SENATE—*Tuesday, January 20, 1981*

(Legislative day of Monday, January 5, 1981)

The Senate met at 10:30 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

Almighty God, in whom our fathers trusted, we thank Thee for the precious memories and bright hopes which stir within us this day.

We pray for Thy servant, Ronald Reagan, summoned by the people to guide the destiny of the Republic. Bestow upon him a wisdom higher than his own, a power greater than his own, and an unfailing spirituality derived from an enduring faith in Thee. Surround him with wise counselors and competent colleagues. Be with him in moments of loneliness and anguish. And be with Thy servant, GEORGE BUSH, that he may be ready at all times for the exigencies of history. Be with the Members of this body. Hold us to all that is right and good and true.

Renew in all the people a strong sense of civic responsibility. Rekindle the fire of high patriotism, of self-reliance, and personal industry. Give us a part in the recovery of national purpose and the revival of pure religion. Quicken our love of America that, beyond the glittering lights of today, we may see the shining glory of the Republic—"one nation under God, indivisible with liberty and justice for all." Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The Senator from Alaska is recognized.

THE JOURNAL

Mr. STEVENS. Mr. President, I ask unanimous consent that the Journal of the proceedings to date be approved.

The PRESIDENT pro tempore. Without objection, it is so ordered.

RECESS UNTIL 10:49 A.M. TODAY

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate stand in recess until 10:49 a.m.

The PRESIDENT pro tempore. Without objection, it is so ordered. Recess until 10:49 a.m.

There being no objection, the Senate, at 10:32 a.m., recessed until 10:49 a.m.; whereupon, the Senate reassembled when called to order by the President pro tempore.

RECESS UNTIL 3 P.M.

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the inaugural platform for the inauguration of our new President, Ronald Reagan. The Senate will then stand in recess until 3 o'clock today.

(Thereupon, at 10:49:25 a.m., the Senate recessed until 3 p.m.)

INAUGURATION OF THE PRESIDENT OF THE UNITED STATES AND THE VICE PRESIDENT

PROCESSION TO THE INAUGURAL PLATFORM

The Members of the House of Representatives, headed by Representative JAMIE L. WHITTEN, Speaker pro tempore, W. Raymond Colley, Deputy Clerk of the House, and the Reverend James David Ford, Chaplain, proceeded to the inaugural platform. House leadership, committee chairmen, and ranking minority members were seated in the inner ring of the platform. Mr. James T. Molloy, Mr. Walter Kennedy, and Mr. Robert V. Rota assisted in the seating of all other Members in the outer ring of the platform.

The Members of the U.S. Senate, headed by Senator STROM THURMOND, President pro tempore, William F. Hildenbrand, Secretary of the Senate, and the Reverend Edward L. R. Elson, D.D., Chaplain of the Senate, proceeded to the inaugural platform. Senate leadership, committee chairmen, and ranking minority members were seated in the inner ring of the platform. Mr. Walter J. Stewart and Mr. Howard O. Greene, Jr., assisted in seating all other Members in the outer ring of the platform.

The Governors of the States and the Mayor of the District of Columbia, were escorted by Mr. Joseph deGenova, assisted by two Capitol Police, to their seats in south boxes 1 and 2. The Governors' spouses, and the spouse of the Mayor of the District of Columbia, were escorted to their places in section A.

The members of the diplomatic corps were escorted from the Rayburn Room by Ms. Linda Melconian and Mr. Hyde Murray and were seated in the north boxes. Spouses of the diplomats were escorted by Mr. Tommy Winebrenner and Mr. Ronald Lasch to their seats in section A.

The members of the diplomatic corps spouses were escorted by Mr. Gerald Frank from the rotunda to their seats on the President's platform.

All the Justices of the Supreme Court were escorted to their seats on the President's platform by Mr. Martin B. Gold. The spouses of the Justices, except for the spouses of the Chief Justice and Associate Justice Stewart were escorted by Capitol Police to their seats in section A. Mrs. Burger and Mrs. Stewart were escorted by the coordinator to their seats on the President's platform.

MRS. BUSH AND MRS. MONDALE

Mrs. Baker, Mrs. Michel, Mrs. Pell, Mrs. Wright, and Mrs. Robert C. Byrd escorted Mrs. Bush and Mrs. Mondale, with assistance from the coordinator, to the President's platform.

MRS. REAGAN AND MRS. CARTER

Mrs. Hatfield, Mrs. Rhodes, and Mrs. O'Neill escorted Mrs. Reagan and Mrs. Carter, with assistance from the coordinator, to the platform.

PRESIDENT CARTER AND VICE PRESIDENT MONDALE

Mr. Mello G. Fish and Mr. Charles Mallon, accompanied by Mr. William McWhorter Cochrane, escorted President Carter and Vice President MONDALE, followed by Senator PELL, Senator ROBERT C. BYRD, Speaker O'NEILL, and Representative WRIGHT to the President's platform.

THE VICE PRESIDENT-ELECT

Mr. Howard S. Liebengood and Mr. Benjamin J. Guthrie escorted the Vice President-elect, Senator BAKER, and Representative MICHEL to the President's platform.

THE PRESIDENT-ELECT

Senator HATFIELD and Representative RHODES, accompanied by Mr. Thomas K. Decker, the Executive Director, escorted the President-elect to the President's platform.

This party joined the Sergeants at Arms, Speaker O'NEILL, Senator BAKER, Senator PELL, Representative MICHEL, Senator ROBERT C. BYRD, and Representative WRIGHT and proceeded to the platform.

The ANNOUNCER. Ladies and gentlemen, Senator MARK O. HATFIELD, chairman of the Joint Congressional Committee on Inaugural Ceremonies, will present the program.

[Applause.]

THE INAUGURAL CEREMONY

Mr. HATFIELD. Welcome to the historic first inauguration under the panoply of the west front of our Nation's Capitol. The 40th President of the United States takes his oath of office in a day when a tide of new hope is rising throughout our land. As an affirmation of this new hope, let us all join Michael Ryan of the U.S. Marines in singing a verse of "America the Beautiful."

All join and reach out and grasp the hand of your neighbor, and let this be a symbol of our unity.

(The U.S. Marine Corps Band, under the direction of Lt. Col. John Bourgeois, played "America the Beautiful," which was sung by Michael Ryan.)

[Applause.]

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

INVOCATION

Mr. HATFIELD. Please be seated.

This new hope is not promoted in lyricism but is a tough and realistic hope which is the instinct of the soul, the energizer of the mind.

For our invocation today, I present President-elect and Mrs. Reagan's pastor, the Reverend Donn Moomaw of the Bel Aire Presbyterian Church of Los Angeles.

Will you please stand?

Reverend MOOMAW. Wherever you might be, here in the United States and around the world, please bow with me in this moment of solemn dedication and prayer.

Gracious God, Our Father, we need you today, maybe as never before. We have not lived up to our personal or national potential. We have seen our world from our own selfish, parochial point of view. We have lived as though everything depended upon us. We confess our sin and seek Your forgiveness.

In this historic moment, we would pray for our President-elect Ronald Reagan. May he see himself as one who has been called by You to lead this country. May he take very seriously his accountability to You and do all he can to walk in Your truth, run with patience the race that is set before him, and stand mature and wholly devoted to doing Your will.

Grant him a steady peace, a brave and compassionate heart, a single desire to always be quick to give You all the praise and the honor and the glory.

Help and encourage Mrs. Reagan and the children in these days. Teach them, O God, to understand that with responsibility comes sacrifice, and with leadership comes loneliness. May they all find their companionship in You, O God.

We also pray for Vice President-elect GEORGE BUSH, the Cabinet, and all others who are in positions of leadership in this new administration. May they measure well the shortness of time and the length of eternity. May they see all people and things and nations from Your point of view.

We thank You, O God, for this moment of commitment. Give to all of us as a nation enough hard times to keep us humble and humane, enough tasks beyond our own abilities to keep us ever dependent upon You, enough joys and accomplishments to keep us pressing on and gloriously happy as we serve You together.

We thank You, O God, for the release of the hostages, and for all of those who have made this moment possible.

And so in this moment of new beginnings, our hearts beat with a cadence of pride in our country and hope in its future. Help us to stand proudly as American citizens and face every challenge with a confidence born of Your spirit and humbly touched by Your love and grace.

So to this end we commit ourselves and to this end we pray, in the name of the Lord of lords and King of kings, even Jesus Christ. Amen.

Mr. HATFIELD. Please be seated.

My fellow citizens, will you join me at this time in wishing good health and happiness to President and Mrs. Carter and the Vice President and Mrs. MONDALE?

[Applause.]

ADMINISTRATION OF OATH TO THE VICE PRESIDENT-ELECT

Mr. HATFIELD. I now present the Associate Justice of the U.S. Supreme Court, the Honorable Potter Stewart, who will administer the oath of office to the Vice President-elect.

[Applause.]

Associate Justice Potter Stewart administered to the Vice President-elect the oath of office prescribed by the Constitution, which he repeated, as follows:

I, GEORGE HERBERT WALKER BUSH, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

Mr. JUSTICE STEWART. God bless you.

[Applause.]

ADMINISTRATION OF OATH TO THE PRESIDENT-ELECT

Mr. HATFIELD. The U.S. Marine Band will now play our national hymn, "God of Our Fathers."

(The U.S. Marine Corps Band played "God of Our Fathers.")

[Applause.]

Mr. HATFIELD. My fellow citizens, I now present the Chief Justice of the United States, the Honorable Warren Burger, who will administer the oath of office to the President-elect.

Mr. CHIEF JUSTICE BURGER. Put your hand on the Bible and raise your right hand and repeat after me.

The Chief Justice of the United States, Warren Earl Burger, administered to the President-elect the oath of office prescribed by the Constitution, which he repeated, as follows:

I, Ronald Reagan, do solemnly swear that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States. So help me God.

Mr. CHIEF JUSTICE BURGER. I congratulate you.

[Applause.]

(Four ruffles and flourishes, "Hail To The Chief," and 21-gun salute.)

Mr. HATFIELD. My fellow countrymen, the President of the United States.

President REAGAN. Thank you.

[Applause.]

THE INAUGURAL ADDRESS

President REAGAN. Senator HATFIELD, Mr. Chief Justice, Mr. President, Vice President BUSH, Vice President MONDALE, Senator BAKER, Speaker O'NEILL, Reverend Moomaw, and my fellow citizens: To a few of us here today, this is a solemn and most momentous occasion. And, yet, in the history of our Nation, it is a commonplace occurrence.

The orderly transfer of authority as called for in the Constitution routinely takes place as it has for almost two centuries and few of us stop to think how unique we really are. In the eyes of many in the world, this every-4-year ceremony we accept as normal is nothing less than a miracle.

Mr. President, I want our fellow citizens to know how much you did to carry on this tradition. By your gracious cooperation in the transition process, you have shown a watching world that we are a united people pledged to maintaining a political system which guarantees individual liberty to a greater degree than any other, and I thank you and your people for all your help in maintaining the continuity which is the bulwark of our Republic.

[Applause.]

The business of our Nation goes forward. These United States are confronted with an economic affliction of great proportions. We suffer from the longest and one of the worst sustained inflations in our national history. It distorts our economic decisions, penalizes thrift, and crushes the struggling young and the fixed-income elderly alike. It threatens to shatter the lives of millions of our people.

Idle industries have cast workers into unemployment, causing human misery and personal indignity. Those who do work are denied a fair return for their labor by a tax system which penalizes successful achievement and keeps us from maintaining full productivity.

But great as our tax burden is, it has not kept pace with public spending. For decades, we have piled deficit upon deficit, mortgaging our future and our children's future for the temporary convenience of the present. To continue this long trend is to guarantee tremendous social, cultural, political, and economic upheavals.

You and I, as individuals, can, by borrowing, live beyond our means, but for only a limited period of time. Why, then, should we think that collectively, as a nation, we are not bound by that same limitation?

We must act today in order to preserve tomorrow. And let there be no misunderstanding—we are going to begin to act, beginning today.

The economic ills we suffer have come upon us over several decades. They will not go away in days, weeks, or months. But they will go away. They will go away because we, as Americans, have the capacity now, as we have had in the past, to do whatever needs to be done to preserve this last and greatest bastion of freedom.

In this present crisis, Government is not the solution to our problem. Government is the problem.

From time to time, we have been tempted to believe that society has become too complex to be managed by self-rule, that government by an elite group is superior to government for, by, and of the people. But if no one among us is capable of governing himself, then who among us has the capacity to govern someone else?

All of us together, in and out of Government, must bear the burden. The solutions we seek must be equitable, with no one group singled out to pay a higher price.

We hear much of special interest groups. Our concern must be for a special interest group that has been too long neglected. It knows no sectional boundaries or ethnic and racial divisions, and it crosses political party lines. It is made up of men and women who raise our food, patrol our streets, man our mines and

our factories, teach our children, keep our homes, and heal us when we are sick—professionals, industrialists, shopkeepers, clerks, cabbies, and truckdrivers. They are, in short, "We the people," this breed called Americans.

This administration's objective will be a healthy, vigorous, growing economy that provides equal opportunity for all Americans, with no barriers born of bigotry or discrimination. Putting America back to work means putting all Americans back to work. Ending inflation means freeing all Americans from the terror of runaway living costs. All must share in the productive work of this "new beginning" and all must share in the bounty of a revived economy. With the idealism and fairplay which are the core of our system and our strength, we can have a strong and prosperous America at peace with itself and the world.

So, as we begin, let us take inventory. We are a Nation that has a Government—not the other way around. And this makes us special among the nations of the Earth. Our Government has no power except that granted it by the people. It is time to check and reverse the growth of Government which shows signs of having grown beyond the consent of the governed.

It is my intention to curb the size and influence of the Federal Establishment and to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States or to the people.

[Applause.]

All of us need to be reminded that the Federal Government did not create the States; the States created the Federal Government.

[Applause.]

So there will be no misunderstanding, it is not my intention to do away with government. It is, rather, to make it work—work with us, not over us; to stand by our side, not ride on our back. Government can and must provide opportunity, not smother it; foster productivity, not stifle it.

If we look to the answer as to why, for so many years, we achieved so much, prospered as no other people on earth, it was because here, in this land, we unleashed the energy and individual genius of man to a greater extent than has ever been done before. Freedom and the dignity of the individual have been more available and assured here than in any other place on earth. The price for this freedom at times has been high. But we have never been unwilling to pay that price.

It is no coincidence that our present troubles parallel and are proportionate to the intervention and intrusion in our lives that result from unnecessary and excessive growth of government.

It is time for us to realize that we are too great a nation to limit ourselves to small dreams. We are not, as some would have us believe, doomed to an inevitable decline. I do not believe in a fate that will fall on us no matter what we do. I do believe in a fate that will fall on us if we do nothing.

So, with all the creative energy at our command, let us begin an era of national renewal. Let us renew our determination, our courage, and our strength. And let us renew our faith and our hope. We have every right to dream heroic dreams.

Those who say that we are in a time when there are no heroes just don't know where to look. You can see heroes every day going in and out of factory gates. Others, a handful in number, produce enough food to feed all of us and then the world beyond.

You meet heroes across a counter—and they are on both sides of that counter. There are entrepreneurs with faith in themselves and faith in an idea who create new jobs, new wealth and opportunity. They are individuals and families whose taxes support the Government and whose voluntary gifts support church, charity, culture, art, and education. Their patriotism is quiet but deep. Their values sustain our national life.

I have used the words "they" and "their" in speaking of these heroes. I could say "you" and "your" because I am addressing the heroes of whom I speak—you, the citizens of this blessed land. Your dreams, your hopes, your goals, are going to be the dreams, the hopes and the goals of this administration, so help me God.

[Applause.]

We shall reflect the compassion that is so much a part of your makeup. How can we love our country and not love our countrymen? And loving them reach out a hand when they fall, heal them when they are sick, and provide opportunities to make them self-sufficient so they will be equal in fact and not just in theory?

Can we solve the problems confronting us? Well, the answer is an unequivocal and emphatic yes. To paraphrase Winston Churchill, I did not take the oath I have just taken with the intention of presiding over the dissolution of the world's strongest economy.

In the days ahead, I will propose removing the roadblocks that have slowed our economy and reduced productivity. Steps will be taken aimed at restoring the balance between the various levels of government. Progress may be slow—measured in inches and feet, not miles—but we will progress. It is time to reawaken this industrial giant, to get Government back within its means, and to lighten our punitive tax burden. And these will be our first priorities, and on these principles, there will be no compromise.

[Applause.]

On the eve of our struggle for independence a man who might have been one of the greatest among the Founding Fathers, Dr. Joseph Warren, President of the Massachusetts Congress, said to his fellow Americans, "Our country is in danger, but not to be despaired of . . . On you depend the fortunes of America. You are to decide the important question upon which rests the happiness and the liberty of millions yet unborn. Act worthy of yourselves."

Well, I believe we, the Americans of today, are ready to act worthy of ourselves, ready to do what must be done to ensure happiness and liberty for ourselves, our children and our children's children.

And as we renew ourselves here in our own land, we will be seen as having greater strength throughout the world. We will again be the exemplar of freedom and a beacon of hope for those who do not now have freedom.

To those neighbors and allies who share our freedom, we will strengthen our historic ties and assure them of our support and firm commitment. We will match loyalty with loyalty. We will strive for mutually beneficial relations. We will not use our friendship to impose on their sovereignty, for our own sovereignty is not for sale.

As for the enemies of freedom, those who are potential adversaries, they will be reminded that peace is the highest aspiration of the American people. We will negotiate for it, sacrifice for it; we will not surrender for it—now or ever.

[Applause.]

Our forebearance should never be misunderstood. Our reluctance for conflict should not be misjudged as a failure of will. When action is required to preserve our national security, we will act. We will maintain sufficient strength to prevail if need be, knowing that if we do so we have the best chance of never having to use that strength.

Above all we must realize that no arsenal, or no weapon in the arsenals of the world, is so formidable as the will and moral courage of free men and women. It is a weapon our adversaries in today's world do not have. It is a weapon that we as Americans do have. Let that be understood by those who practice terrorism and prey upon their neighbors.

[Applause.]

I am told that tens of thousands of prayer meetings are being held on this day, and for that I am deeply grateful. We are a Nation under God, and I believe God intended for us to be free. It would be fitting and good, I think, if on each Inaugural Day in future years it should be declared a day of prayer.

This is the first time in our history that this ceremony has been held, as you have been told, on this West Front of the Capitol. Standing here, one faces a magnificent vista, opening up on this city's special beauty and history. At the end of this open Mall are those shrines to the giants on whose shoulders we stand.

Directly in front of me, the monument to a monumental man: George Washington, Father of our country. A man of humility who came to greatness reluctantly. He led America out of revolutionary victory into infant nationhood.

Off to one side, the stately memorial to Thomas Jefferson. The Declaration of Independence flames with his eloquence.

And then beyond the reflecting pool the dignified columns of the Lincoln Memorial. Whoever would understand in his heart the meaning of America will find it in the life of Abraham Lincoln.

Beyond those monuments to heroism is the Potomac River, and on the far shore the sloping hills of Arlington National Cemetery with its row on row of simple white markers bearing crosses or Stars of David. They add up to only a tiny fraction of the price that has been paid for our freedom.

Each one of those markers is a monu-

ment to the kinds of hero I spoke of earlier. Their lives ended in places called Belleau Wood, The Argonne, Omaha Beach, Salerno and halfway around the world on Guadalcanal, Tarawa, Pork Chop Hill, The Chosin Reservior, and in a hundred rice paddies and jungles of a place called Vietnam.

Under one such marker lies a young man—Martin Treptow—who left his job in a small town barber shop in 1917 to go to France with the famed Rainbow Division. There, on the Western Front, he was killed trying to carry a message between battalions under heavy artillery fire.

We are told that on his body was found a diary. On the flyleaf under the heading, "My Pledge," he had written these words: "America must win this war. Therefore, I will work, I will save, I will sacrifice, I will endure, I will fight cheerfully and do my utmost, as if the issue of the whole struggle depended on me alone."

The crisis we are facing today does not require of us the kind of sacrifice that Martin Treptow and so many thousands of others were called upon to make. It does require, however, our best effort, and our willingness to believe in ourselves and to believe in our capacity to perform great deeds; to believe that together, with God's help, we can and will resolve the problems which now confront us.

And, after all, why shouldn't we believe that? We are Americans. God bless you and thank you.

[Applause.]

Mr. HATFIELD. Will you remain standing, please?

The Joint Congressional Committee on the Inauguration and all the Members of U.S. Congress are honored that you have come here for this great occasion today.

We close now with the benediction offered by Reverend Moomaw, which will be followed by the singing of the Star Spangled Banner by Mrs. Juanita Booker.

BENEDICTION

Reverend MOOMAW. May the Lord bless you and keep you; may the Lord make His face to shine upon you and be gracious unto you; may the Lord lift up the light of His countenance upon you and give you peace, both now and forever more. Amen.

PRESENTATION OF THE NATIONAL ANTHEM

(The National Anthem was sung by Mrs. Juanita Booker, accompanied by the U.S. Marine Corps Band, audience standing.)

[Applause.]

Mr. HATFIELD. Will you greet once more our President and Mrs. Reagan?

[Applause.]

(The inaugural ceremonies were concluded at 12:23 p.m.)

(Following the conclusion of the inaugural ceremonies, the Senate reassembled at 3 p.m., when called to order by the President pro tempore (Mr. THURMOND).

MESSAGES FROM THE PRESIDENT

The PRESIDENT pro tempore. The Senate will now receive a message from the President of the United States.

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES OF THE PRESIDENT WITH RESPECT TO NOMINATIONS OF CABINET OFFICERS HELD AT THE DESK

Mr. BAKER. Mr. President, I ask unanimous consent that the messages from the President, which are in respect to his nominations for Cabinet officers, be held at the desk pending further disposition of the Senate.

The PRESIDENT pro tempore. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, there will be no objection from this side. We on the Democratic side want to expedite the process of confirming the nominees. Some of the nominees will be confirmed quickly and without much debate. Others will require a little more time, but we stand ready to cooperate in expediting the nominees.

I feel the new President, as have his predecessors, should have those whom he has chosen insofar as the Senate is willing to confirm them in place as soon as possible so he can begin to govern. That will be the spirit on this side of the aisle as we approach this matter.

We are ready to enter into a time agreement which I have discussed with the distinguished majority leader, if he so wishes to propound it.

Mr. BAKER. Mr. President, I thank the minority leader, and I am most grateful for his graciousness and his expression of cooperation which he has stated previously privately, as well as on the floor of the Senate. It is characteristic of him and of his leadership and, I may say, augurs well for the beginnings of a good bipartisan relationship in matters of national importance that we are off to a start of this type.

I might say to the minority leader it is my intention to ask unanimous consent in a moment to proceed to the consideration, first, of the nomination of Caspar Weinberger to be Secretary of Defense. I would advise the distinguished minority leader, as I have done previously, that I had hoped to go first to the Secretary of State, who is the senior Cabinet officer, but at the specific request of the President I will alter that request and, in a moment, I will make such a request, such a unanimous-consent request.

I hope, Mr. President, in respect to the remainder of this day that we can dispose of the Secretary of Defense nomination on which, I assume, there will be a rollcall vote, based on the colloquy with the Senator from Wisconsin on yesterday, and then begin on the nomination of General Haig to be Secretary of State. If the minority leader is prepared to do so, I would like to propound, if he is prepared to respond, now a unanimous-consent request with respect to those two nominations.

Mr. ROBERT C. BYRD. Mr. President, first of all, I have no objection, as I represent the Members on this side of the aisle, to holding the nominations at the desk prior to their being sent to committee, and I also have no objection to proceeding with any nomination the distinguished majority leader wishes to proceed with or nominations today without their being held for a day.

The PRESIDENT pro tempore. Without objection, the Senator's request is agreed to.

Mr. BAKER. I thank the Chair.

TIME-LIMITATION AGREEMENT ON VARIOUS CABINET NOMINATIONS

Mr. BAKER. Mr. President, I now request that when the Senate goes into executive session to consider nominations, those held at the desk, that we first proceed to the consideration of the nomination of Caspar Weinberger to be Secretary of Defense, and on that nomination there be a total time of 100 minutes to be divided as follows: 45 minutes under the control of the ranking member of the Committee on Armed Services, the distinguished Senator from Mississippi (Mr. STENNIS); 15 minutes under the control of the distinguished chairman of the committee, Mr. TOWER; and 40 minutes under the control of the distinguished Senator from North Carolina (Mr. HELMS). That is the request.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object—and I will not object—I wonder if the distinguished majority leader would care to put all of the requests at one time, certainly those on which this side of the aisle requests 45 minutes, without singling out any one in particular?

Mr. BAKER. All right.

Mr. President, responding to the minority leader, let me go through the list, if the Chair will withhold granting the request.

Mr. President, I further ask unanimous consent that when we proceed to the consideration of the nomination of Alexander Haig to be Secretary of State that there be a time limitation of 4 hours to be divided as follows: 3 hours to be controlled by the ranking minority member, Senator PELL, the distinguished Senator from Rhode Island; the remaining hour to be controlled by the chairman of the committee, the distinguished Senator from Illinois (Mr. PERCY); and 30 minutes of that hour to be allocated to the distinguished Senator from Connecticut (Mr. WEICKER).

Mr. President, in addition, I ask unanimous consent that on the nomination of James Watt to be Secretary of the Interior that there be a 4½-hour time limitation to be divided as follows: 3 hours to be controlled by the ranking minority member, Senator JACKSON; and 1½ hours to be controlled by the distinguished chairman of the committee, Senator MCCLURE.

I further ask unanimous consent, Mr. President, that on the nomination of David Stockman, to be Director of the Office of Management and Budget, there be a 3-hour time limitation to be divided

as follows: 2 hours under the control of the ranking minority member, Mr. EAGLETON, and 1 hour under the control of the chairman of the committee, Senator ROTH.

Further, Mr. President, I ask unanimous consent that when the Senate reaches the nomination of James Edwards to be Secretary of Energy that there be a time limitation of 75 minutes to be divided as follows: 45 minutes under the control of the ranking minority member, Senator JACKSON; and 30 minutes under the control of the chairman of the committee, Senator MCCLURE.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object—and I shall not object to the requests en bloc—the Democratic side of the aisle is prepared to enter into agreements on all the remaining nominees with the exception of Mr. Stockman, and to the extent that 45 minutes be allotted to this side of the aisle under the control of the ranking minority member, if the distinguished majority leader—I am sorry, I misstated myself by a slip of the tongue. I did not mean to make reference to Mr. Stockman. My reference to the lack of any intention to enter into any time agreement on this side with respect to a nominee was with respect to the nomination of the Secretary of Labor.

Mr. BAKER. Mr. President, I thank the distinguished minority leader.

On the basis of that then I make this final addition to my unanimous-consent request. I ask unanimous consent that on all the remaining nominations which are now at the desk, having been transmitted by the President of the United States on this day, there be a time limitation of 45 minutes allocated to the minority, and 15 minutes allocated to the majority under the control of the ranking member of the jurisdictional committee in each instance, and the chairman of the jurisdictional committee on this side in each instance.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished majority leader were to add this proviso, that 30 minutes of the time allotted to the Democratic side of the aisle be under the control of Mr. PROXMIRE on each nominee, I have no objection.

Mr. BAKER. Mr. President, I thank the distinguished minority leader, and I add that to my request.

The PRESIDENT pro tempore. Without objection, all requests are agreed to.

(Later the following occurred:)

Mr. BAKER. Mr. President, it has been called to my attention that, by inadvertence, it might be thought that I asked unanimous consent to limit the time on the nomination of Mr. Donovan to be Secretary of Labor. Just so there is no misunderstanding about that, Mr. President, I ask unanimous consent that the Donovan nomination not be included in the overall catchall request that I made just previously.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I thank the minority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the majority leader.

(End of later proceedings.)

Mr. BAKER. Mr. President, while we have a number of Senators in the Chamber, I would say once again that it is my intention in a few moments to ask unanimous consent to proceed first to the nomination of Caspar Weinberger to be Secretary of Defense. While there are a number of Senators here, I ask unanimous consent that it be in order to ask for the yeas and nays on that nomination.

The PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. BAKER. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, is it the intention of the majority leader to allow Senators to have a few minutes for routine morning business? I have a couple of statements I would like to make at this time.

Mr. BAKER. Mr. President, I am prepared to do that now, if the minority leader would wish, or we could do it later, as he might prefer.

Mr. President, if there is any remaining leader time, let me make one remark and then I will yield to the minority leader for such remarks as he may wish and then we will have a provision for the transaction of routine morning business.

Mr. TOWER. Mr. President, may we have order?

EXPRESSIONS OF APPRECIATION

Mr. BAKER. Mr. President, I would like to pay a special tribute to the distinguished minority leader for something that may not be widely known even in this body, and that is his perseverance, his initiative, and his request that the inauguration of the 40th President of the United States be held on the west front of the Capitol, a historic first.

We have just concluded that ceremony, and it was no less than majestic. I wish to pay my special respects to the distinguished minority leader for taking the initiative in making that possible and making that event so memorable.

At the same time, Mr. President, I wish to express my deep appreciation to the distinguished Senator from Oregon, Mr. HATFIELD, who was chairman of the Joint Congressional Committee on the Inauguration. I think the entire inauguration was conducted with style and grace, with a type of class that becomes the Congress of the United States, and the rapport that I hope will continue to exist between the three departments.

Mr. President, I wish to express my appreciation to all of those on the staff of the Senate and the Congress who have served so faithfully in making this truly a memorable day.

I yield to the minority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished majority leader. I thank him for his remarks with respect to the bit of a part that I played in having the inaugural ceremony conducted on the west side of the Capitol.

I must confess that at that time I clearly had in mind the inauguration of a Democratic President. But, nevertheless, I think we did the right thing in having it on the west side.

Mr. President, let me also add my commendations to those of the majority leader with respect to the work that Mr. HATFIELD has done and the class, poise, and dignity with which he carried out his responsibility today. I think that all Members of the Senate can be justly proud of Mr. HATFIELD.

PRESIDENT REAGAN

Mr. ROBERT C. BYRD. Mr. President, today is a day of hope in our country. Back in November we had our day of partisan contest. The winner of that election becomes much more than a victor of his party. He becomes the President of the United States. I congratulate President Ronald Wilson Reagan. I join with my fellow Democrats and with all Americans in wishing him an auspicious beginning, and a successful term of office.

More than anyone, the President represent our country. When the President succeeds, so do all of us. Every American has a stake in the strength and the wisdom of our President. That is why today is a day of national hope. The United States has a new leader, and all Americans wish him Godspeed.

Back in November and during the campaign there were negative comments about the state of our Nation—both sides criticized our policies and pointed to problems. Now it is time to leave behind the rhetoric of economic disaster and military weakness. Now is the time to look to our strengths, which are ample and enduring. Now is the time to focus on our problems as challenges, with a sense of perspective, and with a sense of purpose. The spirit of this land is proud and resilient. We know that we as a people have an inner strength, and we want to use it for the good of the country. We know that we are prepared to work, to sacrifice, and to better this Nation. We welcome a fresh chapter in our history.

The transition from President Carter to President Reagan is one of which we can be proud. There are few nations in the world capable of transferring power by the ballot. In many countries an event such as the one we have celebrated today would be accomplished not by respect for the rule of law and with dignity for both winner and loser—but rather by force of arms and tanks in the streets. We do live in a special country. We have a duty to preserve our system of representative democracy.

President Carter had a contract with the American people until today. History will record that he was a President tenacious for peace. He honored our country by working for the release of the American hostages in Iran right up to the last moment. We are proud of Jimmy Carter for this.

Mr. President, President Reagan stands before a nation of Republicans and Democrats, a nation strong by its ethnic, cultural, economic, and religious

diversity. We owe him our support and our cooperation to strengthen America. Today is indeed a day of hope for all Americans.

RELEASE OF AMERICAN HOSTAGES

Mr. ROBERT C. BYRD. Mr. President, in the early days of the Roman Empire, the ancient Latin poet Horace offered this advice and counsel: "The man who is tenacious of purpose in a rightful cause," he observed, "is not shaken from his firm resolve by the frenzy of his fellow citizens clamoring for what is wrong, or by the tyrant's threatening countenance." I do not know whether President Carter, Secretary of State Muskie, Deputy Secretary Christopher and others in the Carter administration were aware of the Latin poet's sage observation in their approach to gaining the release of the American hostages in Iran. But, at this juncture, it really does not matter.

What does matter is that the hostages are free and they are free because President Carter was, in fact, "tenacious of purpose" and "not shaken from his firm resolve" to win their release—and to win it in a dignified and honorable manner.

The Nation owes President Carter and his advisers a debt of gratitude for their determined and unfailing efforts to bring the hostage ordeal to a successful conclusion. A lesser man, a lesser President could easily have decided to turn his back and slowly walk away, leaving it as a problem for his successor. To his credit, President Carter refused to do so and for that, we can all be thankful. History will so record.

And history will also record that this was an issue on which all Americans were united, whether rich or poor, black or white, Democrat or Republican. It was a bipartisan issue and it was approached in just that fashion. Indeed, I would be remiss if I did not acknowledge the efforts of the incoming President, Mr. Reagan, and his advisers as well. Their efforts were supportive, constructive and forthright.

Clearly, then, a lot of people deserve a lot of credit in writing the final act of the hostage drama. Congratulations to all of them. The drama is over and well it should be.

With great fondness and affection we look forward to welcoming our fellow citizens home and we rejoice in the happiness of their families and friends.

Mr. President, I thank the distinguished majority leader for his courtesy.

Mr. BAKER. Mr. President, I thank the minority leader.

Mr. President, may I take this brief opportunity to join with the distinguished minority leader in paying my respects to President Carter. I have known him now for 4 years as President and before that as Governor of Georgia. I have known him as a friend and as President of the United States.

There is one point, however, that I would like to record at this moment. As the minority leader has correctly pointed out, a lesser man could easily have turned his back on the continuation of the diligence of effort that he has shown to gain the release of the American hostages in Iran.

I commend President Carter, I commend former Secretary of State Muskie, I commend former Under Secretary of State Warren Christopher, and so many others, for working right up to the last moment, not only to gain the release of our hostages, but also to liquidate a problem that would have been a very difficult one for our new President to face.

The country, this administration, all of us, owe to President Carter and his colleagues a debt of gratitude for that service, and I wish to express that at this time.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that at this time there be a period for the transaction of routine morning business, not to exceed 20 minutes, and that Senators may speak therein for not to exceed 5 minutes each.

The PRESIDENT pro tempore. Without objection——

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I will not object, I wonder if the distinguished majority leader will include in his request once he does proceed into executive session, that the first 15 minutes of executive session be allotted to Senator PROXMIRE without the time being charged against any nominee.

Mr. BAKER. Mr. President, I certainly have no objection to that. It is my understanding that the Senator from Wisconsin wishes to make a general statement about the nominations rather than about a particular nominee.

Mr. PROXMIRE. That is correct.

Mr. BAKER. I modify my previous unanimous-consent request so that the Senator from Wisconsin may have 15 minutes when we go into executive session for the purpose of considering Presidential nominees for Cabinet positions, and that such 15 minutes not be charged against any of the several nominations.

The PRESIDENT pro tempore. Without objection, the request, as modified, is agreed to.

RELEASE OF AMERICAN HOSTAGES BY IRAN

Mr. FORD. Mr. President, like all other Americans, I am thankful that the safe release of the hostages has finally been arranged and that they are now on their way home. My prayers remain with them and their families for the trying personal times ahead.

The resolution of this situation should be a sign to other nations that the value our country places on human life will not be compromised. The respect and importance that we assign to human life is a source of inner strength to this country. This is what made the situation in Iran so fragile, but the United States, through patience and perseverance, was able to drive a hard bargain without backing away from that principle.

This has been a very frustrating and trying experience for the Nation in general and the Carter administration in particular. As he leaves office, President Carter will do so knowing that he did his best and gave his all to win the release of the hostages and that despite the many obstacles involved he and his administration succeeded.

REPORT OF THE INTERAGENCY COAL EXPORT TASK FORCE

Mr. FORD. Mr. President, last September, the Senate Committee on Energy and Natural Resources, held 3 days of hearings on U.S. coal exports. I found chairing much of these hearings to have been both educational and somewhat disturbing.

The United States, always a major exporter of metallurgical coal, now can serve an increasingly important role as a major exporter of steam coal, both in the short term and over the longer run. The international market for steam coal will increase rapidly during the remainder of the century as an economic alternative to OPEC oil. The capability of the United States to satisfy this market will, in large part, be determined by national policies such as our policy regarding the expansion and dredging of ports.

One day of the September hearings was devoted to reports by, and questioning of, members of those agencies represented on the Interagency Coal Export Task Force. Today, I received my copy of the interim report of the task force, and I commend its study to all Members and all committees of jurisdiction.

Mr. President, I ask unanimous consent that the major findings and recommendations of the Interagency Coal Export Task Force be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTERAGENCY COAL EXPORT TASK FORCE

INTRODUCTION: MAJOR FINDINGS AND RECOMMENDATIONS

Background

Coal was the dominant energy source and feedstock used by industrialized nations at the turn of the century. Within twenty years, however, coal's dominance began to erode with the discovery of large petroleum and natural gas reserves. As explorations, production and refining technology advanced, oil and gas became cheaper and more convenient to use, store and ship than coal. Coal's contribution toward the world's primary energy requirements fell from 49 percent in 1940 to only 29 percent in 1973. In 1973, OPEC initiated what has now grown to be a ten-fold increase in world oil prices. By comparison, coal prices have moved up modestly, and steam coal is now significantly cheaper than oil for use in large stationary facilities that generate electricity and industrial process heat, even including costs of new construction or conversion and emission-cleaning equipment. This together with concerns about stability of supply of oil, has accelerated a worldwide re-evaluation of the role of coal in meeting the world's energy needs. By 1979 coal's share of primary energy requirements had climbed to 33 percent. The United States, with vast recoverable coal reserves and an underutilized capacity to mine coal, has the potential to become a leading exporter of steam coal.

Growing international awareness of the need to rely on coal in order to fuel the economic growth of the industrialized world was reflected in commitments made at the Tokyo Economic Summit in June 1979. There, the United States joined with its industrialized allies to encourage coal use, facilitate its transport and avoid governmental interference with long-term contracts for coal, except in a national emergency.

In June 1980, the seven heads of State at the Economic Summit Meeting at Venice again turned their attention to coal. As part of the fundamental undertaking to "break the existing link between economic growth and consumption of oil . . . in this decade," the participants adopted the goal of doubling coal production and use by the early 1990's. They agreed to a number of implementing actions, including:

Encouragement of long-term commitments by coal producers and consumers;

Improvement of infrastructure in both exporting and importing countries, as far as is economically justified, to insure the required supply and use of coal;

Use of full authority to insure that increased use of coal does not damage the environment; and

A number of steps to bar the construction of new oil-fired generating capacity and to encourage the conversion of current capacity to other fuels.

In order to evidence the United States' commitment to a major role as a coal exporter, the President called a White House Coal Export Conference in December 1980. There, over 300 persons representing nearly all aspects of world coal trade heard panelists and audience participants review the promise and problems underlying United States coal export potential. Given a common and current understanding of the progress made and plans for additional actions, along with the commitment of the United States government, the attendees would, it was believed, be in a better position to move trade forward. A summary of the proceedings of the conference is contained in Appendix A. Participants in the Task Force are listed in Appendix B.

The Task Force

In connection with the international efforts of the United States supporting the use of coal, the Interagency Coal Export Task Force was formed in the summer of 1980 at the direction of the President. Its purpose was to report on possible courses of action to increase United States steam coal exports in a manner consistent with other national policies, including our commitment to environmental protection.

In its roughly six months of existence, the Task Force undertook a number of related activities. It assembled existing, and developed significant new information regarding the international coal market. It undertook analyses of apparent problems underlying coal exports. It served as a clearinghouse for ideas and information among those who had interests in coal exports; in many cases, it helped to bring parties together for possible mutual and national benefit. It served as a point of contact for foreign representatives both to obtain current information on developments in the United States and to register concerns. It made a contribution to public awareness that increased coal exports will serve both the domestic and international interests of the United States.

Just as the work of the Task Force naturally entails related activities, this interim Report embraced matters other than narrow proposals for Federal action. Any such proposals should be based on an adequate foundation and viewed in perspective. Thus, for example while it is not the purpose of this Report to describe comprehensively the geology or utilization of coal, it is necessary to refer to such material selectively, since it may be helpful in understanding the dynamics of the coal export market. Moreover, it is just as important to point out areas where Federal action is unnecessary. By cataloging the plans and achievements of private industry or of State and local governments, we can paint a more accurate picture and satisfy concerns that attention is being given to potential problem areas. We do not see the Task Force as an invitation for recommendations which necessitate federal intrusion into the free market, and, with a few significant exceptions, we view federal action as generally inappropriate here.

The report will, therefore, set forth a variety of information useful in understanding the process by which United States steam coal exports can increase, including current problems; ideas pursued but, for reason, rejected or deferred for others to consider; and conclusions reached by the Task Force on major situational factors—such as estimates of foreign demand for steam coal.

It must be emphasized that this is solely an interim Report. Much more needs to be done to evaluate the data and studies received by the Task Force. Given its relatively brief existence, the breadth of issues covered (from foreign energy policies to the condition of domestic waterways), and the large volume of materials recently received, it was not possible to integrate fully the work product or to reach interagency consensus on problems and solutions. Moreover, this Report does not constitute the entirety of the Task Force's written work. Listed in Appendix C are the extensive reports of the working subgroups of the Task Force and of its consultants. These will be made available for public review at the Department of Energy and for copying according to a procedure described herein (Appendix C). Those with particular interests in matters touched upon in this initial Report will have the opportunity to obtain more detail. Additional publication of this material may be undertaken when the final Report of the Task Force is completed.

Appendix D to this report provides a summary of existing Federal programs that are designed to support coal export activities.

Set forth in the following text are the current conclusions and recommendations of the Task Force on issues which are of primary importance to the United States' role as a supplier of the international market for steam coal. Other findings lie within the body of the report and may form the basis for future recommendations.

Conclusions and recommendations

1. World Coal Demand:

Based upon extensive, independent field studies in Europe and the Far East, the Task Force believes that there will be significant growth in world demand for steam coal. Such growth has already begun, has contributed to the almost seven-fold increase in U.S. overseas steam coal exports for 1980 over 1979, and is expected to continue beyond the end of this century. Import demand for the "primary overseas market" is projected in the table below:

TABLE I–1.—PRIMARY OVERSEAS MARKET DEMAND

[Million short tons per year] [1]

	Actual 1979	1985	1990	2000
Europe	62.6	97–123	146–190	273–343
Pacific rim	13.9	43	90	202–222
Total	76.5	140–166	236–280	475–565

[1] Our underlying projections of coal demand were computed in MTCE (million metric tons of coal equivalent). An MTCE measures both volume and heating value such that one MTCE equals 1,000,000 metric tons of coal with a heating value of 12,600 Btu per pound. Conversion to "short tons," which is the usual unit for shipments within the United States, requires first, multiplying MTCE by a factor of 1.1 to convert from metric to short tons, and then multiplying by a factor of 1.045 to reflect heating value of the low-sulfur bituminous coal likely to be exported by the United States. The combined conversion multiple is 1.15.

The projections for individual countries which comprise the foregoing projections are set forth in detail in Table I–2, which follows. For the period 1985–1990, these projections are roughly 20 percent higher than earlier projections by the World Coal Study; and for the year 2000, they lie within the high range of such projections.

The primary reason for this high projected growth is the escalating price of petroleum, the apparent undependability of its supply and the resulting need to convert to other fuels for reliable electric power generation and industrial process heat. The expected increase in imported coal demand is rendered more significant in light of the fact that the Task Force utilized more conservative assumptions for growth in the gross national product (GNP) of consuming countries and for the associated rates of growth in electricity demand. The increase in coal demand expectations over those of prior studies reflects certain curtailments or deferrals in consuming countries' plans for construction of nuclear facilities; additional conversion to coal use in the industrial sector (for example, cement manufacture), and a closer analysis of certain countries' likely consumption, not individually analyzed in previous studies.

It should be noted that almost all steam coal in world trade today is low-sulfur (generally below 1.5 percent and preferably below 1 percent), bituminous coal. Some industrial uses such as cement manufacture can accept somewhat higher sulfur levels, about 1.5 to 2 percent. The Task Force believes that the predominant steam coal demand will continue to be for low-sulfur, bituminous coal. The market for higher sulfur coal will be small, such coals being used primarily to blend with very low sulfur coal.[1]

TABLE I–2.—PRELIMINARY PROJECTIONS OF STEAM COAL IMPORTS BY COUNTRY AND REGION

[Short tons] [1]

	Year			
	1979	1985	1990	2000
Europe:				
Austria	3	5	6	17
Belgium/Luxembourg	6	13	17	23–33
Denmark	8	13	16	22
Finland	5	5–8	6–8	8–18
France	21	15–22	14–24	25–36
Greece	(2)	2	4	5
Italy	2	17	37–41	46–54
Ireland	1	2	4	7
Netherlands	3	7	15	33–37
Norway	(2)	1	1	3
Spain	4	7	9	24
Sweden	2	4	11	27
United Kingdom	2	0–8	0–8	0–10
West Germany	7	8–15	6–25	28–50
Subtotal	63	97–123	146–190	273–343
Pacific rim:				
Japan	3	25	48	99–118
Korea	6	9	16	51
Taiwan	5	4	16	41
Hong Kong		5	9	12
Subtotal	14	43	90	202–222
Total	77	140–166	236–280	475–565

[1] 1 short ton is assumed to contain 24,000,000 Btu. Totals may not add due to rounding.
[2] Unknown.

[1] Most of the coal in world trade today is metallurgical coal—used for production of metallurgical coke for steel manufacture. The United States is a major exporter of metallurgical coal, primarily to the Pacific Rim countries from Eastern and Gulf ports, shipping about 51 million tons in 1979, valued at about $2.8 billion. The demand for metallurgical coal is thus tied to worldwide steel production. The Task Force expects the growth of metallurgical coal trade to be slow.

2. The U.S. Share of the International Steam Coal Market:

The growth in the world steam coal trade reflected in the preceding section does not guarantee United States coal exporters a large or expanding share of the market. The United States' role depends on the buying strategies of the consuming countries, the policies and prices of competing exporters, and the actions taken by the United States to maintain reasonable prices, prompt delivery and dependable quality. Projections of United States coal exports, therefore, rest upon a number of highly uncertain factors.

The principal issues raised are:

Whether buyers will simply maximize purchases from the lowest cost suppliers;

Whether, instead, they will seek to diversify supply sources for security, with price operating as a secondary factor which might constrain the desire for diversification; or

Whether, regardless of buyers' strategies, world steam coal demand will grow until it enters a range where, given political and resource constraints on other sellers, only the United States can deliver the desired additional volumes.

Based on our interviews here and abroad and on other factors, we do not believe the United States' market share will turn entirely on a lowest-delivered-cost criterion. Rather, the lessons learned from the unstable energy markets of the last decade have shaped basic purchasing strategies for importing countries so as to emphasize security of supply and diversification of supply sources. The buying strategies also reflect the fact that coal is inexpensive relative to oil and natural gas. A certain range of differences in prices among coal suppliers is viewed as insubstantial in respect to both the savings to be gained by conversion to coal and the hidden costs inherent in the risks of nondiversification of supply.

As long as competing delivered-coal prices lie within an acceptable tolerance, which may be of the order of 10 percent, the Task Force believes the purchasing strategies will be determined by the foregoing considerations. If the United States maintains prices within this range, it would obtain a relatively stable share of the market, following initial growth as export facilities are developed.

Should the tolerance be exceeded, however, then buyers might follow one of two courses: they might direct their purchases to cheaper suppliers to the limit of the latters' ability to supply, leaving only residual purchases for the high-priced source. It is not possible to project the precise relationship between price and market share, where diversification is the primary goal. There seemed to be, agreement, however, among those who believe that buyers will follow the latter course, agreement on the exemplary case, that, if United States' coal were generally priced at $6–$8 per ton above others' prices, the result would be to reduce the United States' share of the European market from 30 percent to 25 percent.

Given the distance from mine to port in the United States, the costs of transportation, and the production costs (all relatively uncompressible factors), it is not likely that the United States will, in this decade, become the low-cost supplier in either Europe or the Pacific Rim. The United States will, however, generally be able to maintain reasonable delivered prices for its coal.

Our projections of the United States' market share, based on the analysis in Chapter 6, are summarized as follows:

TABLE I–3.—PROJECTED U.S. SHARE OF THE WORLD STEAM COAL MARKET [1]

	Percent			Millions of short tons		
	1985	1990	2000	1985	1990	2000
Worldwide	18	25	38	28	64	197
Europe	28	29	47	28	49	145
Pacific rim	(2)	17	25	(2)	15	52

[1] Assumptions underlying the projections are as follows:
a. The overall worldwide data are the task force projections. The assumptions regarding South Africa, Australia, and Canadian distribution of exports between Europe and the Pacific rim below are considered reasonable extensions of current market factors, but are provided as working hypotheses only.
b. Poland will continue steam-coal exports to Europe at the 1979 level.
c. South Africa will ship 50 percent of its coal to Europe, 50 percent to the Pacific rim.
d. Australia will ship 80 percent of its steam coal to the Pacific rim; 20 percent to Europe.
e. Canada will ship almost all of its coal to European buyers.
[2] Minimal.

3. Backlog at United States Coal Ports:

The immediate hindrance to expanding the United States' role in international steam coal trade is our limited capacity to store and load coal at the ports. During 1980, the output of port exporting facilities increased about 60 percent over 1979 levels; some terminals increased output by as much as 80 percent; and utilization of the principal loading piers was about 90 percent of available service hours. The Task Force believes that the practical limit of our coal export facilities was reached in 1980, when the United States was called upon to make up for export curtailment by two competitors (Poland and Australia).

As a consequence, long queues of ships, as many as 130, lay waiting to load at the East Coast coal port of Hampton Roads, Virginia in early January 1981, with an overall average waiting time of 40 days. Associated demurrage costs were reported to be as high as $10,000 per day per ship, which added an average of about $6.00 to $6.50 per ton to the cost of shipping United States coal. Even more serious than demurrage costs are the problems posed by untimely or undependable delivery to power plants dependent on coal. Although such delay could, in certain cases, be protected against by buyers' maintaining higher inventories at yet additional costs, the threat of uncertainty of delivery arouses special fears among potential customers.

The principal problem underlying the port backlogs of 1980 was that existing facilities and methods for moving coal to the ports, designed for metallurgical coal, were overtaxed by the surge of demand directed toward the United States and were unable to deal separately with steam coal. Metallurgical coal is a highly specialized product with as many as 500 blended sales grades, whose components are stored in the same hoppers used to transport it. Given an absence of ground storage at the ports, shippers were simply unable to maintain or move the volumes of steam coal necessary to fill orders and load ships. Waiting ships were not accepted for loading until all the coal ordered was on hand. Even if the necessary coal had been available at the port loading areas, then another bottleneck would have developed, because the capacity of piers and loading equipment was also inadequate.

Channel depth at the ports did not in itself play a primary role in the problem. The fragmentation of the coal market—reflected in the inability of one broker or transshipper of coal quickly to purchase coal from another in order to complete an order—did contribute to the problem. The Task Force studied whether a more rigorous ship reservation system would have ameliorated the problem at the coal ports, and concluded that it was not a cure for the current difficulties, although an improved system merits consideration for future use by port operators.

The development of new piers and associated coal loading equipment is not the responsibility of the federal government, but rather that of private industry, the States and local governments. Their response now appears to be entirely adequate, and, given reasonable governmental diligence in the processing of applications for permits, the principal problem at United States ports should begin to lessen by mid-1983. Approximately 18 million tons per year of new capacity is now under construction, and roughly an additional 81 million tons per year of new capacity is planned for the East Coast. For the Gulf Coast, 5 million tons per year additional capacity is under construction and another 33 million tons per year planned. Plans for the West Coast ports would add about 47 million tons per year of new capacity. In aggregate, 23 million tons per year of new capacity is under construction and there are plans for 160 million tons per year of additional new capacity.

