United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, WEDNESDAY, DECEMBER 20, 1995 *No. 205*

House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore [Mr. WICKER].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
December 20, 1995.

I hereby designate the Honorable ROGER F. WICKER to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

May Your word, O God, that brought the Earth into being and sustains us along life's way not only comfort us, but examine and correct us in our vision, our motivations, and our purposes. We know that we are accountable to You for our lives and responsible to each other for our deeds so we pray that we will see Your mighty purposes for justice among us. Sustain us, strengthen us, judge us, forgive us, and minister to us in the depths of our hearts. This is our earnest prayer. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Mississippi [Mr. MONTGOMERY] come forward and lead the membership in the Pledge of Allegiance.

Mr. MONTGOMERY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1530), ''An Act to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.''

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain fifteen 1-minutes per side.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON TODAY

Mr. STEARNS. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with today.

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

There was no objection.

DEMOCRATS AND PRESIDENT DUCK RESPONSIBILITY

(Mr. STEARNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, there are two arguments the Democrats