The new port facility proposals are detailed in Table I–4, which was based on a survey of American ports conducted in August and September of 1980. It includes only those expansions which were firmly committed, as evidenced by commencement of actual site preparations or by early commitments of financial support or contracts. Some announced expansion plans were not included as they had not sufficiently matured at the time of the survey to be considerd reliable for planning purposes. This does not mean that they are unlikely to go forward. Some expansion plans have been firmed up since last September— e.g., acceleration of the Massey facility in Newport News, Virginia, and development of export capacity at Morehead City, North Carolina. Other new proposals, such as the 15–35 million tons per year facility at Marley Neck in Baltimore, were not included because development was at too early a stage at the time of the survey.

TABLE I–4.—EXISTING AND POTENTIAL EFFECTIVE CAPACITY FOR HANDLING EXPORT COAL AT U.S. PORTS

[Millions of short tons]

Port/terminal	Vessel size (DWT)		Existing capacity (10^6 tons)		Capacity expansion (10^6 tons)		Total mid- to long-term* effective capacity, 1985 (10^6 tons)
	Existing	Proposed	Designed	Effective	Planned	Underway	
East coast:							
New York, New York (P)	80,000				5.0		5.0
Philadelphia—Pier 124 (E)	60,000		5.0	2.5		6.5	9.0
Camden, New Jersey (P)	35,000				2.0		2.0
Wilmington, Delaware (P)	30,000				7.5		7.5
Lower Delaware Bay (P)	100,000+				10.0		10.0

Port/terminal	Vessel size (DWT)		Existing capacity (10^6 tons)		Capacity expansion (10^6 tons)		Total mid- to long-term* effective capacity, 1985 (10^6 tons)
	Existing	Proposed	Designed	Effective	Planned	Underway	
Baltimore (E)	70,000	100,000+	27.2	16.6	11.0	6.5	34.1
Norfolk:							
Pier 6 North (E)	80,000	100,000+	58.0	29.0	7.3		36.3
Pier 5 South (E)			8.0	4.0	1.0		5.0
Newport News:							
Pier 14 (E)	80,000	100,000+	33.0	16.5			16.5
Pier 15 (E)			14.6	5.3		5.0	10.3
Pier 9 (E)					5.0		5.0
Portsmouth (P)	50,000	100,000+			10.0		10.0
Morehead City (P)	50,000	100,000+			5.0		5.0
Charleston (P)	40,000	50,000			5.0		5.0
Savannah (P)	50,000	70,000			7.5		7.5
Brunswick (P)	30,000	43,000			5.0		5.0
Total east coast			145.8	73.9	81.3	18.0	173.2
Gulf coast:							
Mobile (E)	60,000	100,000+	11.0	5.5		5.0	10.5
New Orleans—Davant (E)	60,000	100,000+	14.0	7.0	3.0		10.0
Myrtle Grove (E)	60,000	100,000+	6.0	3.0	9.0		12.0
Mile 118 (P)	60,000	100,000+			4.0		4.0
Baton Rouge (Burnside) (E)	60,000	100,000+	5.0	2.0	4.0		6.0
Port Arthur (P)	60,000	100,000+			2.0		2.0
Galveston (P)	55,000	100,000+			10.0		10.0
Corpus Christi (P)	75,000	100,000+			0.5		0.5
Total gulf coast			36.0	17.5	32.5	5.0	55.0
West coast:							
Los Angeles (E)	100,000+		4.0	1.5	7.5		9.0
Long Beach (E)	100,000+		4.0	1.5	5.0		6.5
Sacramento (P)	30,000	40,000			1.2		1.2
Stockton (P)	35,000	40,000			1.2		1.2
Astoria (P)	50,000				5.0		5.0
Portland (P)	55,000				3.0		3.0
Coos Bay (P)	35,000				3.0		3.0
Kalama (P)	50,000				7.5		7.5
Bellingham (Cherry Point) (P)	100,000+				1.2		1.2
Dupont, Washington (P)	100,000+				3.0		3.0
Grays Harbor (P)	40,000	60,000			3.0		3.0
Anchorage (P)	100,000+				3.0		3.0
Trading Bay (P)	100,000+				3.0		3.0
Total west coast			8.0	3.0	46.6		49.6
Total United States			189.8	94.4	160.4	23.0	277.8

(E) Existing facility.
(P) Potential facility.
*Based on survey of U.S. ports, using 1985 as nominal date for mid- to long-term coal port development plans.

Source: Maritime Administration.

There is no apparent need for special federal assistance in the construction of coal handling facilities at the ports. There had existed what has been characterized as the "chicken-before-the-egg problem"—that is, foreign consumers were hesitant to consider long-term coal contracts absent investments in new port handling facilities, while potential investors in such facilities seemed reluctant to act until long-term contracts had been signed. In these circumstances, the Task Force explored the possibility of some Federal action to lessen or share the risk associated with new investments so as to eliminate the economic friction which inhibited development. By the fall of 1980, however, it appeared that, through the process of continued meetings and negotiations, the parties had become sufficiently assured as to the seriousness of each others' intentions. Venture capital began to flow toward the construction of facilities, and at the same time new long-term supply contracts were given for significant amounts of coal.

Some concerns are now being voiced about the construction of over-capacity at the ports. We expect, however, that individual construction plans will be adjusted with that prospect in mind. Also, new facilities are not constructed so that their full volume will be reached immediately, but rather so that they may accommodate larger volumes over time.

Although the proposed facilities will largely resolve foreign concerns over prompt delivery of American coal and associated demurrage charges, there have been concerns expressed because a number of these facilities on the East Coast will be owned by large coal producers. The smaller producers, it is feared, may be excluded from access to the port market. Since the conditions of access to these or other facilities have not been established, consideration of remedial action is inappropriate, although continued attention is warranted.

4. Deepening the Coal Ports:

By 1990, a large percent of world steam coal will be moving in vessels of 120,000 deadweight tons and larger. Most coal exporting nations and many coal importing nations, including Japan and most of Europe, have deepwater port facilities in operation, under construction or planned that are capable of accommodating large bulk carriers. Presently, East and Gulf Coast coal ports have depths ranging from 40 to 45 feet and, absent special tidal conditions, are limited to fully-loaded ships in a range of 40,000 to 80,000 deadweight tons.

The consequences of United States port limitations will be increased delivered cost of United States coal to foreign buyers. At current prices for bunker fuel, a 150,000 dwt ship can deliver coal to Europe from the East Coast for roughly $6.00 less per ton than one of 60,000 dwt capacity. This transportation cost difference alone amounts to just less than 10 percent of the delivered price of United States coal in Europe. The effect that this cost difference will have on the volume of United States coal export sales depends upon both the weight given to price in customers' buying strategies and the level of the other components of the delivered cost of coal. In terms of the savings to be achieved and correspondence to the trend of the shipping fleet, such ports are less than optimum for future coal trade.

Port depth issues connected with trade to the Far East involve different considerations. For coal shipments from the East or Gulf Coast to the Pacific Rim, the economies of scale for vessels larger than the 50,000–70,000 dwt range (the "Panamax" class) are offset by the much shorter voyage of a Panamax vessel through the canal. Moreover, there is harbor depth of 52 feet or greater in southern portions of the West Coast, and any dredging projects there, or in the Northwest, are likely to be on a scale more limited than on the East and Gulf Coasts; in any event, such projects will be ripe for consideration only at a later time.

Prior to the worldwide expansion in steam coal demand, and on the basis of needs as then perceived, the Congress directed the Corps of Engineers to undertake feasibility studies for various channel improvements on the East, Gulf and West Coasts. As a result of one of these studies, a project to deepen Baltimore Harbor to 50 feet was authorized by Congress in 1970, although it has not been funded. Currently, Congressionally authorized studies for channel improvements at Hampton Roads, Virginia; Mobile, Alabama, and New Orleans, Louisiana, have been completed or are in the process of completion. It appears that all of these reports will likely demonstrate favorable cost-benefit ratios in each case for a 55 foot channel. The current growth in coal exports and the projections made by the Task Force will likely require revision of the cost-benefit ratios more favorably to the proposed projects. Many other active channel deepening studies are underway, including, but not limited to, such locales as Portsmouth, Boston, New York, Charleston, Savannah, Galveston, Los Angeles-Long Beach, Columbia River at the mouth, and Grays Harbor.

The Task Force is not constituted to decide which, or whether any, ports should be

dredged, because the analysis of cost and benefits depends upon commerce in products other than coal. Such analysis involves two-way commerce: just as shipping economies would be available to buyers of United States coal and other products, they would be available to United States buyers who import goods from abroad. The analyses performed by the Corps of Engineers embrace these overall benefits, and there is an established process for determining whether ports should be improved—that is, the statutory process by which a study is authorized by the Congress, undertaken by the Corps of Engineers, reviewed by the Secretary of the Army and others in the Executive Branch and then considered by the Congress in order to determine which projects, if any, shall go forward.

The role of the Task Force is to project the coal flows likely to move to United States ports for export—the results of which are noted above—and to attempt to assess the effect that dredging decisions may have on future coal trade. Lowering the delivered cost of coal by use of larger ships would bring the United States closer to the possibility of selling in a price competitive range, should additional efficiencies be realized in other parts of the coal chain (production, loading, inland transportation, and port handling). As indicated in Chapter 6, such savings would likely put the United States in a position where it could compete in Europe on the basis of price with Australia, even if Australia were to employ lower cost coal-fired ships for transport. On the other hand, failure to take any action to improve coal ports could generate adverse reactions abroad which, apart from purely economic considerations, might affect our export levels. Finally, enhancing coal trade, as part of the international effort to increase coal production and use in order to reduce dependency on foreign oil by our industrialized allies, involves security considerations which go beyond the trade-related benefits noted above.

Although legislative proposals have been made for accelerated consideration of dredging projects, there are significant practical and political barriers to action. There are four apparently meritorious applications for port dredging currently authorized or in advanced stages of study entailing aggregate project costs of about $1.5 billion (as estimated in mid-1980) and will involve about $80 million per year in increased annual maintenance costs. While the federal share of this cost is somewhat smaller than the figure shown, budgeting constraints make it unlikely that all such ports can be dredged to the 55 foot depth addressed in current studies. Moreover, port dredging decisions have significant additional commercial consequences. The flow not only of traffic, but of investment, in a geographic area may well be rerouted by dredging decisions. Such decisions may have consequential effects for the coal mining industry, transmitted backwards along the rail and barge lines to affect the relative competitiveness of producers. It is likely that the political battle to be fought on behalf of these ports will be significant; it could impede the dredging of any port.

As a useful basis for cutting through the potentially serious problem of funding any of these projects, the Task Force believes that consideration should be given to the possibility of dredging these major coal ports to 50 feet in order to reach a stage where operations can be improved significantly and a decision on deeper channels reserved for decision at a future time. The cost of each project would be lessened significantly. At 50 feet, ships in excess of 100,000 dwt would be able to load (see pages 5–34 and 5–35 Infra). This capability will accommodate the preponderance of traffic likely within the time frame projected for the growth of the shipping fleet, and much of the expected economies could be captured while a move to a greater depth is being considered. Variations of this staging concept are possible for specific ports. In the continuing Task Force effort, the Ports and Ocean Transportation working group will examine this possible approach in more detail, with specific attention to any construction inefficiencies resulting from a phased approach, the costs of the projects at the staged depths, and the associated benefits.

5. A Better Process for Administrative Environmental Review:

The need to simplify, coordinate, and remove unnecessary delays from, governmental administrative and environmental reviews cannot be overstated. The current delays and entanglements involved in these processes were among the most cited problems in the comments received by the Task Force.

There are two general types of activities connected with coal exports in which such reviews are involved. First are the substantive, financial and environmental reviews, conducted sequentially by the Executive and Legislative branches, pursuant to the Rivers and Harbors Act of 1962, of proposed harbor improvements undertaken by the federal government—specifically the deepening of shipping channnels. Second are the reviews of non-federal construction activities, primarily for compliance with environmental laws, conducted by federal, state and local governments. These include the building of port facilities, piers, coal storage areas, coal handling facilities, and railroad lines. Each type of review presents somewhat different problems.

In the case of federal harbor improvements, the implementation process has frequently taken more than 20 years. From the time of issuance of a Congressional Resolution directing the Corps of Engineers to conduct a study until the time such report clears the several levels of administrative review has averaged nine to ten years. Awaiting Congressional authorization and funding has averaged another six to seven years. The execution of a project, including advanced planning, design and construction has averaged another eight years.

Task Force participants have already achieved some administrative expedition of the review process. Responding to a Presidential request in August 1980, the Secretary of the Army, acting through the Corps of Engineers and in consultation with the Task Force, implemented steps to shave several months from the "preauthorization" review process, and for approved projects, to compress the advanced engineering and construction activities so as to accelerate the benefits of dredging by making a deepened outbound channel operational at the earliest possible time.

In order to speed legislative action, the President in October 1980 announced his support of legislation that would provide blanket Congressional authorization for those harbor improvement projects approved in the administrative review process, thereby allowing the projects to qualify for Congressional appropriation of funds and the immediate commencement of projects for which funds were otherwise available. Similar legislation has recently been introduced with bipartisan support in the Congress. The legislation also provides that Congressional review of the environmental impact statement accompanying the project and subsequent approval of the project will constitute compliance with federal environmental projects and, therefore, will preempt litigation in the courts.

The Task Force recommends support of legislation of this type, with the proviso that through Congressional hearings or otherwise, a fair opportunity be provided for the presentation of objections to any such project on environmental grounds because of particular concerns over dredge disposal. It is our view however, that the more important issues facing harbor improvement in the Congress are those involving competition for funding between ports. The currently proposed legislation is not a substitute for the need for a serious effort by Congress and the incoming Administration to work out the substantive problems underlying the funding of specific port projects.

In the case of non-federal construction projects, the principal need is for a process which brings both the law and agencies of the several jurisdictions involved into a sensible and coordinated management plan so that unnecessary delays, costs, and contradictions are deleted from environmental review.

Several forms of an Energy Mobilization Board (EMB) had been proposed last year, to "fast track" critical energy projects. Without taking a position on the portions of the proposal that were viewed as controversial (Primarily those involving questions of substantive and procedural "override"), the Task Force endorses the principle of consolidated review and recommends enactment of legislation which would provide a mechanism for it. The Task Force notes, however, that previous proposals for an EMB would have to be revised in order to embrace the types of projects customarily involved in the construction of coal export facilities: specifically, the limit on the number of projects to be "fast tracked" by the EMB might well have precluded widespread inclusion of the projects needed for the expansion of coal exports. Moreover, the then proposed legislation would have had application only to projects enhancing domestic energy production; although coal exports benefit the United States financially and ultimately improve its energy posture, their broader purpose may have fallen outside this statutory criterion.

The Task Force recommends aggressive federal support for a number of initiatives at the federal and state level to establish management systems which will reduce duplication and conflict in administrative review. Among these efforts are:

The Environmental Protection Agency's "Priority Energy Projects Tracking System."

The Western Interstate Energy Board's project with the Department of Interior on Transportation rights of way and facility siting.

A new model program developed by the State of Colorado with funds provided by the Department of Energy—the Colorado "Joint Review Process for Major Energy and Mineral Resource Development Projects"—merits particular attention, because of its advanced state of development and its utility as a model for other states. It is a voluntary management plan which coordinates federal, state and local review in order to eliminate snarls and delays. By including all interests at an early stage, it provides a basis for avoiding the lengthy "end-games" often fought out by project proponents and environmentalists in the courts. The fact that the principal coordinating agency is the state tends to alleviate local fears of long-distance imposition of unwanted projects.

Although participation by the federal government in such a Joint Review Process is technically on a "voluntary" basis, the Task Force recommends that the President adopt a policy which directs federal agencies fully to cooperate and to participate constructively where such a joint review program is established by a state.

In recent weeks, the Joint Review Process has been presented to over 30 states in "workshops" and briefings sponsored by the federal government. The reception has generally been favorable. The Task Force recommends that

these briefings be extended to all states and that consideration be given to providing additional financial assistance to states which act affirmatively to establish such joint review programs to expedite consideration of important projects.

6. Noninterruption of Foreign Supply and Encouragement of Foreign Investment:

The United States must remain sensitive to the concern, registered repeatedly with the Task Force by foreign representatives, that coal exports might be restricted for political reasons or to stabilize domestic coal price or supply during certain periods. This concern rests on foreign perceptions of a willingness by the United States, at least where other products such as grain have been involved, to resort to embargoes as an instrument of national policy. Moreover, because one of the principal reasons for the industrialized countries' commitment to convert to coal is the actual and threatened petroleum supply interruptions during the 1970's, it is natural that they would insist that a new reliance on coal not be undermined by new uncertainties.

Continuity of supply should be a national commitment. Our strength as an exporter lies largely in the high degree of stability in our political and commercial system. The promise we offer of dependable supply goes a long way to offset the somewhat higher delivered price of United States coal. Moreover, our own experiences with petroleum supply interruptions should make us sensitive to the need for the reassurances requested by our customers. This reassurance also has domestic value: the new investments required for the construction of port handling capacity, railroad tracks and similar infrastructure are substantial, and the cost of, and access to, funds should not be made less favorable because coal export trade is viewed as interruptible for policy reasons.

At the same time, our customers should appreciate that they have little realistic basis for concern. At the June 1979 Economic Summit in Tokyo, the United States pledged not to interrupt coal trade pursuant to long-term contracts, except as required by national emergency. We have never previously interrupted coal exports. For example, during the 1978 strike which reduced national coal production by approximately 50 percent, the Department of Commerce exercised its statutory authority to monitor coal exports, but no interruptions or restrictions of supply occurred. Moreover, our supplies of coal are abundant, and our principal customers are our industrial and political allies. Even in the event of a national energy emergency, it would not be possible for domestic users to convert so rapidly to coal as to make restrictions on exports a likely occurrence. Finally, as noted by the President at the White House Coal Export Conference, American laws and courts protect foreign coal buyers in respect of their contracts.

Although our coal reserves and production capacity appear more than adequate to meet both domestic and export demand, concern has been expressed that short-term surges could affect the adequacy of supplies. In general, the Task Force believes this to be unlikely given the fact that coal is purchased primarily through long-term contracts. Should threatening circumstances nevertheless materialize, the Department of Commerce already has statutory authority under the Export Administration Act of 1979 to monitor and require reporting of contracts for coal export.

Turning to the subject of foreign investments in United States coal production facilities, the Task Force believes that the incoming Administration should reaffirm the assurance given by the President at the White House Coal Export Conference, that the United States welcomes investment by foreign buyers in coal mining and in improving transport loading and handling facilities. In addition to providing capital, such investment enhances exports by giving foreigners a stake in the success of the operation and encourages long-term commitments by giving additional security of supply.

Although there are some legal restrictions on alien ownership of mineral rights on public lands, these are not significant bars to foreign participation in investments. It would not be beneficial if foreign interests were to acquire control of the transportation or handling facilities at, or giving access to, the ports where alternative facilities at a port are not readily available—since foreign interests could then constrain trade in the same way that the United States had abjured or give preferences which would disadvantage other customers. There appears to be little threat or prospect of this occurring, and American planners of such facilities seem keenly aware of the need for American control. A related concern regarding patterns of domestic ownership of facilities is noted at page I–13. Comments received by the Task Force generally favored foreign investment in mines and production facilities but some raised questions about the need for such investments at the ports, at least on the East Coast.

7. Inland Transportation:

We do not believe that there is need for special federal action specifically directed toward improvement of facilities for inland transportation of export coal beyond actions currently under study.* The following points place the role of inland transportation in perspective:

In spite of the very sizeable increases projected for coal exports, this traffic will still be but a small percentage of the total demand placed on the rail and barge systems, as well as a small percentage of rail and barge coal traffic.

The lead times for making improvements to the land transportation system are usually shorter than lead times for mine and port development; therefore, road and railroad improvements generally can be completed in time to serve new mines or port facilities.

Barge transportation constraints on inland waterways occur principally at locks and dams; those constraints which already exist or are developing are either in the process of improvement or being studied by the Corps of Engineers. Expected future waterborne movements may cause other constraint points to appear. However, movement of export coal, by itself, will probably have only a marginal effect.

Although inland transportation rates account for a significant percentage of the price of export coal at the U.S. port, the rates appear to be related primarily to the distance from each port and the nature of the service provided, rather than to excesses or inefficiencies in the way carriers service the present export facilities. For western coal the level of rates primarily reflects the long distances from the mines to ports. For eastern coal, the level of rates primarily reflects the relatively high cost of single-car service that is typically purchased instead of unit train service.

In the West, where the movement of coal to port will create entirely new flow patterns, construction and upgrading of rail lines to particular mines or pier facilities will probably be necessary to accommodate large volumes of export coal. These improvements will depend upon the sources of coal selected by foreign buyers, their commitments through investment or long-term contract, and the coordinative skills of enterpreneurs, in packaging mine, rail and port "systems" to sell to foreign buyers.

Steam coal purchased on a spot basis for export will not trigger major investment responses by the rail, barge and mining industries. These industries will view spot purchases as noncommittal opportunity purchases and will service such coal movements accordingly. The federal government should not take action to encourage the premature emplacement of new facilities, but should encourage trade meetings and delegations where foreign and domestic representatives have the opportunity to appraise each other's intentions and move toward long-term mutual commitments.

On the other hand, federal action can influence the question of who participates in coal export. Absent a major expenditure to rehabilitate the coal haul roads in Appalachia, it will be difficult for small producers who depend upon truck transport to benefit from the export market. The smaller Eastern coal mines are inadequately served by rail spur or rail gathering lines, and generally have their coal trucked to a rail tipple, primarily over state maintained highways. A study recently completed by the Department of Transportation reported significant deferred maintenance costs on these roads estimated to be at least $4 billion. Funding for this purpose was defeated in the last Congress.

Those inland waterways systems that most likely will be used to transport steam coal for export were reviewed by the Task Force with the following observations:

The Missouri River is free of constraints.

The Lower Mississippi River between St. Louis and New Orleans is essentially unconstrained and can accept many times its current level of commerce.

The Upper Mississippi River is constrained. Some improvements to Lock and Dam 26 at Alton, Illinois, are underway. The Upper Mississippi River Commission is in the process of producing a Master Plan and recommendations for further improvements.

Locks and dams on the Ohio, Kanawha, and Monongahela Rivers have limited reserve capacities and are expected to impede steam coal flows. It is too early to state specifically which locks and dams will require expansion to handle steam coal exports. Because of long lead times, four to seven years (for high priority studies) from onset of planning to completion, the Task Force recommends that coal traffic on these waterways be carefully monitored to provide early warning to the Corps of Engineers to start the process to improve the locks and dams as required.

Coal slurry pipelines are economical alternatives to rail or waterborne inland coal transport. The major constraints to moving steam coal to ocean ports for export is the requirement that coal slurry pipelines obtain water rights and be granted the right of eminent domain to traverse other rights of way. A coal slurry pipeline bill to grant the latter was supported by the Administration in the 96th Congress, but was not passed. The Task Force believes that it should be.

The Task Force reviewed proposals for offshore coal slurry loading of large bulk carriers as a complement to port channel dredging. Although technologically feasible, they have not been commercialized. Engineering feasibility studies are needed for commer-

*The interim report contains preliminary estimates of the capabilities of the inland waterways system. These estimates are subject to revision based upon the findings of the Congressional-directed National Waterways Study and detailed review within the Executive Branch.

cialization which should be supported by the Federal government. In addition, feasibility studies should also be supported by the Federal government to evaluate the use fluids other than water, such as liquid carbon dioxide or methanol, as the hydraulic media.

Virtually all ships now carrying U.S. coal in the export trade are foreign owned, built, and manned—a situation which has raised concerns because of economic and security considerations. This situation is likely to continue, because United States vessels are more costly than their foreign counterparts. The Task Force is considering proposals to enable United States flag coal ships to participate in coming coal export trade, consistent with our basic objective of enhancing our exports and promoting the use of coal.

8. Selected Market Problems:

The Task Force evaluated a number of critical analyses of the United States coal export markets but has not reached definitive conclusions. Selected matters are treated below:

Communications: There is need for a central point in the United States government for foreign representatives to discuss coal export matters in order to continue functions now being performed by the Task Force and others. Important functions are now being exercised by, or have been consigned to, the Under Secretary of State for Economic Affairs, the Deputy Secretary of Energy, the Under Secretary of Commerce for International Trade and the White House Economic Policy Office. There is also need for better exchange of commercial information on opportunities for coal sales abroad and coal availability here. As part of its Task Force efforts, the Department of Commerce took steps to make its commercial information network knowledgeable and responsive regarding coal trade. In Appendix D is set forth a list of the facilities currently available.

A steam coal exchange: Given criticisms regarding "fragmentation" of the coal market in the United States and the contribution of this characteristic to the problems at the ports in 1980, the Task Force gave consideration to the possibility of a "coal exchange"—a transaction center where brokers would stand ready to buy and sell coal. The formation of such an exchange would be entirely a private sector function. There is at least one effort to create such an exchange to serve small producers primarily, and we also believe that the idea is being considered by large producers for the export market. Greater standardization of product than currently exists would be a prerequisite, and this appears practical with respect to steam coal.

The advantages to such an exchange are, in brief:

It allows sellers of all sizes access to the market without having to subcontract sales to larger suppliers and without being dependent upon the skill of a particular broker in locating willing buyers.

It would provide information about product availability and price in a market where communications are very poor, such that only limited samplings of spot sales are reported.

It would enhance potential for United States coal exports by providing easy access by foreign buyers to available coal.

Preferences for domestic coastal trade. A number of foreign representatives have expressed concern over legislation enacted in October 1980 giving preference to domestic coastal shipping of coal. The Task Force received one suggestion that would limit the preference to shallow loading areas, but this proved impractical. The Task Force does not believe that the preference will place a significant burden on coal export trade and believes that it should be viewed in this perspective. The amount of coastal trade currently protected by the preference is small. There are a number of separate loading facilities for domestic trade, particularly on the East Coast, and this configuration has been encouraged. As new port loading capacity comes on line, the preference will become increasingly academic, even considering increases in domestic trade. Moreover, the legislation permits the Secretary of Commerce to suspend the preference, and we recommend that special attention be given to this area to insure that our international commitments are not frustrated.

9. Effect of Increased Coal Exports on Domestic Coal Prices:

The Energy Information Agency of the Department of Energy regularly forecasts domestic coal supply, demand, and minemouth cost as part of its Administrator's Annual Report to Congress. Using these projections, the Task Force added the coal demand resulting from fuel conversions and implementation of the Administrations goal for coal-derived synthetic fuels. The Task Force then evaluated the effect of steam coal exports on the availability and price of coal for domestic consumers.

For 1955, the Task Force estimated that the United States' share of the export steam coal market could be about 15.0 million short tons per year, composed of a mix of 45 percent low sulfur (less than 1 percent sulfur) bituminous coal, 27 percent low sulfur subbituminous coal, and 28 percent bituminous coal with greater than one percent sulfur. Steam coal exports of this order of magnitude are not likely to exceed 10 percent of domestic consumption, and the potential increase in domestic prices is unlikely to exceed $1/short ton at the minemouth. Comments received by the Task Force generally estimated that exports would have little effect on domestic price.

SUPPORT THE U.N. BY RATIFYING THE GENOCIDE TREATY

Mr. PROXMIRE. Mr. President, in 1945, the United States participated in developing the machinery for the boldest experiment in international organization yet adopted by man—the United Nations. In the wake of a terrible conflict, the U.N. held the promise of eliminating future wars and establishing world peace. For 36 years, the U.N. and its affiliated organizations have served as the international diplomatic arena to air disagreements and resolve issues.

Four years later, the General Assembly adopted its very first human rights treaty—the Genocide Convention. The U.N. resolved that genocide was a matter of international concern and a grave threat to world peace, and declared it a crime under international law. Its unanimous passage affirmed to the world that the lessons of the holocaust would never be forgotten.

The United States played an active role in the formation and goals of the U.N. Thus it must no longer overlook a resolution such as the Genocide Convention. As Thomas Jefferson so often insisted, we must have "a decent respect for the opinions of mankind." Therefore, the United States must support the credibility of the United Nations, and the 83 nations which have ratified the Convention. It is time for the United States to finally join the contracting parties of the genocide treaty.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now go into executive session for the purpose of considering Presidential nominations, and that the order of consideration when we go into executive session, if the request is granted, be, first, the Secretary of Defense Caspar Weinberger, and, second, the Secretary of State, General Haig.

THE PROGRAM

Mr. ROBERT C. BYRD. Mr. President, there will be no objection on this side. May I ask the distinguished majority leader a question?

I think this should be the point in time when we should have from him his feeling as to the program with respect to today and tomorrow as we take up nominations.

Mr. BAKER. Mr. President, I thank the distinguished minority leader, and I agree it is a good time before Members scatter to observe the inaugural parade and to prepare for festivities this evening.

As I indicated earlier, it is my hope and expectation that we will have a rollcall vote on the Secretary of Defense this afternoon. That can occur at any time, of course, depending upon the nature of the debate, but it should occur sometime around 4:30.

My expectation is that would be the final vote today, and that we would go out about 6 o'clock this evening, convening again at 11 o'clock tomorrow morning.

Mr. President, I may say before we go out, I intend to confer with the minority leader before I propound a request in respect to the Vice President of the United States having permission to address the Senate on his first day to preside.

Other than that, I anticipate no business today or tomorrow, except routine business on which we may agree by unanimous consent, other than the confirmation of the nominees as we have previously discussed.

For the balance of the week, Mr. President, I expect that it will take all day today, tomorrow, and possibly the next day to complete all these nominations. At this moment, I do not know if other legislative items or Executive Calendar items might be considered.

Mr. BUMPERS. Mr. President, reserving the right to object, and I shall not object, has there been anything said about backing up the votes?

Mr. BAKER. Mr. President, there has not been anything said about that. I might say to my friend from Arkansas that I do not wish to back up the vote on the Secretary of Defense. I would like to proceed with that vote as soon as possible after debate is concluded. After that, I am willing to explore that possibility.

Mr. BUMPERS. Mr. President, I would

have no objection to backing up the votes except in the cases of Defense, Interior, and State. I think most Members would feel pretty much the same.

Mr. BAKER. I thank the Senator from Arkansas. I assure him that I will work with Members of that side, and particularly with the minority leader, to try to accommodate the convenience of as many Senators as possible in that respect. But I would say that I wish to proceed with the vote on the Secretary of Defense this afternoon as soon as reasonably possible.

The PRESIDING OFFICER (Mr. GRASSLEY). Without objection, it is so ordered.

The clerk will report the first nomination.

DEPARTMENT OF DEFENSE

NOMINATION OF CASPAR WEINBERGER, OF CALIFORNIA, TO BE SECRETARY OF DEFENSE

The legislative clerk read the nomination of Caspar Weinberger, of California, to be Secretary of Defense.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me for the purpose of suggesting the absence of a quorum? Would the Senator wish to proceed first?

Mr. PROXMIRE. Mr. President, I will be happy to proceed first. I was not speaking to this particular nomination at the moment.

Mr. ROBERT C. BYRD. Very well, if the Senator wishes to proceed. I will withhold the suggestion of the absence of a quorum.

The PRESIDING OFFICER. The Senator from Wisconsin.

WHY CABINET NOMINEES REQUIRE AT LEAST A MODERATE FLOOR DEBATE

Mr. PROXMIRE. Mr. President, on this Inauguration Day 1981 with the heartwarming reminder of the 200-year history of this country, the inauguration of a new President, the rare chance for a new beginning, let us consider why we meet here and what responsibilities, we as Senators have under the Constitution. How seriously should we take this "Advise and Consent" responsibility?

THE SENATE'S DUTY

Article II, Section 2: The Founding Fathers gave us the duty to advise and consent to these nominations. They painstakingly wrote that duty into this remarkably brief charter for our country. Should we give it bare ceremonial obeisance by having the clerk mumble the name of the cabinet official and then shout it through? Oh—yes we did that in the past and we were wrong in doing so—These officials whose appointments we act on will have immense power and discretion.

Nearly 200 years ago when Alexander Hamilton wrote Federal Paper 76 contending for the Senate's "Advise and Consent" power he argued how salutory action by the U.S. Senate would be in preventing favoritism on the part of the Executive. How significant that Hamilton should be the prime advocate of this Senatorial duty—Hamilton—the consistent advocate of a strong, Central Government and a strong Executive. Were the conditions of this country and its Government in the 1780's when Hamilton defended the advise and consent requirement of the Constitution more conducive to a Senate that takes the advise and consent power seriously or less?

A BIGGER COUNTRY

When Hamilton pleaded for our advice and consent power, Americans counted about 3½ million citizens, the Federal budget was less than one-ten thousandth of its present size. All the Federal employees probably constituted fewer people than the Senate employs on our personal and committee staffs. The President then could and did have direct, day-to-day, hour-by-hour personal consultation with each member of his Cabinet. No vast White House staff insulated the President from his Cabinet. The President could easily oversee, affirm, or contradict orders of his Cabinet affecting the expenditure of $100 of public money or less. And yet, Hamilton contended in Federalist 76 that this body, this U.S. Senate, should advise and consent to these officials at that time so closely allied to the President.

If the U.S. Senate should have scrutinized and debated Cabinet officers in our little Republic with our pint-sized Federal Government in the 1780's, how much more essential that we scrutinize the nominations with care today when these nominees will command offices with multibillion dollar budgets with the power to issue mandatory regulations that can impose vast burdens of time and money on American consumers, businesses, workers.

The officials we confirm in the next few days will, in many cases, have more power over the lives of our citizens than the entire Cabinet had in Washington or Jefferson's day.

You might ask, why do we not believe that the President will exercise the necessary discipline and scrutiny? The answer to that Mr. President, is: No way. The most diligent, intelligent President this country has ever had could not possibly involve himself in the thousands of critical, far-reaching decisions that each of these Cabinet officers will have to make.

EACH CABINET OFFICE AN INDEPENDENT DUKEDOM

As John Erlichman, President Nixon's Chief of Staff, points out—

A Cabinet officer is like a medieval duke out there in this dukedom and all his vassals and all his apparatus very quickly convince him that he's the head of the whole operation. Yes, there is a President down there in the White House, but that's a remote problem. The Duke is, by God, the head man of his dukedom and all the perks and trappings—the huge offices, the gymnasiums, the private dining rooms, the limousines—reinforce all that. So it's very hard to find a cabinet officer who has recently reminded himself that he's subservient to anybody.

The head of a typical agency, such as the Department of Housing and Urban Development, is not only a duke but a veritable emperor in terms of his budget. Using HUD as a middle-sized agency budget, with outlays of $13.2 billion, we find that this budget is bigger than the central government expenditure of 113 countries, including such countries as Israel, Mexico, Norway, South Africa, Switzerland, Greece, or Austria.

Mr. President, you do not have to be an Erlichman fan to recognize the solid realism of that assessment. These men we confirm have massive, independent power. And if you think the President will have day-to-day control consider what Carter's White House counsel, Lloyd Cutler, recently said about the frequency and closeness of Presidential contacts with Cabinet officers in the real world. Cutler said:

If you're Stu Eizenstadt's 2nd or 3rd assistant, you'll see the President more than the cabinet officer whose programs you're dealing with. Cabinet members are outer moons.

WHY WE NEED CAREFUL CONSIDERATION

Here is exactly why we must rely on the character, the intelligence, the judgment, the experience of each of these officials to act in the public interest. And how do we determine those critical qualities? How? By the very advise and consent responsibilities we are going through now. When? Right now. Oh yes, sure—most probably all of these nominees will win confirmation. But now and only now do we have the chance to chisel their commitments, if any, into the record.

THE CHANGE

Mr. President, there is a new and most vital reason why this year—1980—especially, we should take special care in acting on these Cabinet nominees.

The 1980 election brought a shocking change when the country's minority party, a party with a membership less than half the Democratic Party's membership, won a decisive victory—in my judgment, a clear mandate. What did the people mandate this Government to do? Can anyone doubt? We have a mandate to fight inflation by reducing the size, the burden, the reach of Government.

President Reagan said exactly that a few moments ago, really, in his inaugural address.

Mr. ROBERT C. BYRD. Mr. President. the Senator is entitled to be heard. Those here who do not wish to listen to him should retire to the cloakroom.

The PRESIDING OFFICER (Mr. GRASSLEY). The Senate will be in order.

Mr. PROXMIRE. Mr. President, I thank the minority leader.

The Cabinet we act on in the next few days will have the big voice in determining whether we can arrest and turn around 50 years of momentum toward ever bigger government. Maybe this Government can achieve that objective, maybe we cannot. Whatever chance we have will depend greatly on the determination and commitment as well as the ability of the officials we confirm for the Cabinet now.

Mr. President, we—the Congress and the new administration—have a golden opportunity to begin to turn this situation around. to begin to make progress against inflation, to reduce the size of Government, and, in the process, to make a more effective Government. In a

thoughtful article analyzing what has happened to the power of the President, the current Newsweek suggests why Government has failed this country in the past few years. I suggest that Senators ponder the last two sentences of that article. Here they are:

> The President's real enemy is not the indolence or the intransigence of the permanent government, but its size. It is the mirror of a central paradox of the Presidency: its power to make things happen has diminished as its appetite and its reach have grown.

Mr. President, as we consider these nominees, let me repeat that last sentence. This Government's "power to make things happen has diminished as its appetite and reach have grown."

CONGRESS AND CABINET WORK TOGETHER

One final point: this Government can only have a chance to meet this challenge to reduce the burden of Government if the Congress and the Cabinet work together. The record of the hearings on these nominees suggests that this may be difficult. Here is why:

Mr. President, as a group, these nominees have been remarkably unresponsive. Some have been more forthcoming than others. In replies to questions submitted by this Senator for instance, Mr. Schweiker and Mr. Haig made an obvious effort to provide what information they could in response to most questions. Others gave no useful answers to most questions. Others stonewalled throughout. Why should there be a contest between the Senate and the Cabinet on these matters?

In the years I have been in the Senate, I have observed no significant partisanship in the willingness of Cabinet officials to respond to senatorial inquiry. Democratic officials, by-and-large, have been no more and no less responsive than Republican officials. So partisanship can hardly be considered the reason.

Certainly, relationship with the Congress provides only one part of a Cabinet officer's responsibility. Even with poor congressional relations, a Cabinet officer may administer his department efficiently. He may promote vigorously the national interest and the interest of that part of our citizenry for which he has the principal responsibility. He may work zealously to carry out the program of the President.

But in all these areas, he will succeed far better if he wins congressional confidence and support than if he engenders a spirit of mutual antagonism, suspicion, and distrust.

How can a Cabinet officer achieve congressional cooperation? What does he have to do to win it? Mr. President, the first thing is to be as open and forthcoming as possible. Can anyone argue that we foster good relations between human beings who work together toward a common end when we fail to communicate?

Certainly, Congress and the administration should and do work toward a common end. We all want this country to succeed. We want these departments to function efficiently. We want to provide appropriations to the departments that are necessary. We want to limit regulations and paperwork. We want the departments to achieve their purposes. Can they do this if the laws we pass provide too much or too little resources, if they require regulations and paperwork that drown both businessmen and regulators.

What constitutes the most serious deficiency in the success of this Nation's great executive departments? How about the failure of the Congress to understand the needs and requirements of these departments? How about the failure of the Cabinet officials who run the departments to understand the intention of the Congress in enacting the laws? Does anyone really believe that this Government can function well and especially can achieve the immensely difficult mandate that faces the Reagan administration to reverse 50 years of Government growth and reduce the size and reach of Government and do it without tragic consequences for millions of Americans, unless we somehow find a cooperative spirit between the Congress and the administration?

START OF COOPERATION

What is the first step in this cooperative spirit? It should start right here with the advice and consent responsibility that the Constitution imposes on us. Here Congress and the nominees for the Cabinet have the chance to begin considering how we can move this gigantic Government into a lower gear. Many thoughtful people say we cannot and will not do it. The momentum toward ever bigger Government, they say, has become irreversible, the interest groups just too powerful. Congress and the administration—they say—with the best will in the world cannot turn it around.

Mr. President, I do not believe that for a minute. But I do believe that unless we get a cooperative spirit in both the Congress and the administration, there is no way we can succeed. That cooperation should have begun with nominees for these offices answering the questions we ask, directly and without evasion. Unfortunately this has not been the case.

Answers to questions put by Senators have been ducked, dodged, evaded, as if the nominees were prisoners of war, doing their best to keep vital secrets from the enemy. Mr. President, this body under article II, section 2 of the Constitution has a direct duty to review, discuss, debate, and pass on these nominations. We have failed miserably in the past to do this and we have failed while the Government became ever more massive and the power of these nominees has become bigger, more costly, more arbitrary and more imposing on the lives of our citizens.

We have made a generally feeble attempt in the inquiries of nominees during the committee hearings to turn this around. Perhaps we can begin in some measure today to live up to our responsibility by at least developing a clear record on each of these very important nominees.

LAST CHANCE

Their train is pulling out of the station. Here we have our last chance to find out where the committees with jurisdiction over these nominees expect these officials to take this country. Here we have a chance to establish the expectations against which we can measure the performance of these departments. Today is Inaugural Day. This is Inaugural Week—a happy, party week, celebrating our democracy. That is great. But, Mr. President, with all the ceremonial fireworks and parades and balls—not to mention cocktail parties—only two matters of solid substance will occur.

One, of course, is the inaugural address of the President of the United States. The other is the action by the U.S. Senate in advising and consenting to the appointments of this Nation's principle policymaking officials. Let us not permit ourselves to be bulldozed or intimidated into betraying our constitutional responsibility. Let us take full advantage of this opoprtunity. Let us have no unnecessary, irrelevant delay, but a thorough, careful, responsible examination of each and every nominee for every one of these important offices, and then let us have a rollcall vote in which each of us stands up and makes his or her position public on the record as to each nominee.

Mr. ROBERT C. BYRD. Mr. President, the decisions by the Senate today and tomorrow and, if necessary, the next day on the nominees will have an impact upon the next 4 years of the administration and an impact on the country.

It is the constitutional role of the Senate to advise and consent to nominations. I therefore feel that it would be appropriate to suggest the absence of a quorum and make it a live quorum.

Mr. TOWER. Mr. President, will the Senator withhold before he makes that request?

Mr. ROBERT C. BYRD. Yes.

Mr. TOWER. Mr. President, I ask unanimous consent that the time consumed by the distinguished minority leader not be charged to either side.

Mr. STENNIS. Mr. President, may we have order? I think we have to insist that we have conditions under which the discussions can be heard. The men on whose nominations we will be passing are going to spend hundreds of billions of dollars.

We cannot hear back here unless there is order in the Chamber.

The PRESIDING OFFICER. The Senate will be in order.

Is there objection to the request of the Senator from Texas?

Mr. TOWER. Mr. President, it is my understanding that in the case of a live quorum, the time will not be charged.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

CALL OF THE ROLL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 2 Ex.]

Baker	Garn	Pell
Baucus	Gorton	Proxmire
Byrd, Robert C.	Grassley	Pryor
Cannon	Hollings	Quayle
Cohen	Jackson	Randolph
Cranston	Kassebaum	Rudman
Denton	Long	Simpson
Dixon	Mattingly	Stennis
Dodd	Metcher	Stevens
Domenici	Murkowski	Symms
East	Nickles	Tower
Ford	Packwood	Warner

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absent Senators.

The legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

Abdnor	Exon	Mathias
Andrews	Glenn	Matsunaga
Armstrong	Goldwater	McClure
Bentsen	Hart	Metzenbaum
Biden	Hatch	Mitchell
Boren	Hatfield	Moynihan
Boschwitz	Hawkins	Percy
Bradley	Hayakawa	Pressler
Bumpers	Heflin	Riegle
Burdick	Heinz	Roth
Byrd, Harry F., Jr.	Huddleston	Sarbanes
	Humphrey	Sasser
Chafee	Inouye	Schmitt
Chiles	Jepsen	Specter
Cochran	Johnston	Stafford
D'Amato	Kasten	Thurmond
Danforth	Kennedy	Tsongas
DeConcini	Laxalt	Wallop
Dole	Leahy	Weicker
Durenberger	Levin	Williams
Eagleton	Lugar	Zorinsky

The PRESIDING OFFICER. A quorum is present.

The Chair recognizes the Senator from Texas.

Mr. TOWER. Mr. President, the results of the November 4 election have signaled, among other things, that the American public is deeply concerned and disturbed about the existing capabilities of our Armed Forces. President Reagan has indicated on numerous occasions that finding solutions to the many problems involving our national defense will be one of the top priorities of his new administration. To assist him in this formidable effort, President Reagan has selected Mr. Caspar Weinberger.

On January 6, 1981, the Committee on Armed Services met in open session to conduct a hearing on the anticipated nomination of Mr. Weinberger to be Secretary of Defense. At such hearing, Mr. Weinberger was asked to respond to numerous questions on a variety of issues involving national defense. It was evident from his testimony that Mr. Weinberger already has a sense of the complexity of the many problems which he must address and the need to deal with many of these problems in a reasoned and yet expeditious fashion.

Mr. President, I am pleased to say that the committee was favorably impressed with the content of Mr. Weinberger's testimony and his impressive record of performance in both the public and private sectors. Yesterday, in executive session, the Committee on Armed Services voted unanimously in favor of Mr. Weinberger's nomination as Secretary of Defense.

I urge my colleagues to speedily confirm the nomination of Caspar Weinberger to be Secretary of Defense.

Mr. President, I yield on his own time to the distinguished ranking minority member of the Armed Services Committee, the Senator from Mississippi.

The PRESIDING OFFICER. The Chair recognizes the Senator from Mississippi.

Mr. STENNIS. Mr. President, am I recognized?

The PRESIDING OFFICER. Yes.

Mr. STENNIS. I thank the Chair.

Mr. President, there was a real down-to-earth, rather rigid, hearing and examination of Mr. Weinberger. The unanimous vote indicates that we were well impressed—Mr. President, may we have conditions here where those who wish to hear may hear?

Mr. TOWER. Mr. President, may we order?

The PRESIDING OFFICER. Let us have order.

Mr. STENNIS. Their unanimous vote, with the rather rugged group of Senators following the examination that he had, proves that this man has capabilities, and he has a record that commends itself. He is a former Secretary of HEW; he is a former Director of the Bureau of the Budget, and he has had other experience in Government to the extent of my telling him that he would have no excuse if he did not do well because he knew what he was getting into.

I was exceptionally well-impressed with him. He has not been directly connected with the Department of Defense or other military activities, but it is very obvious that he is a fast learner with his capabilities and this experience, and I am expecting him to be an outstanding man.

I questioned him particularly on the question of procurement, the expenditure of this massive amount of money that some think, if it is for the military, to just throw it in.

He was concerned and he was interested, and I believe he will give attention, as he promised, special attention, to making these military dollars go as far as they possibly can, particularly in view of the high cost of our modern weaponry.

I mentioned to him the manpower problem—not the number but the capability, the talent, the personal knowhow, and the ability to get things done of great numbers of people whom we are taking into the services. He indicated that he had a concern, very much of a concern, along that line, and would give it his personal attention. So I am very much impressed with him.

Mr. HELMS. Mr. President, may we have order. The Senator deserves to be heard.

The PRESIDING OFFICER (Mr. RUDMAN). I call the Senate to order.

Mr. STENNIS. I thank the Senator.

I feel we are entrusting this power, the President is, to capable hands, good hands. He has a sense of accountability to those of us who have to help pass on the policy and help pass on the money.

So with satisfaction I support without any reservation this nomination and predict that Mr. Weinberger will be an outstanding gentleman in this field.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. President, it is with regret that the Senator from North Carolina has come to the conclusion that he must vote against the confirmation of Caspar W. Weinberger as Secretary of Defense. I think the Chair can recognize that this is a painful decision for me because Mr. Weinberger is regarded as a distinguished public servant whose conduct and capabilities are above reproach. Moreover, his public stands are the very symbol of those qualities of Government, efficiency, frugality, and sound management, which I myself have long espoused.

Mr. President, many of my colleagues whose judgment I respect and whose friendship I revere have pronounced themselves delighted with the choice of Mr. Weinberger. Yet I feel obliged to vote against the confirmation, as I will also vote against the confirmation of his hand-picked deputy, Mr. Carlucci.

Those nominations have proved particularly troublesome not only to me, who will vote against them, but also to a great number of my colleagues who plan to vote for confirmation.

Mr. President, the contending issues involved are so complex and so subtle that at first blush it appears so easy to come down on one side of the question or on the other side of the question. So considered, I, perhaps, could have supported the nomination of Mr. Weinberger and of Mr. Carlucci. But I cannot in good conscience for reasons that I shall state, in no small measure out of respect for the large number of my colleagues who came to me and asked me to make my views known, including many who are publicly taking the opposite stand, and they are doing so sincerely.

Because of the great issues that here hang in the balance, they apparently feel that both the pros and cons of these nominations should become a matter of record, just as a patient who is ill often seeks a second opinion from a doctor.

Mr. President, I do hope that my stand here this afternoon will not be interpreted as opposition to Mr. Weinberger as a person. Quite to the contrary. He is a gentleman, and I hope we will have the opportunity to develop a warm relationship as between friends who have a different point of view.

But be that as it may, I intend here to draw the line, a benchmark, as it were, to measure the progress of the reconstruction of our national strength.

The PRESIDING OFFICER. I call the Senate to order.

Mr. HELMS. I thank the Chair.

So I come here, as I think, not only representing the second opinions of the colleagues, who in a very real way deputized me to speak out, but also seeking to articulate the concerns and the hopes of millions of Americans who saw in the past election the national defense issue, along with inflation, as the most compelling problems of our Nation.

The President has chosen Mr. Wein-

berger as Secretary of Defense, and he knows Mr. Weinberger far better than I, and I feel I would be derelict in my constitutional duty to advise and consent were I not to do so with such charity and candor as I possess.

Moreover, the constitutional duty of the Congress to raise and support arms makes this nomination especially important.

Now, the national crisis which America faces is a crisis of sheer survival, and we should make no mistake about that, and for survival Mr. Weinberger's dedication to efficiency, frugality and sound management, all of which I admire, simply are not enough. Those qualities are only the minimum which ought to be assumed of all officeholders in every branch of Government at every level. But we will be lucky indeed if the minimum effort of good Government will pull this Nation through the next 4 years. We must have more than that.

For the past 35 years, Mr. President, the Pentagon has been ruled by Secretaries of Defense who have been intelligent, well intentioned, and honorable. They have brought us to a situation where the Soviet Union is today verging on decisive strategic nuclear superiority—decisive in the sense that the outcome of any potential war will increasingly favor the Soviet Union. The strategic nuclear threat provided by the United States is no longer sufficient to deter Russia in Europe or elsewhere. NATO is disintegrating. A single major breakthrough in weapons technology by the Soviet Union could leave this country effectively defenseless. Even without such a breakthrough the Soviets will find an open window sometime next year when Soviet nuclear forces will enjoy undoubted nuclear superiority.

If we start now, Mr. President, we can begin to close that window by the year 1985.

It is going to take all of the courage and determination of a bold new President and all of the skills and diplomacy of an extraordinary Secretary of State to discourage the Soviets from taking advantage of that window.

But only resolute and visionary action by the Secretary of Defense can provide the means to close that window in time for survival of this Nation. Mr. Weinberger has yet to demonstrate, at least to this Senator, that he has either that resolution or that vision.

The Central Intelligence Agency now estimates that the Soviets are spending more than 50 percent more in military accounts than the United States, 80 percent more in military procurement. 2½ times as much on ground forces, and 2.6 times as much on strategic forces. Defense Intelligence Agency estimates are even higher and are probably more accurate than the CIA's estimates.

The Soviets have made enormous strides in closing the gaps in technology, frequently with American assistance. Thanks largely to American equipment and technology exports to the Soviet Union, the Soviets will very soon be ahead of the United States in missile accuracy—the advantage that was supposed to guarantee our security in SALT I.

Do you remember, Mr. President? That was our hope. They have been ahead of us in tanks and armored vehicles since 1970. Many of their ground force weapons are clearly better than ours. They have the only long-range, that is to say 100 miles or more, cruise missile operational in the world today.

Indeed, the Soviet Union already has moved ahead of the United States in perhaps 75 percent of all measures of strategic power and will close much of the remaining gap by the end of next year. The U.S. ICBM force is vulnerable to near-complete destruction. The U.S. bomber force is potentially vulnerable to both ICBM attack and SLBM attack. The bomber force is incapable of penetrating advanced Soviet air defenses or of surviving electromagnetic pulses from nuclear weapons detonated in space. There exists no survivable command and control system for U.S. missile submarines.

During the Carter Presidency, the Soviet missile threat, in terms of high accuracy, advanced by about 5 years in state of technology. The Soviet Union has continued development of five new fifth generation ICBMs and several new SLBMs, one of them recently tested. Through the dialectical manpulation of the SALT process, the Soviets convinced President Carter to sign a one-sided strategic arms limitation treaty that locked in and legalized Soviet expansion of its strategic systems.

Mr. President, what was the reaction of the United States to all of this, the mightiest expansionary burst of military power that the world has ever seen? The litany is now familiar from its repetition in the 1980 Presidential campaign. Do you remember Mr. President?

President Carter killed the B–1 bomber. He delayed the MX 3 years. He delayed cruise missile, and Trident I development by 2 years. He refused timely production of Trident II. He terminated Minuteman production. He destroyed the Minuteman assembly line. He ended Minuteman II modernization. He canceled the neutron warhead. He delayed Pershing II. He terminated Lance I missile production. He stymied Lance II. He vetoed a nuclear carrier, stalling its construction, cut naval shipbuilding in half. He cut the size of the Army, Navy, and Air Force. He withdrew troops from Korea, and he relinquished the Panama Canal.

MANAGING OUR DECLINE

How have we managed this decline? I already have said that our defense advisers over the past 35 years have been intelligent, well-intentioned, and honorable. But in every case the intent was, literally, to manage the decline of U.S. power. Some have been known popularly as soft-liners; others as hard-liners. Yet in the end both have brought us to the same place. And we have to ask the question why, Mr. President? Why? Let me take a crack at it.

The so-called soft-liners have been men who have been truly uncomfortable at the leadership of a nation wielding so much power. The use of power requires a claim to authority which these men appear to have been anxious to relinquish. Authority, and its corollary, leadership, conflict with the assertion of the sovereign equality of all nations. Thus, such individuals look forward to a world order based upon reason, rather than upon power. They see their job as one of manipulating international affairs so as to phase out the capability of any nation and all nations to disturb a shared responsibility for the world. They are seeking, on a long-term schedule, a planned decline of all independent power, a decline so well-managed that at no point in the process will any of the superpowers be able to derail the orderly scenario. They have regarded it as the duty of the United States to "set an example" by reducing our power first.

Now, we get down to the meat of the coconut, Mr. President. This view is so distant from my own, and so contradictory to the feelings of the vast majority of the American people, that it is hard to give credit to its sincerity. Yet, do so we must. We must assume that those who advocate this view sincerely believe that the steps they have been taking are prudent and proper, leading to a new definition of peace and security. In my view, those steps have been demonstrably harmful to America's security, and even if I agreed with their goal, I would submit that withdrawal of U.S. power and influence from the world would clearly result in the triumph of Soviet imperialism. No other face could be put upon it.

The other view, the view of the so-called hard-liners, is, upon analysis, not much different from the first. This view holds that the decline of the United States is inevitable, the result of the rise of powers beyond our control, the result of the growing political and economic interdependence of all nations, and the result of the disintegrating social structure of our own country. The task of our leaders, in this view, is to manage our decline so as to squeeze from it all the leverage we can get to prevent us from being overwhelmed now. They call for strength, but only for what they vaguely define as "sufficient" strength, so as to stave off the inevitable until alternative arrangements can be made. And then act as referees in bankruptcy; or, to change the image, as a physician keeping a terminal patient comfortable while his affairs are being put in order.

Rather than an affirmative action program, this is a negative action program; but both result in managing our decline. Moreover, it has been a bipartisan program, and both of our great parties must share responsibility. We began with an enormous capital of power and strength. When we first began to fritter away, the consequences were not all that obvious. Now, however, the results are painfully obvious to every American. And I think that on November 4 one of the messages sent to us by the American people was that they wanted a change.

Mr. President, may I ask how much time I have remaining of my 40 minutes?

The PRESIDING OFFICER. The Senator from North Carolina has 20 minutes remaining.

Mr. HELMS. I thank the Chair.

THE MISSION OF THE UNITED STATES

Mr. President, the primary mission of the Government of the United States is to maintain freedom for the people of the United States and, in furtherance of that purpose, to establish freedom as the dominant political principle in the affairs of men and nations. The continuing independence of the United States is, in large measure, a function of her military strength in relation to the power of potential adversaries, principally—and we must be frank about it—the Soviet Union.

Independent American military power, separate from alliances of doubtful or reduced value, is the underlying and only safe foundation of American political independence and of individual freedom. Only such strength can provide the international stability and confidence necessary for the moral and economic progress of all peoples.

Mr. President, all of us consider ourselves students of history to one degree or another. I think it is essential that we bear in mind that the processes of history are not inevitable.

The processes of history are not inevitable. The decline of American power is the product of the actions of men, and the ill-conceived ideas of three generations. Only a clear break with the past, only a determination to take practical steps immediately to restore our depleted military strength, and to devise new programs and new strategies can preserve American independence and freedom.

Against the backdrop of the U.S. doctrine of containment, what happened? The record is clear.

The Soviets aggressively pursued a successful policy of territorial expansion. Against a backdrop of the doctrine of "sufficiency," the Soviets built strategic and nuclear forces that were more than enough. Indeed, under the doctrine of the SALT process. the Soviets achieved strategic superiority. That is their definition of sufficiency. The reason for this is that "superiority" is not a measure of numbers, nor a measure of dollars, but a measure of our national will. "Superiority" represents not a static goal, but a moral commitment to victory.

Let us look further at history. Our past Secretaries of Defense have erected a vast civilian, corporate-like structure at the Department of Defense. This structure has tended to cause even the Armed Forces to lose sight of their real function—let us be candid about it—war, during peace.

We should not kid ourselves. That is what the Department of Defense is for.

The corporate mind at the Department of Defense has discouraged nonconforming judgment and has stifled initiative in the military. Management by objective has replaced leadership by example. Commodity and cost-effectiveness as principles of defense have replaced security, surprise, maneuver, fire-power, and shock action as principles of war.

Purporting to seek efficiency and economy as a first and often single goal, the corporate managers of the Department of Defense, from the Secretary on down, have failed to understand that war and the preparation for war are inherently wasteful, but that the alternative is defeat or dependence. A Secretary of Defense who is principally preoccupied with removing waste would be driven by the logic of his position to eliminating his whole department. But a defense apparatus that is never used has already fulfilled its purpose.

Following a "management" philosophy, we have spent billions of dollars seeking to manage efficiently and cheaply and have, in the process, obtained less for more. We have managed the decline of what was once the strongest armed force of history.

MR. WEINBERGER'S QUALIFICATIONS

Placed against this context, Mr. Weinberger's special expertise and his notable record of Government service become not an asset, but a handicap. He must become not a prosecutor, but an advocate. There will never be a time when efficiency and economy are not necessary in Government affairs. I want the record to be clear on that. But if this Nation is to survive, Mr. Weinberger will have to break with his own past, and become an advocate within his own bureaucracy, demonstrating through leadership, openness, and aggressive initiative the need to substitute thinking for fulfillment of objectives, and action for process. And, he must become an advocate for a strong defense within the top circle of the Reagan administration.

When Mr. Weinberger's nomination was first proposed, many knowledgeable defense experts expressed their belief that the proposed nominee knew little about the decline of U.S. military power, nor the rise of Soviet strength. Contrary to my expectations, the nominee's testimony before the Armed Services Committee did nothing to disarm these critics. Although I am a former member of that committee, I was unable to attend the hearing because, as chairman of the Agriculture Committee, I was chairing a hearing on the nomination of the Secretary of Agriculture at the same time. When I consulted the transcript, what I found deeply distressing was not only what he said, but the way he said it.

Mr. President, allow me to cite a few examples:

First. On several occasions, Mr. Weinberger constantly talked of the massive Soviet drive for nuclear superiority as an "imbalance". He acknowledged that the Soviets have—

An intention, a desire, a plan to achieve major imbalance as represented by a tremendous growth on their side, and that is one of the things that I think has to be of concern.

Later on, he again used the same language in describing the Soviet drive for military superiority:

It does seem clear that their intention is to proceed with an attempt to secure an imbalance that would make it very difficult if not impossible for us to assert our interests or the interests of our allies in any portion of the world. And I think that obviously has to be totally unacceptable.

While I am delighted that he finds the so-called imbalance unacceptable, the fact remains that we are not talking about an imbalance at all, except in the sense that an avalanche could be considered an imbalance. The notion that there ought to be a balance of forces is part and parcel of the same doctrines that have brought about our military decline. Unless we get away from talking about Soviet superiority as an imbalance, and our very survival as our interests, we will never be able to convince the Soviets, much less ourselves, that these developments are unacceptable. (Once we begin using terminology that sounds acceptable, then the unacceptable becomes acceptable.)

Second. Over and over again, Mr. Weinberger embraced the obsolete and discredited principles of mutual assured destruction (MAD) as his basic strategic doctrine. There is no evidence that the Soviets have ever adopted that doctrine, and indeed, their theoretical literature is all to the contrary. Thus, the feeling of mutuality so essential to the MAD theory becomes merely an illusion. Yet, at the hearing, Mr. Weinberger said:

As far as improving that strategic balance . . . I think that involves starting and continuing various weapons systems that will give us sufficient strength, so that anyone who plans any sort of attack will correctly perceive that we retain a full ability to respond to deliver a return blow of such strength that they will be deterred from launching that kind of attack.

Mr. President, has not history demonstrated over and over again that "sufficient strength" is not enough for victory? If we do not know that, then we had better wise up. Victory requires a moral truth over and beyond calculations of force. Yet, in speaking of SALT III, Mr. Weinberger said:

I would think that the only kind that would be useful would be something that genuinely advanced the cause of peace by a limitation that made it clear that each side had sufficient strength so that they would be equally deterred from launching any sort of attack.

And again, he said:

There has to be in my opinion the condition under which we are correctly perceived as sufficiently strong and resolute, and possessed of sufficient resources so that there will not be any inducement, in fact, there will be a major and effective deterrence for anybody launching an attack upon us. And if we reach that stage, then I think that whatever it happens to be called, it is a satisfactory state of balance.

The problem with this neat formulation is that balance is never static, particularly when one side is dedicating inordinate means to finding ways to get around the deterrent of the other side. It is not simply a question of adding quantitatively to one's forces, but of thinking up new ways to make the old forces irrelevant. Thus it happens that what is "sufficient" one day is far too little the next.

Third. Mr. Weinberger evidently

thinks of the SALT negotiations not as a calculated strategy by the Soviets to relieve us of our remaining advantages, but rather as a "process" that is inherently necessary, even if it fails. Thus he said:

My personal view is that negotiations should continue, and that we should make every effort to get a vastly better agreement than SALT II.

And again:

Well, I have to believe that both sides would certainly want to have such discussions continue. I don't think that we should enter into such negotiations from a position of weakness or a position which contemplates maintenance of the kind of gap that now exists.

Yet despite the plain weaknesses of the United States in its strategic posture—weaknesses which Mr. Weinberger calls a "gap"—he unbelievably is prepared to begin negotiations within 6 months. He told the committee:

I would think that it would take a good 6 months for some formulations of policies to be made. I don't think we should enter the negotiations lightly or unadvisedly, and I think that we should have a very clear idea of the agenda that we would want to pursue, and the goals, the way in which we would like to have it come out. And I think that will take a few months.

But aside from in a sense getting our own side in order, getting our own agenda made up, then I don't think there is any particular problem about timing, and I think it is important that the process continue.

It is inherently incredible that a new administration could effect any real change in our strategic posture within 6 months, or even reexamine our nuclear strategies within that time. If we are going to have a fundamental break with the past of the sort that is necessary if we are to survive, an allowance of 6 months is scarcely time to turn around—unless we are going to continue the policy of managed decline. Yet despite Mr. Weinberger's stated objective of negotiating from strength, he later explained that all that was necessary to start negotiations was to signal to the Soviets that we had an intention to restore our strength:

Well, Senator, I have left you with a misimpression. It is not until that gap is closed, but until we have very firmly signalled and indicated a beginning of a major effort to close that gap. I don't think that we have to sit on the sidelines and not allow the negotiating process to proceed, but I do think that there had to be a very clear indication that we are aware of the gap and we are aware of the importance of improving the balance markedly and materially, and I think during that period of time, if that signal is clearly and unequivocally given, as I assume it will be, that it then would be possible to enter into negotiations.

The steps outlined by Mr. Weinberger would result in the United States entering the negotiations with only an intention as a bargaining chip, whereas the Soviets would be entering further negotiations at the same time they are entering the "window" of superiority when the United States is particularly vulnerable.

Fourth. Mr. Weinberger is equally simplistic when he speaks of the motivations of the Soviet Union in entering SALT negotiations. For example he said:

So I think that negotiations, to be useful to both sides, have to be viewed from a different kind of basis, that is, the basis that we both want peace, we would assume that, and that we both believe, or certainly I would believe that we have the best chance of obtaining peace if there is not such a destabilizing factor as a gross imbalance in the forces of the two countries.

The objectives of the United States and of the Soviet Union in entering SALT negotiations are fundamentally different. The Soviet literature makes it clear that the word "peace" has a completely opposite meaning than we ascribe to it. There is no reason whatsoever for assuming that we both want peace in the same sense, nor that peace is best achieved—in the Soviet sense—by the Soviets giving up the gross imbalance which now exists. Mr. Weinberger continued to imagine a mutuality of intention when he said:

I think it may well be that there are elements within the Soviet Union now that would recognize that an arms limitation of a meaningful character is something that would be of interest to both sides and to the best interests of both sides, as I think it would be, but I think it has to be a meaningful limitation, and not a highly technical series of calculations of weight and excluding this and including only launchers and not missiles or vice versa, and not including certain kinds of planes and things of that kind.

Setting aside the informality of the discourse in this passage, Mr. Weinberger reveals anastonishing naivete to imagine that any SALT agreement could set aside "technicalities" and be meaningful. It is the very essence of SALT negotiations to be technical, as well as to be a dialetical process trapping the unwary. The Soviets are skilled dialecticians who are on the lookout for innocent participants who imagine that the deal is to the best interest of both sides, just as the city slicker looks for the rube. It is precisely the technicalities which make the SALT talks so dangerous; yet if we expect to have no technicalities, we are setting ourselves up for the subtlest technicalities of all. Yet this theme was no accidental slip of the tongue, for Mr. Weinberger also turned to it at another point:

I think an effort to negotiate a true strategic arms limitation that is effective and is not bogged down in technical detail about whether or not launchers are involved and whether or not an intercontinental plane such as the BACKFIRE is excluded, I think the need to negotiate an effective strategic arms limitation treaty is always going to be there.

In short Mr. Weinberger turned in what I view as a dismaying performance for a person who is expected to take a leading role not only in determining our SALT posture, but in preparing and executing our overall force structures.

Fifth. Mr. Weinberger dismissed one of the major issues in our relationship with the Soviet Union—the issue of technology transfer—with an offhand comment. The continuing ramifications of Soviet industrial and military espionage, of commercial purchase of technology, and of the role which the Department of Defense plays in such transfer were summed up as follows:

Some years ago there were one or two what we might call involuntary transfers of technology, and there have been, I think, some instances and certainly some possibilities where in an apparently unrelated field, civilian computers or things of that kind, requests have been made and perhaps granted that have advanced their capabilities in a way that it was not necessary for us to do.

Mr. Weinberger obviously was not sufficiently briefed on this issue, and apparently did not understand the role which technology transfer has played in the Soviet drive for awesome military superiority.

Indeed, it is one of the handicaps of Mr. Weinberger that he enters upon the job without ever having been obliged to give serious thought to Soviet power, Soviet intentions, or Soviet doctrine. With regard to his assessment of these issues, he candidly tetified:

As far as my own assessment at the moment is concerned, it is obviously imprecise and not formed on any sort of adequate briefings or knowledge of the situation in the last 5, 6 years.

Mr. President, the point the Senator from North Carolina is trying to make is that these are precisely the issues upon which this man or any man entering into the post of Secretary of Defense should not even have to be briefed. He should already be formed by training, experience, and philosophical reflection, and he should accept the job with the understanding that he is going to put a specific doctrine into practice. Yet when he was cross-examined skillfully by the distinguished Senator from Colorado, and the distinguished Senator from Alabama, who has had perhaps greater opportunity to think upon the doctrines of warfare than any man who has sat in the Senate, he did not seem to have a theoretical grasp of what they were talking about.

I invite Senators to examine the report which is before us and to read the questions posed by the Senator from Alabama and the Senator from Colorado and the answers.

I realize, Mr. President, that the events of the transition have happened very quickly, and it is perhaps too much to expect a nominee to have absorbed every detail of his new position so rapidly. In this examination of his testimony, I have deliberately chosen only those issues of the broadest import, and which are most fundamental to the situation this Nation faces today.

Mr. President, I hope that Senators will realize and agree that the Senator from North Carolina would never insist that Mr. Weinberger's conclusions agree precisely with mine or be expressed in the same rhetoric. Yet I do think it is fair to conclude that Mr. Weinberger is not at this moment prepared to make the clean break with the very policies of the past which have managed our military and international decline. Nothing less than a clean break will do.

Let me say again that Mr. Weinberger is an exceedingly intelligent man, and we must hope for the possibility of growth and a deepening of understanding. Yet the chances of that do not appear auspicious. It has been reported to

me that one of his first actions was to dismiss the term of defense experts that had prepared detailed transition reports outlining the absolute necessity for a clean break with the policies of the past. His second action was to consign the reports of these defense experts to oblivion.

His third action was to demand, as his principal deputy, Mr. Frank Carlucci, a man who is also regarded by many as a distinguished public servant, but whose talents reinforce Mr. Weinberger's weaknesses and obviate his strengths. Had these actions not been taken, had Mr. Weinberger sought briefings and assistance from the transition team, he might have been better prepared to respond to the task ahead.

I apologize to the Senate for having been so long in making my feelings a matter of record, but I wanted to be clear why I must take the regretful action of voting against the confirmation of the nomination of Mr. Weinberger, knowing full well that only a few, if any, of my colleagues will vote with me. The nomination of Mr. Weinberger will be confirmed—there is no question about that—but not without the issues at least having been spread on the record in this forum. My duty as a Senator and my conscience as a concerned American require no less that that.

I say this in conclusion, Mr. President: Nobody is more prayerful than I am that I will be proved wrong in the conclusions that I have reached and that I have stated to the best of my ability. In that event, I assure my fellow Senators and Mr. Weinberger that I will hasten to acknowledge my error in judgment. But inasmuch as I hold these concerns, it is a matter of conscience that I felt obligated to state them.

I yield the floor.

Mr. TOWER. Mr. President, I yield 2 minutes to the distinguished senior Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I am grateful to the able Senator from Texas (Mr. TOWER), the chairman of the Committee on Armed Services, for giving me the opportunity to make brief remarks in reference to the pending nomination.

It was my privilege to work very closely with and to have knowledge of Caspar Weinberger during the some 5 years that he held responsible positions in our national Government. My confidence in this proven public servant is reflected by the members of the committee who reported his nomination unanimously and who said he was "fully qualified in all respects"—I have read the report—to be our Secretary of Defense.

As the result of the contacts I had with him, especially in the Department of Health, Education, and Welfare, as well as in the Federal Trade Commission and the Office of Management and Budget, I determined that he was an intelligent administrator; yes, he was tough-minded; he could make decisions; he was affirmative, not negative.

Mr. President, I say to my colleagues that when a Member of the Senate rises, as does the Senator from West Virginia on this occasion, he does not expect his words to have an influence on the vote result. However, I believe the record should reflect that when we have known men who are now asked by President Reagan to be a part of his Cabinet, and when we have worked with these men who are now being given these responsible posts—"with the advice and consent of the Senate"—that we should speak.

I will support—gladly support—the nomination of this capable man.

Mr. TOWER. Mr. President, I yield 2 minutes to the distinguished Senator from California (Mr. CRANSTON).

Mr. CRANSTON. I thank the distinguished chairman.

Mr. President, I rise to speak in behalf of a fellow Californian whom I have known for many, many years, whose nomination to be Secretary of Defense is now before us.

Caspar Weinberger is a man of very high intelligence and very high integrity. I believe that he will perform two very useful functions as Secretary of Defense.

First, he is a man who understands money, who knows how to economize in government. He did that as Director of Finance in the Reagan administration in California. He did that later as a Director of the Office of Management and Budget in the national Government in Washington.

We need economy in the spending of the larger sums that we will spend in national defense, and I believe Caspar Weinberger is very well qualified to fulfill that responsibility.

Second, it has been suggested that he lacks adequate background in military matters. I point out, first, that as Director of OMB, he had become very familiar with the national defense budget, because that is one of the largest items of expenditure in the Federal budget, and thus he has developed considerable expertise from that vantage point. Third, while he may lack a strategic sense at the present time, I am confident that, due to his very high intelligence and his ability to learn subjects very swiftly, he will have, before too long, all the knowledge and more than one would wish of a Secretary of Defense about all the vital matters that relate to grand strategy and lesser strategies that fall within the responsibility of the Secretary of Defense.

For these reasons, I strongly support this nomination.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, it is my understanding that under the unanimous-consent agreement, I have 30 minutes, which I will not use. I will use only a little of that time.

The PRESIDING OFFICER. The Chair understands that under the unanimous-consent agreement, the time is controlled by the Senator from Mississippi. Is the Chair correct?

Mr. PROXMIRE. It is my understanding that the minority leader made it clear at the time that 30 minutes of that time would be allocated to me.

The PRESIDING OFFICER. If there is no objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I ask my friend from Texas, the chairman of the Armed Services Committee, about what specific qualifications Mr. Weinberger has to be Secretary of Defense.

I realize that he served in the Army for 4 years, as did 12 million of the rest of us, in World War II. He was discharged as a captain. He served in OMB and had a responsibility for the Defense Department as well as all other departments. That was diffused and obviously had to be rather limited and superficial.

I share the view of Senator CRANSTON and the view others have expressed that this is an extraordinarily intelligent man. But I should like my friend from Texas to indicate what specific experience and what specific demonstration of ability would persuade him that Mr. Weinberger will be an effective Secretary of Defense.

Mr. TOWER. I say in response to the distinguished Senator from Wisconsin that although Mr. Weinberger does not have a professional background in defense, he has a broad understanding of defense policy. His views on defense matters are compatible with those of the President, who appointed him to the job.

He has had some considerable experience in defense budgeting by virtue of his position as Director of the Office of Management and Budget.

It is very often the case, perhaps more often than not, that people who are appointed as Cabinet Secretaries might be considered laymen in jurisdictions over which they preside. They are appointed for their policy concepts. They are appointed because of their ability as administrators. They are appointed because of their compatibility with Presidential views.

I believe that Mr. Weinberger is highly qualified because he has the right instincts.

I believe that he understands the role of a strong military, not just in terms of national security but also in terms of supporting the foreign policy objectives of the United States. In addition, he is a very quick study. He is a man who has intimate grasp. I believe, too, that his experience in the Office of Management and Budget commends him to the highly complex matters in which the Secretary of Defense is involved.

Mr. PROXMIRE. Would the Senator feel as strongly about this in view of the fact that the Under Secretary of Defense, Mr. Carlucci, as I understand it, also lacks the kind of technical background and experience in defense matters that previously we have associated with the Department of Defense?

Mr. TOWER. Mr. Carlucci's nomination is not at issue at this time.

Mr. PROXMIRE. Except as it relates to the fact that the top man of the administration is.

Mr. TOWER. Mr. Carlucci has served as Deputy Director of the Central Intelligence Agency and as such has a very, very clear perception of the threat, and I can think of nothing that is more important for a Deputy Secretary of Defense to be armed with than that kind of understanding. He also has broad experience as an administrator and as a diplomat.

It may be that the Senator from Wisconsin thinks that the Secretary of Defense or the Deputy Secretary should be

a professional bean counter or systems analyst. I think it is high time that we had in these positions people who thought in terms of roles and missions, who thought in terms of global objectives and clear perceptions of national interest.

We have been too long in the business of bean counting and systems analysis. It is time that we get away from that.

I think that Caspar Weinberger is ideally suited for the job that I expect the Senate to commend him to today.

Mr. PROXMIRE. May I ask my friend from Texas to inform the Senate about the problem that has disturbed many Americans, I am sure, and that is the lack of readiness of our Armed Forces. There has been reports that most of our Army divisions are not ready, that half, at least, of our carrier task forces are not in a stage of readiness. Did the Secretary-designate indicate what plans he had, if any, to remedy that situation?

Mr. TOWER. The first thing the Secretary-designate recognizes is the problem and I understand that manpower and personnel problems are the area of primary impact on readiness. In fact, there is the problem of our retention rate of senior noncommissioned officers and many junior officers in the captain and major areas or lieutenant and lieutenant commander areas, that are the middle management team of the armed services. He fully recognizes that we have to resolve these manpower and personnel problems and further that we must address ourselves to other aspects of readiness such as adequate funds for operation and maintenance, spare parts, and adequate training, which includes steaming time, flying hours, field exercises. I think he has a very good grasp of the readiness problem.

Obviously, he is not prepared to submit to us at this moment a detailed plan for resolving our readiness problems. I think it should not be expected that he should.

Mr. PROXMIRE. I certainly would not expect a detailed plan. A man who has the experience and knowledge that Mr. Weinberger has, according to the Senator from Texas, it seems to me, should have some outside notion of what it would cost to provide this kind of readiness for our Army and our Navy. I am not talking about a precise number.

Mr. TOWER. He is currently engaged in working with people in the Defense Department and others who would provide expertise from the outside at what the ballpark figures might be. I know he has been in consultation with me and with other Senators on the Armed Services Committee and with members of the staff of the Armed Services Committee. I think that he has some idea about what the cost might be for perhaps inclusion in the supplemental appropriations bills for fiscal 1981 and for projection into the fiscal 1982 budget. But I think it is difficult at this point to project what the cost might be over an extended period of time because for the first thing we do not know what the inflationary factor is going to be.

Mr. PROXMIRE. May I ask the Senator if the nominee gave any indication of the rate at which we could provide an improvement in our deficiency in force numbers? For example, I understand that the Soviet Union has one-and-one-half times the number of planes, that they have three times the ships, that they have four times the tanks, and in some respects it is not necessary for us to have more if we have better and more firepower, and so forth. But I think just the gross difference concerns many Americans.

I wonder if the Senator can tell us what plans if any Mr. Weinberger has to correct that with cost?

Mr. TOWER. Now we are getting into specifics. As to his understanding of specific numbers imbalance I think it is sufficient to say that he recognizes there is a very serious imbalance in virtually every area of military endeavor, at an impending loss of strategic equivalence. I think he will proceed early to devise a defense policy that will deal with these deficiencies. Again that cannot be spelled out at this time.

Mr. PROXMIRE. The Secretary of Defense-designate says that he cannot be certain about the requirement——

Mr. TOWER. If I may say one more word, we do not deal strictly with numbers in the defense business. The Soviets, for example, have superior numbers of ships. We still have superior tonnage.

Mr. PROXMIRE. I realize that.

Mr. TOWER. I must say that we have a tenuous maritime edge that we are likely to lose if we do not enhance our shipbuilding program. There is no question about that. I do not think we can deal on a strict numbers basis. The Soviets obviously have a bigger land army. The United States would not want a land army that size. We would not know what to do with it if we had it.

Mr. PROXMIRE. It is my understanding that Secretary of Defense-designate Weinberger says that he cannot be certain about the required number of civilians in the Defense Department until he studies the situation more closely. Would the chairman agree that a million civilians in the Defense Department indicates a prominent area where savings might be made without enfeebling our defense?

Mr. TOWER. I think we have to examine very carefully the business of any reductions in civilian personnel. I believe that we probably have reduced civilian personnel as low as we should at this point. We have gotten to the point now where we have shortages of civilian help in certain areas and where we are having to use actually combat troops to perform support functions, and again that impacts on readiness. But again I would not think that the Senator would want to try to require some kind of specific answer to that question at this point.

The Armed Services Committee has been very diligent in trying to enhance the detailed ratio. Senator NUNN of Georgia has, of course, taken quite a leadership role in that, and we have done a great deal. We have annually over the past few years reduced civilian end strength. We have reduced them now to the point that any further reduction would impact adversely on our readiness.

Mr. PROXMIRE. I wonder. Senator GOLDWATER and I joined in an amendment last year, I believe it was, to cut the civilians by 17,000. It passed. It seems to me that the reports of the Armed Services Committee have consistently criticized the excessive number of civilians. We have, as I understand it, very close to the same number we had at the height of the Vietnam war when we had military personnel nearly twice as large as at the present time. That ratio between civilian and military does seem to be excessive.

Mr. TOWER. I would not characterize it at this point as excessive. The Armed Services Committee will be going into this whole matter. We have a subcommittee that is specifically charged with that responsibility.

I would be very hesitant to suggest at this point that our civilian strength is too high. As a matter of fact, in some areas we have a shortage of civilian industrial personnel that has impacted on our readiness and maintenance capability.

I think the civilian end strengths are probably as low as they should be. They have even been too low in some areas. We had to contract out a lot of work and some resulted in unsatisfactory results.

Mr. PROXMIRE. Mr. Weinberger says he will study the present requirements.

Mr. TOWER. I may say that responsibilities for the responses I am giving to the Senator from Wisconsin are my own and should not be interpreted as those of Secretary Weinberger. I am not in position to answer for him on every question.

Mr. PROXMIRE. I understand that. I simply want to get the chairman's reaction because I value that, and I think that judgment is very helpful to us.

Mr. Weinberger says that he will study the present requirements for the number of generals and admirals of the Defense Department. In fiscal 1980, if I understand it, the committee called for a cutback. Will the chairman agree that cutting back on the number of generals and admirals is a priority for the new Secretary of Defense?

Mr. TOWER. I would not call that a priority. I think we have so many priorities. There are so many other areas in which we could accomplish economies that I would not regard that as a priority. It would not really be much of an economy. But we have to understand that when we shrink dramatically the numbers of flag officers we shrink the opportunities for junior officers to rise to the top of their profession and provide a disincentive to the extent that sometimes when someone reaches the rank of major or lieutenant commander and starts looking over the prospects of getting to the top of his profession he realizes there may be too few slots at the top and he opts out.

Mr. PROXMIRE. As I understand it, Mr. Weinberger——

Mr. TOWER. I might also note that we have a number of command structures that require flag officers, and these command structures exist really to perform contingency tasks based on our

having to function in some particular kind of military endeavor. It might be considered redundant otherwise.

Mr. PROXMIRE. Mr. Weinberger said he will submit amendments to the fiscal year 1981 budget, the one we have, the one we are operating under now, and we will until September 30, based on unanticipated changes in inflation rates and operating tempo.

Does the chairman have any indication of the budget amendments for fiscal 1981? Does he agree that they should be limited to unanticipated changes in inflation rates and operating tempo or should they take into consideration these other matters we have been discussing?

Mr. TOWER. The chairman's view—and I cannot express the Secretary-designate's view, but the chairman's view—is that we probably should have a supplemental in the neighborhood of $12 to $14 billion to accommodate certain facts-of-life increases, as the Senator from Wisconsin has already pointed out, miscalculation on the inflationary factor, miscalculation on increased fuel costs, the need for additional spare parts, war reserves that impact on readiness, probably a very small increase in military pay and benefits to keep abreast of the inflationary factor; in addition, the cost of maintaining of virtually a permanent force in the Indian Ocean.

At this point the expenses of maintaining that force there are coming out of the services' hides, primarily out of the Navy's hide, which also means what the Navy should be doing is suffering. I think we need to make special provision for the costs of maintaining the permanent deployment in the Indian Ocean.

Mr. PROXMIRE. That is a very, very helpful response. It is the kind of response I wish we could get from the nominees.

Mr. TOWER. I do not believe we should go extensively into new programs in a supplemental.

Mr. PROXMIRE. But by giving us and pointing out—not a precise figure but an estimate—that in his judgment we need a supplemental in 1981 of $12 to $14 billion we have some notion of the job we have in front of us in cutting of programs, because we have to fight inflation.

Mr. TOWER. That is where we would be delighted to enlist the help of the distinguished Senator from Wisconsin.

Mr. PROXMIRE. He will get it.

Mr. TOWER. Who can nitpick a budget better than anybody else in this body. We will need his assistance and help in supporting us in making the needed reduction in nondefense spending so that we can properly fund that which is our No. 1 national priority, the defense of the United States of America and its vital interests abroad.

Mr. PROXMIRE. The Secretary agrees that the purchasing power of military personnel should be improved and maintained in order to keep a viable All-Volunteer Force, something I enthusiastically agree with.

Does the committee have any idea as to how much it would cost to compensate all military members for the ravages of inflation since 1970, that is to make the military pay retroactively constant with inflation?

Mr. TOWER. Ideally what we should seek over a period of time—it would not be accomplished over 1 fiscal year—is to ultimately get them up to roughly the purchasing power that the military enjoyed in 1972, which is the last time in which military compensation was comparable with that in the private sector.

Mr. PROXMIRE. But, as I understand it, since 1972 there has been a 14- to 17-percent decline in the purchasing power of the pay of our military forces; is that correct?

Mr. TOWER. I am not certain of the figure, but the figure cited by the Senator sounds correct.

Mr. PROXMIRE. So the increase would cost several billions of dollars; is that right?

Mr. TOWER. I think we can expect that it will. I can tell the Senator from Wisconsin that we are not going to get defense on the cheap.

Mr. PROXMIRE. Secretary-designate Weinberger said that the Reagan administration would be inclined to pursue development of a strategic bomber after a thorough but rapid engineering effort. That was his answer to a question asked at the hearing.

Does the chairman have any indication of the type of bomber currently favored by the Secretary-designate, the FBI-111H or the B-1 derivative or an advance technology bomber?

Mr. TOWER. I do not believe the Secretary-designate has a favorite at this point.

Mr. PROXMIRE. Should they not make a decision? I know the Armed Services Committee has been pushing for a decision for 2 years.

Mr. TOWER. The Armed Services Committee expects to make a decision on March 15 as to the option they should select. The military has informed us that they cannot have the cost figures for us by that time, but we expect to have those before us in May.

Mr. PROXMIRE. Did not Mr. Weinberger say the date might slip and might have to come along later?

Mr. TOWER. Well, the point is the Air Force can come up with a technical assessment and with a selected option but cannot present us with the cost figures at that time because they will not be ready then.

Mr. PROXMIRE. What would a new bomber mean in defense budget costs? Can we have any idea of that?

Mr. TOWER. I cannot give you a cost right now. If I could I would. I wish we had the cost figures in hand but we do not. Obviously the Senate is going to have the opportunity to make a judgment on this.

Mr. PROXMIRE. Do we have any idea when we can have it?

Mr. TOWER. The Senate does not have to make a judgment on it right now.

Mr. PROXMIRE. Mr. Weinberger, as I understand it, declined to answer the question of at what point it will be necessary to consider amending the ABM treaty to permit a mobile ABM defense system.

Does the committee have any indication as to the intention of the administration to amend the conditions of the ABM treaty to allow a mobile preferential ABM defense system?

Mr. TOWER. I do not believe the administration has formulated a defense position at this time. There are so many new things in this area the new administration is going to have to review. I would not be prepared to give even my own judgment at this point.

Mr. PROXMIRE. Is it not essential that we have that in order to defend the MX?

Mr. TOWER. I would not even respond to that question at this point.

Mr. PROXMIRE. Mr. Weinberger declined to answer the question as to his recommendation about the need for additional large nuclear aircraft carriers. Does the committee have any independent knowledge of the disposition of the new administration as to the large aircraft carrier issue?

Mr. TOWER. There is no monolithic viewpoint that I can articulate in behalf of the committee on the matter of the carrier.

Mr. PROXMIRE. What is the chairman's view?

Mr. TOWER. My own view is we are going to need a couple of additional task forces if we are going to protect our vital interests abroad.

If we do not want to pay the price of protecting our sea lines of communications, our sources of energy, our sources of strategic metals then, of course, we can spend much less on defense, and it would be much cheaper.

Mr. PROXMIRE. Has the new Secretary provided the committee with any indication of his priority for the neglect of the Reserves and the Guard? That is a concern in our State, and it is one that many of us feel very strongly about. It is such a vital part of our defense and it has been seriously neglected in my view.

Mr. TOWER. The Secretary has indicated his concern for it, but I might go beyond that and say that the President, our new President—I have to get over calling him the President-elect because he is now, thank Heaven the new President—has expressed a strong interest in developing a good, sound Reserve package to enhance and improve both the numbers and capabilities of our Reserves because our new President believes in the All-Volunteer Force and wants to make it work, and recognizes if we are going to have that kind of force you also have to have a good Reserve to back it up.

I might note a lot of our combat-support effort is lodged in our Reserves and, therefore, it is essential that we get our Reserves up to speed.

I might, too, reassure the Senator from Wisconsin on the views of members of the committee. Traditionally we in the committee have taken most of the worthwhile initiatives on the Reserves.

Mr. PROXMIRE. I am glad the com-

mittee has done that. As the Senator knows, I have put in some amendments which have passed to do that, and I think it is essential.

One final question: As with many other nominees, the Secretary-designate, Mr. Weinberger, says he is looking at the issues of overregulation and excessive paperwork. With all the others, the constancy of the theme is that while we campaign on it we really do not know exactly what we are going to do about it.

Here is a man who served in OMB; he served in the Department of Health, Education, and Welfare as the top man, he is well aware from his service in private industry of the colossal burden of regulations and paperwork.

It seems to me if anybody should be able to give us some notion of how we can cut these regulations and cut this paperwork it ought to be Mr. Weinberger.

What accounts for this response that he cannot tell us where? It is all vague generality, that they are going to look for it and they will knock out any unnecessary regulation or unnecessary paperwork but cannot tell us precisely how to go about it now.

Mr. TOWER. I do not know that as Director of the Office of Management and Budget he was charged with that specific responsibility in the previous administration. I certainly am not prepared to comment on what his views are on regulations.

Obviously, what the Senator is talking about is something that we think of as being a part of agencies that are not defense agencies. I do not think that overregulation is really a part of the Defense Department's problem.

Mr. PROXMIRE. Certainly in contracting it is.

Mr. TOWER. Sometimes we have confusion of command structure. I think probably some reorganization is required in several areas so that we have a clear line of control, authority, responsibility and accountability. In the military, there is no question but there is work that has to be done in that regard.

Mr. PROXMIRE. But, certainly in contracting, especially small business contracting in the Defense Department, there has been overregulation and the paperwork seems unnecessary.

Mr. TOWER. That is really a can of worms that has to be opened and gone into. We have a lot of complications. In some instances, we are required to try to establish competitive bidding where, really, sole source might even be more efficient.

In some instances, we have small business setasides that require us to do things in a less efficient way. In some instances, the Occupational Safety and Health Agency imposes additional costs on us.

We have all sorts of things that impact on defense costs and on contracting procedures.

So that is a matter that does have to be gone into in great detail. I expect that Mr. Weinberger will seize upon the opportunity to get into that early on in his administration.

(Mr. GORTON assumed the chair.)

Mr. PROXMIRE. Mr. President, let me ask if the chairman believes in multiyear funding for these defense operations? Would that be more efficient? Would it save us money, in his judgment?

Mr. TOWER. Mr. President, I think there is a great deal to be said for multiyear funding, in terms of its efficiency and economy. I think the major problem is it might be more political. I think the Senator well knows what I am talking about. He knows a lot of his colleagues would rather scrub it once a year than to authorize something over a long period of time.

Mr. PROXMIRE. Mr. President, I thank the distinguished chairman of the Armed Services Committee. I want to say that I will vote for Mr. Weinberger. I agree that he is an extraordinarily able and intelligent man with strong experience in Government. I regret the fact that he has not had the kind of technical military experience that would serve him well. I also regret very much the lack of direct responses, where I think that, with his background, he could have been far more responsive and cooperative with the Congress.

But, on balance, I will certainly vote for his confirmation.

Mr. TOWER. Mr. President, if there is no one else who wishes to be heard on the nomination of Mr. Weinberger, I am prepared to yield back my time if my distinguished colleague from Mississippi, Senator STENNIS, is present and is prepared to yield back his time.

Mr. President, I reserve the remainder of my time. I suggest the absence of a quorum and ask unanimous consent that the time be charged to both sides.

Mr. WARNER. Mr. President, will the Senator withhold on that request?

Mr. TOWER. Mr. President, I withdraw that request. I yield 3 minutes to the Senator from Virginia.

Mr. WARNER. Mr. President, I wish to commend the distinguished chairman of the Armed Services Committee for conducting a colloquy that I feel has answered all of the pertinent questions. I certainly hope the Senate can proceed before sundown to confirm the President's choice for the Secretary of Defense.

I yield the floor to my distinguished colleague from Illinois.

Mr. TOWER. Mr. President, I yield 3 minutes to the Senator from Illinois.

Mr. PERCY. Mr. President, I thank my distinguished colleague. I take the floor at this time, first, to address my comments as the chairman of the Foreign Relations Committee to the ranking minority member and all the members of the committee.

I simply say, at this particular time in our history, with the critical situations that we face around the world, whether it be in the Middle East, whether it be in oil security, whatever the challenge may be, that this is the time when the foreign relations policy of this country must be backed by a very strong national defense.

I think, for that reason, members of the Foreign Relations Committee would want to work, as we never have in history before, closely with the members of the Armed Services Committee. Whenever we have issues and hearings that bear upon a foreign policy where the credibility of foreign policy is involved, I, as chairman, would certainly like to invite members of the Armed Services Committee to participate.

Whenever we have testimony, whenever we have chiefs of state, whenever we have foreign ministers, whenever we have premiers, whoever it may be, as guests of the committee, members of the Armed Services Committee would always be welcome to meet with us. Where there are items of particular military importance to that committee, they may well want a separate meeting with these people because the intertwining of Armed Services and Foreign Relations concerns is always present.

I have already discussed with the chairman of the Armed Services Committee, Senator TOWER, the possibility of having the Armed Services Committee take a look at our foreign assistance and grant programs to other countries. Many times those programs have a direct bearing and a direct effect upon our own ability to spend money on our programs here and they are closely intertwined. Certainly with our allies we have joint programs, and these must be carefully reviewed.

I welcome this opportunity to address my colleagues in the Armed Services Committee for whom we have such great respect and tell them we would like to work very closely with them.

Mr. TOWER. Mr. President, I yield 15 seconds to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the nomination by President Ronald Reagan of Caspar W. Weinberger as Secretary of Defense.

Mr. President, the nominee has already demonstrated his great management abilities in Washington during his previous service in the early 1970's as Director of the Office of Management and Budget and head of the former Department of Health, Education, and Welfare.

As I have often stated, national security is the most important issue facing our Nation. The Reagan administration has been placed in office partly because the people see the need to rebuild our Nation's defense forces.

During his confirmation hearings Mr. Weinberger made it clear that he favored increased defense spending and a rebuilding of all segments of our military forces. I am sure he will find in the Congress ample support for recommendations along these lines.

Mr. President, I believe the nominee is an exceptionally capable man and will render an outstanding service as Secretary of Defense. Therefore, I urge that the Senate give expeditious and favorable approval to his nomination.

● Mr. QUAYLE. Mr. President, I am delighted to have had the opportunity this afternoon to join with the majority of my colleagues in confirming the nomination of Caspar Weinberger for Secretary of Defense.

In Caspar Weinberger, the country's defense will be looked after by a man of rare qualities, for he is a man who understands the potential conflict between defense expenditures and economic well-being that this country must face throughout the remainder of this century. On the one hand, he understands the lack of commitment we have shown to our own defense over the last 10 to 15 years. He also understands the development of a dangerous imbalance between the United States and the Soviet Union that will require a new attitude and new direction to correct. And yet Mr. Weinberger has shown us that he also possesses sufficient perspective to understand that a strong economy is a crucial element of our national defense, and that if we are to revitalize our economy and retain the long-term support of the American people for the necessary, but expensive resurrection of America's defenses, we will have to spend our defense dollars with more prudence and deliberateness than has ever before been necessary.

I look forward to working with Mr. Weinberger and the rest of their defense team in the months and years ahead; for although the problems that face us may at times appear staggering, I am confident that with their commitment and the support of the Congress, our difficulties will ultimately find resolution.●

Mr. TOWER. Mr. President, I yield 1 minute to the distinguished Senator from Tennessee, the majority leader.

Mr. BAKER. Mr. President, I thank the distinguished manager of the bill and the chairman of the committee.

The purpose of my request that he yield is to say that there will be no further votes tonight after the vote that is about to occur. The Senate will convene in the morning at 11 a.m. We will proceed with the debate on the Haig nomination, which I anticipate will be laid down and made the pending business yet this evening.

Mr. PERCY. Mr. President, may I have 30 seconds?

Mr. TOWER. Mr. President, I yield 30 seconds to the Senator from Illinois.

Mr. PERCY. Mr. President, I will simply add that I enthusiastically support Cap Weinberger's nomination. He will find a way to make an improvement in the way we spend our money, but he will also see that we have a strong defense. I have great confidence in him.

Mr. TOWER. Mr. President, I am prepared to yield back the remainder of my time.

Mr. STENNIS. Mr. President, I yield back the remainder of my time.

Mr. TOWER. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Caspar Weinberger to be Secretary of Defense? On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Georgia (Mr. NUNN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 97, nays 2, as follows:

[Rollcall Vote No. 1 Ex.]

YEAS—97

Abdnor	Garn	Mitchell
Andrews	Glenn	Moynihan
Armstrong	Goldwater	Murkowski
Baker	Gorton	Nickles
Baucus	Grassley	Packwood
Bentsen	Hart	Pell
Biden	Hatch	Percy
Boren	Hatfield	Pressler
Boschwitz	Hawkins	Proxmire
Bradley	Hayakawa	Pryor
Bumpers	Heflin	Quayle
Burdick	Heinz	Randolph
Byrd, Harry F., Jr.	Hollings	Riegle
Byrd, Robert C.	Huddleston	Roth
Cannon	Humphrey	Rudman
Chafee	Inouye	Sarbanes
Chiles	Jackson	Sasser
Cochran	Jepsen	Schmitt
Cohen	Johnston	Simpson
Cranston	Kassebaum	Specter
D'Amato	Kasten	Stafford
Danforth	Kennedy	Stennis
DeConcini	Laxalt	Stevens
Denton	Leahy	Symms
Dixon	Levin	Thurmond
Dodd	Long	Tower
Dole	Lugar	Tsongas
Domenici	Mathias	Wallop
Durenberger	Matsunaga	Warner
Eagleton	Mattingly	Weicker
Exon	McClure	Williams
Ford	Melcher	Zorinsky
	Metzenbaum	

NAYS—2

East	Helms

NOT VOTING—1

Nunn

So the nomination was confirmed.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TOWER. Mr. President, I ask unanimous consent that the President be notified of the confirmation of this nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, this afternoon the Senate, in its first vote since the inauguration of the new President, voted to confirm an excellent man for Secretary of Defense.

I rise not only to salute my colleagues for the overwhelming vote we have given the new Secretary but also to direct the attention of my colleagues in the Senate to a most excellent article that appeared in the Omaha World-Herald of Sunday, January 18, from another outstanding expert on defense.

The article in the Omaha World-Herald to which I have made reference is about and giving the views of General Richard Ellis, the Commander of SAC in Omaha, Nebr., on the MX Missile and its possible sites of deployment.

I ask unanimous consent that the text of the article in the Omaha World-Herald of the date I have mentioned be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ELLIS CALLS THE MX ABSOLUTE PRIORITY

(By Howard Silber)

The increasing vulnerability of U.S. intercontinental ballistic missiles is of such overriding concern that the mobile MX missile "must be absolutely the nation's highest military priority," said Gen. Richard H. Ellis, commander in chief of the Strategic Air Command.

"We need that missile today," Ellis said. "It won't be there (in its bases) until 1996. But the need is there today."

The increased firepower and accuracy of Soviet missiles "have put our Minuteman at risk to the point where, if we had to ride out an attack, the time is fast approaching where we could not respond effectively in a coherent manner," Ellis said.

The 1,000 Minuteman missiles deployed by SAC make up the bulk of the U.S. land-based missile force. The other ICBMs, 52 Titan IIs, are equally vulnerable to Soviet rockets, he said.

The Minuteman and Titan II missiles are in fixed underground silos.

FAVORS DESERT BASE

"The situation will get worse until the MX comes in," Ellis said.

Ellis said he strongly favors the plan to base the MX in desert areas, using horizontal shelters interconnected by extensive road networks for rapid mobility of the missiles.

That deployment concept has come under fire in Nevada and Utah, where the Air Force wants to put the MX, and is being fought by some environmentalists.

President-elect Ronald Reagan and Defense Secretary-designate Caspar Weinberger also have questioned the need to base the MX in the Great Basin desert area.

Ellis said a plan to establish two MX fields, one in the Nevada-Utah region and the other in the high plains of west Texas and eastern New Mexico, would be acceptable, but splitting the vast bases between the two regions would add to the problems of command and control.

SURVIVAL SYSTEM

"We've looked at the MX for 10 years in several different forms, missiles and basing modes," said the general.

"SAC has several different criteria for an effective replacement for the Minuteman. One of the most critical is to have a survivable system, and by survivable I mean something that can last on the order of 20 years in a period in which you cannot begin to anticipate what the threat will be.

"That makes the deployment mode one of the more critical aspects of such a missile system.

"SAC believes that mobility is the key. Ideally, if we are able to ensure that a missile is not going to be in the same place when the other side's missile arrives as it was when the missile fired, then we've got a chance of having a sufficient force survive for an indefinite period.

"We have that kind of ability in the MX—the horizontal MX."

The deployment plan calls for shelters, from which missiles could be elevated to a near-vertical position for launching, to be spaced at intervals of about 5,500 feet.

Missiles would be moved from shelter to shelter at random in enclosed transporters which would resemble huge tanker trucks.

There would be 4,600 shelters for 200 missiles and, with the plan for rapid mobility, the Soviets would have to target all 4,600 locations to be sure of neutralizing the MX and prevent the United States from effectively retaliating to a missile attack on this country.

SAC anticipates the shelters would look like livestock feedlot pens. Each 2½-acre plot would be surrounded by a wire stock fence. The shelters within the fenced area

would be concrete and steel tubes 170 feet long and about 15 feet in diameter. They would be covered by native topsoil.

Each missile and accompanying launcher would be moved and deposited secretly in a shelter. Then the transporter would move to other shelters and simulate the process of leaving the missile and launcher.

SUFFICIENT TIME

In crisis periods, the transporters and their cargoes of missiles and launchers could either be parked on roads between shelters or moved constantly among shelters.

Upon receipts of warning of the launching of Soviet missiles, there would be a 25-minute period before the hostile warheads would reach the MX field. That would be sufficient time to move the missile safely, Ellis said.

Ellis said he recognizes that the Reagan administration has been reviewing and will continue to review the MX basing modes.

"My hope is that, during the course of this review, they won't slow down work that is currently being done on the MX," he said.

Ellis said the Air Force has reviewed the possibility of using expanded Minuteman bases for the MX and moving missiles on highways or by rail to confound Soviet targeters. The possibility of putting more missiles at sea also has been examined.

UNACCEPTABLE RISK

"All of these modes, with the possible exception of submarines, would create more difficult environmental problems than the current MX basing plan," he said, "As for submarines, one of the great successes we've had for the last 30 years has been the triad of strategic forces"—land-based and sea-based missiles and manned bombers.

"The fact that each operates in a different environment causes (the Soviet Union) a different defensive problem," the general said. "If we locate a major portion in any one environment, then we're making his job easier; he can concentrate in that area. We don't think that is an acceptable strategic risk."

Discussing proposals to put the MX in existing Minuteman III silos in the Nebraska Panhandle, Colorado, Wyoming, North Dakota and Montana, Ellis said a great number of additional silos would have to be built, "and we would have environmental problems of a grander scale than we have now."

There also would be a loss of at least two years due to the need to embark on exhaustive environmental studies, he said.

"We've looked and we know how long the environmental studies take," Ellis said.

DEPARTMENT OF STATE

NOMINATION OF ALEXANDER MEIGS HAIG, OF CONNECTICUT, TO BE SECRETARY OF STATE

The PRESIDING OFFICER. Under the previous order, the clerk will state the nomination of Alexander Haig to be Secretary of State.

The legislative clerk read the nomination of Alexander M. Haig, Jr., of Connecticut, to be Secretary of State.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, may we have order in the Chamber?

The PRESIDING OFFICER. The Senate will be in order.

Mr. PERCY. Mr. President, on behalf of the Committee on Foreign Relations, I am pleased and honored to report to the Senate the nomination of Alexander M. Haig with the recommendation that he receive the advice and consent of this body to be Secretary of State. The committee conducted 5 days of hearings on this nomination, including 28 hours in public session and 4 hours in executive session. We heard testimony from Senators WEICKER and GOLDWATER and from former Senator John Sherman Cooper. We invited Senators not on the committee to ask questions directly of the nominee and Senators GARY HART of Colorado and ROBERT KASTEN of Wisconsin participated. A number of other Senators submitted questions in writing and have received written responses. We heard also from the Archivist of the United States, Dr. Robert Warner, and his staff on the issue of the accessibility of certain materials held by the Archives.

Finally, the committee received communications from a number of organizations and individuals. We have included all the written testimony submitted by such organizations in the appendix to the hearings, and have also included a number of the individual letters received. Among them are strong endorsements from former President Ford, former Secretary of State Dean Rusk, eminent diplomats Joseph Sisco, Ellsworth Bunker, and Robert Ingersoll, and others who have worked closely with Alexander Haig at various stages in his career.

Joseph Sisco served as Under Secretary of State. Ellsworth Bunker is one of the most accomplished ambassadors and diplomats, along with David Bruce, that this Nation has ever had. Robert Ingersoll served as Ambassador and Deputy Secretary of the Department of State.

We also had letters from others who have worked closely with Alexander Haig at various stages in his career.

Mr. President, I ask unanimous consent that the letter of President Ford be printed in the RECORD at this time.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JANUARY 9.

DEAR MR. CHAIRMAN: I am writing to you in support of the nomination of General Alexander Haig for the position of Secretary of State. As you and the members of the committee know, General Haig has had an outstanding military career. A graduate of West Point, his personal and professional career have reflected the precepts of duty, honor, country. He has served this Nation as a combat leader in two wars, in both of which he was wounded and decorated for valor.

But he is not simply an able and valiant soldier. His more than 30 years of distinguished military service portray a dimension of leadership I would describe as that of the soldier-statesman.

I first observed General Haig's many talents when I served as minority leader of the House of Representatives. And he held a key post on the staff of the National Security Council during my tenure as Vice President and later as President. I saw firsthand his performance of the demanding duties associated with the office of Chief of White House Staff. Dedicated and hardworking, he was a skillful administrator with an indepth knowledge of the Executive Branch of Government.

Throughout this period, in all of my personal relationships with him he reflected great strength of character and integrity.

In 1974 I nominated him Supreme Allied Commander of the North Atlantic Treaty Organization Forces in Europe. The leadership he brought to that command won him respect at home and abroad. Perhaps more than any other assignment, it indicated his unusual qualifications for the post for which you are now considering him.

Because I am convinced he is eminently qualified, I strongly support his nomination and hope your committee and the Senate will confirm him as Secretary of State.

With kindest personal regards, I am,

GERALD R. FORD.

Mr. PERCY. Through the extraordinary efforts of the Government Printing Office and the staffs of both General Haig and the Foreign Relations Committee, we were able to make available to the Senate on Monday the complete record of our public sessions—a full 5 days of hearings. All Senators have the two-part record of the hearings before them today.

Mr. President, I wish to pay great tribute to the staffs of both the majority and minority, of the Foreign Relations Committee, particularly to our Staff Director for the majority, Mr. Ed Sanders. Until a week ago, he served with the Office of Management and Budget for a decade, under three Presidents. He was brought in during the administration of President Nixon, served with President Ford, and stayed on with President Carter.

In his most recent position as an Associate Director of OMB, he had responsibility for the State Department for Intelligence, and for the Department of Defense authorizations and appropriations. It was a remarkable time for him to join the other branch, the Senate, in the beginning of the Haig hearings. He performed in a very commendable fashion, and I am deeply grateful to him for the long hours he and the rest of the staff put in to make these hearings a complete success.

Mr. President, the committee's review of this nomination has been the most extensive and thorough in its history. We had available an enormous record of the principal stages and events of Alexander Haig's career, including the work of numerous congressional committees. We retained the services of a number of special counsel and consultants, including our former distinguished colleague, Senator Jacob Javits, and special counsel for the majority, Fred Thompson, and for the minority, Henry Schuelke. Along with our existing staff, they devoted virtually all their time over the past month to the assembly and review of the available record.

In addition, we have made every reasonable effort to obtain additional materials and information regarding this nomination, including the issuance of a subpena for the archival log of all taped conversations between former President Richard M. Nixon and Alexander Haig during the initial period of Mr. Haig's tenure as White House Chief of Staff. Additional material has been made available from the executive branch pursuant to the requests of Senator PELL, the ranking minority member of the committee.

Finally, Mr. President, we had before us for 5 days the best possible witness to these events, General Haig himself. At his own request, General Haig testified under oath and responded to a wide range of questions on all aspects of his career. His written statement, the ap-

pendix, and his answers to our questions added to the already extensive testimony that he has given on these matters on previous occasions.

On the basis of all of this information, the committee voted last Thursday, by 15 to 2, to report this nomination favorably to the Senate, and all members cooperated in the effort to expedite its early consideration on the Senate floor. Committee members voting in the affirmative were myself and Senators BAKER, HELMS, HAYAKAWA, LUGAR, MATHIAS, KASSEBAUM, BOSCHWITZ, PRESSLER, PELL, BIDEN, GLENN, ZORINSKY, CRANSTON, and DODD, with Senators SARBANES and TSONGAS voting in the negative.

At this time, Mr. President, I commend the distinguished ranking minority member of the committee, Senator PELL, for his tremendous cooperation, for his thoroughness, and for his candor at every stage of these proceedings. I have had the pleasure of working with Senator PELL on many occasions in the past. I look forward with tremendous anticipation to working with him in the Foreign Relations Committee in the future. My admiration for him as a former Foreign Service officer, as a man of tremendous integrity, great thoroughness and conviction, has been strengthened in the past several weeks, even though it had no bounds before.

I also pay particular tribute to the way in which Geryld Christianson has handled his work as staff director for the minority. We do have a working relationship that I believe is enviable. On occasion, we will have differences of opinion. Many times in hearings we will have differences within the Republican Party. There will be differences between members and between staff members.

I believe that this extraordinary hearing was really a marvelous opportunity for us; it brought out—it tested—the best in us. In the end, collectively, working together, it brought out the best in us.

Despite various press accounts alluding to divisions between or among Republicans and Democrats, the committee emerged from these proceedings as a united and effective body, dispatching its duties with great care and full discussion, but always preserving mutual respect among its members. This continued cooperation and comity is a credit to Senator PELL and the other minority members of the committee, including a new member of the committee, the distinguished assistant minority leader, Senator ALAN CRANSTON. This also applies to new Members on both sides of the aisle. On behalf of Senator PELL and myself, we extend to them our appreciation for so quickly jumping into this work. This is their major committee and they gave unstintingly of their time, energy, thought, and effort, as their first experience in working with the committee.

It is also, Mr. President, a credit to the active and constructive role played by the majority leader, Senator HOWARD BAKER, and to the other members of the Republican majority of the committee, especially Senator HELMS, who acted as ranking majority member of the committee during the necessary absence of Senator BAKER.

Mr. President, I believe that the record presently before the Senate is fully adequate to inform the Members of this body as to the background and views of this nominee for Secretary of State. Members may wish to supplement the hearing record itself with the records of earlier Senate investigations into such matters as wiretapping, the Indochina war, Watergate, and U.S. actions in Chile, and I would be glad to make available members of the committee staff to discuss these issues with my colleagues or to supply additional materials. Members need only contact Mr. Ed Sanders to have whatever information and material they wish made available to them promptly through members of his staff. Mr. Christianson may be contacted for the same thing.

Nevertheless, in the interest of making clear the committee's ongoing responsibilities for this nomination, and for other nominations which may raise questions regarding committee access to relevant materials, I agreed to join with the full committee in passing a resolution declaring our continuing interest in obtaining whatever information may be relevant and reasonably available to us. I ask unanimous consent that the resolution be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

Resolved, That in anticipation of its vote on reporting to the Senate the nomination of Alexander M. Haig to be Secretary of State, and other nominations which may come before it for consideration, the Committee on Foreign Relations:

(1) adopts this resolution for the purpose of continuing the jurisdiction of the Committee over matters relating to such nominations and its general oversight responsibilities, and

(2) will continue all reasonable efforts, including those actions taken by the Committee to date, to obtain materials relating to such nominations and such general oversight responsibilities.

Mr. PERCY. Mr. President, this resolution was adopted on Wednesday, January 14, by a vote of 14 to 3, with myself and Senators BAKER, HAYAKAWA, MATHIAS, KASSEBAUM, PRESSLER, PELL, BIDEN, GLENN, SARBANES, ZORINSKY, TSONGAS, CRANSTON, and DODD voting in the affirmative, and Senators, HELMS, LUGAR, and BOSCHWITZ voting in the negative.

Further steps in the committee's deliberations have not yet been formally considered. We did receive word late yesterday that the Archivist, Dr. Warner, has accepted all of the objections raised by attorneys for former President Nixon to the committee's access to materials covered by the 1974 Presidential Materials and Recordings Act. The committee will now have to decide whether it would be necessary or productive to take this matter to court.

For my own part, I want to emphasize that my principal concerns from the beginning have been to conduct a thorough and impartial inquiry, but that we always have to be guided by our best judgments as to what is both reasonable and relevant to the committee's responsibilities. Differences may have existed and may continue to exist as to the relevance of certain materials to our task, and as to the reasonableness of certain efforts to obtain them. In this connection, I ask that a recent article by journalist Bob Woodward, currently an editor at the Washington Post, who has written extensively on the Watergate period, who has done so in the Washington Post and in book form, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, January 1981]

DON'T SUBPOENA THE TAPES

(By Bob Woodward)

The U.S. Senate should probably forget about obtaining any of the notorious Nixon tapes as part of the confirmation hearings of Alexander M. Haig, the secretary of state-designate. The subpoena for the logs of the 1973 Haig meetings with President Nixon should also be abandoned. It is a senseless chase. The subpoena is quite possibly illegal and, if challenged in court, is an almost sure loser for the Senate; the search is itself unfair and has no precedent in any other confirmation hearing.

Legally, the Senate and its Foreign Relations Committee have little to stand on. The Nixon tapes generated their very own Supreme Court decision, the 1974 ruling that directed Nixon to produce some tapes. Nixon lost on the particular taped conversations, but it is not well remembered that he won big on the overall principle. The unanimous court opinion stated emphatically, for the first time in a high court ruling, that the confidentiality of presidential communications is protected by the Constitution. The court said that the presidential confidentiality has "constitutional underpinnings . . . the privilege is fundamental to the operation of government."

The tone and language of the opinion make it clear that the tapes are presumed to be confidential and unobtainable unless there is a presentation of sworn testimony that the discussion might be criminal. John Dean, former Nixon counsel, had testified precisely about specific meetings that were taped.

The Haig-Nixon conversations of 1973 do not come close to meeting such a standard. The senators in fact have said exactly the opposite and have fallen all over themselves praising Haig, saying that there is no evidence to suggest improper conduct on his part. Sen. Charles Percy, the committee chairman, who signed the subpoena for the 1973 logs said: "I have never seen a shred of evidence that would lead me not to believe that he [Haig] will be fit."

The law has for years been clear on at least one point: evidence is never obtainable to prove a charge that is not made. There has to be some reason, clue or hint of relevance or criminal activity before it generally can be subpoenaed. In the tapes opinion, the court applied the standard in the federal rules of criminal procedure about "relevance and admissibility"—the need to show that the subpoenaed tapes had something to do with the case and could be used in a trial. And the opinion goes on explicitly to note that a "fishing expedition" will not be permitted.

Granted, the Supreme Court opinion deals with a criminal trial only and not with the issue of a subpoena by a Senate committee. But the spirit of the 1973 rulings is clear—there has to be some established basis for seeking the material, not just a feeling that it might be useful.

Whether the Senate likes it or not, the Supreme Court might view its pursuit of the tapes as substantially less pressing than that of a prosecutor investigating a crime, especially if there is no specific charge. Carry this thought several steps further. Suppose Haig wrote some letters to his son during the same 1973 Watergate period and talked about the scandal in the White House. Should the Senate subpoena those letters also? No one has suggested that yet, but the Senate would have a better case to get such letters, because they are not constitutionally protected as confidential, as the tapes are.

Four years ago when Cyrus Vance and Harold Brown were up for confirmation as secretary of state and secretary of defense, respectively, no one seriously suggested that the Senate subpoena documents from the Defense Department concerning their service during the Vietnam War era. But the Vietnam questions were able to be fully explored at their confirmation hearings.

It is little known that, because of the obstructionist actions of the White House in 1974, the Watergate prosecutors took a look at the actions of Haig, who was then serving as White House chief of staff, and at the actions of the White House lawyers. Though the Watergate prosecutors were not pleased with the delaying tactics and other stunts pulled by Nixon and his aides, Haig and the lawyers handling Nixon's case were unofficially cleared.

But, there is much more than a principle of law involved in this resurfacing of Watergate and the tapes. The larger point has to do with the function of the Senate in reviewing someone's fitness for a Cabinet position. What are the limits? There must be some.

To turn to the practical questions posed by the tapes: the audio quality is terrible. The transcribing would be a nightmare task; the unintelligibles, the ambiguities, the vagueness and indirection of Nixon conversations are as maddening as the man himself. If the senators ever got the tapes, they might never be able to agree what actually was on them.

Haig was the chief aide to a criminal president trying to cover up an illegal eavesdropping operation. What would it mean if Haig, in an effort to console Nixon or get out of Nixon's office (Nixon was legend for keeping aides for hours rambling on), said something encouraging that would look bad now?

It is hard to agree with former special Watergate prosecutor Leon Jaworski's characterization of Haig's White House service during Watergate as "heroic." Haig was in a tough spot and played out many contradictory strategies on Watergate, saying and doing many often contradictory things. He is probably a shameless self-promoter, and carried situation ethics to the point of making it a personal character flaw.

Haig, nonetheless, did keep a rickety and criminal ship of state afloat and helped ease Nixon out of office. To my mind, he should be neither hailed nor strangled for that role, only held accountable. That has happened and is happening. But let it happen without the tapes.

Mr. PERCY. Mr. President, this was advice, I might say, by probably the most knowledgeable, at least one of the most knowledgeable people in the world on the Watergate epic.

The Senate does not always take the advice of outside columnists, but in this case the heading of his article was "Don't Subpena the Tapes."

The committee decided in its wisdom to issue such subpenas and on the request of the minority the majority decided and authorized the chairman to issue such subpenas.

We now have a situation where we must face up realistically to the fact that we have been told that we could not have them. The litigation that the committee would go through to get them is a factor that would have to be taken into account. We also would have to consider what we would actually gain, I really do urge that every committee member read the words of Bob Woodward before we meet to discuss what we do. He has lived with this problem. He has analyzed in an extraordinarily perceptive manner what the end objective might be, what would be gained, and he has offered again some opinions on it.

Obviously we are going to be guided by our own judgment, but we must also take into account the huge agenda that the Foreign Relations Committee has. We must also take into account the critical conditions facing a Secretary of State standing side by side with the President after he has been sworn in and taken on his awesome responsibilities.

We must have a Secretary of State to cope with and deal with those problems. We should also have a committee working with the Secretary of State in a bipartisan sense, not always agreeing, and reserving the right to present our views as a committee or as individual Members. We also recognize that the kind of problems we face are perplexing problems that will require time, energy, and attention. When we take into account the hours, days, and weeks that went into the exhaustive investigation of the fitness, character, and qualifications of General Haig to be Secretary of State and the overwhelming conclusion reached by the committee, then we must ask ourselves whether it is appropriate for us to take the time, whether it is worth the taxpayers' money, and whether it is worth our effort to continue to seek access to these materials.

I make no judgment until we have talked this out in the committee. I ask only that we give careful consideration to this and assess what we would really accomplish by it.

Whatever the committee's final judgments on these matters may be, I am confident that we will discharge our responsibilities in a manner which will maintain the broad support of our members and of the other Members of the Senate as a whole.

Mr. President, to my mind, such issues are important, but subsidiary to the larger task of the committee and of the Senate to assure itself that Alexander M. Haig is qualified by his substantive experience and views on foreign relations to undertake the enormous responsibilities of the Secretary of State. On the basis of an exhaustive review of his performance over the last decade, a considerable body of his writings, and nearly 5 days of hearings before the Committee on Foreign Relations, I am deeply impressed by General Haig's command of the issues. Not only did he demonstrate a breadth and depth of understanding on the major issues of foreign policy, he also demonstrated a series of other qualities which will be especially valuable to the Secretary of State:

First, his understanding of military strategy, and of the need to combine wise and skillful diplomacy with a credible capability for military maneuver and deterrence. His skill in such matters is undoubtedly what made him a widely praised commander of our NATO forces in Europe during a difficult period for the alliance;

Second, his genuine stature as an articulator of U.S. foreign policy. General Haig is not only a leader of demonstrated competence, but a persuasive spokesman and advocate of the new administration's views, both to our own people and to the peoples of the world at large;

Third, his repeated commitment to an effective partnership with the Congress. General Haig seems to understand the importance of a sound relationship with us, including not only an observance of the letter and spirit of laws already enacted, but a genuine desire to expand the opportunities for consultation and cooperation on all major policies.

Finally, Mr. President, Alexander Haig is a man of firm convictions, who is deeply committed to the task of preserving Western, democratic values in a world of challenge and crisis. The strength of those convictions, I think, was evident to anyone who listened to his description of the dangers we face, and his defense of the positions he and the President-elect have already put forward. I have no doubt that in the years ahead, we will not only know who speaks for the Reagan administration on matters of foreign policy, but also what his strongly held views are.

Mr. President, we are all aware of the critical importance of having a strong Secretary of State at a time when the world sometimes seems adrift with aimlessness, and when even the basic precepts of civilized diplomacy are threatened by anarchism and cynicism. The prospects for a stable and productive world continue to depend, as they have for a century, upon the diplomatic skills of the United States, backed by the military, economic and moral influence of this great Nation. I urge my colleagues to consider this nomination with the care it deserves, but to do so with the sense of urgency which the times demand.

I commend Alexander M. Haig to the Senate for its advice and consent.

Mr. PELL. Mr. President, the Foreign Relations Committee has held 5 days of hearings on the nomination of Gen. Alexander M. Haig, Jr., to serve as Secretary of State. These have been the most extensive and thorough hearings on a Secretary of State since at least World War II. During the course of the committee's hearings, every major aspect of General Haig's views on foreign policy was examined. Of particular importance, in this regard, was the effort on the minority side to elicit General Haig's views on the use of military force, especially the use of nuclear weapons, in support of American foreign policy objectives. As a result, I believe that the committee has built an excellent record on the kind of foreign policy that General Haig would conduct—although all of us may not agree on every aspect of that policy.

In addition to the extensive examination of General Haig's foreign policy views, the committee's hearings were prolonged because of the controversy that has surrounded this nomination growing out of the political baggage carried by General Haig as a result of his presence at the White House during some of the most distasteful episodes in our Nation's history.

In this connection, members of both parties represented on the Foreign Relations Committee agreed that General Haig's past activties could be relevant in deciding how he might perform his duties as Secretary of State. Accordingly, the full committee tried to obtain certain records, including some of former President Nixon's tapes, in order to consider what in General Haig's past record might be relevant to our deliberations.

The committee has been unsuccessful in obtaining all of the records requested, but agreed that, while the vote on the nominations should not be held up, we should continue our efforts to gain access to those records, and we passed a resolution to this effect.

When the committee began its hearings on January 9, I had some very real concerns about General Haig, but I also had an open mind and was determined to give him a full and fair hearing in the hope that I could, in the end, confidently vote for his confirmation.

As I questioned and listened to General Haig during the 5 days of the committee's hearings, I got to know General Haig better and to have a clearer understanding of his foreign policy views. I found General Haig to be remarkably able, intelligent, and dedicated, with very definite views concerning the future shape of American foreign policy.

While General Haig is more hawklike than I am and does not place the same stress on the danger of war that I do, I do believe that he is no more hawkish than anyone else that President Reagan would have chosen for this job. Personally, I believe the Secretary of State should have a profound aversion to war, a particular abhorrence of nuclear war and a complete dedication to peace and to peaceful solutions to international disputes. Although all of my concerns about General Haig were not allayed, the bulk of them were. I also concluded that although General Haig and I did not agree on every point of foreign policy, we were in agreement on the broad outlines of that policy.

Accordingly, I have decided to support General Haig's confirmation. I hope very much that at the end of his 4 years of stewardship, as well as having led us in a strong, consistent foreign policy, he and President Reagan will be able to say, as President Carter is, that not a single American has been killed in combat. I believe that our Secretary of State must be our Secretary of Peace.

General Haig, if confirmed, will take the helm of the State Department at a very perilous time in our history. Cool nerves, clear vision, and a dedication to peace will be vital if our country is to survive. But no Secretary of State can succeed on his own. He will need support and counsel from the Congress, the American people, and the career Foreign Service.

For my own part, I wish General Haig well and pledge him all the help I can provide as he carries out his awesome responsibilities.

ORDER PLACING NOMINATIONS ON EXECUTIVE CALENDAR

Mr. BAKER. Mr. President, I ask unanimous consent that the remaining nominations at the desk be placed on the Executive Calendar with the exception of the nomination of Raymond Donovan to be Secretary of Labor and that that nomination be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 11 A.M. TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 11 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER AUTHORIZING THE PRESIDENT OF THE SENATE TO ADDRESS THE SENATE

Mr. BAKER. Mr. President, I ask unanimous consent that on tomorrow following the time allocated to the two leaders under the standing order the President of the Senate, the Vice President of the United States, be permitted to address the Senate for a period of not to exceed 5 minutes, and that upon the conclusion of his remarks, the Senate stand in recess for 10 minutes so that Members may greet and congratulate our new Presiding Officer.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE TOMORROW

ORDER FOR THE RECOGNITION OF SENATORS ON TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that on tomorrow following the recess just ordered Mr. DURENBERGER and Mr. JEPSEN be recognized for not to exceed 15 minutes each and in that order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I reserve the right to object, but I shall not. I just want to make sure that the time that is being utilized by the orders propounded by the distinguished majority leader not come out of time that has been allotted to any nomination and the orders aforementioned be as in legislative session. Would that be helpful?

Mr. BAKER. Mr. President, I thank the minority leader. Indeed, we should not charge that time and I now amend my request so that the special orders and the other procedures that I have requested not be charged against the time previously provided for on the nominations and, Mr. President, I ask that these unanimous-consent requests be considered as in legislative session.

Mr. ROBERT C. BYRD. Mr. President, I thank the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR LIVE QUORUM

Mr. BAKER. Mr. President, I might also say that I understand from previous conversations with the minority leader that he wishes, as I would wish, for a quorum call on tomorrow at some point and I would also suggest that we do that early and that it not be charged against the time otherwise allocated to the nominations.

So at this point, Mr. President, I ask unanimous consent that a quorum which will be a live quorum in all likelihood may be in order and not charged against the time otherwise allocated.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I thank the majority leader. I feel that there should be a live quorum before the Senate proceeds on tomorrow to discuss nominations, this being a most important role of the Senate under the Constitution to advise and consent to nominations, and so, therefore, I thank the majority leader.

I suggest that the cloakrooms alert Senators that there could very possibly be a rollcall vote in connection with having the Sergeant at Arms instructed to request the attendance of Senators. I am not saying that there will be, but certainly there is always that possibility when a live quorum ensues.

Mr. BAKER. I thank the minority leader.

I might also say that it is my intention at the moment, unless there is strong disagreement from the minority leader, to suggest the absence of a quorum immediately after we convene and in advance of the time that the Vice President is permitted to speak pursuant to the request that has just been granted.

Mr. PERCY. Mr. President, reserving the right to object, and I shall not, this is just a question. For the advice of the members of the Foreign Relations Committee who may wish to be on the floor, is there any estimate as to about what time we may then take up the Haig nomination and about how long has been reserved for that?

Mr. BAKER. Mr. President. I thank the Senator for the inquiry. Under the orders that have just been entered we will have 5 minutes for the Vice President to speak, 10 minutes in which the Senate will be in recess to greet our new Presiding Officer. That is 15 minutes, plus 30 minutes of the special order time. That will be 45 minutes plus the time for a live quorum, plus the time for the two leaders. So it will be something over an hour before we would reach that.

Mr. PERCY. Has the duration of the discussion and debate on General Haig been established?

Mr. BAKER. There is a time order on

the Haig nomination of 4 hours if my memory serves me.

Mr. PERCY. Part of which we will have used tonight.

Mr. BAKER. Part of which we will have used tonight. Twenty-two minutes, I am advised, have been consumed on this evening.

There is 1 hour, as I recall, on this side on the Haig nomination and 3 hours on the minority side.

Mr. PERCY. I do wish to reiterate again my appreciation, which I have privately given the minority leader, for the discussions he had with the distinguished majority leader about reserving the rights of Senators to question witnesses, particularly in important nominations. That right was preserved. An opportunity was offered to all Members, when it became apparent we were able to accomplish this within the desired time frame and not in any way cut off other Senators, but that right I think is an important right and I thank both of the leadership for bringing it to the attention of the new chairman.

Mr. ROBERT C. BYRD. Mr. President, I appreciate the fact that that right was accorded to Senators as I think it should be.

Mr. BAKER. Mr. President, I thank all Senators, and I am prepared to yield the floor at this point. I understand that the distinguished ranking minority member of the Foreign Relations Committee wishes to be recognized.

Mr. PELL. Mr. President, I would very much like to thank the chairman of the Foreign Relations Committee, like me new on the job, for his courtesy, his fairness, and his preciseness, and it is a pleasure to work with him, and I look forward to working with Senator PERCY.

I thank the staff for all the work they did, particularly in the preparation of that great compendium of material which was useful to majority and minority alike. It was a grand job, and I thank them and I thank my own staff, Jerry Christianson, Hank Schuelke, and Bob Bennett, and Ed Sanders who helped us so much.

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I now ask unanimous consent that there be a period for the transaction of routine morning business for not to extend beyond 10 minutes, and in which Senators may speak.

THE GARRISON DIVERSION UNIT

Mr. BURDICK. Mr. President, since the turn of the century, North Dakotans have dreamed of an irrigation project that would divert water from the Missouri River to the semiarid farmlands of North Dakota. The Dust Bowl of the 1930's and a generally unreliable supply of water over the years has stimulated overwhelming statewide support for such an irrigation plan.

As many of my colleagues are aware, the Congress authorized construction of the Garrison Diversion Unit in 1965. The authorization called for the irrigation of 250,000 acres, municipal and industrial water supply for communities, full development of the fish and wildlife and recreation potential in the project area, and minor flood control benefits. Since the plan was authorized, the Congress has consistently demonstrated its support for the authorized project and has appropriated nearly $158 million for its construction which is about 20 percent complete.

In the past several years the Canadians have expressed concern about the project and last year the Congress addressed potential problems by stating that funds should not be used to construct features affecting waters flowing into Canada. Moreover, the North Dakota State legislature is now supporting a phased construction plan which calls for proceeding initially with parts of the project not affecting Canada, while problems with other features are being negotiated and, hopefully, resolved.

The fiscal year 1982 budget request released earlier this week calls for $4 million for the Garrison diversion project. This amount is woefully inadequate to meet the full construction capability of the project for the coming year. I want to make my Senate colleagues aware that as a long-time supporter of the project and as a member of the Senate Appropriations Committee, I will be working to see that adequate funding is made available.

I would like to share with my colleagues a resolution which was passed earlier this week by the North Dakota State Legislature which endorses the phased construction plan and urges the Department of the Interior to seek consultations with Canada about the features of the project affecting Canada. As we prepare to begin work on the fiscal year 1982 budget, I urge my colleagues to keep in mind this strong endorsement of the Garrison diversion project from the North Dakota State Legislature. I ask unanimous consent that the resolution be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION

A concurrent resolution urging the Secretary of Interior to proceed with phased construction and to seek consultations on the authorized Garrison Diversion Unit

Whereas, the Garrison Diversion Unit is authorized and funded as a multi-purpose water resource development project, and

Whereas, the Garrison Diversion Conservancy District has adopted a program for phased development of the project as authorized, with the initial construction of 5,000 acres of irrigation features within the James River Basin, and

Whereas, this program of phased development includes a cooperative research and monitoring program consistent with the International Joint Commission's recommendations for conditions to proceed with project construction, and

Whereas, consultations are proposed between the United States and Canada concerning features of the project,

Now, therefore, be it resolved by the Senate of the State of North Dakota, the House of Representatives concurring therein:

That the Forty-Seventh Legislative Assembly supports phased development of the authorized and funded Garrison Diversion Unit and urges the Secretary of Interior to proceed with its construction, and

Be it further resolved that the Secretary of Interior is urged to recommend that any consultations with Canada concern features of the authorized 250,000 acre unit, and

Be it further resolved that copies of this resolution be forwarded by the Secretary of State to the North Dakota Congressional Delegation, the Secretary of Interior, and the Governor.

REPORT ON ACTIONS TAKEN WITH RESPECT TO IRAN—MESSAGE FROM THE PRESIDENT—PM 27

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying documents; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Pursuant to Section 204(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1703, I hereby report to the Congress that I have today exercised the authority granted by this Act to take certain measures with respect to property of the Government of Iran and its controlled entities and instrumentalities.

1. On November 14, 1979, I took the step of blocking certain property and interests in property of the Government of Iran and its controlled entities and instrumentalities. This action was taken in response to a series of aggressive actions by Iran, including the attack on the United States Embassy in Tehran, the holding of U.S. citizens and diplomats as hostages, and threats to withdraw assets from United States banks, and otherwise seek to harm the economic and political interests of the United States. Subsequently, on April 7, 1980, and April 17, 1980, I took further action restricting various kinds of transactions with Iran by persons subject to the jurisdiction of the United States.

2. Agreement has now been reached with Iran concerning the release of the hostages and the settlement of claims of U.S. nationals against Iran. Among other things this agreement involves the payment by Iran of approximately $3.67 billion to pay off principal and interest outstanding on syndicated loan agreements in which a U.S. bank is a party. This includes making all necessary payments to the foreign members of these syndicates. An additional $1.418 billion shall remain available to pay all other loans as soon as any disputes as to the amounts involved are settled and to pay additional interest to banks upon agreement or arbitration with Iran. In addition, there will be established an international tribunal to adjudicate various disputed claims by U.S. nationals against Iran; and the deposit of $1 billion by Iran from previously blocked assets as released, which will be available for payments of awards against Iran. Iran has committed itself to replenish this fund as necessary. This tribunal, among other things, will also hear certain disputes between Iranian nationals and the United States Govern-

ment and contractual disputes between Iran and the United States.

In connection with this agreement, and to begin the process of normalization of relations between the two countries, I have issued and will issue, a series of Orders.

3. First, I have signed an Executive Order authorizing the Secretary of the Treasury to enter into or to direct the Federal Reserve Bank of New York to enter into escrow and depositary agreements with the Bank of England.

Under these agreements, assets in the escrow account will be returned to the control of Iran upon the safe departure of the United States hostages from Iran. I have also by this Order instructed the Federal Reserve Bank of New York, as fiscal agent of the United States, to receive other blocked Iranian assets, and, as further directed by the Secretary of the Treasury, to transfer these assets tc the escrow account.

4. Second, I have signed an Executive Order directing the Federal Reserve Bank of New York to transfer to its account at the Bank of England and then to the escrow account referred to in the preceding paragraph, the assets of the Government of Iran, both transfers to take place as and when directed by the Secretary of the Treasury.

In order to assure that this transaction can be executed, and having considered the claims settlement agreement described above, I have exercised my authority to nullify, and barred the exercise of, all rights, powers or privileges acquired by anyone; I have revoked all licenses and authorizations for acquiring any rights, powers, or privileges; and I have prohibited anyone from acquiring or exercising any right, power, or privileges, all with respect to these properties of Iran. These prohibitions and nullifications apply to rights, powers, or privileges whether acquired by court order, attachment, or otherwise. I have also prohibited any attachment, or otherlike proceeding or process affecting these properties.

5. Third, I have signed an Executive Order which directs branches and offices of United States banks located outside the United States to transfer all Iranian government funds, deposits and securities held by them on their books on or after November 14, 1979 at 8:10 a.m. EST to the account of the Federal Reserve Bank of New York at the Bank of England in London. These assets will be transferred to the account of the Central Bank of Algeria, as escrow agent. The transfer is to include interest from the date of the blocking order at commercially reasonable rates. In addition, any banking institution that has executed a set-off subsequent to the date of the blocking order against Iranian deposits covered by this order is directed to cancel the set-off and to transfer the funds that had been subject to the set-off in the same manner as the other overseas deposits.

This Order also provides for the revocation of licenses and the nullifications and bars described in paragraph 4 of this report.

6. Fourth, I will have signed an Executive Order directing American banks located within the United States which hold Iranian deposits to transfer those deposits, including interest from the date of entry of the blocking order at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury. Half of these funds will be transferred to Iran and the other half (up to a maximum of $1 billion) will be placed in a security account as provided in the Declaration and the Claims Settlement Agreement that are part of the agreement we have reached with Iran. This fund will be maintained at a $500 million level until the claims program is concluded. While these transfers should take place as soon as possible, I have been advised that court actions may delay it. This Order also provides for the revocation of licenses and the nullifications and bars described in paragraph 4 of this report.

7. Fifth, I have signed an Executive Order directing the transfer to the Federal Reserve Bank of New York by nonbanking institutions of funds and securities held by them for the Government of Iran, to be held or transferred as directed by the Secretary of the Treasury. This transfer will be accomplished at approximately the same time as that described in paragraph 6.

This Order also provides for the revocation of licenses and the nullifications and bars described in paragraph 4 of this report.

8. Sixth, I will sign, upon release of the hostages, an Executive Order directing any person subject to the jurisdiction of the United States who is in possession or control of properties owned by Iran, not including funds and securities, to transfer the property as directed by the Government of Iran acting through its authorized agent. The Order recites that it does not relieve persons subject to it from existing legal requirements other than those based on the International Emergency Economic Powers Act. This Order does not apply to contingent liabilities. This Order also provides for the revocation of licenses and the nullifications and bars described in paragraph 4 of this report.

9. Seventh, I will sign, upon release of the hostages, an Executive Order revoking prohibitions previously imposed against transactions involving Iran. The Executive Order revokes prohibitions contained in Executive Order No. 12205 of April 7, 1980; and Executive Order No. 12211 of April 17, 1980; and the amendments contained in Proclamation No. 4702 of November 12, 1979. The two Executive Orders limited trade and financial transactions involving Iran and travel to Iran. The proclamation restricted oil imports. In revoking these sanctions I have no intention of superseding other existing controls relating to exports including the Arms Export Control Act and the Export Administration Act.

10. Eighth, I will sign, upon release of the hostages, an Executive Order providing for the waiver of certain claims against Iran. The Order directs that the Secretary of the Treasury shall promulgate regulations: (a) prohibiting any person subject to U.S. jurisdiction from prosecuting in any court within the United States or elsewhere any claim against the Government of Iran arising out of events occurring before the date of this Order arising out: (1) the seizure of the hostages on November 4, 1979; (2) their subsequent detention; (3) injury to the United States property or property of United States nationals within the United States Embassy compound in Tehran after November 1979; (4) or injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran; (b) prohibiting any person not a U.S. national from prosecuting any such claim in any court within the United States; (c) ordering the termination of any previously instituted judicial proceedings based upon such claims; and (d) prohibiting the enforcement of any judicial order issued in the course of such proceedings.

The Order also authorizes and directs the Attorney General of the United States immediately upon the issuance of such a Treasury regulation to notify all appropriate courts of the existence of the Executive Order and implementing regulations and the resulting termination of relevant litigation. At the same time, I will create a commission to make recommendations on the issue of compensation for those who have been held as hostages.

11. Finally, I will sign, upon release of the hostages, an Executive Order invoking the blocking powers of the International Emergency Economic Powers Act to prevent the transfer of property located in the United States and controlled by the estate of Mohammed Reza Pahlavi, the former Shah of Iran, or by any close relative of the former Shah served as a defendant in litigation in United States courts brought by Iran seeking the return of property alleged to belong to Iran. This Order will remain effective as to each person until litigation concerning such person or estate is terminated. The Order also requires reports from private citizens and Federal agencies concerning this property so that information can be made available to the Government of Iran about this property.

The Order would further direct the Attorney General to assert in appropriate courts that claims of Iran for recovery of this property are not barred by principles of sovereign immunity or the act of state doctrine.

12. In addition to these actions taken pursuant to the International Economic Emergency Powers Act, other relevant statutes, and my powers under the Constitution. I will take the steps necessary to withdraw all claims now pending against Iran before the International Court of Justice. Copies of the Executive Orders are attached.

JIMMY CARTER.

THE WHITE HOUSE, *January 19, 1981.*

(The foregoing message was received by the Secretary of the Senate at 11:38

a.m. on January 20, 1981, and embargoed for release until 6 p.m. on that day.)

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

Mr. TOWER. Mr. President, from the Committee on Armed Services, I report favorable the following nominations: In the U.S. Air Force, there are 60 temporary appointments to the grade of brigadier general (list beginning with Richard F. Abel); Brigadier General John B. Conaway, Air National Guard, to be major general in the Reserve of the Air Force, and, in the Reserve of the Air Force, there are 14 appointments to the grade of major general and brigadier general (5–MGEN) (9–BGEN) (list beginning with S. T. Ayers). I ask that these names be placed on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. In addition, in the Regular Army of the United States; there are 96 promotions to the grade of colonel and below (list beginning with George P. Brandel); in the Reserve of the Army, there are 1,165 appointments/promotions to the grades of colonel and lieutenant colonel (list beginning with Robert E. Bilbrey); in the U.S. Navy and Reserve of the Navy, there are 765 temporary/permanent appointments to the grade of captain and below (list beginning with Diana T. Cangelosi); in the Marine Corps, there are 776 temporary/permanent appointments to the grade of captain (list beginning with Linda C. Arms) and 34 permanent appointments/reappointments to the grade of captain and below (list beginning with Robert A. Alvick); in the Reserve of the Air Force, there are 236 promotions to the grade of colonel (list begining with James G. Abbee) and 35 promotions to the grade of lieutenant colonel (list beginning with Larry K. Arnold). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of January 5, 1981, at the end of the Senate proceedings.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. INOUYE:

S. 161. A bill to amend title XVIII of the Social Security Act to provide for coverage under medicare of services performed by a nurse-midwife; to the Committee on Finance.

S. 162. A bill to amend title 5 of the United States Code to provide payments under Government health plans for services of nurse-midwives not performed in connection with a physician; to the Committee on Governmental Affairs.

S. 163. A bill to direct the Secretary of the Army to determine the validity of the claims of certain Filipinos who assert that they performed military service on behalf of the United States during World War II, and for other purposes; to the Committee on Armed Services.

By Mr. MELCHER (for himself, Mr. BAUCUS, Mr. HEFLIN, Mr. JEPSEN, Mr. LUGAR, Mr. PRYOR, Mr. SYMMS, and Mr. PRESSLER):

S. 164. A bill to prohibit proposed regulatory increases in imputed interest rates for tax purposes on loans between related entities and on deferred payments in the case of certain sales of property; to the Committee on Finance.

By Mr. MELCHER:

S. 165. A bill to protect the take-home pay of the American taxpayer by adjusting personal income tax rates to reflect inflation; to the Committee on Finance.

S. 166. A bill to enhance the production of domestic crude oil by exempting qualified stripper well production and certain oil produced by independent producers from the windfall profit tax, and to provide permanent relief from the windfall profit tax for small royalty owners; to the Committee on Finance.

By Mr. BURDICK (for himself and Mr. ANDREWS):

S. 167. A bill for the relief of Juan Esteban Ramirez; to the Committee on the Judiciary.

By Mr. ANDREWS:

S. 168. A bill for the relief of Dr. Jaime D. Tuazon and his wife, Ma. Veronica Tuazon, and their daughters, Eliza Victoria and Jaime; to the Committee on the Judiciary.

By Mr. HEINZ (for himself, Mr. RANDOLPH, and Mr. GLENN):

S. 169. A bill to amend Sections 169 and 103 of the Internal Revenue Code with respect to tax treatment of pollution control facilities; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. PACKWOOD):

S. 170. A bill to amend the Internal Revenue Code of 1954 to allow the charitable deduction to taxpayers whether or not they itemize their personal deductions; to the Committee on Finance.

By Mr. SASSER:

S. 171. A bill to amend the Internal Revenue Code of 1954 to reduce the tax effect known as the marriage penalty by permitting the deduction, without regard to whether deductions are itemized, of 20 percent of the earned income of the spouse whose earned income is lower than that of the other spouse; to the Committee on Finance.

S. 172. A bill to amend the Internal Revenue Code of 1954 to allow a deduction as an expense for certain amounts of depreciable business assets; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INOUYE:

S. 161. A bill to amend title XVIII of the Social Security Act to provide for coverage under medicare of services performed by a nurse-midwife; to the Committee on Finance.

S. 162. A bill to amend title 5 of the United States Code to provide payments under Government health plans for services of nurse-midwives not performed in connection with a physician; to the Committee on Governmental Affairs.

COVERAGE OF SERVICES OF NURSE-MIDWIVES

● Mr. INOUYE. Mr. President, today I am introducing two bills that would provide for increased access to the services of certified nurse-midwives by our Nation's disabled under the medicare program and also our Nation's Federal employees under the Federal Employees Health Benefit Act.

To date, there are approximately 2,200 nurse-midwives in the United States and I understand that every year this number increases by nearly 220. Most nurse-midwives practice in association with institutions such as hospitals, clinics and birthing centers. A small number, however, offer home birth services. Mr. President, since October 1978, the Department of Defense, under its civilian health and medical program of the uniformed services (CHAMPUS) has authorized the direct payment to certified nurse-midwives. Some 8.6 million military dependents and retirees are eligible for health benefits under CHAMPUS.

Further, as a provision of Public Law 96–179, on a special experimental basis extending from January 1980 to December 1984, if a health insurance contract under provisions of the Federal Employees Health Benefit program provides for payment for a particular service only when rendered by a physician, the plan must also provide reimbursement if the service is provided by any other category of health practitioner—including certified nurse-midwives—who are licensed under applicable State statute when 25 percent or more of the State's population is located in a formally designated primary medical care manpower shortage area. It is my understanding that as a result of this provision, Federal employees in 10 designated States presently have direct access to certified nurse-widwife services.

Finally, as a provision of the Omnibus Reconciliation Act of 1980, Public Law 96–499, enacted late last Congress, certified nurse-midwives have received direct recognition under our Nation's medicaid program. Specifically, the law now states that services furnished by a nurse-midwife which he or she is legally authorized to perform under State law, whether or not he or she is under the supervision of, associated with, a physician or other health care provider, shall be directly reimbursed. My proposal would amend our Nation's medicare program with language identical to that of our medicaid program and also extend the coverage of nurse-midwife services to all Government employees. In this effort, I am most pleased to have the active support of the National March of Dimes.

The first step toward becoming a professional nurse-midwife in the United States is to study nursing and then practice nursing in the field of maternal and infant health for at least 1 year. The future nurse-midwife then applies to a nurse-midwife reeducational program. Although all of these programs are associated with major universities, some are part of a master's degree program and others grant a certificate rather than a degree. Both kinds of programs offer nurse-midwifery education which prepares the student nurse-midwife for clinical practice. Students in the master's program also receive further education in public health or nursing. Stu-

dents who successfully complete their educational programs are then eligible to take the American college of nurse-midwives' certification exam. Those who pass the examination are certified as nurse-midwives-CNMs. All nurse-midwife programs are credited by the division of accreditation of the American College of Nurse-Midwives.

Mr. President, in my judgment, there is no question that our Nation's certified nurse-midwives are extraordinarily competent professionals who have demonstrated both educational proficiency and clinical excellence. In fact, the recent report released by the Graduate Medical Education National Advisory Committee indicated that nurse-midwives may very well be doing 5 percent of all normal deliveries in the United States by the year 1990. Further, we should, during this era of cost-consciousness, consider the influence that nurse-midwives have had on the cost of health care, to both the consumer and the Nation. Although I have been unable to obtain extensive data, that which I have reviewed suggests that nurse-midwifery is considerably less expensive than traditional obstetrical care.

For example, in Washington, D.C., the current cost of prenatal, delivery, and post partum care with the nurse-midwife service is $800 for clients planning to deliver in the hospital. This includes prenatal care, labor management and delivery, post partum care, a 2-week, 6-week, 6-month, and 1-year checkup, and three post partum classes. Physician's fees vary from $800 to $1,200 and include prenatal care, labor and delivery management, post partum care, and a 6-week checkup. Hospital costs for nurse-midwifery clients who spend 6 hours or less in a hospital after delivering are around $600. Clients who stay the traditional 3 days will pay close to $1,000 in hospital costs. I might note that the average salary of a nurse-midwife in clinical practice in 1976 was $16,200. By contrast, the most recent figures available regarding the median income of obstetrician/gynecologists in 1979 was $89,310. In essence, Mr. President, the bill that I am proposing today would provide our Nation's disabled and Federal employees with the option of selecting the services of a certified nurse-midwife if they so desire. In no way would my proposal prevent such a program beneficiary from utilizing the services of a physician if she so desired.

Mr. President, I request unanimous consent that the texts of these two bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 161

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1861(s)(2) of the Social Security Act is amended—

(1) by striking out "and" at the end of subparagraph (F);

(2) by adding "and" at the end of subparagraph (G); and

(3) by adding at the end thereof the following new subparagraph:

"(H) nurse-midwife services;".

(b) Section 1861 of such Act is amended by adding at the end thereof the following new subsection:

"NURSE-MIDWIFE SERVICES

"(dd)(1) The term 'nurse-midwife services' means services furnished by a nurse-midwife (as defined in paragraph (2)) which he is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not he is under the supervision of, or associated with, a physican or other health care provider.

"(2) The term 'nurse-midwife' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies (throughout the maternity cycle) which he is legally authorized to perform in the State in which he performs such services.".

(c)(1) Section 1905(a)(17) of such Act is amended by striking out "as defined in subsection (m)" and inserting in lieu thereof "as defined in section 1861(dd)(2)".

(2) Section 1905 of such Act is amended by striking out subsection (m).

SEC. 2. The amendments made by this Act shall be effective with respect to services performed on or after the first day of the first month which begins more than 60 days after the date of the enactment of this Act.

S. 162

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (k) of section 8902 of title 5, United States Code, is amended by striking out "or optometrist" each place it appears and inserting in lieu thereof ", optometrist, or nurse-midwife".

(b) Section 8901 of such title is amended—

(1) by striking out "and" at the end of paragraph (8),

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and

(3) by adding at the end thereof the following new paragraph:

"(10) 'nurse-midwife' has the same meaning given to such term by section 1905(m) of the Social Security Act.".

SEC. 2. The amendments made by the first section of this Act shall apply to contracts entered into on or after the date of the enactment of this Act.●

By Mr. INOUYE:

S. 163. A bill to direct the Secretary of the Army to determine the validity of the claims of certain Filipinos who assert that they performed military service on behalf of the United States during World War II, and for other purposes; to the Committee on Armed Services.

MILITARY SERVICE OF CERTAIN FILIPINOS

● Mr. INOUYE. Mr. President, today I am introducing a bill to direct the Secretary of the Army to determine the validity of the claims of certain Filipinos who assert that they performed military service on behalf of the United States during World War II, and for other purposes.

During the course of World War II, many Filipinos, guerrillas, and active servicemen, fought on behalf of U.S. interests. In 1948 the U.S. Government struck from official U.S. Army records the names of thousands of Filipinos who served during this time, denying these individuals the rights, benefits, and privileges they so richly deserve.

The legislation I am proposing today would permit these "excluded veterans" to submit their claims to the proper authorities for reevaluation—resolution—on a case-by-case basis. Upon submission of sufficient documentation of service with the U.S. Army or organized guerrilla forces, these individuals should be duly recognized as veterans and entitled to benefits and assistance from the U.S. Government.

The removal of their names from official Army records was an injustice to these individuals who helped the United States during World War II. For some, this bill is too late since death has taken its toll. However, the enactment of this legislation would confirm our commitment to these Filipinos who fought so hard to maintain U.S. freedom.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 163

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) any person who claims to have performed military service with or for the United States Army in the Philippine Islands during World War II and is not recognized, for any purpose, as having performed active service in or on behalf of the Armed Forces of the United States may file an application, in such form as the Secretary of the Army (hereinafter in this Act referred to as the "Secretary") shall prescribe, to have the Secretary determine, on the basis of all information and evidence presented to him by such person and on the basis of all other information and evidence available to the Secretary, whether such person should be considered as having performed active service in or for the Armed Forces of the United States.

(b) If the Secretary determines, in the case of any person who files an application under this Act, that such person—

(1) served in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the United States, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States;

(2) was awarded the Purple Heart or other medal or decoration of the Armed Forces of the United States in connection with the performance of military service on behalf of the Armed Forces of the United States; or

(3) was inducted into the United States Armed Forces in the Far East (USAFFE) before the outbreak of World War II, performed military service for or on behalf of the United States in the Philippine Islands during World War II, reported to United States military control during the liberation of the Philippine Islands, and subsequently, without his consent, had his name and records erroneously deleted or otherwise erroneously removed from the official records of the Armed Forces of the United States;

the Secretary shall issue to such person an appropriate certificate of service which shall entitle such person to the same rights and benefits under the laws of the United States as other persons who performed substantially the same type of military service in the

Philippine Islands during World War II and who, on the day before the date of enactment of this Act, were entitled to such rights and benefits by virtue of such service.

SEC. 2. No person shall be eligible for a certificate of service under this Act if the Secretary determines that such person was discharged from military service described in subsection (b) of the first section under conditions other than honorable.

SEC. 3. As used in this Act the term "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946.

SEC. 4. The Secretary may not consider any application received more than two years after the date of enactment of this Act.

SEC. 5. The Secretary shall issue such regulations as he deems necessary and appropriate to carry out effectively and equitably the provisions of this Act.

SEC. 6. No benefits shall accrue to any person for any period prior to the date of enactment of this Act as a result of the enactment of this Act.●

By Mr. MELCHER (for himself, Mr. BAUCUS, Mr. HEFLIN, Mr. JEPSEN, Mr. LUGAR, Mr. PRYOR, Mr. SYMMS, and Mr. PRESSLER):

S. 164. A bill to prohibit proposed regulatory increases in imputed interest rates for tax purposes on loans between related entities and on deferred payments in the case of certain sales of property; to the Committee on Finance.

PROHIBITION ON PROPOSED INCREASES IN CERTAIN INTEREST RATES

● Mr. MELCHER. Mr. President, the bill I am introducing today will prohibit the Internal Revenue Service from issuing new regulations increasing the imputed interest rates on loans between related entities under section 482 of the Internal Revenue Code of 1954, and on deferred payments in the case of certain sales of property under section 483 of the code. It also requires the IRS to administer sections 482 and 483 of the code in accordance with the rules and regulations in effect on January 1, 1980.

On August 29, 1980, the IRS issued proposed regulations that will set imputed interest rates on loans between financially related entities at 12 percent, if the stated interest rate is at least 11 percent; and they will set imputed interest rates at 10 percent on deferred payments in the case of certain sales of property, if the stated interest rate is below 9 percent. The proposed IRS modifications to these sections of the law will increase imputed interest rates in the sale of property 50 percent over existing levels.

These regulations affect all deeds for contract and sales of property where the seller takes back any part of the mortgage, and will have a litany of negative effects:

They will make it more difficult for young people to purchase homes;

They will lead to a further decline in family farming and businesses;

They discriminate against family transactions by requiring higher interest rates on loans for the sale of property to members of their families than rates for perfect strangers;

They are also highly inflationary; and They will further depress the housing and real estate industry.

These proposed changes do not reflect historic and regional market interest rates for the kinds of deferred payment sales they regulate, but are set on the basis of current artificially inflated national prime interest rates that are being manipulated by the Federal Reserve Board as part of their policy on inflation.

Inflation and high interest rates have already combined over the past few years to push the cost of housing beyond the means of most young couples looking to purchase their first home. Now the IRS arbitrarily proposes to push up the interest on yet another type of purchase contract—that where the seller takes back all or part of the mortgage on the property and permits the buyer to pay it off over time. These regulations will mean, in more than just a few cases, that young couples will be unable to purchase their first home.

These regulations also hit hard at small businesses, farms, and ranches. The continued existence of the small business—whether commercial or agricultural—during this period of record-high inflation is already threatened. The cost/price squeeze faced by most businessmen today, coupled with skyrocketing interest rates on operating loans, is leading to the virtual disappearance of the family-owned business. The higher interest rates proposed by IRS on the deed for contract sale of small businesses, farms, and ranches will further increase the cost of operation and result in a decline of the small family-owned business in favor of the large corporation. This policy is a near-perfect example of how the "rich get richer and the poor get poorer." I do not think that is good Government policy.

These regulations are particularly unfair to the son or daughter who wants to purchase the family business. Because these regulations do not differentiate between the transactions of a national or multinational corporation and one of its subsidiaries on the one hand, and between a parent and child on the other hand, a son or daughter is forced by the IRS to pay higher interest on the purchase of the family business than some perfect stranger who comes down the road. Congress failure to realistically adjust inheritance and gift taxes for inflation has already made it more difficult than ever for parents to pass the family business to a son or daughter, thus further insuring the disappearance of such enterprise.

These regulations will bring about a further decline in the housing and real estate industry, which is already suffering perhaps more than any other segment of our economy through restrictive monetary policies.

Finally, by artificially raising the minimum interest rate to 9 percent or 11 percent between financially related parties, the IRS will have, in effect, guaranteed that yet another segment of our economy is victim of high inflation. This proposal will insure that our economy will not return to more reasonable interest rates. Even when we are successful in controlling the other elements of inflation, anyone who purchases property under these regulations will be locked into a contract or deed at these proposed high interest rates for perhaps the next 20 or 30 years.

During consideration of the continuing resolution last December we won a delay of the implementation of the regulations until July 1, 1981, in order to give Congress a chance to take permanent action. It is important now that there be quick action to make this prohibition permanent—at least until such time as the underlying law is changed to insure that future regulations in this area do not harm family farms and businesses or further depress the housing industry.

I think these regulations are ill advised and that it is foolish policy, at a time when we are all trying to fight inflation, for the Federal Government to propose another increase in interest costs and to make it more difficult for young families to purchase their first home or business. I hope that my colleagues will agree with me and support this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 164

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PURPOSE

SECTION 1. To prohibit proposed regulatory increases in imputed interest rates for tax purposes on loans between related entities and on deferred payments in the case of certain sales of property.

FINDINGS

SEC. 2. Congress finds that proposed internal Revenue Service regulations to modify title 26 Code of Federal Regulations, part 1, paragraph 1, sections 1.482 and 1.483 increasing imputed interest rates on loans between related entities and on deferred payments in the case of certain sales of property unnecessarily add to the current unacceptably high inflation rate, are not based on historic regional interest rates for such transactions but on artificially inflated prime interest rates, go beyond the original intent of the underlying law, and will inhibit the ability of young people to purchase homes, family farms and businesses.

LIMITATIONS

SEC. 3. No regulations shall be issued in final form under section 482 or 483 of the Code after the date of the enactment of this Act modifying the imputed interest rates under section 482 or 483 of the Internal Revenue Code of 1954 which has the effect of increasing the rate of imputed interest under such section. Sections 482 and 483 of such Code shall be administered in accordance with the rules and regulations in effect on January 1, 1980.●

By Mr. MELCHER:

S. 165. A bill to protect the take-home pay of the American taxpayer by adjusting personal income tax rates to reflect inflation; to the Committee on Finance.

ADJUSTMENT OF PERSONAL INCOME TAX RATE TO REFLECT INFLATION

● Mr. MELCHER. Mr. President, today I am introducing a Federal income tax indexing bill to give Federal income taxpayers the same kind of protection

against inflation-created tax increases as the citizens of Montana adopted in last fall's initiative to index State income taxes.

We need guards against having our Federal income tax burden go up just because of inflation. It should be clear to everyone that we must redefine our tax impact on individuals at all levels to keep taxation from becoming an all-consuming monster in our country.

We should protect the take-home pay of those paying Federal income taxes by adjusting individual tax brackets, personal exemptions and tax-withholding provisions for the inflation rate. The individual's pay check should not be reduced by higher taxes just because a worker otherwise may be fortunate enough just to keep up with inflation.

The bill I am introducing today will index personal taxes and exemptions based on changes in the gross national product price deflator, the U.S. Commerce Department measure to correct the GNP for inflation.

It is clear that we are going to have a tax bill in the Senate this session. I believe that any such bill should index personal taxes as part of our tax reduction program. The time to act is now, before inflation eats up yet more of the American working person's pay check. For example, a family with a taxable income of $20,000 in 1980, which manages to increase its income to keep up with a 10 percent inflation rate during 1981, would pay an additional $504 in 1981 income taxes without having gained any additional buying power. If this bill were enacted, that family would not have to pay any extra 1981 taxes.

If the current estimates of a 10-percent inflation rate for 1981 prove accurate, as much as we hope otherwise, this alone would boost the Federal tax take by $20 billion. Add to this the higher social security tax that went into effect on January 1, 1981, and American taxpayers will be facing the highest ever peacetime tax burden. We need to act, and act quickly to reduce this burden. Indexing personal taxes and cutting back on the social security withholding increases would be a good start. I hope that my colleagues agree.

I ask unanimous consent that my bill be printed in full following these remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 165

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. THIS ACT SHALL BE KNOWN AS THE TAKE-HOME PAY PROTECTION ACT.

SEC. 2. INDIVIDUAL TAX RATE ADJUSTMENTS TO AVOID TAX INCREASES RESULTING FROM INFLATION.

(a) GENERAL RULE.—Section 1 of the Internal Revenue Code of 1954 (relating to tax imposed) is amended by adding at the end thereof the following new subsection:

"(f) ADJUSTMENTS IN TAX TABLES SO THAT INFLATION WILL NOT RESULT IN TAX INCREASES.—

"(1) IN GENERAL.—Immediately following September 30 and prior to December 1 of each year, the Secretary of Commerce shall report to the Secretary of the Treasury the ratio which the price index for the 4 consecutive calendar quarters ending September 30 of that year bears to the price index for the base period. Each dollar amount in the tables under subsection (a), (b), (c), and (d) under the heading 'if taxable income is' shall be increased by an amount equal to such dollar amount multiplied by such ratio and, as so increased shall be the amount in effect for taxable years beginning in the calendar year following the calendar year in which such report is made.

"(2) AMOUNT OF TAX.—The Secretary shall adjust each dollar amount in the tables under subsections (a), (b), (c), and (d) under the heading 'The tax is' to reflect the changes made under paragraph (1).

"(3) DEFINITIONS.—For purposes of paragraph (1)—

"(A) the term 'price index' means the average of the relevant 4 consecutive calendar quarters of the Gross National Product Implicit Price Deflator published quarterly by the Bureau of Economic Statistics in the Department of Commerce; and

"(B) the term 'base period' means the 4 consecutive calendar quarters ending September 30 of the calendar year preceding the Secretary of Labor's report."

(b)(1) Section 63 of such Code (relating to the definition of taxable income) is amended by adding at the end thereof the following new subsection:

"(i) ADJUSTMENT FOR CHANGES IN BRACKET AMOUNTS.—Prior to the beginnings of each calendar year, the Secretary shall, after adjusting each dollar amount listed in the tables under subsections (a), (b), (c), and (d) of section 1, as provided in section 1(f), adjust each dollar amount in subsection (d) to reflect the adjustments made under section 1(f) which are to be in effect for taxable years beginning in such calendar year."

(2) Subparagraph (B) of section 3402(m)(1) of such Code (relating to withholding allowances based on itemized deductions) is amended—

(A) by striking out "$3,400" and inserting in lieu thereof "the dollar amount in effect under section 63(d)(1)"; and

(B) by striking out "$2,300" and inserting in lieu thereof "the dollar amount in effect under section 63(d)(2)".

(3) Subparagraph (C) of section 402(e)(1) of such Code (relating to imposition of a separate tax on lump-sum distributions) is amended by striking out "$2,300" and inserting in lieu thereof "the dollar amount in effect under section 63(d)(2)".

(4) Section 6012(a)(1) of such Code (relating to persons required to make returns of income) is amended by adding at the end thereof the following new subparagraph:

"(D) Each time an adjustment is made under section 63(i) with respect to any dollar amount under section 63(d), the Secretary shall adjust each dollar amount under subparagraph (A) to correspond to such adjustments and such amount, as adjusted and rounded to the nearest $1, shall be the amount in effect under such subparagraph for taxable years beginning in any calendar year with respect to which such adjustment is in effect under section 63."

SEC. 3. ADJUSTMENTS IN AMOUNT OF PERSONAL EXEMPTIONS.

(a) GENERAL RULE.—Section 151 of the Internal Revenue Code of 1954 (relating to allowance of deductions for personal exemptions) is amended by striking out "$1,000" each place it appears and inserting in lieu thereof "the exemption amount".

(b) EXEMPTION AMOUNT.—Section 151 of such Code is amended by adding at the end thereof the following new subsection:

"(f) EXEMPTION AMOUNT.—For purposes of this section, the term 'exemption amount' means, with respect to taxable year 1981, $1,000 increased by an amount equal to $1,000 multiplied by the price index (as defined in section 1(f)(3)). For subsequent tax years, this 'exemption amount' shall be adjusted to reflect changes in the price index (as defined in section 1(f)(3))."

SEC. 4. ADJUSTMENTS IN WITHHOLDING.

Section 3402(a) of the Internal Revenue Code of 1954 (relating to tax withheld) is amended by adding before the last sentence thereof the following new sentence: "The tables prescribed under this section shall be adjusted in accordance with section 1(f) with respect to the wages paid in the year following the Secretary of Labor's report under such section."

SEC. 5. EFFECTIVE DATE.

The amendments made by this act shall apply with respect to taxable years beginning December 31, 1980.●

By Mr. MELCHER:

S. 166. A bill to enhance the production of domestic crude oil by exempting qualified stripper well production and certain oil produced by independent producers from the windfall profit tax, and to provide permanent relief from the windfall profit tax for small royalty owners; to the Committee on Finance.

RELIEF FROM WINDFALL PROFIT TAX

● Mr. MELCHER. Mr. President, today I am introducing a bill to modify the windfall profit bill so as to provide additionally needed incentives for the production of domestic crude oil.

If we as a nation are serious about curbing inflation, we must reduce our dependence on imported oil. Our conservation efforts are paying off. Our current oil imports are the lowest in several years. However, we continue to be at the mercy of OPEC prices which have recently hit the $40 per barrel mark and gone beyond. We need to couple increased domestic production of crude oil with our conservation efforts to ever really break OPEC's hold on our economy.

When the Senate originally passed the windfall profit bill, we were careful to include exemptions for the first 1,000 barrels of oil produced each day by independent producers as well as stripper oil. These exemptions were meant to insure that we did not discourage new exploration, more than 80 percent of which comes from our independents, and to insure that we encouraged as much production as possible from our older, smaller fields.

However, when the Senate version of the bill went to conference with the House of Representatives, these exemptions were lost, and replaced with lower tax rates for independent producer oil and stripper oil. We have had a year to look at the results, and the facts are that in Montana, at least, we have not gotten the increased production that the decontrol of crude oil prices was meant to bring.

I reluctantly supported the conference report on the windfall profit tax bill, but its now clear to me that we should modify the bill to restore the exemptions for independent producer oil and stripper wells.

I think that the need for this modification can best be shown by inserting in the record part of a letter I recently received from an independent oil producer in Montana. I include the following excerpt in the RECORD:

More than 25 years ago, I purchased the minerals under 160 acres of land located approximately 25 miles west of Conrad. When the price of oil was low I could not afford to develop this small acreage. When the ceiling was taken off the price of oil the first announcement that we had here was that the windfall profits tax would not apply to independent producers who had new oil and produced less than 1,000 barrels of oil per day. At that time the price of oil was $40.00 per barrel. On the basis of this, I proceeded to drill a well and got gas but had no way to market it.

On the basis of what appeared to be a rather substantial gas well, I drilled a second hole which was dry and expensive. By this time, I had borrowed money from the bank, but decided to proceed to drill a third well, even though I was getting way out on the financial limb. The third well was a good gas and oil well, but I could not market the oil without being able to market the gas and it was capped.

By now, I owed the bank a substantial amount of money but Jim Connelly, then president of First Bank West, gave me the go ahead to drill another well, which I did. This well was also an oil and gas producer, but I could not market the oil without marketing the gas. In an attempt to obtain oil production without too high a gas-to-oil ratio, I moved down dip and got another dry hole.

These are not deep wells, averaging about 3500' to the Madison Limestone, but because of the considerable testing of each well that I did as they were being drilled, my costs had gotten out of my personal ability to carry. Jim Conelly went to the First Bank in Minneapolis and arranged a loan of $500,000.00. I drilled another dry hole and then drilled a well which obviously would be a producer from the Madison Limestone, but I was in an area where I thought we might obtain Devonian production and I decided to go down and test the Devonian. This well became the first Devonian oil producing well on the Montana side of the Sweetgrass Arch and spurred a great deal more drilling activity which is continuing as I am dictating this letter.

Finally, I was able to market the gas and therefore produce the oil from three wells. There was a great deal of expense involved in putting together a gathering system, separators, a heater treater, tank battery, electrifying the wells, etc. The two banks loaned me $1,250,000.00. I now have three wells on production. The maximum production I get is 120 barrels of oil per day and 750,000 mcf, for which I receive only $1.25 per mcf gross.

The irony of all of this is that when I commenced marketing oil I still did not know that the windfall profits tax applied to me. Obviously, I have no profits and for a single little guy on 160 acres, I could be in big trouble. As long as my production stays at this present level I will ultimately be able to pay the banks back from the production, but that is somewhat self-defeating from our energy point of view because I have some other acreage in other areas that I would drill if I had the money. Obviously, I cannot borrow more money from the banks, at least in the foreseeable future, nor do I want to.

In Pondera County there is a 15 percent net proceeds tax. The windfall profits tax amounts to 15 percent of this new oil. There are four other taxes amounting to approximately 5 percent totally. This is all before income tax. All but the net proceeds tax apply prior to my overhead and operating costs. The price of oil is down to $34.00 per barrel and my net before income tax is down to $20.00 per barrel. From this I must make repayment to the banks on 1.25 million dollars bearing interest which is now 22½ percent. It will be a matter of years before I make one penny in profits if I do then.

I have lived in the area of the Kevin-Sunburst-Cut Bank-Pondera fields all of my life and know most of the operators personally and can say, with perhaps only a couple of exceptions, that none of the Montana residents in this area who have oil producing properties have more than 250 barrels of production a day; yet these same operators have historically made 90 percent of the new oil discoveries in this part of Montana. These are the people who do not need the added burden of all of this taxation on the one hand and who have provided such a valuable service in the energy area on the other. Furthermore, I doubt that Congress or anyone else ever intended that these small operators should pay such a disproportionate share of taxes. We all know that the income tax is the great leveler for these kind of independent people, anyway.

Mr. President, this story is not unique. I heard variations of it from independent producers all over Montana during my travels there in recent weeks. The evidence is clear. The windfall profit tax is not accomplishing one of the major goals of decontrol—to encourage more domestic crude oil production. With the modifications I am introducing today—the worst of the disincentives for increased domestic production will be removed.

Finally, my bill also exempts royalty owners from the windfall profit tax. As part of the budget reconciliation process last fall, we exempted royalty owners from the first $1,000 of windfall profit taxes. That was a stopgap measure. We should take action now to exempt royalty owners from the windfall profit tax once and for all. It was never the intent of the Senate to treat royalty owners as though they were giant oil companies—that was clear from our action in the Budget Reconciliation Act—and we should correct that oversight as soon as possible.

I ask unanimous consent that my bill and a section-by-section analysis be printed in full following this statement.

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 166

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TAX EXEMPTION FOR STRIPPER WELL PRODUCTION.

Amend Sec. 4991(b) of the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96-223) by adding a new subsection as follows:

"(5) Any oil which is from a stripper well property within the meaning of the June 1979 energy regulations."

Amend Sec. 4991(d) by repealing subsection (1)(A) and renumbering as appropriate.

SEC. 2. TAX EXEMPTION FOR INDEPENDENT PRODUCER OIL.

Amend Sec. 4987(b) of the Crude Oil Windfall Profit Tax Act of 1980 by repealing subsection (2).

Amend Sec. 4991(b) by adding a new subsection as follows:

"(6) Independent producer oil."

Amend Sec. 4992 (c) (1) by adding a new subsection as follows:

"(C) Minus the number of barrels of exempt stripper oil produced each quarter (the resulting 'producer amount' cannot be less than zero)."

SEC. 3. TAX RELIEF FOR SMALL ROYALTY OWNERS.

Amend Sec. 4992 (d) of the Crude Oil Windfall Profit Tax Act of 1980 by repealing subsections (1) (D) and (2) and renumbering as appropriate.

SEC. 4. EFFECTIVE DATE.

The effective date of this act is to be January 1, 1981.

SECTION BY SECTION ANALYSIS

Section. 1. The first section of the bill *includes* "any oil which is from a stripper well property within the meaning of the June 1979 energy regulations" within the exempt oil category. It also *repeals* the section of the law that includes stripper well oil within the Tier 2 Oil tax bracket.

Section. 2. The second section of the bill *includes* "independent producer oil" within the exempt oil category. It also *defines* the amount of independent producer oil to be exempted as being equal to 1,000 barrels each day—reduced by the amount of exempt stripper oil produced each day. This limits the total exemption for combined stripper & independent producer oil to 1,000/each day. I discussed this with Bud Scoggins at the IPAA and he says it is fine to do it this way. It would make no difference to 99 percent of the independents. I think it also makes the proposal sound reasonable and answers any argument that both the stripper exemption and independent exemption goes too far.

Section 3. The third section of the bill extends the exemption to royalty owners. All that I have done is remove the section of the law that limits the independent exemption to those with a "working interest" in the property. This extends the exemption to royalty owners. Also because of the definition of an independent—does not refine more than 50,000 barrels a day or sell more than $5,000,000 annually of oil or natural gas through retail outlets—all royalty owners, not only those who receive royalties from independent producer wells, would be eligible for the exemption. IPAA agrees this is the simplest way to handle the royalty owners.

Section. 4. Sets effective date at January 1, 1981.●

By Mr. HEINZ (for himself, Mr. RANDOLPH, and Mr. GLENN):

S. 169. A bill to amend sections 169 and 103 of the Internal Revenue Code with respect to tax treatment of pollution control facilities; to the Committee on Finance.

TAX TREATMENT OF POLLUTION CONTROL FACILITIES

Mr. HEINZ. Mr. President, the legislation I am introducing today is designed to insure that expenditures for compliance with Federal and State pollution control laws do not jeopardize the ability of American industry to make job-creating investments.

Before explaining the specifics of this legislation, which amends sections 103 and 169 of the Internal Revenue Code, let me state in general terms the compelling economic and political arguments in favor of providing expanded tax incentives for pollution abatement.

I, for one, reject the argument that the recent election returns signal a desire on the part of the American electorate to retreat from the progress that has been made in recent years toward a cleaner, safer, and healthier environment.

What is the basis, then, for the mount-

ing criticism of the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, and other environmental laws, and the activities of the Environmental Protection Agency in enforcing these laws?

A great deal of this criticism results from the transformation of these laws and the good intentions they represent into a regulatory morass that has proven to be a dream come true for the army of technocrats and lawyers whose services are needed to write, interpret, and litigate them—and, all too often, a nightmare for the State and local governments, the business managers, and the employees of firms subject to them.

I am confident that the new administration—working in conjunction with the Congress—will make great progress toward simplifying these laws and regulations; allowing greater flexibility for cost-effective attainment of regulatory goals; providing rational criteria for standard setting; and incorporating cost-benefit considerations into the regulatory process.

But even with long-overdue statutory and regulatory changes, expanded tax incentives are needed to ease the substantial financial burden of environmental compliance requirements. These expanded incentives are necessary to insure that expenditures for pollution abatement do not jeopardize the ability of American industry to make the productive capital investments necessary to modernize facilities, create jobs, expand production, maintain, and enhance international competitiveness, improve productivity, and reduce inflation.

As an example of the potential for pollution abatement expenditures to cause a capital "crunch," consider the following statistics relating to basic U.S. industries. In 1978, pollution abatement expenditures accounted for 16.6 percent of all investment in the steel industry. For chemicals the comparable figure was 7.1 percent; for petroleum, 8.3 percent; and, for utilities, 10 percent.

During the coming decade pollution abatement expenditures will remain high. In the case of the steel industry, for example, the American Iron and Steel Institute has estimated, based upon a report by Arthur D. Little, Inc., that total environmental control expenditures for the next decade may reach $7 billion. The chemical industry faces the "double whammy" of complying with the 600 plus pages of hazardous waste control regulations promulgated by EPA under RCRA and paying a billion plus dollars in additional taxes over the next 5 years into the superfund. Other industries are faced with similar cost burdens.

As desirable as such expenditures may be, these investments are generally not productive investments in the sense that they do not result in increased output or efficiency of operations. They are particularly burdensome for small businesses. In most cases such investments do not earn a monetary return to the investor. To the contrary—and in addition to the cost of capital—pollution control equipment can cost a considerable amount to operate and maintain. And it goes without saying that the billions of dollars invested in pollution abatement are not available for other job-creating investments.

To ease the burden on industry imposed by environmental laws, Congress has already provided limited tax incentives for installing pollution control equipment under sections 103 and 169 of the Internal Revenue Code. Both of these provisions—section 103, dealing with tax-exempt industrial development bonds, and section 169, dealing with 5-year amortization—reflect a recognition that investment in pollution control and solid waste disposal facilities is necessary to attain desirable social goals and to fulfill the mandates of environmental laws. These tax code provisions also reflect a recognition that such investments are not productive in the sense that they do not result in increased output or efficiency of operations.

My legislation would expand the tax advantages available for pollution abatement expenditures under sections 103 and 169 of the Code. Let me briefly explain the provisions of title I of my bill, dealing with tax-exempt IDB's, and title II, dealing with expensing of pollution control expenditures.

TITLE I—TAX TREATMENT OF INDUSTRIAL DEVELOPMENT BOND ISSUES TO FINANCE POLLUTION CONTROL OR WASTE DISPOSAL FACILITIES

As I mentioned previously, tax-exempt section 103 financing is already available for air or water pollution control facilities and solid waste disposal facilities. However, through regulation—and over the objections of the Environmental Protection Agency—the IRS has so narrowly interpreted section 103 of the Code as to thwart the will of Congress.

Specifically, the IRS has:

First, ignored the fact that Congress has amended the Solid Waste Disposal Act to regulate hazardous waste as well; instead, the IRS has held the definition of solid waste constant to that contained in the original act; and

Second, limited eligible financing to end-of-the-pipe, "back box" technologies—ignoring the fact that current environmental law recognizes and indeed encourages the role of process changes in abating pollution.

Title I of my bill would change current law as interpreted by the IRS under its proposed section 103 regulations by:

First, making clear that process changes that prevent the creation of pollution are eligible for tax-exempt financing;

Second, providing for certification of eligible pollution control facilities by the Environmental Protection Agency and State environmental control agencies;

Third, containing safeguards to insure that only that portion of any facility that actually represents a pollution control expenditure qualifies for tax-exempt financing—including a limitation on expenditures at new plants; and

Fourth, making expressly clear that in amending the Solid Waste Disposal Act with the Resource Conservation and Recovery Act, Congress intended that nonnuclear hazardous waste management facilities should also qualify for section 103 financing.

Let me briefly explain each of these provisions.

PROCESS CHANGES ELIGIBLE FOR SECTION 103 FINANCING

Proposed IRS regulations limit section 103 financing to "black box," end-of-the-pipe technologies that represent discrete units, ignoring the demonstrated potential for process changes to prevent the creation or discharge of pollutants. Current environmental law recognizes and indeed encourages the role of process changes in abating pollution. In fact, such process changes could even be required under best available technology requirements.

From a public policy standpoint, it makes no sense to provide tax-exempt financing, for example, to a utility installing a scrubber to reduce emissions, while denying such financing to fuel pretreatment such as coal washing that also reduces emissions, at less cost and with less of an adverse impact on efficiency of operations.

My legislation would make clear that such process changes can qualify for tax-exempt financing. So that this provision cannot be interpreted as a blank check to qualify all plant modernizations, I submit the following list of process changes and facilities that might be expected to qualify for section 103 financing, and ask unanimous consent that it appear in the RECORD at the conclusion of my remarks (see exhibit 1).

This list is by no means exhaustive: We must avoid locking in potentially obsolete technologies by statute. At the same time, it is intended to provide the IRS with some guidance in determining what sorts of pollution control facilities Congress intends to qualify.

I might add that this approach has already been the subject of discussion between EPA and IRS, as evidenced by an October 20, 1980, memorandum, I ask unanimous consent that this memorandum appear in the RECORD at the conclusion of my remarks (see exhibit 2).

CERTIFICATION BY ENVIRONMENTAL CONTROL AGENCIES

As is already the case under section 169 of the Internal Revenue Code, the certification that a facility was installed to meet or further Federal or State requirements for abatement of control of water or atmospheric pollution or contamination would be made by the Environmental Protection Agency or the corresponding State environmental control agency. The certifying agency would also have to certify that the portion of the expenditure eligible for tax-exempt financing would not be made but for the purpose of abating, controlling, or preventing pollution.

SAFEGUARDS LIMITING TAX-EXEMPT FINANCING

I am sensitive to the concern that in qualifying process changes for this type of financing, we run the risk of also qualifying plant modernizations that have as an incidental effect the reduction of pollution.

My legislation contains several safeguards for insuring that tax-exempt financing is limited to facilities or por-

tions of facilities the expenditures for which are clearly for pollution control. Two of these safeguards I have already referenced: The list of eligible facilities and process changes, and the requirement for certification by environmental control agencies that the expenditure would not have been made but for Federal or State environmental control requirements.

An added safeguard is a formula for reducing the amount of financing eligible for tax-exempt financing to the extent that portions of the cost of a certified pollution control facility are recoverable in the form of economic benefit. The tax exemption would not apply to the portion of the proceeds of the bond issue that exceeds the amount by which the cost of acquiring, constructing, reconstructing, or erecting the facility exceeds the net profit which may reasonably be expected to be derived through the recovery of wastes or otherwise in the operation of the facility over its actual useful life. A formula for calculating this net profit is also set forth in the statute.

Finally, my legislation contains an added safeguard for limiting the amount of tax-exempt financing attributable to pollution abatement expenditures in the case of construction of new plants or major expansion of existing facilities—defined as a 35-percent increase in capacity or output. The amount of tax-exempt financing for certified pollution control expenditures, reduced to the extent that a net economic benefit results, would be further limited to: 30 percent of the first $100 million of capital expenditures for the entire plant or site; 25 percent of the second $100 million; 20 percent of the third $100 million; and 15 percent thereafter. Capital expenditures subject to the limitation would include those made 3 years before and 3 years after the date on which the bonds were issued.

Although a final revenue loss estimate has yet to be prepared, EPA has informally calculated that the first year revenue loss due to qualifying process changes for air and water pollution abatement would be $94 million. I ask unanimous consent that a recent letter from EPA regarding the revenue impact of this change be inserted in the RECORD at the conclusion of my remarks.

(See exhibit 3.)

I have asked EPA, the Treasury Department, and the Joint Committee on Taxation to prepare revenue loss estimates for these proposed changes and to suggest options for reducing the revenue loss in advance of Finance Committee consideration.

TITLE II—EXPENSING OF CERTIFIED POLLUTION CONTROL EXPENDITURES

As I mentioned previously, section 169 of the Internal Revenue Code provides for the amortization over 5 years of certified pollution control facilities.

Title II of my legislation would reduce the 5-year period to 1 year. Expensing of pollution control expenditures would be allowed at new plants as well as existing ones. In addition, as is the case under current law, section 169 amortization would be allowed in conjunction with either the investment tax credit or one-half the ITC if tax-exempt IDB's are also used.

Finally, the current requirement that a certified pollution control facility "* * * includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in section 167, which is identifiable as a treatment facility, and which is property * * *" has the disadvantage of biasing investment in pollution abatement away from process changes which are often more efficient. It is my expectation that once the Finance Committee has settled upon a definition of certified pollution control facility eligible for section 103 financing, it will consider a similar amendment to section 169 as well.

In closing, Mr. President, it is my hope that the Finance Committee will review this proposal at the earliest possible date. As you may recall, the distinguished chairman and ranking minority members of the Finance Committee, Senators DOLE and LONG, agreed on the need for early hearings on this proposal when I raised the issue during the debate on superfund.

I look forward to working with my distinguished colleagues on the Finance Committee and in the full Senate toward passage of this measure so that pollution abatement expenditures do not continue to jeopardize the ability of American industry to make job-creating investments.

I ask unanimous consent that the text of this legislation and certain exhibits be printed in full in the RECORD.

There being no objection, the bill and exhibits were ordered to be printed in the RECORD, as follows:

S. 169

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—TAX TREATMENT OF INDUSTRIAL DEVELOPMENT BONDS ISSUED TO FINANCE POLLUTION CONTROL OR WASTE DISPOSAL FACILITIES

SECTION 101. TAX-EXEMPT FINANCING REQUIREMENTS.

(a) IN GENERAL.—Section 103 of the Internal Revenue Code of 1954 (relating to interest on certain governmental obligations) is amended by redesignating subsection (h) as subsection (j), and by inserting after subsection (g) the following new subsections:

"(h) AIR OR WATER POLLUTION CONTROL FACILITIES.—For purposes of this section—

"(1) IN GENERAL.—The term 'air or water pollution control facility' means land or property of a character subject to depreciation under section 167—

"(A) which is acquired, constructed, reconstructed, or erected to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat,

"(B) which is certified by the Federal certifying authority (as defined in section 169(d)(2)) or the State certifying authority (as defined in section 169(d)(3)) as meeting or furthering Federal or State requirements for abatement or control of water or atmospheric pollution or contamination, and

"(C) all or a portion of the expenditures for the acquisition, construction, reconstruction, or erection of which would not be made except for the purpose of abating, controlling, or preventing pollution.

"(2) EXEMPT FINANCING TO BE UNAVAILABLE FOR EXPENDITURES FOR PURPOSES OTHER THAN POLLUTION CONTROL.—

"(A) IN GENERAL.—Subsection (b)(4)(F) of this section shall not apply with respect to any issue of obligations (otherwise qualifying under subsection (b)(4)(F)) if the portion of the proceeds of such issue which is used to provide air or water pollution control facilities exceeds (by more than an insubstantial amount) the amount by which—

"(i) the cost of acquiring, constructing, reconstructing, or erecting the facility, exceeds

"(ii) the net profit which may reasonably be expected to be derived through the recovery of wastes or otherwise in the operation of the facility over its actual useful life.

"(B) NET PROFIT.—For purposes of this paragraph, the term 'net profit' means the present value of benefits (using a discount rate of 12½ percent) to be derived from that portion of such cost properly attributable to the purpose of increasing the output or capacity, or extending the useful life, or reducing the total operating costs of the plant or other property (or any unit thereof) in connection with which such facility is to be operated, reduced by the sum of—

"(i) the total cost incurred to acquire, construct, reconstruct, or erect the property (reduced by its estimated salvage value), and

"(ii) the present value (using a discount rate of 12½ percent of) all expenses reasonably expected to be incurred in the operation and maintenance of the property, including utility and labor costs, Federal, State, and local income taxes, the cost of insurance, and interest expense.

(C) LIMITATION ON EXPENDITURES UNDER SUBSECTION (b)(6)(F).—

"(i) IN GENERAL.—For purposes of subsection(b)(4)(F), the face amount of obligations issued for such facilities to be installed at any new manufacturing or processing plant shall not exceed the amounts described in clause (ii) of this subparagraph after application of subparagraphs (A) and (B) of this paragraph.

"(ii) INSTALLATIONS AT NEW PLANTS, ETC.—In the case of facilities described in subsection (b)(4)(F) to be installed at new plants (as defined in clause (iii) of this subparagraph), the aggregate authorized face amount of obligations to be issued therefor shall not exceed the sum of 30 percent of the first $100,000,000 of capital expenditures paid or incurred in connection with such plants, 25 percent of the second $100,000,000 of such capital expenditures, 20 percent of the third $100,000,000 of such capital expenditures and 15 percent of such capital expenditures in excess of $300,000,000 plus the costs and expenses incurred in issuing such obligations.

"(iii) NEW PLANT.—For purposes of this subparagraph the term "New Plant" means any plant or identifiable part thereof, or other location that is or would be a source of pollution, placed in service within the six-year period beginning 3 years before the date of any issue for the facility and ending 3 years after such date of issuance of the obligations described in clause (i). For purposes of clause (ii), all the capital expenditures during the six (6) year period shall be aggregated. A major expansion of the capacity of any plant or identifiable part thereof or a major conversion in the use to which any plant (or identifiable part thereof) is devoted, shall be treated as a New Plant. For purposes of this paragraph a major expan-

sion of capacity shall mean an increase in capacity of 35 percent, and a major conversion in use shall mean a change affecting 35 percent of the output of the plant. Any plant or identifiable part thereof not described in the preceding three sentences shall be deemed an existing plant.

(iv) CAPITAL EXPENDITURES TAKEN INTO ACCOUNT.—The capital expenditures taken into account with respect to any new plant or other source of pollution for purposes of this subparagraph are the expenditures which are properly chargeable to capital account and which are either made within 3 years before the date of the issuance of the issue or can reasonably be expected (at the time of the issuance of the issue) to be made within 3 years after the date of such issuance.

"(l) SOLID WASTE DISPOSAL FACILITIES.—For purposes of this section, the term 'hazardous waste or solid waste disposal facilities' includes land and property of a character subject to depreciation under section 167 which is acquired, constructed, reconstructed, or erected for no significant purpose other than to comply with hazardous or solid waste management requirements imposed by the Solid Waste Disposal Act.".

(b) CONFORMING AMENDMENT.—Subparagraph (E) of section 103 (b) (4) of such Code is amended by inserting ", hazardous waste," after "sewage".

(c) CLARIFICATION OF REFERENCE.—For purposes of section 103 (l) of the Internal Revenue Code of 1954, any reference to the Solid Waste Disposal Act means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as it is, or may be, amended from time to time by other Acts. No inference shall be drawn from the preceding sentence with respect to the presence or absence of the words "as amended", by themselves or in combination with a reference to another Act, whenever reference is made in any other provision of law to an Act by its short title.

SEC. 102. EFFECTIVE DATE.

The amendments made by subsections (a) and (b) of section 101 shall apply with respect to obligations issued after the date of enactment of this Act and with respect to taxable years ending after that date.

TITLE II—CURRENT EXPENSING OF AMOUNTS PAID OR INCURRED IN CONNECTION WITH THE CONSTRUCTION OR ERECTION OF POLLUTION CONTROL FACILITIES

SEC. 201. DEDUCTION ALLOWED FOR TAXABLE YEAR IN WHICH EXPENSES ARE PAID OR INCURRED.

(a) IN GENERAL.—So much of section 169 of the Internal Revenue Code of 1954 (relating to amortization of pollution control facilities) as precedes subsection (d) is amended to read as follows:

"SEC. 169. POLLUTION CONTROL FACILITY EXPENSES.

"(a) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who elects the deduction allowed by this subsection, there shall be allowed as a deduction for the taxable year the sum of the amounts paid or incurred by the taxpayer in connection with the acquisition, construction, or erection of a certified pollution control facility (as defined in subsection (d)), and such amounts shall be treated as items not chargeable to capital account.

"(b) ELECTION.—The election provided by subsection (a) shall be made at such time, in such form, and in such manner as the Secretary may prescribe.

"(c) TERMINATION OF ELECTION.—A taxpayer who has elected under subsection (b) to take the deduction provided by subsection (a) may, at any time after making such election, discontinue the deduction with respect to the remainder of the amounts paid or incurred with respect to the facility. Any such discontinuance shall begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary before the beginning of such month. The depreciation deduction provided by section 167 shall be allowed, beginning with the first month as to which the election under subsection (b) does not apply, and the taxpayer shall not be entitled to any further deduction under this section with respect to such facility.".

(b) DEDUCTION TO APPLY TO NEW CONSTRUCTION AS WELL AS EXISTING PLANTS AND PROPERTIES.—Paragraph (1) of subsection (d) of such section (relating to definition of certified pollution control facility) is amended by striking out "in operation before January 1, 1976".

(c) CONFORMING AMENDMENTS TO SECTION 169.—

(1) Paragraph (3) of subsection (d) of such is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services".

(2) Section 169 of such Code is amended—

(A) by striking out subsections (f) and (j),

(B) by redesignating subsections (g) and (l) as subsections (f) and (g), respectively, and

(C) by striking out "which is not the amortizable basis" in subsection (f) (as so redesignated) and inserting in lieu thereof "for which a deduction is not claimed under subsection (a)".

(d) TECHNICAL AND CONFORMING AMENDMENTS TO OTHER CODE PROVISIONS.—

(1) The table of sections for part VI of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 169 and inserting in lieu thereof the following:

"Sec. 169. Pollution control facility expenses.".

(2) Paragraph (5) of section 46 (c) of such Code (relating to applicable percentage in case of certain pollution control facilities) is amended by striking out "constitutes the amortizable basis for purposes of section 169" and inserting in lieu thereof the following: "constitutes the adjusted basis".

(3) Paragraph (1) of section 48 (a) of such Code (defining section 38 property) is amended by adding at the end thereof the following new sentence: "In the case of any property with respect to which an election has been made under section 169, such property shall, for purposes of the preceding sentence, be treated as property with respect to which depreciation is allowable.".

(4) Paragraph (4) of section 57(a) of such Code (relating to items of tax preference) is repealed.

(5) Subsection (f) of section 642 of such Code (relating to amortization deductions) is amended—

(A) by striking out "Amortization" in the caption and inserting in lieu thereof "Certain Other", and

(B) by striking out "for amortization" in the text.

(6) Subparagraph (B) of section 1082(a) (2) of such Code (relating to exchanges subject to the provisions of section 1081(b)) is amended by striking out "for amortization".

(7) Subsection (a) of section 1245 of such Code (relating to general rule for determination gain from dispositions of certain depreciable property) is amended—

(A) by striking out "169," in subparagraph (D) of paragraph (2) thereof,

(B) by striking out "169," each place it appears thereafter in paragraph (2), and

(C) by striking out "169," in subparagraph (D) of paragraph (3) thereof.

(8) Paragraph (3) of section 1250(b) of such Code (relating to depreciation adjustments) is amended by striking out "169,".

SEC. 202. EFFECTIVE DATE.

The amendments made by section 201 shall apply with respect to amounts paid or incurred after December 31, 1980.

EXHIBIT 1

FACILITIES AND PROCESS CHANGES TO BE INCLUDED AS REPORT LANGUAGE TO ACCOMPANY LEGISLATION PROPOSED BY SENATOR JOHN HEINZ DEALING WITH IRS DEFINITIONS OF POLLUTION CONTROL FACILITIES ELIGIBLE FOR TAX-EXEMPT INDUSTRIAL DEVELOPMENT BOND FINANCING PURSUANT TO SECTION 103(b) OF THE INTERNAL REVENUE CODE

In addition to those specified on the accompanying fact sheet, eligible facilities and process changes shall include, but not be limited to, the following:

Coal mining and combustion

Coal washing and preparation to reduce sulphur emissions;

Fluidized bed boilers;

In mining operations, water diversion ditches that prevent natural water run-off from mingling with mining operations, becoming contaminated, and exiting as run-off pollution.

Metals

In metal "pickling" processes, equipment to convert sulphuric acid to hydrochloride acid, permitting acid regeneration and avoidance of waste treatment and sludge disposal expense.

Industrial printing

Equipment to convert water-based paints, thereby avoiding aid pollution that occurs from dried solvents dispersing through stacks.

Paper industry

Recovery boilers and their associated preciplatators, black liquor oxidation systems, and black liquor evaporation systems.

Brewing industry

Dust control equipment;

Spent grain liquor evaporators.

Solid waste management

Landfills;

Landfarms;

Transfer stations;

Incinerators without heat or energy recovery facilities;

Incinerators with heat or energy recovery facilities;

Compaction equipment (shredders, balers, and compaction equipment);

Transportation vehicles used to implement the collection and disposal functions.

Hazardous waste management

Same list as solid waste management but also:

Deep injecion wells;

Storage facilities;

Treatment facilities.

Petroleum industry

Facilities to strip sulphur from gas streams to be combusted at the refinery;

Facilities to transport waste water to regional waste control facilities;

Floating roof storage tanks.

EXHIBIT 2

U.S. ENVIRONMENTAL PROTECTION AGENCY,

Washington, D.C., October 20, 1980.

Subject Expanding the Definition of Pollution Control Facilities Eligible for Industrial Development Bond Financing.

From Jack F. Fitzgerald, Acting Director, Economic Analysis Division.

To John Samuels. Tax Legislative Counsel, Department of Treasury.

As you know, we seek to extend Section 103 financing to: (1) process changes that control or prevent pollution, and (2) discrete equipment that removes a potential pollutant before its creation in a manufacturing

process. From our recent meeting with Ed Roche and John McMaster on this subject, I understand that the Department may be willing to extend the subsidy to discrete pollution prevention equipment, but continues to find our proposals unacceptable as applied to process changes. One objection raised was that EPA's administrative scheme for making process changes eligible was insufficiently precise and hence would be subject to abuse.

Upon reflection, we have developed a different approach to financing process changes that would give bond counselors and private firms little leeway to expand IDB use beyond what was intended by IRS.

Under our new approach, IRS and EPA would jointly establish an official list of generic process changes that are judged to significantly control pollution. For each process change on the list, the percentage of capital cost attributable to pollution control would also be specified. The list would be quite detailed and probably industry specific. It could be developed in the following manner.

IRS would ask industry to nominate types of process changes for IDB financing and to justify their choice, and to suggest what proportion of the capital cost should be eligible for financing. The justification would include engineering and economic data that:

Described the various pollution control options—including the process change—available to the sponsoring industry;

Demonstrated that the process change is the best of the options;

Indicated the economic (as opposed to pollution control) costs or benefits of the process change; and

Allocated the capital cost of the process change between pollution control purposes and other purposes.

IRS and EPA jointly would evaluate the industry nominations. IRS would promulgate with EPA's concurrence, a list specifying each eligible process change and, for each process change, the percentage of capital costs eligible for financing. The list could be revised periodically, and a procedure could be established for variances in special cases.

The most difficult step in this process probably would be determining the proportion of capital expenditures that should be eligible for IDB financing. Some arbitrary decisions might be unavoidable. IRS and EPA either would have to make a judgment that one sort of process change is more or less "for the purpose of" pollution control than another sort of process change, or would have to establish a method of computing this proportion based on financial information concerning the current process and the proposed new process. In the next section of this paper we discuss how the cost allocation percentages might be derived.

This entire process is similar to the current practice in setting depreciation lives to be used by firms for tax purposes. Under the ADR system, rather detailed engineering and economic judgments have been made, usually particular to specific industries, in order to establish the various (and numerous) classes and lives of capital assets. A procedure also exists for variances in special cases from the ADR guidelines.

ALLOCATION OF COSTS OF A PROCESS CHANGE

We would suggest using an allocation procedure that is similar to the one IRS now uses for end-of-pipe controls. Under this approach, the capital cost of a process change eligible for IDB financing would be adjusted downward to account for any economic benefits realized from the investment. More specifically, the difference between the capital cost of the process change and the discounted value of the net economic benefits would be the portion of the investment made "for the purpose of" pollution control. Thus,

$$K_p = K_T - B$$

where

K_p is the portion of the capital cost allocated to pollution control,

K_T is the total capital cost of the process change, and

B is the net economic benefits from the process change.

Also,

$$B = CF_{pc} - CF_o$$

where

CF_{pc} is the anticipated discounted present value of the cash flow of the firm after adopting the process change, and

CF_o is the discounted present value of the cash flow of the firm using the existing process.

We are under no illusions that this formula can be calculated precisely. The economic benefits may be exceedingly difficult to compute, as the process change may affect many aspects of the firms's operating performance. However, we do believe that this formula provides a sufficient guide for IRS and EPA to roughly allocate the costs of the process change. If the pollution abating process change produces insignificant or even negative economic benefits, the percentage of costs allocated to pollution control should approach 100. If, on the other hand, the process change appears justified solely on economic grounds, none of the costs should be eligible for Section 103 financing.

We should mention another aspect of the formula. It can be re-expressed as:

$$K_p/K_T = 1 - B/K_T$$

We would prefer to establish a single percentage of cost to be allocated to pollution control for each process change. But, if B/K_T varies significantly among plants that might adopt the process change, then the ratio K_p/K_T will also vary considerably.

In general, we expect that B/K_T will be reasonably constant for the same process change across different firms, since it depends mostly on the productive efficiency of the new process relative to the old process, and this comparison should not shift drastically from firm to firm. However, we can think of instances when B/K_T should not be relatively constant—where an old unit is replaced by a new, less polluting unit, for example. Consider replacing a conventional boiler with a fluidized bed boiler. In this case the net economic benefits of the process change will depend substantially on the age of the equipment which is replaced. The older the replaced equipment (the closer it is to retirement), the greater the economic benefits of replacing it with the new equipment. Instead of specifying one percentage for the cost of a fluidized bed boiler that should be eligible for Section 103 financing, we might need to specify a percentage that varied with the age of the boiler to be replaced. Thus, for example, when replacing a conventional boiler with a fluidized bed boiler, the rule might be specified something like: "The following percentages of fluidized bed boiler costs shall be eligible for Section 103 financing:

0 percent if the boiler to be replaced exceeds 20 years in age

20 percent if the boiler to be replaced is of 10–20 years in age

40 percent if the boiler to be replaced is of 5–10 years in age

60 percent if the boiler to be replaced is of less than 5 years in age."

NEW PLANTS

In existing plants, pollution control requirements may necessitate investment in a retrofit process change that generates economic benefits insufficient to earn a normal return. For a firm to invest in a new plant however, projected economic benefits must exceed capital costs. Thus our formula is not applicable for new plants, since it would never allow any capital costs to be attributed to pollution control. Alternative methods of making this attribution at new plants are as follows:

(1) Regard the pollution control costs as equal to the costs of the end-of-pipe facilities which are thereby avoided. For example, assume that fluidized-bed boilers are an eligible pollution-controlling new process for electric utilities. If a generating station using conventional boilers normally incurs an end-of-pipe pollution control cost of 20 percent of the total capital cost, while a fluidized bed station needs end-of-pipe equipment costing only 12 percent of the total capital cost, 8 percent of the capital cost of the fluidized bed station might be regarded as for pollution control.

(2) A limited number of novel, low-polluting processes, when installed at new plants, could be designated by IRS/EPA as worthy of subsidy. The proportion of capital cost to be eligible in each case for IDB financing would have to be set rather arbitrarily. This procedure would be similar to the proportional tax credits now given for investment in designated sorts of alternate energy property.

(3) Allow tax-exempt financing of only that pollution control equipment at new plants which contributes insignificantly to the production process. Under this approach, IRS/EPA would ask whether the production process could continue relatively unimpaired if the equipment in question were removed. If the answer was no, the equipment would be ineligible for the subsidy. This approach would tend to minimize the subsidy. One might justify this harsher treatment of new plants than of retrofits on the basis that retrofits present a better case for subsidy—old plants have environmental requirements imposed on them subsequent to construction, whereas new plants can be planned and built with full knowledge of environmental standards. This approach would, though, leave the bias toward end-of-pipe control techniques largely undiminished at new plants.

EXAMPLES

1. Pollution prevention:

The principle here is that IDB financing should be applicable to any discrete equipment that treats a material in such a way as to remove a potential pollutant before its creation in a manufacturing process. The proportion of the capital cost eligible for IDB financing should be determined through use of the formula currently used by IRS for discrete end-of-pipe equipment—the financable cost is essentially the total cost less any projected economic benefits.

Coal washing.—A common example of prevention equipment is a coal washing facility which removes sulfur from coal prior to combustion, thereby reducing or eliminating the need for desulfurization of coal-fired power plant emissions. The coal washing facility should be eligible for IDB financing whether it is at the power plant or at the coal mine.

Finishing agents.—Finishing agents are commonly applied to knitted and felted textiles to give them desired surface characteristics. One such agent frequently used is acrylic latex, which contains a few hundred parts per million (ppm) of unreacted ethyl acrylate monomer. In the oven when the finished textile is cured, this ethyl acrylate impurity is volatilized into the off-gases, and it creates a severe odor problem in the vicinity of the plant. The cost of stripping the ethyl acrylate from hot curing oven gases, the most obvious form of end-of-pipe treatment, is very high. This is because the

concentration of ethyl acrylate would have to be reduced below .002 ppm to reduce it below the odor threshold. However, an investigation of the latex manufacturing process showed that the ethyl acrylate monomer can be vacuum stripped to a few parts per million during manufacture of the latex, and the residual monomer totally destroyed by the addition of a suitable catalyst before the latex is applied. This prevention approach totally eliminates the odor problem from the textile finishing operation at a low cost. The cost of the vacuum stripper and the catalyst feed equipment should be eligible for Section 103 financing.

2. Process changes:

Conversion from direct heat to steam heat for product drying.—In the fish meal industry, fish are cooked and ground, and the oil is separated from the residue. The residue becomes saleable fish meal when it is dried normally in plate-shaped driers which are heated directly by a flame from below. Warm air is passed over the driers to carry away moisture. However, the direct heated driers are subject to local overheating, and the result is that a very small portion of the fish meal is scorched. Malodorous decomposition products from the burnt protein are discharged with the moist gasses from the driers. Stripping the large volume of gases from the drier is prohibitively expensive. The solution is to replace the direct fired driers with driers heated by steam. This produces a much more even heat and avoids scorching the meal, thereby avoiding the odor problem. A portion of the cost of the replacement driers should be eligible for Section 103 financing. The eligible cost should be given by the cost of the new driers less the economic benefits associated with the new driers that accrue because the new driers have a longer useful life than the partially depreciated old driers had.

Recirculation of exhaust gases for NO_x control.—Formation of NO_x from combusion in air can be reduced considerably by combustion modifications which reduce flame temperatures. In some boilers a portion of the flue gas can be cooled and returned to the boiler and mixed with the combustion air prior to combustion. The inert flue gas absorbs some of the energy released during the combustion process and thus reduces peak flame temperatures. This recirculation has little effect on the boiler's efficiency. Thus, the complete cost of the added-on recircualtion equipment—the cooling equipment, pipes, and pumps—should be eligible for Section 103 financing.

Mechanical food peeling.—One step in commercial processing of potatoes and tree fruit such as apricots, peaches and pears may be peeling. Traditionally, the peeling is accomplished by soaking the product in large volumes of a caustic soda solution. The result is a large volume of wastewater, with heavy COD and suspended solid loadings. A new process has been developed which accomplishes the peeling by a wiping action of flexible rubber disks on fruit wetted with a limited amount of hot caustic soda. The new process reduces wastewater volume by 93 percent, reduces COD and suspended solid loadings by 67 percent, and reduces product loss by 13 percent. The new process equipment should in theory be eligible for Section 103 funding. However, the economic benefits attributable to the new process are substantial. The benefits probably exceed the costs of the new process in most cases except where the old process equipment is of recent vintage and is relatively undepreciated. The proportion of the new process cost that is eligible for Section 103 financing should be above zero only when the old process equipment to be replaced is relatively undepreciated.

EXHIBIT 3

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., August 22, 1980.

Hon. JAMES R. JONES,
Cannon House Office Building,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. JONES: This is in response to your letter of July 11, 1980 to the Administrator requesting EPA's opinion on the desirability of making industrial development bonds (IDBs) available for financing pollution prevention activities. While EPA cannot speak for the Administration on the change you suggest, we are interested in it from an environmental standpoint because we believe it would help eliminate the current bias in our tax policy toward "end-of-pipe" pollution control.

By prohibiting the use of IDBs to finance facilities that prevent pollution, the IRS regulations provide a significant economic incentive to control pollution through "end-of-pipe" technologies. If we subsidize these technologies, then we also should afford similar financing alternatives for prevention activities. Our concern is that the IRS regulations may prompt a firm to invest in a less efficient approach (e.g., end-of-pipe control) simply because the after-tax cost is less than that for a more efficient approach (e.g., prevention technology).

The current IRS regulations also prohibit the use of IDBs to finance investments in process changes that may reduce or eliminate pollution. Again, we are concerned that this may cause private firms to select less efficient technologies for reducing pollution.

Expanding IDBs to cover process changes, however, may present administrative difficulties to IRS. Since IDBs should not be used to finance an entire investment in new process technology, the problem is how to estimate the amount of the investment that goes toward pollution control. We have developed a rather straight forward approach for addressing this problem, but it may require that IRS agents collect more data than is now available to them. We propose that the difference in cost between the old and new facilities (on a current dollar basis) be considered as pollution control costs. Differences in rated capacities and economic benefits of the facilities complicate the calculation, but we think it is possible to make adjustments to the calculation to take such differences into consideration.

We are working very closely with IRS and Treasury to examine the feasibility and desirability of expanding coverage of IDBs to include prevention and process change technologies. We believe Treasury could handle this matter within their statutory authority.

We have made some very preliminary estimates of the likely losses to Treasury caused by extending the coverage of IDBs to both prevention and process change technologies. IDBs currently are used to finance about $3 billion of an estimated $7 billion of annual expenditures by industry on new plant and equipment for pollution abatement. Using $4 billion as an upper limit for additional IDB financing in combination with reasonable assumptions regarding interest rates and marginal tax rates, yields an estimated annual tax loss of $94 million. However, in the second year of expanded IDB financing, the tax loss would be doubled (i.e. $188 million), in the third year it would triple, etc. In present value terms, the annual tax loss would amount to about $860 million.

We are working with Treasury on this matter and will ask them to provide us with more accurate estimates of the likely revenue loss as we develop specific detailed proposals.

Sincerely,
WILLIAM DRAYTON, Jr.,
Assistant Administrator
for Planning and Development.

By Mr. MOYNIHAN (for himself and Mr. PACKWOOD):

S. 170. A bill to amend the Internal Revenue Code of 1954 to allow the charitable deduction to taxpayers whether or not they itemize their personal deductions; to the Committee on Finance.

CHARITABLE DEDUCTIONS

● Mr. MOYNIHAN. Mr. President, today I am introducing for Senator PACKWOOD and myself a bill to permit all taxpayers to deduct their charitable contributions, whether or not they itemize their other deductions.

This is identical to H.R. 501, as introduced on January 6 by Congressmen GEPHARDT and CONABLE.

This is the third consecutive Congress in which we have made this proposal. Last year our bill had 42 Senate cosponsors, and was approved by the Finance Committee as part of the tax cut package that was reported out and would have been considered by the full Senate had time and circumstances permitted. We anticipated widespread support by the full Senate for that proposal in the 96th Congress, and hope for even wider support in the 97th Congress that is now beginning. We also expect this year to have the support of the administration.

The 1980 Republican platform stated that "We support permitting taxpayers to deduct charitable contributions from their Federal income tax whether they itemize or not." This was reiterated in a telegram that Governor Reagan sent to the National Conference of Catholic Charities on September 18, 1980 in which he stated that "We support permitting taxpayers to deduct charitable contributions from their Federal income tax whether they itemize or not." I am submitting the full text of the President-elect's eloquent telegram, and ask unanimous consent that it be printed in the RECORD.

The telegram follows:

Rev. Msgr. LAWRENCE J. CORCORAN,
Executive Director, National Conference of Catholic Charities, Washington, D.C.

I deeply regret that prior campaign commitments preclude me from addressing your annual meeting in Rochester. I came to know by firsthand experience as Governor of California the excellence, efficiency, and true sense of human care of Catholic charities.

Particularly do I respect and commend the National Conference of Catholic Charities as the largest voluntary and private sector provider of social services designed to help with both effective low cost and warm compassion. You are living and heartening proof that person helping person, group helping group can do this needed work without Government interference.

I am strongly committed to this provision of our 1980 Republican platform: "The American ethic of neighbor helping neighbor has been an essential factor in the building of our Nation. Republicans are committed to the preservation of this great tradition.

To help nongovernmental community programs aid in serving the needs of poor, disabled, or other disadvantaged, we support permitting taxpayers to deduct charitable contributions from their Federal income tax whether they itemize or not.

Government must never elbow aside private institutions—schools, churches, volunteer groups, labor and professional associations—in meeting the social needs in our neighborhoods and communities."

Through long association with government programs, the world "welfare" has come to be perceived almost exclusively as tax supported aid to the needy. But in its most inclusive sense—and as Americans understood it from the beginning of the Republic—such aid also encompasses those charitable works performed by private citizens, families, and social, ethnic and religious organizations such as yours. Policies of the Federal Government leading to high taxes, rising inflation, and bureaucratic empire building have made it difficult and often impossible for such individuals and groups to exercise their charitable instincts.

Private sector organizations such as yours need this kind of indirect, substantial encouragement from the Federal Government—they do not need its further regulation and usurpation.

Most fundamentally, I share with you your respect for life, in its inception and in its quality. Be assured of my gratitude for your invitation and for your magnificent work.

RONALD REAGAN.

Mr. President, the essential change is not political or governmental. It is the widening appreciation by the American people of the unique and vital role played by private, nonprofit organizations and the importance of devising public policies that succor and sustain them and the charitable impulse that undergirds them. It is also a mounting wariness toward government monopoly and toward the enrichment of the public sector as the private is diminished.

Return for a moment to a period of extraordinary intellectual ferment, just before the great crises of our century: The World Wars, the Depression, the rise of totalitarianism. Social and political thought was deadlocked in a conflict between two powerful schools. On one hand stood the classical liberals, who asserted the sovereignty of the individual, and looked with skepticism upon most forms of collective human enterprise.

On the other hand, emerging from continental traditions both of socialism and conservative absolutism, stood the statists. They feared that such individualism would lead to the disintegration of society—reducing humanity, in Durkheim's powerful phrase, to "a dust of individuals."

In response to this dichotomy, a third tendency began to develop, a tendency that owed much of its strength to the Anglo-American experience. It was called pluralism. While it is not properly regarded as a school of political thought, its exponents stood more to the democratic left than to the right. Among them were English figures such as R. H. Tawney, C. D. H. Cole, and the young Harold Laski.

The pluralists challenged both the absolute sovereignty of the individual and the sovereignty of the corporate state. They argued that between the individual and the state were to be found a great array of social and economic entities. They believed in the strength of these voluntary, private associations—church, family, club, trade union, commercial association—lay much of the strength of democratic society. Such ideas had considerable resonance here. For as deTocqueville observed a century and a half ago:

In no country in the world has the principle of association been more successfully used, or more unsparingly applied to a multitude of different objects, than in America.

One ought not be smug about this, for voluntarism as it developed on this continent traces its roots to the other side of the Atlantic. In Britain especially, private charity had assumed vast proportions by the mid-19th century. As Prof. Calvin Woodard of the University of Virginia notes, in 1871 appropriations for the entire Royal Navy totaled £9 million, while the collections and disbursements of the London charities came to £8 million.

On these shores, the pluralist temper influenced the thoughts of Theodore Roosevelt and the progressive movement. And it can be heard distinctly in this passage from a speech that Woodrow Wilson delivered a few weeks before his election in 1912:

If I did not believe that monopoly could be restrained and destroyed, I would not believe that liberty could be recovered in the United States, and I know that the processes of liberty are the processes of life.

Wilson was indulging in a bit of uncharacteristic hyperbole, for liberty did not need to be "recovered" in the United States. It had never vanished. It is important to recall, however, that the monopoly of which he spoke was private sector monopoly, business monopoly. As I said at Skidmore College in May 1978:

The public life of Wilson's time was much absorbed with fear and detestation of private monopoly, and great chunks of political and social energy were consumed in devising strategies for controlling it. While this was not an easy undertaking at the time, the means were at least conceptually at hand. For the public sector itself—along with public regulation—offered a clear alternative to the private sector and one obviously responsive to public policy. Whereas it is impossible to enact a statute to create a private institution, it is a relatively simple matter to establish public ones and to restrain the activities of private counterparts. In the process, the public sector became powerfully associated with social progress and with liberalism generally perceived.

Then came the cataclysms of our century—wars and economic crises which appeared to require a centralization of public authority and an expansion of public services far beyond anything previously envisioned. In that context, the pluralists' ideas seemed cautious, deliberate, almost effete. Those seeking to meet social needs that individualism could not provide for turned more and more to the public sector, to the state, and away from the realm of private, voluntary associations.

To be certain, the results were salutary for the society. The result is an irreplaceable set of common provisions for the needy, the aged, and the sick. But we are reaching a point at which it begins to be necessary to consider policies which will maintain a sound balance between our private and public spheres. As I further remarked at Skidmore, recalling Wilson's injunction against monopoly:

With its continuing expansion, the public sector commences to displace the private, and to display some of the qualities of an enterprise that desires monopoly control.

Today, we begin to glimpse some questionable side effects of our mounting reliance upon Government. We see it, I believe, in such diverse phenomena as the unsteady condition of the family and the erosion of private education. We also see it in the faltering pace of our economic productivity and the cool impersonality that touches so many Government agencies. And if some in political life still do not see it, or will not see it, it appears that the public sees it, and is beginning to act upon that perception.

Is this a movement of selfishness, miserliness, or public lapse into what has been described as "degraded hedonism"? I think not. More likely, we are witnessing a generalized discontent with the vastness, waste, and unaccountability that now characterize much of the Government. Here, then, is the larger argument for the incentives to private giving that our proposal would provide.

But let it not be thought that our proposal embodies a simplistic reaction against Government or the political process. On the contrary, I believe that our politics and Government would be strengthened by renewed vigor in the voluntary sector. The relative decline of that sector has been accompanied, not by a rise in the prestige and competency of Government, but by the reverse. I am prepared to believe that the two can prosper alongside one another. Indeed, neither can serve us well without the other.

DeTocqueville understood this, as he did so many things:

A government can no more be competent to keep alive and to renew the circulation of opinions and feelings amongst a great people than to manage all the speculations of productive industry. No sooner does a government attempt to go beyond its political sphere and to enter upon this new track, than it exercises, even unintentionally, an insupportable tyranny; for a government can only dictate strict rules, the opinions which it favors are rigidly enforced, and it is never easy to discriminate between its advice and its commands . . . governments therefore should not be the only active powers: associations ought in democratic nations, to stand in lieu of those private individuals whom the equality of conditions has swept away.

We seek in this legislation to reestablish the fundamental principle that underlay the charitable deduction when it was written into the Internal Revenue Code in 1917. This is the principle that money given by an individual to charitable purposes is money that should not be taxed.

The principle is clear enough. What has been less well understood is its gradual erosion as the "zero bracket amount" has been increased and as taxpayers have found it advantageous not to itemize.

The effects have been felt by individuals, whose economic incentive to give to charity has been eroding. And the effects have been felt by charitable organizations whose donated income has been eroding.

Charitable giving, as a percentage of personal income, declined from 1.99 percent in 1970 to 1.90 percent in 1979. As each one-hundredth of 1 percent of personal income is equal to approximately $200 million, this decline means that total charitable giving in 1979 was some $1.8 billion less than it would have been if the levels of giving of just 9 years earlier had been maintained.

Our legislation would restore the charitable deduction's original character, and again make that deduction available to all taxpayers.

This could result in a tax reduction for millions of low- and middle-income families, and in increased charitable giving that would significantly exceed the attendant revenue loss to the Federal Treasury. Prof. Martin Feldstein, one of this Nation's most distinguished economists, estimates that if this deduction had been available in 1975, charitable contributions would have been $3.8 billion greater than they in fact were, at a cost to the Federal Treasury of about $3.2 billion.

The widening congressional support for this proposition is largely the result of the splendid work that local charitable organizations throughout the Nation have done in conveying to their elected representatives a sense of their current condition and of the importance of this legislation to their future condition. I commend them and the exemplary job of information gathering and disseminating done by the national umbrella organization we know as independent sector.

This has not been easy, particularly in view of the opposition to our proposal.

This we expected, knowing that it is difficult for government voluntarily to accept a diminution of its own role and an enhancement of the role of the nongovernmental sector.

Yet the fundamental rationale for our legislation is familiar to every American as a basic principle of federalism: That the National Government should assume only those responsibilities that cannot satisfactorily be carried out by the States, by the localities, and by the myriad private structures and organizations, both formal and informal, that comprise this society. Structures that include the family itself, the neighborhood, the church, and the many private nonprofit agencies to be found in every community in this land.

This issue is familiar to Americans as an aspect of federalism.

Consider the interpretation offered by Jacques Maritain, this century's foremost Thomist, in "Man and the State," published in 1951. Maritain refers to a "Process of Perversion" which occurs:

> When the State mistakes itself for a whole, for the whole, of the political society, and consequently takes upon itself the exercise of the functions and the performance of the tasks which normally pertain to the body politic and its various organs. Then we have what has been labelled the paternalist State: the State not only supervising from the political point of view of the common good (which is normal), but directly organizing, controlling, or managing, to the extent which it judges the interests of public welfare to demand, all forms—economic, commercial, industrial, cultural, or dealing with scientific research as well as with relief and security—of the body politic's life.

The "Paternalist State" has obvious manifestations, as when government commences to engage in activities previously handled by nongovernmental organizations and begins to provide services formerly provided by the private sector.

Many of these activities and services are not only proper but essential to the satisfactory functioning of a just social order. One cannot, for example, readily imagine cash assistance to the poor, the unemployed, the elderly and the disabled being provided as a matter of right other than by the state.

There is a more subtle manifestation of the absorption of the private sector by the public that is all the more worrisome because it is less noted. I refer to the gradual submersion of private organizations that occurs as they become dependent on the state.

Consider the consequences. Independence is eroded. Autonomy is undermined. Sovereignty diminished. The actions of the state become more important. The decisions of the state become more determinative. The ability to pursue objectives that the state does not share—in ways cannot share, perhaps should not share—is curbed.

The purpose of the "above the line deduction" is to redress the balance a little. It may not reverse the powerful historic trends but it will slow them. It will restore a little more independence to the voluntary sector. It will add a bit to the ability of the ordinary working man or woman to determine how, and on what, some of his or her money is spent.

It will in some small measure retard the process that has been described as the slow but steady conquest of the private sector by the public. It will enhance the ability of voluntary organizations to fill some of the void created by the constraints on government activity that contemporary economic conditions dictate, and that contemporary political trends increasingly demand.

It will enhance the abilities of religious charities, of the ASPCA, of the Audubon Society, of universities, museums and thousands of private nonprofit institutions and organizations to enhance the lives of millions of individuals. I believe this is worth doing.

I am submitting two illuminating recent discussions of the issues embodied in our proposal, and ask unanimous consent that these be printed in the RECORD at the end of my remarks. The first of these is a fine analysis of the economic considerations relevant to the Moynihan-Packwood and Gephardt-Conable bills by Hayden W. Smith, senior vice president of the Council for Financial Aid to Education, that was published in the September 1980 issue of Philanthropy Monthly. The second consists of almost the entirety of a splendid new Heritage Foundation study by Dr. Stuart M. Butler entitled "Philanthropy in America: The Need for Action."

I also ask unanimous consent that the full text of our bill be printed in the RECORD at this time.

There being no objection, the bill and articles were ordered to be printed in the RECORD, as follows:

S. 170

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 62 of the Internal Revenue Code of 1954 (defining adjusted gross income) is amended by inserting after paragraph (16) the following new paragraph:

"(17) CHARITABLE CONTRIBUTIONS.—The deduction allowed by section 170.".

(b) Subparagraph (E) of section 170(b)(1) of such Code (defining contribution base) is amended by inserting "and without regard to this section" after "section 172".

(c) Paragraph (1) of section 213(a) of such Code (relating to allowance of deduction for medical, dental, etc. expenses) is amended by inserting after "adjusted gross income" the following: "(determined without regard to paragraph (17) of section 62).".

(d) Section 213(b) of such Code (relating to limitation with respect to medicine and drugs) is amended by inserting "(determined without regard to paragraph (17) of section 62)" after "adjusted gross income".

(e) Subparagraph (A) of section 3402 (m)(2) of such Code (defining estimated itemized deductions) is amended by striking out "paragraph (13)" and inserting in lieu thereof "paragraphs (13) and (17)".

SEC. 2. The amendments made by the first section of this Act shall apply to taxable years beginning after December 31, 1980.

[From the Philanthropy Monthly, Sept. 25, 1980]

ABOVE-THE-LINE TAX TREATMENT FOR CHARITABLE CONTRIBUTIONS

(By Hayden W. Smith, Senior Vice President, Council for Financial Aid to Education)

The tax treatment of charitable contributions has been a matter of social and political concern since 1917 when the contributions deduction was first made a part of the income tax structure. The provisions of the tax law that now provide incentives for philanthropic giving are rooted in one of the deep philosophical convictions that are so uniquely American: that voluntary association and voluntary action should be encouraged in order to enhance the pluralism and diversity so essential to the strength of a free, democratic society. When structural changes in the tax law inadvertently weaken the incentives for giving, the proper case for a corrective change in the tax structure is essentially a derivative of this tenet of social philosophy.

THE STANDARD DEDUCTION

Of particular concern today is the adverse effect on charitable giving of the rapid expansion of the standard deduction since 1969. In this past decade, the standard deduction has been increased six times, with the result that the proportion of taxpayers itemizing their deductions for income tax purposes declined steadily from 47 percent in 1969 to 26 percent in 1977, and is estimated to have been about 30 percent in 1979. This means that for roughly three-fourths of the taxpayer population, there are now no specific tax considerations involved in the determination of the amounts of their charitable contributions.

SHORTFALL

In the absence of the tax incentives that are available to those who itemize, total giving by those who utilize the standard de-

duction has increased more slowly than personal income, and the annual total of charitable contributions from living individuals is believed now to be more than $1 billion less than it would have been had the standard deduction remained at its 1969 level.

Legislation to offset this adverse effect has been introduced and is now pending in the Congress. The Moynihan-Packwood bill (S. 219) and the Fisher-Conable bill (H.R. 1785) propose to alter the tax structure by extending the deduction for charitable contributions to all taxpayers whether or not they itemize their other deductions. This legislation is desirable as an expression of social and political philosophy. It is also desirable because it would be effective in "democratizing" the charitable contribution deduction and in raising the level of philanthropic giving.

The following analysis of the relevant data is offered in support of this assertion:

1. Since 1969, there has been a progressive decline in charitable giving as a percentage of personal income. That is, the growth of giving has not kept pace with the growth of income.

According to the best estimates currently available,* total giving by individuals rose from $14.71 billion in 1969 to $36.54 billion in 1979, an increase of 148 percent. During this same ten-year period, personal income rose from $746 billion to $1,924 billion, a gain of 158 percent. In relation to personal income, therefore, individual giving fell from 1.97 percent in 1969 to 1.90 percent in 1979.

While it may appear that this decline in the percentage of individual giving to personal income was not very significant, it should be noted that at current levels of personal income (over $2 trillion), each 0.01 percent change in this percentage amounts to more than $200 million in charitable contributions. If, for example, the percentage of giving to income in 1979 had been at its 1969 level, total giving would have been about $37.94 billion, some $1.40 billion higher than it actually was.

Most of the decline in charitable contributions as a percentage of personal income is believed to reflect reduced giving by persons in the lower and middle income groups, those for which the utilization rates for the standard deduction are relatively high. Estimates from the Joint Committee on Taxation for 1979, for example, show that for all income groups under $20,000 the proportion of nonitemizers was greater than 50 percent, and for those under $10,000 it was greater than 90 percent; by contrast, the proportion of nonitemizers was well below 50 percent for all income groups above $20,000. Fragmentary data from leading charitable organizations indicate that, while their contributions revenues have increased since 1969, the number of contributors has decreased. More importantly, the decrease in the number of contributors is primarily among those who give less than $25, essentially those in the lowest income groups.

The inference from these facts is that the progressive expansion of the standard deduction has caused a significant decrease in charitable giving in relation to income, especially among those in the lowest income groups. Since for the nonitemizer the net cost after taxes of a charitable gift is equal to the amount of the gift, there is no tax incentive to make a larger number of gifts or to give larger amounts than are induced by non-tax incentives. Taxpayers using the standard deduction, therefore, tend not to be fully participative in the voluntary sector.

2. The standard deduction (now called the "zero bracket amount") has been increased six times since 1969, and those changes have been closely associated with the decline in charitable giving as a percentage of personal income.

The relationship between the changes in the standard deduction and the changes in charitable giving as a percentage of personal income is shown in the following table:

	Billions of dollars		Giving as a percent of P.I.	Standard deduction [3]		
	Individual giving [1]	Personal income [2]		Percent of AGI	Maximum [4] (dollars)	Utilization rate, percent
1969	14.71	745.8	1.97	10	1,000	53
1970	15.92	801.3	1.99	10	1,000	52
1971 [5]	17.02	859.1	1.98	13	1,500	58
1972 [5]	18.19	942.5	1.93	15	2,000	65
1973	20.43	1,052.4	1.94	15	2,000	65
1974	22.33	1,154.7	1.93	15	2,000	64
1975 [5]	24.24	1,255.5	1.93	16	2,600	68
1976 [5]	26.59	1,381.6	1.92	16	2,800	69
1977 [5]	29.32	1,531.6	1.91	ZBA	3,200	74
1978	32.80	1,717.4	1.91	ZBA	3,200	71
1979 [5]	[6] 36.54	[6] 1,924.2	1.90	ZBA	3,400	[6] 69

[1] "Giving USA," AAFRC, 1980, p. 11.
[2] U.S. Department of Commerce.
[3] Percentages and maxima from Congressional Research Service; utilization rates from Internal Revenue Service.
[4] Maximums relate to married couples filing joint returns.
[5] Income years affected by change in standard deduction.
[6] Preliminary.
Note: ZBA=Zero Bracket Amount (flat rate).

As indicated, the decline in charitable giving as a percentage of personal income is closely associated with a rise in the utilization rate (i.e., the percentage of taxpayers utilizing the standard deduction). The closeness of this association is shown graphically on the adjacent chart in which charitable giving as a percentage of personal income is plotted against the percentage of itemizers among taxpayers filing taxable returns (for obvious reasons, the percentage of itemizers among those filing taxable returns is greater than the percentage of itemizers in the total taxpayer population).

It is widely believed that the progressive expansion of the standard deduction since 1969 has been an important factor in the progressive decline of charitable giving as a percentage of personal income. Had charitable contributions remained at the 1969 percentage of personal income throughout this period, the cumulative amount of giving for the decade of the 1970s would have been $5.48 billion more than it actually has been (see Appendix I).

3. Those who itemize their deductions give more to charity than those who utilize the standard deduction. This is true even for individuals within any given income group.

The available evidence indicates clearly that the level of charitable giving is positively associated with income. That is, individuals give more at high levels of income than at low levels of income. This relationship accords with everyday experience and simple logic; as incomes rise, people tend to give more in part because they have more to give. Levels of giving are also affected by factors other than income, one of which is the cost of giving, and the cost of giving, after taxes, is affected by the tax treatment of charitable contributions.

Because income tax rates are highly progressive with income, the after-tax cost per dollar of giving decreases as one goes up the income scale, provided that the taxpayer itemizes contributions and other personal deductions. For those who use the standard deduction, the after-tax cost of charitable gifts is equal to the amounts given, and this is true regardless of income. It is, therefore, hardly surprising that for individuals within any given income group those who itemize give more, on the average, than those who use the standard deduction.

A recent survey by the Gallup organization provides clear evidence of the magnitudes of these differences. Further, the data indicate that the ratio of average contributions for itemizers to the average for nonitemizers increases with income, as follows:

AVERAGE CHARITABLE CONTRIBUTIONS, 1978, BY LEVELS OF HOUSEHOLD INCOME

Household income	Average contributions		Ratio
	Itemizers	Nonitemizers	
Under $5,000	$203	$112	1.8
$5,000 to $9,999	300	165	1.8
$10,000 to $14,999	324	249	1.3
$15,000 to $19,999	652	222	2.9
$20,000 to $49,999	658	281	2.3
$50,000 and over	1,253	227	5.5
Total	652	210	3.1

Source: Survey of the Public's Recollection of 1978 Charitable Donations (Princeton, The Gallup Organization, July 1979).

It is true, as a spokesman for the U.S. Treasury Department contended in testimony to the Senate Finance Committee, that factors other than the after-tax cost of giving may account for some of these differences. Indeed, it is even true that many individuals are itemizers precisely because they make relatively large charitable gifts independently of tax considerations. However, the giving behavior of individual taxpayers and their decision to itemize or not to itemize is sensitive to the after-tax cost of giving at all income levels even though other factors such as home ownership, total assets, and the character of income may influence the results.

Econometric studies by Professor Martin Feldstein of Harvard University and others, based on data from widely differing sources, show beyond any reasonable doubt that levels of giving are sensitive to the after-tax cost of giving. The statistical method used in these studies separates the tax effect (the after-tax cost, or "price", of giving) from the effect of income and other factors that influence charitable giving. There is a remarkable degree of consistency and relative precision in these studies, even though they are based on different years and different types of data. While the numerical results also differ slightly from one study to another, they all show that the tax effect is positive: that is, the level of giving tends to increase as the after-tax cost of giving decreases.

For those who do itemize, the after-tax cost of a given level of contributions is reduced by the amount of their tax saving. Consequently, they can and do, increase their levels of giving without incurring any

*Giving USA, (New York, American Association of Fund-Raising Counsel, 1980).

increase in the after-tax cost as compared to what they would be willing to bear if no deduction could be taken.* For those who do not itemize, the after-tax cost of giving is equal to the amount of their contributions. Consequently, they have no tax incentive to increase their levels of giving beyond the amounts determined by income and other factors.

4. Under the Moynihan-Packwood bill (S. 219) and the Fisher-Conable bill (H.R. 1785), the deduction for charitable contributions would be allowed as a deduction from gross income in arriving at adjusted gross income. This change would give recognition to the fact that a charitable contribution is a transfer of income rather than a personal consumption expenditure. The distinction between these two concepts is important.

Personal consumption expenditures reflect payments in exchange for goods and services received. The present tax law allows deductions for certain expenditures of this type, including medical expenses, certain state and local taxes paid, interest payments on personal debts, and the costs of making good various casualty losses. In all these cases, the expenditure involves a reverse flow of goods or services which are of direct benefit to the individual.

An income transfer, by contrast, reflects a payment not for goods and services received. Such a payment is a unilateral outlay for which there is no reverse flow of direct benefit to the individual. It involves a reduction in the level of income available for the individual's enjoyment, not an expenditure for which he or she receives something in return.

Under present tax law, charitable contributions are treated as though they constitute items of personal consumption, while they are in essence transfers of income from the individual to charitable organizations. The proposed changes in the tax law would correct this situation by treating charitable gifts as reductions in taxpayers' incomes. The effect of these changes would be to tax only the income remaining to taxpayers after they have made such transfers to charity as they may elect.

5. The proposed change in the tax treatment of charitable contributions would result in a reduction of tax revenue for the Treasury, but many believe that it would also result in an increase of charitable giving that is larger than the loss of tax revenue.

It is clear that the adoption of above-the-line treatment of charitable contributions would result in a decrease in tax revenue from individual taxpayers, primarily those now using the standard deduction. The change would result in a decrease in their adjusted gross incomes and a decrease in their taxable incomes, and, therefore, a decrease in taxes paid. Whatever the amount of decrease in tax payments, the after-tax incomes of nonitemizers would increase by an equivalent amount unless the change in the law also induced an increase in charitable giving.

It is widely believed that the extension of the charitable contributions deduction to nonitemizers will induce a positive change in charitable giving. As a theoretical matter, giving will rise both as a result of the rise in after-tax income and as a result of the fall in the after-tax cost of additional giving. As a practical matter, there is some uncertainty about the dollar magnitudes of these changes, but the available estimates do not differ significantly.

According to Treasury, the revenue loss, or cost, of this legislation would be $3.0 billion annually without considering any of the incentive effects. This estimate includes $2.5 billion in "deadweight" revenue loss from the deductions to be claimed by nonitemizers for their current levels of giving, and $0.5 billion in revenue loss due to itemizers who would reduce their tax liability by switching to the standard deduction without making any additional gifts to charity.

According to the staff of the Joint Committee on Taxation, the revenue loss would be $2.4 billion in 1981, rising to $3.5 billion in 1985.

According to Professor Feldstein, tax revenues in 1975 would have been from $3.1 to $3.3 billion lower than they actually were had the proposed change been in effect in that year. These estimates reflect alternative assumptions about the "price elasticity" (i.e. the sensitivity of giving to the price) of charitable giving, and include allowances for taxpayers who would have switched to the standard deduction.

More important than the loss of tax revenue is the impact of the change on levels of charitable giving. There is some dispute as to the amount by which charitable contributions will increase and how fast the increased giving will proceed.

According to Professor Feldstein, total contributions in 1975 would have been from $2.9 to $4.6 billion higher than actual if the proposed legislation had been in effect in that year. His best estimate is a $3.8 billion increase in giving as against a $3.2 billion revenue loss. The ranges around these numbers merely reflect alternative assumptions about the sensitivity of giving to the after-tax cost.

According to the Treasury Department, there is a great deal of uncertainty about the sensitivity of giving in relation to cost as to the low and middle income taxpayers who constitute the bulk of nonitemizers. Treasury concedes that individuals with high marginal tax rates are highly sensitive to the cost of giving, but argues that those with low and moderate incomes are so insensitive to the cost of giving that any increased giving that the proposed legislation induces them to make would be less than the amount of their tax savings.

Treasury also argues that any increase in giving as a result of above-the-line treatment of contributions would not occur immediately but would be spread out over time, possibly not reaching its full value for six or more years. This lagged effect implies that the revenue loss would be immediate and would greatly exceed the gain in charitable contributions throughout the period of adjustment.

Both the Treasury arguments and the Feldstein statistical studies fail to take full account of the efficiency of charitable fund raising. Whatever the statistical studies may show as to price sensitivity and giving lags in the past, the enactment of above-the-line treatment for contributions will undoubtedly trigger an immediate awareness of the tax savings to be associated with increased giving across a very broad spectrum of the population. Taxpayers themselves, their tax accountants, lawyers and other professional tax advisors, and, above all, the recipients of charitable gifts, will all recognize and act upon the change in the tax law with a minimum of delay. Information to the effect that potential gifts would be tax deductible is already included in charitable solicitations despite the fact that a majority of taxpayers now utilize the standard deduction. Once the deduction is available to all taxpayers, the use of the tax calculus in solicitation is certain to be increased in both depth and breadth by the donee organizations and their professional fund raisers. Just how effective will be this new emphasis on the tax savings associated with philanthropic giving is a matter for speculation, but it is certain to be substantial and immediate.

6. A detailed examination of the income characteristics of nonitemizing taxpayers provides support for the view that S. 219 would have its most important impact on taxpayers whose giving behavior is sensitive to the tax incentives, and that the additional giving induced by the change in the law would exceed the loss of revenue to the Treasury.

Treasury has contended that nonitemizers are primarily low and middle income taxpayers whose giving may well not be sensitive to tax incentives. It is argued that the empirical studies on this subject have yielded results that are at best inconclusive, and that it is possible, even probable, that S. 219 would result in a large "windfall" reduction in this group's taxes with relatively small effect in terms of induced giving.

This argument fails adequately to recognize the characteristics of those who do not itemize. New data on this subject were obtained from the staff of the Joint Committee on Taxation and are summarized in the following table:

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*A numerical example may be useful here. Assume a taxpayer filing a joint return with four exemptions and $20,000 of adjusted gross income. If he does not itemize, his tax will be $2,271 and his after-tax income will be $17,729. He is willing to give $400 to charity and thus to reduce his "disposable" income to $17,329, even though he cannot take a deduction for his gifts. That is, he is willing to bear an after-tax cost of $400 for his $400 in contributions. Now assume that he can take a deduction for his gifts in addition to the "zero bracket amount." His tax will be $2,186 and his after-tax, "disposable" income will be $17,414 ($20,000 less $2,186 in tax and $400 in gifts). Since he is willing to reduce his after-tax, disposable income to $17,329, he can increase his charitable giving by an amount that will cause his income to decrease an additional $85. The arithmetic in this case works out to an additional $116 in charitable contributions. That is, the taxpayer now makes $516 in charitable contributions, pays $2,155 in taxes and has $17,329 of "disposable" income left after taxes. The deductibility of his gifts has enabled the taxpayer to increase the amount of his gifts by 29 percent without any decrease in his income after taxes and gifts. In this example, the increase in contributions is exactly equal to the decrease in taxes. This need not be the case. Since this taxpayer is in the 21 percent tax bracket and the after-tax cost of an additional $1.00 in giving is only 79 cents, he might well increase his giving by more than $116 despite the fact that it would decrease his "disposable" income. If he does, then the increase in his giving would be greater than the decrease in his taxes. (See Appendix II).

NONITEMIZERS BY INCOME CLASS AND TAXABILITY, 1979

[Estimates, in thousands]

Expanded income [1]	Total returns		Taxable returns		Nontaxable returns	
	Amount	Percent	Amount	Percent	Amount	Percent
Below $5,000	21,444		4,501		16,943	
$5,000 to $10,000	16,937		13,119		3,818	
$10,000 to $15,000	11,092		10,974		118	
$15,000 to $20,000	6,747		6,737		10	
$20,000 to $30,000	6,210		6,196		14	
$30,000 to $50,000	1,496		1,496			
$50,000 to $100,000	178		178			
$100,000 to $200,000	20		20			
$200,000 and over	3		3			
Total	64,127	100.0	43,224	67.4	20,903	32.6
Below $15,000	49,473	100.0	28,594	57.8	20,879	42.2
$15,000 and over	14,654	100.0	14,630	99.8	24	.2

[1] AGI plus tax preferences (largely excluded capital gains) less investment interest expense to the extent of investment income.

There are several observations to be made about these data:

a. Some 49.5 million nonitemizers, or 77.1 percent of all nonitemizers, have incomes below $15,000. This is the group that Treasury had in mind as low income taxpayers whose giving behavior is not sensitive to tax incentives.

b. However, nearly 21 million of these low income taxpayers, or 42.2 percent of all low income nonitemizers, filed nontaxable returns. Presumably, they had to file tax returns either to obtain refunds of taxes withheld from wages and salaries, or to claim the earned income credit, or both. Those nonitemizers filing nontaxable returns were virtually all in the under-$10,000 income classes.

c. The Moynihan-Packwood bill would have virtually no effect on the giving behavior of those who file nontaxable returns. Above-the-line treatment of charitable contributions would not result in any tax saving, and would not reduce the after-tax cost of giving, for any of those whose incomes are otherwise nontaxable. Likewise the Moynihan-Packwood bill would have virtually no effect on the tax revenue from those who file nontaxable returns. It would not have any effect on the earned income credit which can be claimed by those with incomes less than $6,000, and this group constitutes more than 80 percent of those who file nontaxable returns. In a few instances, those with incomes between $6,000 and $10,000 may be able to claim a slightly larger earned income credit, but the amounts are small and the total cost to the Treasury is not likely to be larger than $75 million.

d. Roughly 28.6 million nonitemizers with incomes under $15,000 filed taxable returns. This group constitutes 44.6 percent of all nonitemizers and 57.8 percent of nonitemizers with incomes under $15,000. These taxpayers face marginal tax rates from 14 percent to 32 percent, depending on filing status, number of exemptions and exact AGI. According to the Gallup survey, average giving by nonitemizers at these income levels ranged from $112 to $249, which implies that average tax savings from above-the-line treatment of gifts varies from $15 to $80. In the absence of any induced giving, the "windfall tax cuts" for this group would amount to about $1.1 billion. There would be some increase in giving by these taxpayers as a result of S. 219, but it is uncertain as to whether it would be as large as or larger than these cuts in their taxes.

e. The nonitemizers with incomes of $15,000 and over constitute an important group in terms of the impact of S. 219. There are 14,654,000 such taxpayers. While this group constitutes only 22.9 percent of all nonitemizers, it makes up 38.5 percent of all taxpayers (itemizers plus nonitemizers) reporting incomes of $15,000 and over. Virtually all of these nonitemizers filed taxable returns in 1979. While they constitute 33.8 percent of all nonitemizers filing taxable returns, they make up 38.6 percent of all taxable returns for $15,000 or more of income. Clearly this group of nonitemizers is numerically significant.

f. Nonitemizers with incomes of $15,000 and over who file taxable returns are of special interest. All but 1.4 percent of them have incomes between $15,000 and $50,000. For this group, the marginal tax rates range from 18 percent to 55 percent, depending on filing status and number of exemptions. Such rates are significant in terms of the after-tax cost of charitable contributions, as is also true for the 201,000 nonitemizers with incomes of $50,000 and over.

g. According to the Gallup survey, average giving by nonitemizers with incomes between $15,000 and $50,000 ranged from $222 to $281, which implies that average tax savings from above-the-line treatment of gifts would vary from $40 to $155. In the absence of any induced giving, the "windfall tax cuts" for this group would amount to about $1.2 billion.

h. The tax incentives for increased giving are peculiarly applicable to those whose incomes are above the $15,000 average, and this implies that S. 219 would induce a significant increase in charitable giving by nonitemizers with $15,000 or more of income. The theoretical elasticity of giving with respect to "price" (one minus the tax rate) equals −1.22 at the 18 percent tax bracket and reaches −2.22 at the 55 percent tax bracket.* Charitable giving for nonitemizers with $15,000 or more of income is estimated to have been more than $4.6 billion in 1979; assuming an average elasticity of −1.5 for this group, the induced increase in charitable giving would amount to $2.3 billion or more as a result of S. 219.

i. This $2.3 billion of induced giving for those with incomes over $15,000, plus perhaps $0.6 billion for those with incomes under $15,000, yields a rough estimate of $2.9 billion of additional contributions as a result of S. 219. This compares with an estimated "tax cut" of $2.3 billion.

These figures, like those published by Treasury, Professor Feldstein, and others, are essentially "ballpark" variety. They differ from the other estimates in that they are based on a theoretical elasticity of giving with respect to price that is income-specific and limited in application to taxpayers filing taxable returns. Clearly, any evaluation of the effects of above-the-line treatment of charitable giving should exclude taxpayers filing nontaxable returns.

*See Appendix II.

APPENDIX I

REDUCTION IN CHARITABLE GIVING DUE TO DECREASES IN GIVING AS A PERCENTAGE OF INCOME, 1969–79

	Total individual giving (1)	Personal income (2)	Giving as a percentage of income (3)	Giving at 1969 percentage of income (4)	Giving at 1969 percentage of income less actual giving (5)
1969	$14.71	$745.8	1.972	14.71	0
1970	15.92	801.3	1.987	15.80	0.12
1971	17.02	859.1	1.981	16.94	−.08
1972	18.19	942.5	1.930	18.59	+.40
1973	20.43	1,052.4	1.941	20.75	+.32
1974	22.33	1,154.7	1.934	22.77	+.44
1975	24.24	1,255.5	1.931	24.76	+.52
1976	26.59	1,381.6	1.924	27.24	+.65
1977	29.32	1,531.6	1.914	30.20	+.88
1978	32.80	1,717.4	1.910	33.87	+1.07
1979	36.54	1,924.2	1.899	37.94	+1.40
Total					+5.48

Note:
(1) Giving USA, AAFRC.
(2) U.S. Department of Commerce.
(3) Col. 1 as a percentage of col. 2.
(4) Col. 2 times 1969 percentage.
(5) Col. 4 minus col. 1.

This analysis has been limited to considerations of an economic character as to the impact of the proposed change in the tax law embodied in the Moynihan-Packwood and Fisher-Conable bills. It is quite clear that this legislation, if enacted, would cause a decrease in tax revenue to the Treasury and an increase in charitable giving. While the numbers derived above, like those derived by Professor Feldstein, indicate that the gain to charity would exceed the loss to Treasury, such an outcome, even if known with certainty, is not a necessary or sufficient condition for the adoption of the proposed legislation.

What is a necessary and sufficient condition is a question of political and social philosophy. Passage of the charitable contribu-

tions legislation would reaffirm the country's commitment to voluntary association and voluntary action as opposed to reliance on government for the solution of contemporary problems. If this is a matter of sufficient importance, then the numbers are really of minor significance.

APPENDIX II

(For those interested in mathematics)

The elasticity of giving with respect to "price" is a theoretical concept. It is defined as the percentage increase in the amount given to charity per percentage point decrease in the price of giving. Since the price of giving is a function of the tax rate and the tax rate is a function of income, the theoretical elasticity of giving with respect to price is income-specific; that is, the elasticity will vary with income.

For an individual taxpayer, let r=the (marginal) tax rate, G=the amount of charitable giving, and C=the after-tax cost of charitable giving; then

$$C=G(1-r)$$

and

$$G=\frac{C}{1-r}$$

If the tax rate changes, then 1−r (the price of giving) also changes and the amount of charitable giving will change for a given C, as follows:

the change in giving,

$$\Delta G=G_2-G_1=\frac{C}{1-r_2}-\frac{C}{1-r_1}$$

and the percentage change in giving is

$$\frac{\frac{\Delta G}{G_1}}{}=\frac{\frac{C}{1-r_2}-\frac{C}{1-r_1}}{\frac{C}{1-r_1}}=\frac{1-r_1}{1-r_2}-1=\frac{r_2-r_1}{1-r_2}$$

For all nonitemizers, P.=1 because r.=0 with respect to their charitable giving. The adoption of above-the-line treatment for contributions is in effect a change in the tax rate, and the price of charitable giving is now income specific. For the lowest tax bracket,

$$r_2=.14, \text{ and } E=-1/.86=-1.16,$$

for the highest tax bracket,

$$r_2=.70, \text{ and } E=-1/.30=-3.33$$

In the case of the taxpayer in the 21 percent bracket. E=−1.27, and since G_1 was $400, $G_2=1.27\times\$400=\$506.33$. This differs from the result shown in the footnote on page 582 only because of the discrete steps in the Treasury's tax tables.

Now the elasticity of giving with respect to price is equal to the percentage change in giving divided by the percentage change in price:

$$E=\frac{\frac{\Delta G}{G_1}}{\frac{(1-r_2)-(1-r_1)}{1-r_1}}=\frac{\frac{r_2-r_1}{1-r_2}}{\frac{r_1-r_2}{1-r_1}}=\frac{1-r_1}{1-r_2}=\frac{P_1}{P_2}$$

that is, the elasticity of giving with respect to price is simply the ratio of the price before a change in tax rate to the price after a change in tax rate, and is opposite in sign.

PHILANTHROPY IN AMERICA: THE NEED FOR ACTION

(By Stuart M. Butler)

INTRODUCTION

"Americans of all ages, all stations of life, and all types of dispositions are forever forming associations. . . . Americans combine to give fetes, found seminaries, build churches, distribute books, and send missionaries to the antipodes. Hospitals, prisons and schools take shape in that way. Finally, if they want to proclaim a truth or propagate some feeling by the encouragement of a great example, they form an association. In every case, at the head of any new undertaking, where in France you find the government or in England some territorial magnate, in the United States you are sure to find an association." Alexis de Tocqueville, Democracy in America (1835)

As de Tocqueville observed during his travels through America, the private support of social activities and services is a deeply rooted element of the American way of life. In the colonial and early national period, it was quite common for leading citizens to promote the private funding of civil projects. Benjamin Franklin, for example, was instrumental in the creation of numerous philanthropic associations. He assisted in the foundation of a volunteer fire company, developed plans for lighting and paving the streets of Philadelphia, and was responsible for raising funds to found both the Pennsylvania Hospital and the academy which ultimately became the University of Pennsylvania. Although Franklin might have displayed more enthusiasm than most, he was typical of the age in his sense of duty. As one social historian has noted, during the Revolutionary era:

"Groups were formed for every imaginable purpose—to assist widows and orphans, immigrants and Negroes, debtors and prisoners, aged females and young prostitutes; to supply the poor with food, fuel, medicine, and employment; to promote morality, temperance, thrift, and industrious habits; to educate poor children in free schools; to reform gamblers, drunkards, and juvenile delinquents." [1]

The use of non-profit voluntary associations to promote public ends has remained a basic feature of American society. It was almost uniquely an American development of the eighteenth-century concepts of self-advancement and improvement; a realization that it is in the interests of a society founded on individual initiative for it to seek voluntary, private means of acquiring the social services needed by the communities within it. This understanding that social responsibility is not merely a moral duty, but that it is also the long-term interest of each individual to encourage the betterment of his community, lies at the heart of the American tradition of philanthropy, and has helped preserve the decentralized, pluralist society that is the United States.

This belief in private philanthropy is as strong today as it was in the early days of the Republic. A Gallup poll conducted in 1972 showed that over 70 percent of the population believe that private giving to health agencies, education, and welfare organizations is at least as important today as in the past, and a majority felt that it was even more important.[2] A poll commissioned by the Heritage Foundation in February-March 1980 gave similar results. Approximately 70 percent of the population oppose the trend towards the use of taxpayer's money to finance activities previously funded by the voluntary sector. The same proportion feels that private organizations have a better track record than government in providing charitable services (see appendix).

Private philanthropy is widely seen as a vital alternative to government provision of services based on compulsory "donations" (i.e., taxation). The private charity is noncoercive, and so reflects accurately the cumulative choices of individuals regarding social needs in a manner that congressional bargaining cannot hope to do. In a democracy, the tendency will always be for public support to be given only to those groups with whom the majority sympathizes, and to those institutions which further the existing attitudes of society. The voluntary sector, on the other hand, allows support to be channeled to social groups and institutions which do not necessarily enjoy the favor of the majority. This encouragement is essential for the preservation of a free and pluralist society, where alternative attitudes and approaches are tolerated and can be assessed for their value. A strong voluntary sector acts as a bridge between those with creative ideas and dedication, and those with the means and desire to assist them.

The notion of pluralism is deeply rooted in the American tradition, and it has been responsible in great measure for the remarkable evolution of American society. A pluralist society is by its very nature more efficient than uniform systems in overcoming the problems of a community and responding to its changing needs and desires. When the state maintains monopoly in the support of social experiments and services, the society will be less free and will advance more slowely. As John Stuart Mill observed in his essay *On Liberty* (1859):

"Government operations tend to be everywhere alike. With individuals and voluntary associations, on the contrary, there are varied experiments, and endless diversity of experience. What the state can usefully do is to make itself a central depository, and active circulator and diffuser of the experience resulting from many trials. Its business is to enable each experimentalist to benefit by the experiments of others; instead of tolerating no experiment but its own."

The appreciation in America of the relationship between pluralism, freedom and progress lies behind the principle of tax exemption for charitable organizations and that of tax deductibility for gifts made to such institutions. As the House Ways and Means Committee stated in its report on the 1938 Revenue Act:

"The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and by the benefits resulting from the promotion of the general welfare." [3]

The basis of tax exemption, in other words, is that charitable organizations fulfill functions which would otherwise fall on the shoulders of government. They are an alternative to government provision, and thus it would be inefficient and damaging to tax them. Similarly, making donations to charities or charitable foundations can be seen as an alternative to having to fund government services through taxation. It is therefore reasonable to exempt such donations from taxation because they reduce the need for taxation. An additional argument comes from the point made earlier that the voluntary sector provides support for valuable organizations and groups in society which would be passed over by a purely democratic allocation of funds: the charitable deduction provides a means whereby such organizations can be fostered.

Tax exemption for philanthropic activities can also be justified from an efficiency standpoint. As several studies to be mentioned later have shown, the charitable tax deduction generates more support for charitable ventures than it costs the Treasury in taxes lost. It is more cost effective to allow a deduction on money donated to, say, a school than to tax the donation and spend it on the same school. The inhibiting effect of the tax on the donor, and the administrative cost involved, would lead to a reduction in total support.

Furthermore, a strong voluntary sector brings with it the efficiency of the market system. Charities depend for their support on showing that they provide the services which the donor wishes to support in a more effective way than competing alternative institutions (including government). If the

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organization does not do this, and does not innovate, it will gradually lose support to other bodies. This filtering out process is at the root of the private enterprise system, and provides the spur to efficiency and responsiveness in the voluntary sector. By encouraging the sector through a tax exemption, the government is promoting the efficient provision of research and services.

Although the value of private philanthropy is well understood in America, the voluntary sector is currently under threat as never before. As a result of the 1969 Tax Reform Act—legislation aimed ostensibly at improving the charitable process—the principle of tax exemption has been undermined, leading to fundamental changes in the level and pattern of giving. This erosion of the principle is a serious precedent and poses great dangers for philanthropy. As Chief Justice John Marshall explained in the early days of the Republic, the power to tax is the power to destroy. The 1969 legislation has shown the truth of Marshall's observation. Changes in the tax code, which will be examined later in this study, have seriously inhibited charitable giving and jeopardized the continued existence of many foundations. Indeed, it was one of the expressed intentions of the 1969 act to encourage a high turnover rate among private foundations by forcing them to increase the dispersal rate of their assets.

Philanthropy is also threatened by other legislation passed in recent years. Expanding state and federal regulation of charitable organizations is slowly strangling the sector in red tape. This has resulted in an increase in accounting and legal costs for organizations and has inhibited the creation of new bodies to replace those winding up their activities as a consequence of the 1969 act.

These changes in the tax code and the growth of regulation have produced a crisis in private philanthropy. Because of inflation, the underlying trends are not always obvious when one examines the current figures for the sector. But, as this study will demonstrate, the trend in giving in real terms underwent a dramatic change after 1969. Private foundations—the clearing houses of philanthropy—have been especially damaged: real giving to and by them has fallen significantly and constantly. There is no reason to believe that there will be any turnaround in this pattern until major reforms in the tax law are enacted. If these changes are not made, and made soon, we will see the decline of private, voluntary philanthropy and its replacement by government services financed by taxation.

This study will first examine the scale and importance of private philanthropy in America, showing how funds are distributed among various types of charity and how the pattern has changed over the years. The law regarding charitable giving will then be considered in detail. It will be shown that legislation since 1969 has seriously inhibited private philanthropy in a number of ways. Finally, the broad implications of the present law will be reviewed, together with the reforms needed to restore philanthropy to its proper place in society.

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1—PRIVATE PHILANTHROPY IN AMERICA—AN OVERVIEW

Scale and distribution

Contributions to charity appear to have grown dramatically since World War II; and measured in current dollars, total giving more than doubled between 1970 and 1978, to a level of nearly $40 billion. Tables 1 and 2 indicate this growth and the pattern of allocation. As is the case with time series presented without an adjustment for inflation, however, the data in these tables disguise the real trend in giving. If one takes inflation into account, quite a different picture emerges, and one which gives cause for concern. Before the mid-1960s, inflation was not a significant factor in comparing financial statistics over time. But between 1960 and 1970 the price level rose by 31 percent, and between 1960 and 1978 prices more than doubled.

Tables 3 and 4 show the level and pattern of giving when adjustments are made for inflation since 1960. Between 1960 and 1970 total real giving increased by 64 percent. In the 8 years between 1970 and 1978, however, real giving increased by only 20 percent, despite the 106 percent rise when measured in current dollars.

Contributions from foundations and charitable bequests have actually fallen during the 1970s, in real terms, and this change has been reflected in the receipts of certain forms of charity. The income of religious organizations, for example (which comes predominantly from small individual donors), has kept pace with economic growth, but giving to education and health, where foundations and bequests are important, has stagnated in real terms, despite a 20 percent rise in population from 1970 to 1977.

Evidence to the Commission on Private Philanthropy and Public Needs (known as the Filer Commission)[4] published in 1977, suggests that the impact of inflation and tax law changes on philanthropy may have been even more adverse than the above statistics indicate. The cost of services tends to rise faster than the general rate of inflation, and so charitable associations providing welfare and other services tend to suffer higher rates of cost increases than the average, since they are labor intensive.[5] Thus, in a period of inflation, these organizations need a correspondingly greater increase in income than that necessary to cover average price rises, merely to maintain a constant level of services. One research paper presented to the Commission attempted to incorporate this factor into the calculations, and concluded that even the apparently buoyant religious sector has experienced a downturn in its share of GNP in the 1970s.[6]

Categories of donors

Individuals

By far the largest segment of donated funds is contributed by individual citizens. This may take various forms. It may be a gift of cash, which can be deducted from taxable income (if the contributor itemizes deductions). It may, on the other hand, be a gift in the form of stock or other property which may be deducted on the basis of saleable value. It could also be a bequest, which would result in a reduction of estate tax.

Foundations

Contributions may also be channeled through an independent private foundation, often set up by a single family or small group. There are approximately 24,000 such foundations in the United States: For the most part they are small, although some, such as the Ford and Rockefeller Foundations, have assets of hundreds of millions of dollars.

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TABLE 1.—ESTIMATED CONTRIBUTIONS TO PHILANTHROPY IN THE UNITED STATES, 1930–78 (SELECTED YEARS)

[In billions of dollars]

Source	1930	1940	1950	1960	1965	1970	1972	1974	1976	1978
Individuals	0.9	1.1	3.7	7.2	9.3	14.4	16.9	19.8	23.5	32.8
Foundations	.03	.06	.1	.7	1.1	1.9	2.2	2.1	2.1	2.2
Business corporations	.01	.04	.3	.5	.8	.8	.8	1.3	1.4	2.0
Charitable bequests	.2	.1	.2	.6	1.0	2.1	2.7	2.1	2.4	2.6
Total	1.14	1.3	4.3	8.9	12.2	19.2	22.7	25.3	29.4	39.6

Note: Due to rounding, individual entries do not necessarily add up to the totals.

Source: American Association of Fund-Raising Counsel, Inc., "Giving USA" (New York). Department of the Treasury, "Research Papers Sponsored by the Commission on Private Philanthropy and Public Needs" (Washington, D.C., 1977), vol. III, p. 1612.

TABLE 2.—ALLOCATION OF PHILANTHROPIC FUNDS, 1960–78 (SELECTED YEARS)

[In billions of dollars]

Recipient	1960	1965	1970	1972	1974	1976	1978
Religion	4.5	6.0	8.3	9.8	10.9	12.8	18.4
Education	1.4	2.1	3.1	3.6	3.7	4.1	5.5
Welfare[1]	1.3	.9	1.4	1.6	2.3	2.7	4.0
Health[1]	1.1	2.1	3.1	3.7	3.9	4.4	5.5
Civic/cultural		.5	1.2	1.5	2.0	3.1	3.6
Foundations, international, etc.	.5	.7	2.2	2.5	2.4	2.4	2.6
Total	8.9	12.2	19.2	22.7	25.3	29.4	39.6

[1] For 1960, contributions for health to welfare agencies are included with welfare, thereafter with health.

Note: Due to rounding, individual entries do not necessarily add up to the totals.

Source: "Giving USA."

TABLE 3.—CONTRIBUTIONS TO PHILANTHROPY, 1960–78 (SELECTED YEARS), IN CONSTANT 1960 DOLLARS

[In billions of dollars]

Source	1960	1970	1974	1978
Individuals	7.2	11.0	11.9	15.1
Foundations	.7	1.5	1.3	1.0
Business corporations	.5	.6	.8	.9
Charitable bequests	.6	1.6	1.3	1.2
Total	8.9	14.6	15.2	18.2

Note: Due to rounding, individual entries do not necessarily add up to the totals.

Source: Table 1, adjusted using price index published by U.S. Bureau of Labor Statistics, as used in the "Statistical Abstract of the United States."

TABLE 4.—ALLOCATION OF PHILANTHROPIC FUNDS, 1960–78 (SELECTED YEARS), IN CONSTANT 1960 DOLLARS

[In billions of dollars]

Recipient	1960	1970	1974	1978
Religion	4.5	6.3	6.5	8.5
Education	1.4	2.4	2.2	2.5
Welfare	1.3	1.2	1.4	1.8
Health	1.1	2.4	2.3	2.5
Civic/cultural		.9	1.2	1.7
Foundations, international, etc.	.5	1.7	1.4	1.2
Total	8.9	14.6	15.2	18.2

Note: Due to rounding, individual entries do not necessarily add up to the totals.

Source: Table 2, adjusted using price index published by U.S. Bureau of Labor Statistics.

Corporations and corporate foundations

Corporations are an important source of funds for philanthropy. American business, on average, contributes approximately 1 percent of its net income to charitable institutions.[7] As a survey commissioned by the Filer Commission showed, the most commonly expressed reason for corporate giving to such sectors as welfare and the arts is the belief that good citizenship requires business to provide funds. While this motive also influenced gifts to higher education, a more important factor in that case was the desire to improve the supply of trained manpower to industry.[8]

As one might expect, the level of corporate giving tends to reflect the prevailing economic situation, and during depressed periods, business contributions have generally fallen as a percentage of income as well as in total real amount. This tendency means, of course, that for some charitable sectors, such as welfare, direct contributions from business fall at precisely the time there is an increase in the demand for services. For this, among other, reasons, many companies maintain their own private foundation—about 1,500 of these exist. The use of such a foundation means that the company can make contributions to the foundation when it is economically most attractive. The foundation, on the other hand, can make payments to individuals and other charities on the basis of need: it is thus possible for a corporation to ensure a steady or flexible contributions policy without regard to temporary fluctuations in corporate income.[9] By establishing its own foundation a company can centralize its decision-making regarding the allocation of charitable gifts, and keep these decisions outside the day-to-day management considerations of the company. On the other hand, the close links between the company and its foundation enables grant-making decisions to be made with an intimate knowledge of the profit strategy and likely future performance of the donor, and hence a more accurate picture of future gifts is available than would be so in the case of a totally independent foundation. A study carried out in 1972 estimated that approximately half of all companies contributing to charity did so through their own foundation, and that about 60 percent of total corporate giving was made in that way.[10]

2—CHARITABLE GIVING AND THE LAW

The growth of government controls

Until the 1950s, charitable organizations were exempt from virtually all taxes and controls. Yet criticisms were being voiced against certain aspects of the sector's activities well before that time. The business holdings of foundations, in particular, attracted many complaints. The Senate Industrial Relations Committee, for example, began to investigate allegedly high stockholding by foundations as early as 1913. In the following years, increasing attention was paid to the tax-exempt status of so-called feeder corporations (i.e. bodies engaged in business activities for the sole benefit of an affiliated charitable organization). Before changes in the law in 1950, the courts took the view that if business activities were to be tax-exempt when carried out directly by a charity, it would be absurd to tax those same activities if the organization chose to segregate them in the form of a business enterprise. The key test, according to the Supreme Court, was the "destination of income." If the profits of an affiliated business went solely to a charitable organization, then the business should be exempt from tax.

In 1950, however, Congress took a much closer interest in the "unrelated business income" of charitable organizations. This development was occasioned by a number of widely publicized acquisitions of major businesses by tax-exempt organizations, after which the businesses claimed exemption for their previously taxable profits. The principal objection to this type of activity was that it gave the untaxed business an unfair edge in the market, allowing it to undercut its taxable competitors and even possibly become a monopolist. As a result of this line of argument, Congress was persuaded in 1950 to enact legislation imposing a tax on unrelated business income.

From a theoretical point of view, there was at least some truth in the allegations behind the 1950 measure. A business which enjoys tax exemption faces a lower cost structure, all other things being equal, than its competitors. Its payroll is reduced because its employees are exempt from FICA, and its profits are exempt from income tax. It could use this advantage to lower prices and increase its market share. In practice, however, it is very likely that such fears were greatly exaggerated. It is probable that a business operated by a church or school would be more cautious and conservative in its approach than most other enterprises, and so would not become a serious threat to the operation of an efficient market. Little evidence, in fact, was put forward to support the claim that charity-owned businesses would result in serious distortions of the market. As studies by two leading Yale law professors have shown:

"These predictions of unfair competition were rarely subjected to close analysis, and we know of no empirical examination of the results of such acquisitions." [11]

The 1950 legislation did not silence criticism of the charitable sector; instead the emphasis shifted to other activities. It was argued, for example, that some major donors to foundations engaged in various forms of self-dealing, using their connections with the foundations for personal gain. It was not claimed, except in very rare cases, that this was illegal, but it was suggested that many of the practices were unethical. Activities cited included the receipt of substantial compensation for services performed by the donor, the use of foundation facilities free of charge and access to foundation funds on favorable borrowing terms. This question was taken up by the Peterson Commission, a private research group set up at the suggestion of several major foundations to examine the state of the voluntary sector. The Commission reported to the Senate Finance Committee in 1969 that self-dealing activities of an objectionable kind were very rare. In a confidential survey of accountants dealing with foundations, for example, the Commission found that only 9 percent of the accountants felt that such practices were either fairly common or very common.[12]

The Peterson Commission recommended to the Senate a strict prohibition on self-dealing, on the grounds that it was wrong for a donor to be able to enjoy a personal gain by virtue of his association with a charity. The Commission also pressed for increased financial disclosure by foundations, both to enable the IRS to monitor the financial practices of foundations, and to discourage questionable practices by exposing them to public scrutiny. The criticism of self-dealing was well taken by most charitable organizations, and there was wide support for the restrictions on such activities which were incorporated into the 1969 Tax Reform Act.

As the Peterson Commission pointed out, self-dealing was in all probability only a minor flaw in the operation of the voluntary sector, despite the criticism it generated, but there was broad acceptance that something needed to be done. Other practices also attracted the close scrutiny of Congress in the 1950s and 1960s, however, but in these cases the argument was far less clear-cut and accepted. There was great concern, for example, over the ability of a donor to make a gift of stock or other appreciated property, and then to take a tax deduction based on the current market value rather than his original cost. It was said that this was unjust and that there were many possibilities for fraud. Property could be overvalued, for example, since it was not actually sold when made over to a charity. Furthermore, in the case of a gift of inventory by a manufacturer, it was possible for the company to actually make a profit from donating, even if the current valuation was accurate. If the input cost of the product was a smaller percentage of its final valuation than the company's marginal rate of taxation, the saving in the tax bill would exceed the production cost of the gift, since the tax write-off would be based on final market value. Notwithstanding this rather special case, there was some feeling that it was wrong in general for a donor to be given a tax deduction greater than a gift "cost" him.

The last criticism is easily disposed of. If a donor gives a charity stock or other property which has appreciated in value, he is denying himself the use of the full market value of the gift, not its original cost, and so a deduction based on the original cost would be unjust and would inhibit giving. The possibility of overvaluation was a legitimate concern in cases where there was no clear market price (for works of art, collections of personal papers etc.). But the problem called only for a revision in the procedures for assessing value, not for radical changes in the whole basis for deducting appreciated gifts. Similarly, small adjustments in the tax code, to ensure that the tax gain could not exceed the current production cost for gifts of inventory, would have dealt with the problem of a real gain resulting from a charitable gift. But as we shall see later in this study, the measures enacted to solve these minor issues were drastic and had the effect of severely inhibiting gifts of appreciated property.

Another claim made by critics of charitable foundations during the 1950s and 1960s was that their officials were unduly cautious in both their investment and disbursement decisions, preferring to see the foundation's assets grow, rather than ensuring the maximum flow of funds to charitable activities. Part of the reason for this, it was said, was that foundations frequently held too great a proportion of their assets in the form of a single company's stock, resulting in relationships which were not in the best interests of philanthropy. This gave rise to pressure for some form of payout requirement for foundations, i.e. for a legal stipulation that private foundations would distribute at least a specified percentage of their assets every year. This, it was claimed, would increase the flow of support for charitable activities, and encourage a more businesslike investment attitude among foundation managers. If the manager remained unduly cautious the organization's assets would simply decline and the foundation would eventually cease to exist. This would be no bad thing, it was suggested, because it would filter out dead weight in the tax-exempt sector. The issues surrounding the argument were complex, and will be discussed in detail in the context of the 1969 legislation. Like the arguments surrounding appreciated property, they gave rise to significant changes in the law regarding tax-exempt organizations, changes which have had sweeping and damaging effects on philanthropy in America.

The debate on the alleged deficiencies of the voluntary sector resulted in major sections being incorporated into the 1969 Tax Reform Act. It was this act which brought about fundamental changes in the law concerning tax-exempt organizations, and the results of the measure are the principal concern of this study.

The 1969 act was of particular importance in its effects on foundations—especially private foundations. Its provisions influenced these charities in four broad ways. Firstly,

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it imposed a 4 percent tax on investment income obtained by private foundations. The aim of this tax was to raise sufficient funds to cover the cost of IRS scrutiny of the foundations. Foundations were also required to make available to the public annual reports showing assets, earnings, grants, and administrative costs.

The second provision of the 1969 act having an effect on foundations required nonoperating foundations (i.e., those that exist to donate money to charitable activities and not to carry out their own programs) to pay out for charitable purposes each year either their total net income or a percentage of their asset value specified by the Treasury, whichever might be the greater. As an additional discouragement to the excessive holding of assets within a single corporation, the act put a limit of 50 percent on the voting stock of a company held by a foundation.

Thirdly, the act began the continuing process of limiting the so-called lobbying activities of organizations, both at governmental and at "grass roots" levels. And finally, the act made key changes in the law regarding the tax deductibility of gifts of appreciated property.

The 1969 act altered the entire legal and tax framework affecting philanthropy. It has been followed by a number of federal measures and a host of state regulations and restrictions.

Donations to charity

Appreciated Property—Individual Donors

Prior to the Tax Reform Act of 1969, the general rule was that an income tax deduction would be allowed for the full fair market value of property donated to a charity. Some restrictions did apply in certain cases, but these had only a minimal effect on giving.

The 1969 act, however, made substantial changes to the exemption basis for gifts of appreciated property (including stocks, etc.). The total market value write-off was retained only when the gift would result in long-term capital gain were it to be sold on the date of contribution. If, however, the property was to be used for a purpose unrelated to the donee's exempt activities, or if the donee were a private foundation.[13] only 50 percent of the gain could be deducted from taxable income under the act. This meant, of course, that the tax advantage of donating such a gift was drastically reduced.

The 1969 legislation further complicated the practice of giving by altering the proportions of income that could be given each year while claiming the deduction. On the one hand, the act raised the ceiling on total deductible charitable contributions from 30 percent to 50 percent of adjusted gross income. On the other hand, in cases when this involved property which would realize a long-term capital gain if sold, the 30 percent ceiling remained. Furthermore, if the donee were a private fundation, or if the property was for the use of the charity, a 20 percent limit was imposed.

The 1978 Revenue Act made certain adjustments to the clauses dealing with appreciated property in the 1969 act. If an individual now gives to a private foundation property on which a long-term gain could be realized, only 40 percent may be deducted from income tax (if the asset is sold for personal gain, 40 percent of the gain is subject to income tax—the remainder to capital gains tax).[14] Previously 50 percent could be deducted from income tax, the remaining 50 percent being deductible from capital gains tax.

A taxpayer can avoid the 30 percent rule, however, if he elects to use a provision whereby a contribution of appreciated property is reduced by a proportion of the appreciation. In this case the 50 percent ceiling applies. Prior to November 1978, the proportion was 50 percent. For gifts made after November 1, 1978, the reduction is only 40 percent, in line with changes in the capital gains tax.

An example will illustrate the operation of the election. Say, after October 31, 1978, a donor contributed securities which cost him $20,000, but which had a present market value of $40,000. In addition, let his income base be $50,000. If he did not use the election, he would be able to deduct only the equivalent of 30 percent of his base income, i.e. $15,000, and he would have to carry the remainder, i.e. $25,000, into the following taxable years. If, however, he chooses to make the election, he must reduce his total deduction by 40 percent of the appreciation, or $8,000. In the year of contribution, therefore, he may deduct $25,000 (50 percent of his base income), and carry over the remaining $7,000 ($40,000 less $8,000 less $25,000). This election is only sensible when a contribution is so large that it cannot be spread over five years, taking into account possible future donations, or when future income is thought likely to decline to a level such that there would be a net tax saving.

These complex changes in the law have had important effects on the donation of property to charity by individuals—especially when the recipient is to be a private foundation. In the first place, the denial of a tax write-off at the full market price of property gifts to private foundations discourages gifts to that segment of philanthropy. This is particularly so in a period of high inflation, when the so-called capital "gain" is, in fact, largely a paper gain arising out of the fall in the value of money. As the rate of inflation accelerates, so this paper gain becomes an even larger proportion of the capital gain. Since tax rates are not indexed in the United States, the effect of the 1969 act was thus to apply an extra tax on those who choose to donate property rather than income (in general, the more affluent donor). The higher the rate of inflation, the more pronounced is this effect. In contrast, the donor who gives out of current funds finds giving relatively more attractive during a long period of inflation, since money incomes tend to rise with inflation, pushing people into higher tax brackets and thereby reducing the "cost" of a charitable contribution.

A second effect, resulting from the 1978 changes, adds to the decline in attractiveness of giving property. As mentioned earlier, the act altered the proportion of a capital gain subject to income tax from 50 percent to 40 percent. Given the exclusions and *relatively* low rates of tax applying to gains (a maximum marginal rate of 28 percent), almost every tax payer will now find it slightly more advantageous to realize a gain, rather than make a donation, than he did before. The higher the individual's tax bracket, the greater is this effect. Thus, while an easing in the tax situation regarding capital gains may be welcomed, a compensatory tax change is needed to prevent the reform inhibiting gifts to charity.

Appreciated Property—Corporate Donors

The federal income tax deduction for charitable gifts by corporations is limited to 5 percent of taxable income. Contributions in excess of this level can be carried over for up to 5 years. Unlike the law covering individual donors, there is no distinction in the tax treatment of contributions to private foundations rather than public organizations.

In addition to its effect on individual gifts of property, the 1969 act had significant implications for corporate donations, and has been a major factor in the stagnation of real support for charity by business. Before 1969, business corporations making contributions of property they had created (known as inventory donations), or which would realize a short-term gain if sold, were allowed a tax deduction equal to the fair market value of the asset. As a result of the act, however, a corporation making such a gift could only take a deduction on the basis of original cost. This was clearly a major disincentive to give—especially in a period of inflation—and so there was strong pressure to alter this aspect of the 1969 act. The 1976 Tax Reform Act amended the law so that an inventory gift could be deducted at cost plus one-half of the unrealized gain up to twice the original cost. In the case of property giving rise to a long-term capital gain which is not related to a charity's tax-exempt activities, the deduction which can be taken amounts to the fair market price less 62.5 percent of the net appreciation.

Although the law does not distinguish between private and public foundations or charities when dealing with corporate gifts of property, the net effect of the legislation is to discourage contributions made through company foundations and hence to the charitable sectors traditionally favored by business.

Bequests

The influence of recent tax law and of inflation on charitable bequests is less easy to determine. Decisions in this case are not only affected by existing economic and tax considerations, but also by the donor's view of the likely situation at the time of his death. And, of course, alterations in wills are not reflected in the pattern of giving for some time.

The attractiveness of alternative forms of bequest will be influenced by the relative cost (in tax terms) of giving to descendants rather than to charity. Gifts to descendants would be subject to estate tax. Charitable bequests, on the other hand, may be deducted from the taxable estate without limit. Since the estate tax is progressive, the larger the estate the greater is the tax advantage in bequeathing to charity: and as one might expect, charitable donations as a percentage of total bequests tend to rise with the size of the estate.[15] Periods of inflation will also have the effect of encouraging charitable bequests, since a paper gain in the value of an asset may incur tax if given to a descendant.

As can be seen from tables 1 and 3, there has been a decline in the level of bequests since 1970, in real terms, and in relation to total giving. Given the many factors influencing the decision to bequeath to charity, and the effect of the lag between the decision to give and the distribution of the estate, it is difficult to discern precisely how much the law has reduced contributions to charity and to what degree donors have used other forms of donation, such as gifts from income or deferred gifts.

Foundation payout requirements

If foundations had only needed to contend with recent revisions in the tax code regarding contributions, their long-term prospects would have been bleak enough, since any measure which acts as a disincentive to potential donors poses a serious threat. But the 1969 act went on to jeopardize the existence of foundations from a quite different direction by forcing them to make distributions at a prescribed rate. Thus, not only do foundations now find their income in doubt, but in many cases they must also distribute their asset at such a rate that they are forced to slow down their growth or even reduce their total assets.

The payout requirement contained in the 1969 Tax Reform Act resulted from criticisms leveled against the investment and distribution policies of private foundations. It was argued that the foundations were far too conservative in their approach, favoring preservation of capital to strong asset growth, and that they were slow to alter their portfolios of stocks. An article in the November 1968 Institutional Investor gives an idea of the feelings of many at the time:

"Is there a place as yet untouched by the revolution in money management? Where the winds of performance are not felt, where the importuning cries of ambitious brokers

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are not heard, a last redoubt so quiet the clocks can be heard ticking?

"There is such a place, and it is called foundationland. There, tax-exempt, is twenty billion dollars, one of the biggest pools of capital in capitalism, and it is still run the way money used to be. The way it used to be, that is for Widows and Orphans, before currency began to depreciate. In foundationland the verities are Preservation of Capital and Yield, verities the current generation shies from. In foundationland the managers do not often buy their stocks, because they already have them—they were given them many years ago, and now they sit, quietly watching."

During the legislative progress of the 1969 Tax Reform Act, specific criticisms were made. It was claimed, in the first place, that the rates of return on foundation assets were extremely low when compared with those of mutual funds: The Peterson Commission, for example, reported to the Senate Finance Committee that the median rates of return for groups of foundation assets were "substantially lower."[16] An important reason for this state of affairs, it was suggested, was the tendency for foundations to hold their assets in a single class of stocks within a single company—in many cases, it was said, to allow continuing family control over the company. As a result of these investment policies, the argument went, the rate of disbursement of funds to charitable activities was correspondingly lower than should be expected. The best way to reform investment practices would be to require foundations to maintain a minimum rate of asset distribution each year. This would impel them to seek better investments, with higher yields, which in turn would force them to avoid concentrating their assets within a single company. The result would be a more efficient charitable sector with an increased turnover of funds.

Considered uncritically, this line of argument has a plausible ring to it, and it carried the day during the congressional debate on the 1969 act. But the assumptions behind the reasoning have been challenged, and as we shall see, the results of the payout that was eventually passed give support to the skeptics. A 1973 study by Norman Ture, for instance, cast grave doubt on the analysis of the Peterson Commission, which had been an influential factor in the discussion regarding the payout requirement.[17] Ture pointed out that the Commission had compared the *median* returns for foundations grouped by asset size with the *mean* rate of return for a group of unidentified mutual funds. By using two different statistical methods, the Commission rendered its findings highly suspect. Ture's own examination, using mean figures for a number of major foundations over several years (Peterson considered only a single year), showed a rate of return which compared far more favorably with mutuals.

Ture also noted that the Peterson Commission did not provide data to show what proportion of foundations held asset portfolios concentrated within a single corporation, nor did the Commission produce evidence to show that there was a significant correlation between asset concentration and poor rates of return. Similarly, the relationship between improved investment practices and a minimum payout rule was left obscure: the claim that increasing the payout rate by law would produce a dramatic change in foundation investments was by no means obvious. The reasoning assumed both that existing investments were not in the interests of charity, and that foundation managers were, simultaneously, so myopic and overcautious that they accepted low returns, yet that they had the will and ability to take very adventurous investment decisions. In fact the whole argument that a high payout rate would produce better yields on foundation assets was rather like suggesting that a legal requirement forcing corporations to maintain a minimum payout to shareholders would improve efficiency and reduce costs in the business world.

The 1969 act required private non-operating foundations to make minimum annual contributions to charitable operations equal to the foundation's actual investment income or, if greater, a specified percentage of the market value of its assets in the previous year. The applicable percentage, to be calculated each year by the Secreatry of the Treasury, was to bear the same relation to 6 percent as money rates and investment yields bore to their respective levels in 1969.[18] To prevent the payout provision from unduly disrupting existing foundations, a transition period was included in the legislation: No payout requirements were to be applied until 1972, and until 1975 these foundations faced a lower payout rate than new foundations created after 1969.

Table 5 shows the payout rates applying to both new and existing foundations between 1970 and the present time. For taxable years since 1969, each private foundation affected by the act has been required to distribute its entire investment income by the end of the following year in order to avoid tax on any undistributed income. If the minimum payout rate exceeds the foundation's income, then total distributions must reach that figure—even if there is no net investment income. The payout is calculated by assessing the fair market value of the foundation's assets and then multiplying this by the applicable annual distribution rate set by the Secretary of the Treasury (prior to 1977, when the rate was fixed at 5 percent for all years). For the purposes of calculating investment income, net long-term capital gains are not included, but net short-term gains are.

The payout provision has posed very serious problems for private foundations. In the first place, the method of computing income has a tendency to overstate a foundation's investment income. Actual income is based on an accounting concept of realization which ignores non-realized capital gains and losses, and so will be greater than economic income when the market value of the foundation's assets declines. In this case, the rule may force the organization to distribute more than the payout rate, which is based only on asset value, and more than its economic income.

Because the rate is calculated on the market, rather than the book, value of the foundation's assets, it has the effect of requiring these organizations to pay out unrealized capital gains. This has put pressure on foundations to hold more liquid assets, and to pay closer attention to cash flow than to capital appreciation. This, in turn, has introduced distortions into the market for capital.

TABLE 5.—MINIMUM PAYOUT RATES FOR PRIVATE FOUNDATIONS, 1970–79

[In percent]

Year	Foundations created	
	Before May 26, 1969	After May 27, 1969
1970	(1)	6.0
1971	(1)	6.0
1972	4.125	5.5
1973	4.375	5.25
1974	5.5	6.0
1975	6.0	6.0
1976	6.75	6.75
1977 to present [2]	5.0	5.0

[1] Not applicable.

[2] The Tax Reform Act of 1976 made the payout rate a permanent 5 percent.

Source: Filer Commission, Research Papers, vol. III, pp. 1664–1665.

Note: Foundations must distribute this percentage of net worth or actual income, whichever is higher.

A more common situation, however, involves cases where a foundation's income is lower than the payout rate. The reason why this is so common is that the holdings of some private foundations tend to consist of limited market stocks, and stocks with a lower, but safer, return than those used by the Treasury as the benchmark for comparison. This is hardly surprising since their purpose is, after all, to make charitable donations and to protect their assets, not to engage in high-risk financial dealings. It might be possible for very large foundations to spread their holdings to allow the inclusion of some high-risk, highyield stocks, but it would not be prudent for small foundations to do so, given the hazards involved.

The effect of the payout rule has been to pressure foundations into either adopting a more risky investment strategy, or reducing their rate of growth. In some cases, it has even forced foundations to reduce their size, and hence capacity for future charitable contributions. The law discourages investment in low dividend, high growth corporations, and encourages foundations to pay out larger amounts in the short-term, at the expense of long-term support for charity. The greater the payout requirement exceeds actual income, the more slowly the foundation grows (assuming it has sufficient contributions to cover the gap, and so avoid shrinking in asset size).[19]

The long-term danger to philanthropy implicit in the concept of a minimum payout has been aggravated by many of the other provisions of the 1969 act and later measures discussed above, which have had the effect of discouraging donations to private foundations. Hence, at the same time that the payout rule has forced foundations to distribute an unduly high proportion of the value of their assets, their ability to maintain a healthy pattern of growth by increasing their non-investment income has been severely inhibited.

It is clear from available empirical evidence that the 1969 act contributed to a dramatic increase in the "death rate" of private foundations (as have state regulations and other factors to be discussed later). The Council on Foundations, for example, examined the rate at which private foundations would up their activities, during the sample month of May, for the years preceding and following the 1969 legislation. As table 6 shows, there was a startling increase in the rate. Similar evidence was presented to the Filer Commission from several other sources. The New York State Attorney General's Office, for instance, reported that while 28 private foundations had dissolved in 1969, the figure for 1971 had risen to 91.[20] A survey of 12 states carried out by the Foundation Center showed that the New York figures were by no means atypical; in the states examined, the aggregate dissolution rate climbed from just under 100 per year in 1968 to about 750 per year in 1971.[21]

TABLE 6.—PRIVATE FOUNDATIONS TERMINATING THEIR ACTIVITIES DURING SAMPLE MONTHS, 1968–1973

May 1968	11
May 1969	23
May 1970	29
May 1971	31
May 1972	55
May 1973	74

Source: (Interna' Revenue Bulletins) Filer Commission, Research Papers, vol. III, p. 1623.

The proponents of the payout requirement, did, of course, foresee an increase in the death rate of foundations, and felt that it would be part of a healthy process which would have the effect of "weeding out" so-called inefficient foundations and replacing them with new organizations. It is difficult, however, to determine exactly what constitutes "efficiency" in the foundation sector; the criteria can hardly be the same as those which would be applied to profit-making businesses. But even if one were to accept this argument, and even if the post-1969

Footnotes at end of article.

death rate was considered reasonable, the statistics on the "birth rate" of foundations shows the theory to be unsound. The replacement rate of foundations not only plummeted after the act, but it also fell to a level well below the death rate among foundations, resulting in a disturbing decline in the number of foundations.

Evidence to the Filer Commission shows this clearly. The Council on Foundations, for example, compared the number of new private foundations created in January–February 1969 with that of formations in January–February 1973. The Council found that the rate had fallen from 433 to just 181: even then some of the foundations listed in 1973 would have been set up under wills drawn up before the act.[22] Evidence from the Foundation Center showed the trend even more clearly. In the Center's study of 12 states, 1250 foundations were formed in 1968. Yet by 1970 the rate of formation had fallen below 200.[23]

The threat to the existence of private foundations arising from the payout provisions of the 1969 act was not confined to the level of payout required. As table 5 indicates, there has been a wide fluctuation in the distribution levels prescribed by the act. This has led to two major problems for foundations. Firstly, it has resulted in suboptimal planning. Since many projects need considerable time to develop, an accurate picture of future needs and funds available is essential if foundation support is to match the requirements of the recipients. But if a foundation is forced to distribute more funds in a particular year than it had planned, it must allocate them to what it feels to be less worthwhile causes. On the other hand, in a year with a relatively low payout requirement, the foundation may feel it necessary to reduce support to the legal minimum, to compensate for high distributions in previous years. In this case, worthy projects which the foundation intended to support will be denied funds.

A second effect of a variable payout based on the previous year's asset value is that the required distribution is both mechanical and volatile. Stock and bond prices depend to a great degree on general confidence in the political and economic climate, and are more often an appropriate reaction by the private sector to inadequate government policies than a measure of the health of the business world. Thus foundations may be forced to disburse their funds at a rate which is far in excess of a sensible level, due to the combination of a mechanical rule and a valuation of their stock based primarily on public confidence in the government.

The deficiencies of the changing payout rate became obvious even to supporters of the measure very soon after the implementation of the act. By November 1974, the Subcommittee on Foundations of the Senate Finance Committee had concluded that the basic 6 percent rule was unrealistic when compared with existing market conditions.[24] Similarly, in December 1975, the Filer Commission was arguing that the basic payout requirement was too high and recommended a flat payout of 5 percent. The concept of a flat payout of 5 percent was also supported by the Treasury, on the grounds that it was simpler, a predictable element in foundation budgeting, and more in line with the long-term rate of return on foundation assets. As a result of this change of attitude, the 1976 Tax Reform Act included a provision to this effect, laying down a permanent rate of 5 percent. But although a flat rate may avoid some problems, by making the rate at least predictable, the basic flaws remain because the payout is still based on a fluctuating assessment of asset value. So the required disbursement of funds is still mechanical and largely unpredictable, and bears no relation to the needs of charity.

Footnotes at end of article.

The continuing saga of the payout rule must serve as a classic example of how well-meaning government intervention can bring about exactly the opposite effect of that intended. The rule was designed to improve the efficiency of private foundations and to encourage them to increase both their earnings on assets and their disbursements to charitable projects. In practice, however, it has resulted in the decline in real giving by private foundations and discouraged the creation of new organizations. It has, in short, managed in a few years to threaten the very existence of a key sector of philanthropy in America.

The tax on investment earnings

The 1969 Tax Reform Act imposed a 4 percent tax on the net investment income of private foundations. The tax was not, in the main, intended to regulate investment decisions, but rather was to be an excise tax to finance IRS monitoring of foundations. Gross investment income includes interest, dividends, rents and royalties, and net capital gains from the sale of property held from the production of such income or held to produce unrelated business income. The net investment income of a foundation would be this figure less deductions stemming from the production of collection of the income.

Many see this tax as objectionable in principle, and a dangerous precedent which could lead to the complete erosion of the principle of tax exemption for charities. In addition, of course, it reduces the amount of money available for charitable purposes by diverting funds to pay the salaries of tax officials.

In keeping with the grossly inaccurate forecasting on which the 1969 act was based, the revenue arising from the 4 percent tax greatly exceeded IRS costs. As table 7 shows, by 1973 the tax was yielding over six times the cost of monitoring the foundations and more than four times the cost of overseeing all tax-exempt organizations.

TABLE 7.—REVENUE FROM THE 4 PERCENT TAX AND IRS MONITORING COSTS (1968–74)

[Dollar amounts in millions]

Government fiscal year ending	Revenue from 4 percent tax	IRS costs	
		Foundations	All exempt organizations
1968		$1.6	$7.1
1969		2.1	7.5
1970		3.5	11.0
1971	[1] $24.6	8.6	15.4
1972	56.0	12.9	19.3
1973	76.6	12.3	18.6
1974	69.8	13.3	23.0
Total	227.0	45.3	101.9

[1] Due to the relationship between tax filing dates and the fiscal year end, this figure represents approximately 6-mo. yield of tax.

Source: Filer Commission, Research Papers, vol. III, p. 1566.

Prior to the passage of the 1969 act, most foundation spokesmen took the view that a tax was far less desirable as a means of covering IRS costs than a filing fee, based on asset size. This idea was rejected by Congress, with the result that by 1974 the foundations have been forced to pay to the Treasury $181.7 million more than the cost of scrutinizing their accounts. This money was, of course, thereby denied to the charitable operations funded by the foundations.

Despite the clear inequity of the 4 percent tax, it was not until the Revenue Act of 1978 that it was altered. The 1978 measure reduced the levy to 2 percent, applicable to tax years after September 1977. Although this is a small step in the right direction, the effects of the change are mixed. It does reduce the proportion of foundation income which flows to the Treasury by an estimated $40 million per year.[25] On the other hand the act, by avoiding the option of a filing fee, continued the disturbing exception to the general principle of tax exemption for charitable organizations.

The standard deduction

One of the ironies surrounding the campaign for tax reduction and simplification is that certain charities have been adversely affected. Moves which have sought to reduce revenue to government have also had the result of making charitable donations less attractive. This has also been the case with regard to tax simplification—in particular the wider use of the standard deduction. The 1976 Tax Reform Act alone shifted about 5 percent of the taxpaying public into the ranks of the non-itemizers. At present about 70 percent of taxpayers opt for the standard deduction, and their charitable contributions do not reduce their tax liability. This compares with about 50 percent using the standard deduction in 1970.

Since they do not itemize, these donors must pay the full cost of any contribution. The impact of this trend on charity has been considerable. Various estimates put the loss at about $5 billion between 1970 and 1977, with a current annual loss of around $1½ billion.[26] Since non-itemizers tend to be those with middle or low incomes, the effect of this loss is concentrated among charities drawing their income from these groups, such as the United Way and other welfare organizations.

The effects of tax reduction and simplification on charitable giving do, of course, pose a dilemma for those wishing both to advance private philanthropy while cutting taxation. The higher the marginal tax rate on income, the less "expensive" is a tax-deductible gift to charity relative to other uses of income. So any change which reduces marginal tax rates raises the cost of philanthropy to the donor, compared with nondeductible expenditures. Hence, while a reduction in tax rates does have an immediate income effect, in that the donor has a greater disposable income from which gifts can be made, the increase in "price" of the gifts diminishes the attractiveness of giving. As studies carried out by Martin Feldstein and others have shown, the price effect exceeds the income effect at all levels of income—even at the lowest incomes.[27] It should be noted, however, that if a tax cut results in a significant stimulus to economic growth and incomes, the long-term income effect may totally offset the price effect and result in an increase in charitable donations. Thus a reduction in tax rates may well be in the long-term interests of philanthropy.

Restrictions on lobbying

An aspect of law which is of increasing importance to charitable organizations is that covering so-called lobbying activities. These provisions tend to be vague, and so make it very difficult for organizations to be sure whether or not certain of their practices are legal.

The IRS code specifies under section 501 (c)(3) that to remain tax-exempt, an organization must ensure that it is a body:

"No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Precisely what constitutes a "substantial part" of an organization's activities is not clear, and numerous legal cases have failed to clarify the position. In order to avoid doubt, some section 501(c)(3) bodies now elect to substitute specific percentages of exempt expenditures toward lobbying activities (effective since 1977).[28] This option is only open to certain categories of institutions, however, and the very indefinite "no substantial part" rule applies to all others, including private foundations and private operating foundations.

The lack of exact definitions of "lobbying" and "influencing legislation" presents further problems. It has been established that these terms would not include nonpartisan analysis, study, research, technical advice or assistance provided for a governmental body at its request. When it comes to communication with a legislative body or representative regarding legislation the matter is far less clear.

Fundraising Limitations

The future of many public and private foundations has been jeopardized to an alarming degree by recent changes in the law dealing with fundraising. These laws have been enacted both by Congress and the states. Federal legislation passed in 1969 specifies the proportion of total funds raised by foundations which must come from individual donors. There is also a plethora of state laws, varying from state to state, regulating mail fundraising within each state's borders.

Federal Laws

Under section 170 of the IRS code, an organization may only retain its status as a public foundation if it obeys certain requirements regarding the composition of its contributions. If it fails to do so it will lose its "public" designation and its donors will be more limited in their ability to contribute property, etc. Furthermore, if an organization ceases to be a public organization, any private foundation making a grant to it is required to exercise "expenditure responsibility" under section 4945(d)(4) of the IRS code. This means that the granting foundation must use all reasonable means to ensure that the grant is used for the purposes for which is made, and must obtain from the grantee full reports on the use of the money. These reports must be filed with the IRS. If the granting foundation fails to comply adequately with this provision, the grant would be considered as a prohibited expenditure, forbidden by law. Needless to say, private foundations are reticent about making grants which would involve them in complicated monitoring of any organization's activities.

Under section 170, at least 10 percent of a public foundation's donated income must come from five or more unrelated individuals. In addition, the foundation must receive not more than one-third of its total income each year from interest, dividends, rents and royalties, and must obtain at least one-third of its support from grants, contributions, membership fees and other gifts. New organizations are given up to four years to comply with these requirements.

Section 170 has had two important effects on foundations. Firstly, it forces those seeking public status to carry out fundraising campaigns to ensure wide support. This does not, of itself, present serious difficulties for the average foundation, since the regulations and compliance period are both reasonable. But it does induce foundations to mount mail fundraising drives in several states, and this has resulted in the need to comply with an array of state regulations.

A second difficulty involves the attitude of private foundations towards new foundations seeking public status (i.e., those operating within the grace period). When it receives a grant request from such a new foundation, the private foundation knows that it is always possible that public status may ultimately be denied, and the new foundation may have to terminate its programs. Given this risk, there has been a marked tendency recently for private foundations to be more conservative in their support, favoring established public organizations at the expense of new ones.

A survey conducted by the Council on Foundations during 1974 indicates the degree to which section 170 has influenced the distribution of grants by private foundations. The survey showed that whereas 39 percent of respondents made grants to publicly supported organization before 1970, only 16 percent were doing so in 1974. As the survey concluded:

"Half of the foundations that were making such grants before 1969 have drawn back from them. In other words, the new requirements appear to have been a real deterrent to some foundations that were formerly prepared to bet on new and often inexperienced grantees. Furthermore, there can be little doubt that foundations that previously had only given to traditional and safe agencies have been confirmed in the tendency by the expenditure responsibility requirements of the 1969 act; thus, the majority of the respondents continue to avoid such grants as a matter of course.[29]

State Laws

Thirty-seven states now have laws regulating charitable solicitations. The nature of these laws differs from state to state, as do the deadlines for compliance. Any foundation seeking funds must abide by the regulations in each state where it intends to raise funds; failure to do so can result in the withdrawal of its right to solicit funds in that state.

State laws fall into two broad categories—disclosure requirements and regulations concerning the activities of fundraisers. Normally, the charity is required to register, pay a fee, and file financial reports with the state attorney general each year. If it does not do so, the charity's license can be withdrawn, which prevents it from raising money in the state. 14 states use the same form for the annual financial disclosure, based on the New York state form, and so charities operating within these states can use the same method to complete each financial statement. The other states, however, have different forms and require different information. This is, of course, in addition to the disclosure necessary to comply with IRS regulations.[30]

Not only does the charity need to register in certain states in which it raises funds, but also it is necessary for professional fundraisers to register and obtain a license in these states. Unlike the financial disclosure form, there are no standard regulations applicable to a large number of states, although there are often similarities. The New York regulations, however, give an indication of the type of laws operating in most states.

In New York, a fundraiser must register with the Secretary of State each year before he commences any activities. Contracts for professional services between the consultant fundraiser and each charity he assists must be lodged with the Board within 10 days and the receipts and expenditures involved in the contract must be properly documented. In addition, an annual fee of $100 and a bond of $5,000 is required.

The complexity and cost of compliance in each state is a major burden for many charities, particularly new or smaller organizations. If the charity uses its own staff to seek support, the registration costs alone could run into several thousand dollars, on top of which would be accounting fees for completion of the disclosure forms. All these costs must be incurred before a single piece of mail has been sent out or a single donation received.

Organizations have generally responded in one of two ways to this profusion of state laws. Often through ignorance, many simply do not comply—and this has led to charities being prosecuted. It is usual for one state to inform the others when a charity has broken its rules, and so, though a misunderstanding of the law, a charitable organization may suddenly find itself faced with dozens of expensive lawsuits and the termination of its right to raise funds throughout most of the United States. As an alternative means of dealing with the problem, many organizations have sought the use, often at high cost, of large mail fundraising companies who are already registered in each state and fully understand the complexities of each state's laws. This trend does raise some questions. If the purpose of insisting on a minimum proportion of small contributions is to prevent charities being controlled by small groups of people, but in order to meet this requirement and the state laws the charities are forced to rely on large fundraising companies, is not the effect of the law merely to replace the control of one small group by another? In addition, the cost implications of requiring foundations to seek support by mail from small donors must be considered, and balanced against the value of encouraging broader participation in philanthropy. The cost of fundraising by direct mail can be significantly higher than that of obtaining support from other sources, and thus, it is possible that a smaller proportion of each dollar contributed will be used for charitable purposes.

Disclosure requirements

Nearly every tax-exempt organization described under section 501(c) of the IRS code must file an annual return stating its income, receipts and disbursements. In addition to this, private foundations with assets over $5,000 must also file an annual report with the IRS. The report must give very detailed information regarding the foundation's financial holdings and activities, together with a list of all the organization's managers who are also substantial contributors to its funds, or who own 10 percent or more of the stock of any corporation in which the foundation has more than a 10 percent interest. A copy of this annual report must be made available to any citizen for inspection at the foundation's principal office for at least 180 days.

While the disclosure of such information to the IRS, and its availability to the public, may be a reasonable requirement for a tax-exempt organization, recent proposals by the IRS indicate an interpretation of the law that is so loose as to raise serious questions. Section 6056(d)(3) of the code specifies that the annual reports of private foundations must be furnished to "such State officials and other persons . . . as the Secretary or his delegate may by regulations prescribe." These regulations have the force of law, and have been used by every federal agency to extend and interpret Acts of Congress to imply restrictions beyond those intended by the legislature. In this case the IRS has indicated recently that it proposes to interpret "other persons" as including non-governmental organizations.

The proposed regulation would require all private foundations with assets of over $1 million, or who make grants of more than $100,000, to send copies of their reports to the Foundation Center, a non-profit, non-governmental body which provides information on foundations to fundraisers and the general public. Although many private foundations voluntarily furnish the Center with their reports, even among these organizations there is great concern over the proposal. In the first place, the proposal has the effect of requiring a private body to transmit its annual report to another non-governmental body which has no relationship with it. And secondly, it establishes a precedent whereby private foundations may in the future be required to send reports to any number of pressure groups, or self-appointed "consumerist" organizations, who seek to obtain control over private philanthropy under the guise of making it more "responsible."

The use of agency regulations to interpret and broaden legislation is by no means confined to cases involving philanthropy. But

Footnotes at end of article.

the use of the IRS code in this way is a disturbing example of back-door government regulation of private foundations.

3—THE IMPLICATIONS OF THE LAW FOR THE CHARITABLE SECTOR

The laws discussed above have brought about very profound changes within the charitable sector in America. Since most of the legislation dates only from 1969, and there have been many recent amendments, it is still too early to identify all the implications. But those that can be seen give rise to grave concern.

The distribution of donations

Individual Contributors

Legislation since 1969 has strongly inhibited contributions from more affluent donors, who give a much higher proportion of their gifts in the form of appreciated property and generally support longer-term capital projects—especially in the health and education sectors. This means that the law is likely to have a delayed but serious effect on the quality of educational and health facilities in America. Thus, measures which are aimed at removing tax "benefits" for the affluent by discouraging certain forms of charity will ultimately have their most damaging effect on the young and the sick.

Table 8 shows the distribution of contributions between different types of charity, according to donor income level. It will be seen that the higher the income, the stronger is the tendency to support education, health and cultural projects. Most charitable support by lower income donors, on the other hand, goes to religious organizations. The figures in the table are taken from a 1973 study presented to the Filer Commission, but similar trends are apparent in other surveys such as the thorough analysis by Martin Feldstein, using 1962 IRS returns.[31]

The many legislative changes that have affected the flow of money to and from foundations thus have serious implications for major areas of charity. In the case of higher education, for instance, foundation support has slipped during the last six years from 23.4 percent of total giving to only 20.5 percent.[38]

TABLE 8.—SHARES OF AGGREGATE DOLLARS GIVEN TO DIFFERENT DONEE TYPES, BY INCOME LEVEL OF DONOR (1973)

[In percent]

Type of donee	Annual income of donor: Less than $10,000	$10,000 to $19,999	$20,000 to $49,999	$50,000 or more	All incomes
Religion	59	67	52	13	46
Education	1	1	6	17	7
Combined appeals	2	3	6	10	6
Health	3	3	4	10	5
Cultural	0	0	1	4	2
Others [1]	35	26	31	46	34
Total	100	100	100	100	100

[1] Includes all gifts after the 4 largest.

Source: James Morgan, Richard Dye, Judith Hybels, "Results from Two National Surveys of Philanthropic Activity," Filer Commission, Research Papers, vol. III, p. 231.

When one examines the receipts of various types of charity, the impact of donations by high income contributors becomes very clear. In the Feldstein study, for instance, taxpayers earning over $100,000 (in 1962) contributed 33.1 percent of total deductible gifts to education, and 27.6 percent of those to hospitals.[32] In a survey of giving to higher education, carried out by the American Council on Education, a similar picture emerged. Of gifts made by individuals in 1973–1974, over 70 percent of total support came in gifts of over $5,000.[33]

Corporations

Legislation in 1969 and more recently has also produced important changes in the pattern of giving by corporations and their subsidiary foundations. The alterations in the tax deductibility of gifts of appreciated property and inventory have been a particular burden—as has the tax on investment income and the mounting costs of complying with IRS regulations.

Corporations are more sensitive than individuals to the cost of giving, given alternative tax advantages. A 1973 study by the Conference Board, for example, indicated that 29 percent of executives felt that the (then) 4 percent tax on foundation investment income was a major issue in considering donations, 21 percent considered the restrictions on gifts in kind to be a serious inhibition to giving, and 20 percent mentioned the tax situation regarding appreciated property as a problem. The survey found that over half of the corporations responding would increase their charitable contributions if the tax incentives were to be improved.[34] In addition, corporate donations to their own foundations fell after 1969, and this has reduced the flexibility of the businesses still giving to charity.[35]

The 1969 act, in particular, had an immediate and dramatic effect on corporate giving. After a steady and substantial rise in donations during the 1960s, from under $500 million in 1960 to more than $1 billion in 1968–1969, corporate contributions tumbled in 1969–1970 to less than $800 million.[36] Although there has been some recovery during the 1970s, the rising trend of the 1960s has been stifled.

Any change in the policies of corporations regarding charitable donations is of particular importance to certain fields of charity. As table 9 shows, corporations give most of their support to education (especially higher education) and to welfare organizations. These gifts are of great importance to the recipients—higher education, for example, receives about 15 percent of all its contributions from business. Thus, the constriction of the corporate sector results in a significant denial of funds to vital areas of philanthropy.

Foundations

Like corporations, foundations are major supporters of education: over 20 percent of all contributions to higher education come from foundations, and almost 30 percent of support for major private universities.[37] Table 10 shows the broad pattern of assistance from the foundation sector.

TABLE 9.—THE PERCENTAGE OF TOTAL CORPORATE GIFTS TO EACH MAJOR FIELD (1977)

Area	Percentage of total
Health	5.7
Welfare	32.6
Education	35.7
Culture and arts	9.0
Civic activities	11.5
Other	5.5
Total	100.0

Source: Conference Board, "Annual Survey of Corporate Contributions," Giving USA 1979, p. 16.

TABLE 10.—THE PERCENTAGE OF FOUNDATION GRANTS TO EACH MAJOR FIELD (CUMULATIVE, 1961–73)

Area	Percentage of total
Education	32
Health	15
International activities	14
Welfare	13
Science	13
Humanities (including the arts)	9
Religion	4
Total	100

Source: (The Foundation Center), Filer Commission Research Papers, vol. III. p. 1562.

Decline of the private foundation

If there is one constant threat that runs throughout virtually all the legislation passed since 1969, it is that private foundations appear to have been selected as the principal targets of the mass of controls, regulations and tax changes emanating from Congress. They have been saddled with payout rates, taxes on investment income, and distribution requirements, and their contributors are presented with changes in the tax code which make it less and less attractive to donate to them. It is hardly surprising under these circumstances that foundation birthrates have collapsed and deathrates have soared. Whether or not private foundations can continue to survive as a significant segment of private philanthropy is in grave doubt.

The implications of a substantial decline in the level of philanthropy directed through private foundations could be serious and far-reaching, particularly in areas such as education, health and the arts. Foundations act as clearing house for charitable funds. If they are prevented from carrying out this important work, pressure will grow for a larger role for government bodies using tax money. This process has already begun in the arts and non-commercial television, with bodies such as the National Endowment for the Arts, and the Corporation for Public Broadcasting allotting public money at their own discretion. The Heritage poll shows clearly that the public does not approve of government intervention in such areas. Two thirds of the population have observed this trend taking place, and 70 percent are opposed to it (see appendix).

We have the situation in America where the foundation sector is being constricted by government controls and tax changes, and where the vacuum so created is being occupied by government itself. Combined with inhibiting effects of legislation on other branches of the voluntary sector, the end result is the gradual, backdoor nationalization of philanthropy. As is so often the case when government acts in this way, some charities have welcomed the entry of government into areas previously funded by the voluntary sector. This is short-sighted, because government involvement brings with it the bureaucratic and monolithic approach, rather than the pluralistic, innovative attitude of private support. It is important that charities realize this before welcoming so much government support that they become dependent on it.

4—RESTORING THE HEALTH OF PRIVATE PHILANTHROPY

As this study has attempted to show, private philanthropy in America is now sub-

Footnotes at end of article.

ject to laws which may lead to a permanent decline in its importance and a reduction in the level of assistance it provides for many worthy causes. If this trend is to be reversed, it will be necessary to make major changes in the law dealing with the charitable sector. The following reforms are suggested as a basis for restructuring the law.

Appreciated property

In order to restore the incentive for taxpayers to donate appreciated property to charities—in particular to private foundations—the full tax write-offs at market value should be reinstated. This is essential during a period of rapid inflation, when the paper gain element in the appreciation is unusually large. An alternative might be to index the assessment of the gain, i.e., to adjust it for inflation. This would improve the position, although it would still leave private foundations at a disadvantage compared with other institutions. Indexing, however, is probably not politically possible at the present time, since there would be enormous Treasury opposition to any correction for inflation in one aspect of taxation for fear that it would inevitably spread to others—and so deny the government the windfall tax gain it enjoys from inflation. So a full value tax write-off of charitable contributions of appreciated property would almost certainly involve a smaller loss to the Treasury than the indexing of capital gains for tax purposes.

Payout requirements

The results of the payout requirement have been entirely negative and it should be abolished. There is now more than sufficient federal scrutiny of foundations to ensure that they are operated in the interests of charity and not their contributors. All the payout law does, therefore, is distort the pattern of giving and cause foundations to reduce their potential for growth, and hence future support for charitable operations.

It is difficult to see how anything short of the total removal of the requirement would remove its defects. Calculating the rate on the basis of a moving average (over several years) of the market value of a foundation's assets might reduce the tendency for it to be countercyclical in terms of need, but it would still force foundations to reduce their rate of growth.

Taxes on investments

The tax on investment earnings is a significant departure from the principle of tax exemption for charities. If the purpose of the tax is truly to finance IRS examination, a filing fee (possibly based on asset size) which bears a direct relation with actual IRS costs would be more appropriate. The Treasury has already managed to deny many millions of dollars to charity by miscalculating the yield of the tax. The investment earnings tax should therefore be abolished.

Contributions

The tax on investment earnings, and the tax discrimination against gifts of appreciated property to private foundations, is typical of the way in which private foundations receive second-class treatment under the law. Legislation has just been introduced to deal with another aspect of this, namely the difference in permitted contribution levels. Under existing law, individuals may contribute no more than 20 percent of their gross annual income to a private, nonoperating foundation. On the other hand, a 50 percent limitation applies for tax purposes when a gift is made to a public charity. A bill announced recently by Rep. Bill Frenzel (H.R. 6402) would remove this distinction. It would also allow private foundations to exclude capital gains income when calculating the net investment tax, and it would enable foundations to count investment expenses as part of the minimum distribution requirement.

Standard deduction

In principle, moves to allow non-itemizers to deduct contributions to charity should be welcomed. But there are certain issues connected with such a policy which should be given consideration. It could be argued, for instance, that a specific charitable deduction for taxpayers who do not itemize would be unfair to other recipients of deductible expenses and contributions who have also lost funds due to the tendency of people to take the standard deduction. But it could be said in response to this that if groups feel they have been seriously injured by the trend, it is up to them to press for similar amendments to the tax code.

A second problem could be the Treasury. In his criticism of the bill introduced to Congress last year by Reps. Fisher and Conable, which would have provided a special charitable deduction for non-itemizers, Treasury Secretary Blumenthal took pains to stress the "loss" to the government's tax revenue that would result from the deduction. A new version of the bill (H.R. 1785) has been introduced in the House, together with a Senate version (S. 219) sponsored by Daniel Moynihan and Robert Packwood, and these bills have wide support in Congress. The Heritage poll indicates that over 70 percent of the population support the bill; only 10 percent oppose it (see appendix). Once again the Treasury and the Administration oppose the measure, based primarily on their assessment of the probable revenue loss. If the Administration were to accept the proposal in return for a reduction in tax breaks for larger contributors, to compensate for the loss due to a special deduction, it could be very damaging for education and for some other forms of charity. If the present Treasury position does alter in this way, support for the deduction should be more circumspect.

Lobbying

Clear and precise guidelines must be established on this issue as soon as possible. It is reasonable that individuals should not be able to band together as a foundation and then obtain a tax exemption for funds aimed at manipulating the legislative process. On the other hand, the lack of precision in the law is inhibiting the activities of many well-respected institutions. Until the question of definition is resolved, foundations will continue to operate under an IRS sword of Damocles.

Fundraising

States are free to pass laws regulating fundraising, but the complexity of these restrictions has become a serious handicap for many institutions. At the very least, the philanthropic sector should press the states to adopt broadly similar regulations to reduce the confusion. Ideally, an attempt should be made to encourage the states to simplify their regulations to avoid the obstacle they present to small and new organizations

A Supreme Court decision in February 1980 has had the effect of reducing the restrictive power of the states, however. The court struck down a city law which required charities raising funds in the area to spend at least 75 percent of the money for charitable purposes. Many states currently have laws very similar to this. Citing the First Amendment, the court ruled that limitations must be narrowly drawn and reasonably related to some specific abuse.

The decision could have important results for many charities. Organizations which are expanding their activities and seeking wider support usually find costs become a high proportion of income until they have established a group of regular contributors. Because of these high costs involved in "prospecting," many charities have found it impossible to comply with state laws. The decision should enable these organizations to raise money more freely.

Regulation

The principal reason for the introduction of much of the recent legislation dealing with tax-exempt foundations was the desire to improve their performance and to weed out questionable institutions. Undoubtedly, federal regulation has removed much of the bad in private philanthropy, but it has done so by destroying a great deal of the good and damaging that which remains. Furthermore, the accounting and legal costs incurred as a result of government regulation can be significant, especially for smaller foundations. Heavy expenses merely reduce the money available for charitable activities.

The growth of federal regulations has also gained its own momentum. As the regulations become more complex, it becomes more difficult for foundations to comply with them. Then groups hostile to private philanthropy can point to those who have not kept to the letter of the agency-made laws and press for even tighter restrictions and more extensive disclosure of information. And so the process continues, aiding the case of those who would replace genuinely private charity with a system controlled by bodies representing group interests.

Conclusion

As this study has explained, legislation passed within the last 10 years has posed major threats to American philanthropy from two separate directions. Changes in the tax code have made donating more complicated and less attractive in many instances; and new federal and state regulations have served to constrict the charitable activities of foundations.

The new laws are often highly technical in nature, and almost incomprehensible to many foundation officers. But the pattern of the legislation is clear, and if the charitable sector does not respond strongly and quickly, private philanthropy could cease to play a significant role in American society.

APPENDIX

The following results are from a public opinion poll commissioned by The Heritage Foundation and carried out by Sindlinger & Company, Inc., of Philadelphia. The survey was conducted between February 21 and March 5, 1980, and involved a nationwide sample of 1,358 persons aged 18 years and older. Due to rounding, the percentages do not necessarily add up to 100.

Question 1

Congress is currently considering a proposal to allow a special tax deduction for charitable contributions for those people who take the standard deduction and do not itemize their income tax return.

Do you agree or disagree on this proposal for a special tax deduction for charitable contributions for those who take standard deductions?

[In percent]

	Total sample	Males	Females
Agree	72.3	71.9	72.7
Disagree	10.5	11.1	10.0
Don't know/refused	17.2	17.0	17.3

Analysis

Although a substantial percentage of the sample had no opinion or refused to answer, of those expressing a view supporters of the measure outnumbered those opposed to it by nearly seven to one. Nearly three-quarters of the entire sample favored the proposal.

Question 2

Some years ago, most public services—such as welfare and the arts—were financed by private charitable organizations through public contributions. In recent years, the trend has been for the government to take

over to finance welfare, education and the arts—rather than by charitable organizations.

Have you observed this trend?

[In percent]

	Total sample	Males	Females
Yes	67.7	66.0	69.2
No	29.8	31.0	28.8
Don't know/refused	2.5	3.0	2.0

Analysis

Two out of three people are aware of the trend towards taxpayer finance of welfare, education and the arts.

Question 3

When the government takes over as the provider of charitable welfare, education and the arts—this is with taxpayers' money. Do you agree or disagree with this trend?

[In percent]

	Total sample	Males	Females
Agree	19.7	18.4	21.0
Disagree	70.7	72.7	68.8
Don't know/refused	9.6	9.0	10.2

Analysis

The trend toward taxpayer financing of activities previously financed by private philanthropy meets with widespread public disapproval. Seven out of ten people were opposed to the trend, and only one in nine favored it.

Question 4

In your opinion, which is the better way to provide these charitable services—by private charitable organizations or by the government?

[In percent]

	Total sample	Male	Female
By private charitable organizations	71.6	71.6	71.5
By the Government	12.9	12.3	13.4
Both	8.8	9.9	7.7
Don't know/refused	6.8	6.2	7.3

Analysis

In line with the public's disapproval of taxpayer financing of charitable services, the vast majority of people believe these services can be better provided by private charitable organizations. More than seven out of ten people thought private bodies provide better services, and only one in eight felt government provision is superior. About one in eleven thought participation by both government and private sectors would be best.

Question 5

In appraising past provisions for charitable services in this country—who do you think has done the better job—private charitable organizations or the government?

[In percent]

	Total sample	Males	Females
By private organizations	68.9	70.1	67.7
By the Government	18.0	17.6	18.5
Don't know/refused	13.1	12.2	13.9

Analysis

More than two-thirds of the sample felt that private bodies have historically done a better job in providing charitable services than the government. Fewer than one in five felt that government has provided the better service.

Question 6

Looking into the future, who do you think can do the better job in providing these public services—the government or private charitable organizations?

[In percent]

	Total sample	Males	Females
The Government	25.4	24.4	26.3
Private charitable organizations	64.1	66.0	62.4
Both	6.8	6.5	7.2
Don't know/refused	3.6	3.0	4.1

Analysis

Nearly two-thirds of the sample felt that private organizations would be best suited to providing charitable services in the future, while only one in five believed the government would be more effective. Nearly one in fourteen thought participation by both would be preferable. The results indicate that the public has only a slight tendency to feel that government action would be more efficient in the future than it was in the past.

FOOTNOTES

[1] Walter Trattner, *From Poor Law to Welfare State: A History of Social Welfare in America* (New York, 1974), p. 37.

[2] The Gallup Organization Inc., *Public Awareness Toward Philanthropic Foundations* (Princeton, 1972).

[3] House Report No. 1860, 75th Congress, 3rd session (1939), at 19.

[4] *Department of the Treasury, Research Papers Sponsored by the Commission on Private Philanthropy and Public Needs* (5 volumes, Washington, D.C., 1977).

[5] See Joseph Goldberg and Wallace Oates, "The Costs of Foundation-Supported Activities," *Foundation News*, July/August 1973.

[6] Ralph Nelson, "Private Giving in the American Economy, 1960–1973," in Filer Commission, *Research Papers*, vol. I, p. 123.

[7] The federal tax deduction for corporate charitable donations is limited to 5 percent of taxable income. Contributions in excess of the annual limit may be carried forward and treated as a deduction during one of the following 5 years. Since it is rare for a company to wish to donate more than 5 percent of its income this is not a serious handicap to philanthropy.

[8] James Harris and Anne Klepper, "Corporate Philanthropic Public Service Activities," Filer Commission, *Research Papers*, vol. III, p. 1753.

[9] In the tables contained in this study grants by corporate foundations are itemized as donations by corporations, not foundations. If a corporation were to give, say, $1 million to its own foundation during one year, and that foundation disbursed $½ million to various charities during the year, these transactions would be tabulated as a contribution of $½ million by the corporation to charity. Corporate donations through their own foundations only appear in the tables, therefore, when the money is actually disbursed to an operating charity.

[10] R. P. Baker and J. E. Shillingburg, "Corporate Charitable Contributions," in Filer Commission, *Research Papers*, vol. III, p. 1859.

[11] Boris Bittker and George Rahdert, "The Exemption of Nonprofit Organizations from Federal Income Taxation," *The Yale Law Journal*, vol. 85, No. 3, January 1976, p. 319.

[12] Senate Report No. 91–522, 91st Congress, 1st. session (1969), 6157.

[13] I.e. a foundation without wide public financial support, as defined by section 509 of the Internal Revenue Code.

[14] The new 40 percent rule also applies when the 50 percent ceiling discussed in note 12 is used.

[15] For empirical support for this conclusion, see Martin Feldstein, "Charitable Bequests, Estate Taxation and Intergenerational Wealth Transfers," in Filer Commission, *Research Papers*, vol. III, p. 1488.

[16] Senate Report No. 91–522, 6179.

[17] Norman B. Ture, *The Impact of the Minimum Distribution Rule on Foundations*, Report Prepared for the Ad Hoc Committee on Section 4942, Public Hearings on General Tax Reform House Committee on Ways and Means, April 9th, and 10th, 1973, Part 14, commencing page 5888.

[18] The Treasury Department has tended to use the yield on five-year Treasury securities as a measure of money rates; but this formula has not always been used rigidly. In 1975, for instance, nominal yields rose. This would have suggested an increase in the payout requirement, but the volatility of asset values that year led the Treasury to avoid a large change in the payout rate.

[19] When the payout rate nears the foundation's total income, including contributions, the effect on growth is very severe. Thus, it is quite common for the payout requirement to produce only a modest increase in immediate gifts by the foundation, but bring about a major reduction in future giving.

[20] Filer Commission, *Research Papers*, vol. III, p. 1623.

[21] *Ibid.*, vol. III, p. 1638.

[22] *Ibid.*, vol. III, p. 1624.

[23] *Ibid.*, vol. III, p. 1638.

[24] *Ibid.*, vol. III, p. 1665.

[25] Senate Finance Committee Report on HR 13511, Report No. 95–1263, 95th Congress, 2nd Session, pp. 217–219.

[26] For estimates see House remarks by Rep. Barber Conable, Jr., 31 January 1979; also *Fund Raising Management*, July/August 1978.

[27] See, for example, Martin Feldstein and Charles Clotfelter, "Tax Incentives in the United States"; Martin Feldstein and Amy Taylor, "The Income Tax and Charitable Contributions"; Michael Boskin and Martin Feldstein, "Effects of the Charitable Deduction on Contributions by Low-Income and Middle-Income Households"; all in Filer Commission, *Research Papers*, vol. III.

[28] The permissible annual expenditure for lobbying for eligible organizations making the election is the *lesser* of $1,000,000 or the following percentages of exempt purpose expenditures: 20 percent of the first $500,000; 15 percent of the next $500,000; 10 percent of the next $500,000; 5 percent of the balance.

Further limits are applied to "grass roots" lobbying: such expenditures may not exceed 25 percent of permitted lobbying expenditures.

[29] Filer Commission, *Research Papers*, vol. III, pp. 1571–1572.

[30] It is intended to introduce a new IRS form for financial disclosure modeled on the New York form.

[31] Martin Feldstein, "The Income Tax and Charitable Contributions," *National Tax Journal*, March 1975 (part I) and June 1975 (part II).

[32] *Ibid.*, part II, p. 214.

[33] American Council on Education, *Patterns of Giving to Higher Education III (1973–1974)*.

[34] Filer Commission, *Research Papers*, vol. III, pp. 1770, 1773.

[35] *Ibid.*, vol. III, pp. 1859, 1862.

[36] Figures from the Department of Commerce, Internal Revenue Service and the Conference Board. The fall between 1969 and 1970 also represented a decline in the percentage of net income given to charity from 1.26 percent to 1.11 percent, so it cannot be explained merely by the drop in business profitability during the period.

[37] American Council on Education, *Patterns of Giving*, p. 4.

[38] American Association of Fund-Raising Counsel, *Giving USA (1979)* (New York, 1979), p. 27.

Mr. MOYNIHAN. Mr. President, in closing, let me note that we held extensive hearings last winter before the Finance Committee's Subcommittee on Taxation and Debt Management on this proposal. Fifty-nine public witnesses appeared, and dozens more submitted their views for the hearing record, a document that runs 572 pages. Thus we begin the 97th Congress with the proposition already a familiar one, already thoroughly aired, discussed and analyzed. The only thing that has changed is that this time I am confident that the Congress is going to enact the bill, and that the President of the United States is going to sign it into law.

Mr. PACKWOOD. Mr. President, today Senator MOYNIHAN and I are reintroducing a bill to permit taxpayers to take a tax deduction for charitable contributions whether or not they itemize their other deductions. If enacted, this bill would help stem the decline of popular support for nonprofit organizations. It would give nonitemizers the same incentive to support nonprofit organizations available to itemizers.

The Taxation Subcommittee of the Senate Finance Committee hearings on this bill on January 30–31, 1980. On September 16, 1980, the Finance Committee adopted it to be added as a floor amendment to the Tax Reduction Act of 1980 (H.R. 5829).

ROLE OF NONPROFIT ORGANIZATIONS

One of America's traditional strengths is the willingness of its people to give time and money to help each other. Organizations devoted to charitable religious, and educational purposes are exempt from Federal income taxation. Importantly, contributions to these organizations are tax deductible if a taxpayer chooses to itemize his or her deductions.

These organizations—and the countless number which have preceded them throughout America's history—have engineered a vast number of our most impressive accomplishments, and advances. This has included the fields of education, science, disease control, health and welfare services, adoption services, environment and conservation, the arts, amateur athletics, mental illness, human rights, civil rights, libraries, museums, civic organizations, consumer protection, symphony orchestras, tax reform, public policy research and improvement of relations among peoples of different nations.

Frequently, the goals of nonprofit organizations are identical to the goals of Government agencies. However, an important difference is the fact that nonprofit organizations are highly participatory.

Most Americans have donated time or money or both to nonprofit organizations. Just as many have participated in programs of nonprofit organizations, or utilized their facilities.

In many cases, the private sector has recognized a problem before the Government sector. For example, most education in the United States was in the hands of private organizations—with taxpayer support—prior to the middle of the 19th century.

Sometimes private action preceded Government action because the Government did not yet recognize the problem. For example, nonprofit organizations took the lead—prior to Government—in the areas of civil rights, elimination of the spoils system, prison reform, reform of mental hospitals, and environmental quality.

Unfortunately, in recent years, there has been a shift away from the nonprofit sector toward the Government sector.

The biggest decline in giving is among middle-income groups. This can have unexpected consequences. Upper income persons traditionally support a somewhat different range of nonprofit organizations than middle-income persons. For example, wealthy donors often emphasize higher education and cultural activities. In contrast, middle-income givers have more traditionally supported community-based charities such as the United Way, the Red Cross, the Salvation Army, Meals-on-Wheels, as well as the varied activities of churches.

One reason contributions are not keeping pace with the economy is that, as the Government offers more and more services, a citizen can say, "Let Uncle Sam do it."

But there is also a more concrete cause: The charitable deduction is vanishing. This is occurring because the dramatic increases in the standard deduction in recent years have led fewer and fewer persons to itemize. In 1970, 48 percent of taxpayers itemized. By 1977, only 23 percent itemized. These tend to be in upper-income groups. This is shown by the fact that, in 1978, the average income of tax returns with itemized deductions is $25,782. The average income of tax returns with the standard deduction is only $8,969.

Itemizers contribute twice as much to charitable organizations as nonitemizers. This is true for every income level. And, just as importantly, they also contribute more time to nonprofit organizations than nonitemizers—by about the same proportion.

A national survey by the Michigan Survey Research Center in 1973 compares the average contribution to those who itemize with those who take the standard deduction:

Adjusted gross income	Itemized	Did not itemize
Less than $4,000	$119	$69
$4,000 to $7,999	215	89
$8,000 to $9,999	314	117
$10,000 to $14,999	407	201
$15,000 to $19,999	600	329
$20,000 to $29,999	800	354
$30,000 to $49,999	1,564	[1] 171
$50,000 to $99,999	5,679	3,190
$100,000 to $199,999	17,106	816
$200,000 to $499,999	39,763	8,892
$500,000 or more	7,316	5,000

[1] Based on fewer than 25 observations.

Source: Sample survey for the Commission on Private Philanthropy and Public Needs by the Survey Research Center of the Institute for Social Research at the University of Michigan and the U.S. Census Bureau.

Prof. Martin Feldstein of Harvard University estimated that, if this proposal is enacted, charitable giving would increase by $4.1 billion. This would mean an increase from the estimated 1978 level of giving of $34.5 billion to a level of $38.6 billion.

This proposal targets the incentive to make charitable contributions to low- and middle-income groups. For example, 57.5 percent of the revenue effect of this bill will be reflected on the tax returns of those earning less than $20,000. More dramatically, 77.3 percent of the tax returns affected have income below $20,000. This is shown by the following table:

DISTRIBUTION OF TAX REDUCTION OF MOYNIHAN-PACKWOOD PROPOSAL

Expanded income class	Cumulative percentage of tax returns affected	Cumulative percentage of revenue loss
$0 to $5,000	7.9	3.0
$5,000 to $10,000	36.7	10.5
$10,000 to $15,000	59.5	36.0
$15,000 to $20,000	77.2	57.5
$20,000 to $30,000	93.8	82.8
$30,000 to $50,000	98.9	93.4
$50,000 to $100,000	99.7	96.0
$100,000 to $200,000	99.9	97.8
$200,000 and up	100.0	100.0

Source: Joint Committee on Taxation, May 6, 1978.

PRESERVING CHOICE

Individuals taking the standard deduction should not continue to be taxed on private dollars contributed to nonprofit organizations for public purposes; 77 percent of our taxpayers currently pay tax on their voluntary contributions. This bill corrects that inequity.

The bill offers a philosophical choice. The choice is, should we cure the obstacles to continued strength in the nonprofit sector, or should we put this part of our national character behind us under the theory that "Uncle Sam can do it."

Executive branch bureaucracies, and their apologists in the private sector, will no doubt claim that this proposal to stem the decline of self-help organizations threatens continued support of Government programs. I doubt that this is true. Instead, the proposal simply recognizes that the nonprofit sector is a vital link in the chain of concern for our fellow man. The Government addresses many of the same problems as the nonprofit sector, but it cannot accomplish the goals alone.

The choice of determining the role of the nonprofit sector is in the hands of the individual. Assume that a taxpayer decides to give $10 to a school for the blind. If this taxpayer is at a typical income level electing the standard deduction, his last dollar of income is taxed at about the 20-percent rate. This means that the school for the blind receives $10, and the aftertax cost to the individual is $8.

Our tax law has encouraged this choice—through a tax deduction for contributions—since the Second Revenue Act of 1917. To tax that $10—just as if it were used for private consumption—is self-defeating and inequitable.

This proposal is contrary to the theory that the tax code ought not be used to reward desirable conduct. This theory holds that the Government should encourage desirable behavior through Government-run direct subsidies instead of tax incentives to individuals. In my opinion, this view ignores the ability of

citizens to recognize and act effectively to solve human needs.

Mr. President, I hope that Congress can approve this vital tax reform proposal this year.●

By Mr. SASSER:

S. 171. A bill to amend the Internal Revenue Code of 1954 to reduce the tax effect known as the marriage penalty by permitting the deduction, without regard to whether deductions are itemized, of 20 percent of the earned income of the spouse whose earned income is lower than that of the other spouse; to the Committee on Finance.

ELIMINATION OF MARRIAGE TAX PENALTY

● Mr. SASSER. Mr. President, since I first came to the Congress, I have heard many arguments for Federal legislation made on behalf of many groups. I have found few of these arguments to be as compelling as the one made by married couples—who are required to pay the "marriage tax penalty."

Mr. President, I would like to review the history of the tax policy, with regard to married and unmarried persons, that led to the creation of this penalty.

As originally written the Internal Revenue Code recognized the individual as the sole taxable unit. Under some State community property laws, however, married couples were permitted to file income tax returns splitting their income. When one spouse earned most or all of the couple's income, a substantial tax savings was realized.

Residents of non-community-property States were at such a disadvantage that many States began adopting community property laws. To avoid the transitional problems likely to result from this growing State movement and for other reasons, Congress in 1948 changed the tax law to allow all married couples to take advantage of income splitting.

By the 1960's many of the growing population of single people felt that the advantage that income splitting gave to one-earner married couples was unfair to them. At some income levels the difference in tax levels between single persons and married couples was as much as 42 percent.

Consequently, Congress revised tax rates in the Tax Reform Act of 1969. Under these rates the tax liability of single persons could be no more than 20 percent in excess of that paid by a married couple on their joint return for the same amount of income. This change, of course, helped single persons but at the same time aggravated another problem.

Under present tax law a married couple making $10,000 each would pay $2,745 in taxes on their combined income of $20,000. If the same were not married, they would pay $2,354 in taxes. This difference of $391 in tax liability is the married penalty. Indeed, it is not uncommon for married couples to pay taxes in excess of the salary earned by one spouse. This is unjust and unfair.

Mr. President, today I am introducing a bill to deal with the marriage tax penalty. This measure is identical to legislation I introduced last year. This legislation alleviates the adverse effects of this penalty on the productivity of the American family. The legislation does this without increasing the tax burden of either one-earner families or single persons. It insures a tax structure that is fair to all taxpayers.

My bill would allow a 20-percent deduction on the gross income of the spouse earning the lower salary. The maximum deduction allowed would be $4,000. This would result in a substantial savings because in many instances a couple would fall into a lower tax bracket.

A couple would not have to itemize their deductions to take advantage of this provision. The deduction also would not affect eligibility for other deductions or credits.

The United States is one of the few nations of the world that does not recognize a difference, for tax purposes, between a one- and two-earner family. This legislation would change the present income tax law to acknowledge this difference.

Mr. President, I am encouraged by the widespread interest shown in this matter by many of my Democratic and Republican colleagues. President Carter and now President Reagan have indicated their desire to alleviate the marriage penalty. Marriage penalty tax revisions were part of the Senate Finance Committee tax bill reported out in the fall of 1980, and I am confident that my marriage tax penalty bill along with others presently pending in the Senate provide us with a concrete and long-awaited opportunity to remove this inequity from the tax code.

My legislation S. 171 is fair to all taxpayers and would ease the discrimination against married couples. I urge the Committee on Finance to carefully consider this proposal in the preparation of future tax legislation.

Mr. President, I ask unanimous consent that the full text of S. 171 be printed immediately following these remarks in the CONGRESSIONAL RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 171

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ALLOWANCE OF DEDUCTION.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as 222 and by inserting after section 220 the following new section:

"SEC. 221. DEDUCTION TO REDUCE THE MARRIAGE PENALTY.

"(a) DEDUCTION ALLOWED.—In the case of a married individual who files a joint return for the taxable year with his spouse, there is allowed as a deduction in computing taxable income an amount equal to 20 percent of—

"(1) the earned income of the spouse whose earned income for the taxable year is less than the earned income of the other spouse for the taxable year, or

"(2) if the earned income of each spouse for the taxable year is the same, the earned income of one spouse for the taxable year.

"(b) LIMITATION.—The amount of the deduction allowed by subsection (a) for the taxable year shall not exceed $4,000.

"(c) DETERMINATION OF MARITAL STATUS.—For purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a).

"(d) EARNED INCOME.—For purposes of subsection (a), the term 'earned income' means—

"(1) earned income (as defined in section 911(b)), plus

"(2) the amount of net earnings from self-employment for the taxable year (within the meaning of section 1402(a)).".

(b) DEDUCTION WITHOUT REGARD TO ITEMIZED DEDUCTIONS.—Section 63 of such Code (relating to definition of taxable income) is amended—

(1) by striking out "and" at the end of subparagraph (A) of subsection (b)(1),

(2) by inserting after subparagraph (B) of subsection (b)(1) the following new subparagraph:

"(C) the deduction to reduce the marriage penalty provided by section 221,",

(3) by striking out "and" at the end of paragraph (1) of subsection (f),

(4) by striking out the period at the end of paragraph (2) of subsection (f), and inserting in lieu thereof a comma and the word "and", and

(5) by adding at the end of subsection (f) the following new paragraph:

"(3) the deduction to reduce the marriage penalty provided by section 221.".

(c) CONFORMING AMENDMENT RELATING TO WITHHOLDING.—Subsection (m) of section 3402 of such Code (relating to withholding allowances based on itemized deductions) is amended—

(1) by striking out subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:

"(A) the sum of—

"(i) his estimated itemized deductions, and

"(ii) the deduction allowed by section 221, over", and

(2) by striking out "section 151" in paragraph (2)(A) and inserting in lieu thereof "sections 151 and 221".

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking out the last item and inserting in lieu thereof the following new items:

"Sec. 211. Deduction to reduce the marriage penalty.

"Sec. 222. Cross references.".

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to taxable years beginning after December 31, 1980. ●

By Mr. SASSER:

S. 172. A bill to amend the Internal Revenue Code of 1954 to allow a deduction as an expense for certain amounts of depreciable business assets; to the Committee on Finance.

SMALL BUSINESS DIRECT EXPENSING ACT

● Mr. SASSER. Mr. President, I rise today to introduce legislation to deal with the capital formation problems of small business. This bill is identical to the measure I introduced in the last Congress, S. 2689, the Small Business Direct Expensing Act of 1980. The need for this legislation is now greater than ever. The volatile economy we now face exacerbates the already distressing trends which make it difficult for business, especially small businesses, to raise much needed equity capital.

Due to the greater risks involved with the new or small business, the lack of adequate collateral, and the higher cost of making smaller loans, the small business is often shunned by banks and other credit suppliers. In times of tight money

small businesses frequently pay higher interest rates than their larger competitors. Stresses in the economy, such as the very high interest rates and inflation we are now experiencing, hit the small business especially hard because of its relatively limited resources.

In addition to borrowing, growing businesses also sell issues of securities to raise equity capital. This method, once a prime source of funds for small business, has all but disappeared. Between 1974 and 1977, only 61 small companies, worth $5 million or less, were able to sell stock to the public. In 1969, 698 such companies were able to sell stock.

Business Week reported that—

> For some years now . . . capital markets have been pretty much open only to the Nation's big companies . . . the top 1,000 or so corporations.

According to a survey conducted by the American Electronics Association, companies founded in the 1970's were able to raise an average of only $522,000 in current dollars. The average for companies established in the 1960's was almost twice that amount. In real dollar terms, this disparity is even greater.

These problems are especially alarming when the critical role of small business in the Nation's economy is realized. Small business accounts for almost 57 percent of all business receipts and 39 percent of the gross national product. It provides 58 percent of total U.S. business employment.

Its tremendous impact on the Nation's employment is further illustrated by a study conducted by the MIT Development Foundation. Five small, new companies were compared with six large, mature corporations. It was found that the small companies, despite having combined annual sales of less than one-fortieth of the giants, created 10,900 more jobs over a 5-year period than did the larger corporations. Over this period the small companies experienced an average growth in jobs of 41 percent, while the larger corporations created jobs at an annual rate of less than 1 percent.

Small business is also a crucial innovative force in the economy. Since World War II, firms with fewer than 1,000 employees were responsible for one-half of the most significant new industrial products and processes. Firms with less than 100 employees produced 24 percent of such innovations.

Mr. President, we must work toward creating the kind of government that will allow these businesses to survive and to flourish. Government tax, credit, and regulatory policies must not be allowed to stifle this vitality that we find in the small business sector. We need its productivity, its jobs, and its innovation too badly to allow this to happen.

My bill is a step toward that end. It will allow the small entrepreneur to deduct, or "direct expense," up to $10,000 in depreciable assets in 1 year. Existing law requires that this deduction be spread over a period of several years.

This 1 year feature gives the small entrepreneur the chance to recover $10,000 in capital expenses very quickly. He or she is then able to purchase new or replacement equipment earlier than would otherwise be possible. This allows more flexibility for small businesses to modernize and make their operations more efficient.

Another important aspect of the bill is the simplification it brings to this very complicated area of the tax law. Depreciation is responsible for a tremendous number of errors on tax returns every year. These errors are often made by taxpayers who have great need of the tax benefit provided by depreciation but who cannot afford to retain an accountant to maintain accurate depreciation records. A tax advantage does little good if it is so complicated that the taxpayer to whom its benefits are directed is unable to comply with its terms.

Mr. President, the real strength and relevance of this proposal is derived from the fact that it comes directly from the small business community. The Tennessee delegates to the White House Conference on Small Business first brought the concept to my attention. They felt strongly about it because they know better than anyone what the problems and the needs of small business are. They canvassed their small business colleagues to refine the idea and to insure its broad acceptance and workability. Then they began to push their idea.

So successful were their efforts in gaging the potential support for direct expensing that when the idea came to a vote among small business people from all over the country at the White House Conference on Small Business, the idea was approved overwhelmingly. When the delegates assembled on the last day of the conference to select as top priorities 15 of the 60 recommendations they would make to the Congress and the President, the direct expensing concept received the second highest number of votes on this priority list.

We cannot ignore this resounding vote of confidence any more than we can ignore the importance of small business to the Nation.

Therefore, Mr. President, I commend this piece of legislation to my colleagues in the Senate and urge the Committee on Finance to carefully consider this proposal when the next omnibus tax bill is brought before the committee.

Mr. President, I ask unanimous consent that the full text of the Small Business Direct Expensing Act, S. 172 be printed immediately after these remarks in the CONGRESSIONAL RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 172

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Direct Expensing Act of 1981".

SEC. 2. ELECTION TO EXPENSE CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to deductions for individuals and corporations) is amended—

(1) by redesignating the first section 194 (relating to contributions to employer liability trusts) as section 195 and inserting such section after the second section 194, and

(2) by adding at the end thereof the following new section:

"SEC. 196. EXPENDITURES FOR BUSINESS ASSETS.

"(a) TREATMENT AS EXPENSES.—A taxpayer may elect to treat expenditures which are paid or incurred by him during the taxable year for section 196 property as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

"(b) DOLLAR LIMITATION.—

"(1) IN GENERAL.—The aggregate amount of expenditures which may be taken into account under subsection (a) for any taxable year shall not exceed $10,000 ($5,000 in the case of a married individual filing a separate return).

"(2) ALLOCATION.—If the aggregate amount of expenditures for section 196 property exceeds the limitation under paragraph (1), the taxpayer shall allocate to the section 196 property the expenditures with respect to which a deduction is allowable under subsection (a).

"(c) ELECTION.—

"(1) IN GENERAL.—The election under this section for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The election shall be made in such a manner as the Secretary may by regulations prescribe.

"(2) ELECTION IRREVOCABLE.—Any election made under this section may not be revoked except with the consent of the Secretary.

"(d) DEFINITIONS AND SPECIAL RULES.—

"(1) SECTION 196 PROPERTY.—For purposes of this section, the term 'section 196 property' means tangible personal property—

"(A) of a character subject to the allowance for depreciation under section 167, and

"(B) acquired by purchase after December 31, 1980, for use in a trade or business.

"(2) PURCHASE DEFINED.—For purposes of paragraph (1), the term 'purchase' means any acquisition of property, but only if—

"(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267 (b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

"(B) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and

"(C) the basis of the property in the hands of the person acquiring it is not determined—

"(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

"(ii) under section 1014(a) (relating to property acquired from a decedent).

"(3) COST.—For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

"(4) SECTION NOT TO APPLY TO ESTATES AND TRUSTS.—This section shall not apply to estates and trusts.

"(5) DOLLAR LIMITATON OF CONTROLLED GROUP.—For purposes of subsection (b) of this section—

"(A) all component members of a controlled group shall be treated as one taxpayer, and

"(B) the Secretary shall apportion the dollar limitation contained in subsection (b)(1) among the component members of such controlled group in such manner as he shall by regulations prescribe.

"(6) CONTROLLED GROUP DEFINED.—For purposes of paragraphs (2) and (5), the

term 'controlled group' has the meaning assigned to it by section 1563(a), except that, for such purposes, the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563(a)(1).

"(7) DOLLAR LIMITATION IN CASE OF PARTNERSHIPS.—In the case of a partnership, the dollar limitation contained in subsection (b)(1) shall apply with respect to the partnership and with respect to each partner.

"(8) COORDINATION WITH SECTION 38.—For purposes of section 38, the useful life of any property with respect to which an election under subsection (a) applies shall be determined without regard to this section.".

(b) TECHNICAL AMENDMENT.—Paragraph (1) of section 263(a) of such Code (relating to capital expenditures) is amended—

(1) by striking "or" at the end of subparagraph (F);

(2) by striking out the period at the end of subparagraph (G) and inserting in lieu thereof a semicolon and "or", and

(3) by adding at the end thereof the following new subparagraph:

"(H) expenditures for property used in a trade or business deductible under section 196.".

(c) CONFORMING AMENDMENT.—The table of sections of part VI of subchapter B of chapter 1 of such Code is amended by adding at the end thereof the following new item: "Sec. 196. Expenditures for business assets.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years ending after December 31, 1980.●

ADDITIONAL COSPONSORS

S. 20

At the request of Mr. SASSER, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 20, a bill to amend title 18 of the United States Code to prohibit the robbery of a controlled substance from a pharmacy.

S. 30

At the request of Mr. SASSER, the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 30, a bill to provide for the payment of interest by the Federal Government on any amount due for more than 30 days to any person under the terms of a contract entered into by the Federal Government and such person.

S. 43

At the request of Mr. SASSER, the Senator from Washington (Mr. GORTON), the Senator from Indiana (Mr. LUGAR), and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 43, a bill to amend the Congressional Budget Act of 1974 to require the Director of the Congressional Budget Office to prepare and submit, for every bill or resolution reported in the House or the Senate which has certain specific economic consequences, an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

S. 45

At the request of Mr. SASSER, the Senator from Maine (Mr. COHEN) was added as a cosponsor of S. 45, a bill to reform the laws relating to the provision of Federal assistance in order to provide State and local governments with greater flexibility in managing programs and projects using such assistance.

S. 158

At the request of Mr. HELMS, the Senator from New York (Mr. D'AMATO) was added as a cosponsor of S. 158, a bill to provide that human life shall be deemed to exist from conception.

SENATE RESOLUTION 17

At the request of Mr. SASSER, the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Oklahoma (Mr. BOREN) were added as cosponsors of Senate Resolution 17, a resolution concerning revision of the monetary policies of the Board of Governors of the Federal Reserve System.

ADDITIONAL STATEMENTS

THE NAMING OF THE PRESIDENT

● Mr. HATCH. Mr. President, this past Sunday the Mormon Tabernacle Choir originated its weekly broadcast from here in Washington, D.C. They were here to help celebrate the inauguration of President Ronald Reagan, the 40th American President. They gave a concert at the steps of the Lincoln Memorial last Saturday night and also participated in the inaugural parade today. Those who had the opportunity to hear their rendition of the "Battle Hymn of the Republic" surely understand why I continue to thrill to hear their voices.

As is customary on their program, "Music and the Spoken Word," a brief thought was offered by J. Spencer Kinard. Mr. Kinard has been giving the spoken word on the program for the last few years and anyone familiar with the history of this program, a program, I might add, that continues to be the longest running radio broadcast in the country, will know that he had a monumental act to follow. The speaker at the origin of the broadcasts was Richard Evans. His deep and resonant voice became synonymous with the choir's broadcast. At his death many felt that it would be impossible to replace him. J. Spencer Kinard was given the task and has filled it admirably.

The thoughts offered by Mr. Kinard last Sunday were very appropriate at this time in history. Entitled "The Naming of the President," he spoke of the dignity of the office and its continual fulfillment of the principles outlined in the Constitution.

As I listened to Mr. Kinard speak I could not help but recall a story that emphasized a very important point. It seems that a newspaperman had the occasion to be visting with a farmer in Iowa and noticed that the man had a picture of then-President Nixon on his wall. The newspaperman asked him if this meant that he was a supporter of Richard Nixon, in spite of his troubles at the time. The reply the farmer gave is indicative of the attitude of the American people toward the Presidency. He looked the newspaperman in the eye and informed him that what he saw was a picture of the President of the United States and he supported the President.

Mr. President, the remarks offered by Mr. Kinard are along the same lines. He points out that our Government, and particularly the inauguration of a new President, is "the culmination of a rare experiment in the history of human government. An experiment which makes those who are governed equal to those who govern."

I ask that the remarks of Mr. Kinard be reprinted in the RECORD and commend them to all of my colleagues.

The remarks follow:

THE SPOKEN WORD: "THE NAMING OF THE PRESIDENT"

The clamor and confusion of the 1980 presidential campaign are now over. And this week, the 40th President of the United States will be installed in the highest elective office in this country.

In so doing, Ronald Reagan fulfills the divinely inspired requirements of the Constitution, that the executive power of these United States shall be vested in an elected President; in an individual selected from among the people, and by the people.

The inauguration of an American President is a momentous occasion, an event filled with symbolism and hidden meanings; for it is the culmination of a rare experiment in the history of human government, an experiment which makes those who are governed equal to those who govern.

Thus, it is not so much the man nor his politics that we honor during the inauguration ceremonies. Rather, it is the office itself. The office of the President of the United States. That office is evidence that the powers to rule in a republic are derived from the common consent of those who are ruled; it is tangible proof that the value of one citizen's voice is as great as the value of any, that the voice of the cattleman in Wyoming, the steelworker in Pennsylvania, or the homemaker in California is one and the same with the voice of the judge, the lawyer, the politician.

In this country, then, when politics function in its rightful arena, the office of the President is placed above the claims of royal blood, the influence of wealth, or the dominion of ecclesiastical authority.

Those who have given their consent and support to this newly elected President also give him a charge, an edict to remember the sacred trust which he has accepted. Let him recognize the common good in every decision, in every act, in every appointment. Let him establish his administration upon the principle that it is the government who should fear the people and not the people who should fear the government.

And may the President keep sacred his oath to preserve, protect and defend the Constitution of the United States, regardless of the risk, political pressures, or cost.

And finally, may this Chief of State, and all who may follow, heed the words spoken during the inaugural address of the first President and Father of our country, that: "Heaven can never smile on a nation that disregards the eternal rules of order and right."[1]

For in truth, God is not a respecter of nationalities nor politics. And the blessings of heaven, for individuals as well as for nations, can only be bestowed upon the condition of righteousness.●

GOVERNMENT TRAVEL

● Mr. SASSER. Mr. President, since becoming a Member of the Senate. I have closely monitored the travel expenditures of Government employees. Each year I

[1] George Bancroft "The Inauguration of Washington," *The Ridpath Library*, Fifth Ave. Library Soc. 1907, Vol II, Page 362.

take a close look at the travel requests of each Federal department and agency.

I am pleased to report that some progress has been made. Many Federal managers have recognized that the Congress is concerned that travel be kept to an absolute minimum. However, some Government agencies have failed to pay close enough attention to these expenditures, allowing costs to mount.

Since the budget was submitted last week, I have paid close attention to the projected travel plans of the executive branch. In many instances, travel cost increases are within a moderate range. Some agencies are even planning reductions in travel expenditures. I would like to share my findings with my colleagues.

First the good news. Projected travel costs in the Office of the Secretary of Agriculture are projected to decrease by 38 percent. Departmental management in Agriculture is projected to be reduced by 60 percent. The only other Government agency which I found to have a projected reduction in travel costs was in the general administration of the Department of Commerce where a 5-percent reduction is budgeted.

Now, I realize that the latest budget submission was prepared by the outgoing administration. But it is my hope that the new Secretaries of Agriculture and Commerce will stick by the travel plans of their predecessors and reduce travel as proposed in the budget.

Now let us turn to more distressing news. Some agencies are planning large travel increases. For instance, a relatively new agency, the National Consumer Cooperative Bank is planning to increase travel by 138 percent from $700,000 in the current year to $1,671,000. While I have not yet seen the detailed budget justification of the Bank, I find it difficult to believe that such an increase is justified. Since this new agency was first authorized I have raised questions about its travel costs. Agency officials have told the Congress that the large travel budget was due to the fact that the Bank had not yet opened regional offices. According to testimony received last year, the Bank will have its regional offices opened by the beginning of fiscal year 1982. This should moderate the travel costs of this agency. A 138-percent increase seems out of line with the travel plans of the rest of the executive branch.

Travel in the program administration account of the Department of Labor is projected to increase 70 percent to $3.3 million. Travel in the Department of Justice departmental administration will reach over $1 million for the first time in history—a 68-percent increase.

Mr. President, some Government agencies spend enormous sums on travel per employee. In fiscal year 1980, the Nuclear Regulatory Commission will spend $3,900 per employee, including clerical employees, for travel. The National Science Foundation which is projecting a 51-percent overall increase in travel to $4.7 million will spend $3,600 per employee. The Water Resources Council, while projecting an overall moderate increase will spend $3,200 per employee. The Appalachian Regional Commission, with only 88 employees will spend almost $2,500 per employee.

Mr. President, I hope the new managers of these agencies and departments will take a close look at these projected travel expenditures and make the proper adjustments aimed at reducing what may be excessive travel budgets.

Mr. President, I would also like to take this opportunity to point out that the Interagency Travel Management Improvement project is releasing its findings and recommendations aimed at reducing waste and abuse in Government travel. This project was an important initiative of President Carter's administration and the fruits of its work will be felt for many years to come.

One effort of the interagency group has been to break down Government travel into various categories. One category—travel to conferences—seems to be an area in need of more efficient management in some agencies.

The interagency group projected that in fiscal year 1979 conference travel totaled 625,000 trips Government-wide or a little more than 6 percent of all travel. Some departments and agencies, however, are sending a much larger percentage of their employees to conferences. For instance, almost 25 percent of the total travel undertaken by Department of Education personnel is to attend conferences; Bureau of Prisons, 20 percent; Veterans' Administration, 21 percent; Tennessee Valley Authority, 19 percent; Food and Drug Administration, 15 percent.

The following agencies exceeded 10 percent of total travel for conferences: the Soil and Conservation Service, National Oceanic and Atmospheric Administration, the National Park Service, Bureau of Indian Affairs, the National Institutes of Health and the Department of Labor. One agency, however, the Department of Housing and Urban Development dedicated only one-half of 1 percent of agency trips to conferences—an impressive record.

Only 1¼ percent of Government-financed trips are for the purpose of giving speeches or making presentations. But some agencies seem to spend substantial amounts sending employees around the Nation and the world for this purpose. Almost 9 percent of all trips of the Environmental Protection Agency were for speeches or presentations; almost 7 percent of travel by the Department of State and almost 3 percent for the Department of Education.

Certainly it is my feeling that we should reduce Government travel costs. In the process I would hope we would not impair program activity. Therefore, we should make a special effort to assure that nonessential travel, such as to conferences or speeches, be kept to an absolute minimum.

Mr. President, Government travel is one of the most visible of Federal expenditures. The American people feel that the Federal Government is not effectively and efficiently managing its resources. Certainly in the area of travel costs, reductions must be made. I will continue to monitor the travel costs of Government agencies. In fiscal year 1980, the Congress approved my legislation which reduced travel by $500 million. Last month the Senate approved a similar reduction in the fiscal year 1981 continuing resolution. I have reintroduced legislation designed to further reduce travel in the current year and I hope it will be approved by the Congress and signed into law by the President.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 11 A.M. TOMORROW

Mr. BAKER. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the provisions of the order previously entered, that the Senate stand in recess until the hour of 11 a.m. on tomorrow.

The motion was agreed to; and the Senate, at 6:07 p.m., in executive session, recessed until Wednesday, January 21, 1981, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate January 20, 1981:

DEPARTMENT OF STATE

Alexander Meigs Haig, Jr., of Connecticut, to be Secretary of State.

DEPARTMENT OF THE TREASURY

Donald T. Regan, of New Jersey, to be Secretary of the Treasury.

DEPARTMENT OF DEFENSE

Caspar Willard Weinberger, of California, to be Secretary of Defense.

DEPARTMENT OF JUSTICE

William French Smith, of California, to be Attorney General.

DEPARTMENT OF THE INTERIOR

James Gaius Watt, of Colorado, to be Secretary of the Interior.

DEPARTMENT OF AGRICULTURE

John R. Block, of Illinois, to be Secretary of Agriculture.

DEPARTMENT OF COMMERCE

Malcolm Baldrige, of Connecticut, to be Secretary of Commerce.

DEPARTMENT OF LABOR

Raymond J. Donovan, of New Jersey, to be Secretary of Labor.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Richard S. Schweiker, of Pennsylvania, to be Secretary of Health and Human Services.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Samuel R. Pierce, Jr., of New York, to be Secretary of Housing and Urban Development.

DEPARTMENT OF TRANSPORTATION

Andrew L. Lewis, Jr., of Pennsylvania, to be Secretary of Transportation.

DEPARTMENT OF ENERGY

James B. Edwards, of South Carolina, to be Secretary of Energy.

DEPARTMENT OF EDUCATION

T. H. Bell, of Utah, to be Secretary of Education.

UNITED NATIONS

Jeane J. Kirkpatrick, of Maryland, to be the Representative of the United States of America to the United Nations with the rank and status of Ambassador Extraordinary and Plenipotentiary, and the Representative of the United States of America in the Security Council of the United Nations.

OFFICE OF MANAGEMENT AND BUDGET

David A. Stockman, of Michigan, to be Director of the Office of Management and Budget.

CENTRAL INTELLIGENCE

William J. Casey, of New York, to be Director of Central Intelligence, vice Stansfield Turner.

DEPARTMENT OF TRANSPORTATION

Darrell M. Trent, of California, to be Deputy Secretary of Transportation, vice William J. Beckham, Jr.

OFFICE OF THE U.S. TRADE REPRESENTATIVE

William Emerson Brock III, of Tennessee, to be U.S. Trade Representative, with the rank of Ambassador Extraordinary and Plenipotentiary, vice Reubin O'D. Askew.

CONFIRMATION

Executive nomination confirmed by the Senate January 20, 1981:

DEPARTMENT OF DEFENSE

Caspar Willard Weinberger, of California, to be Secretary of Defense.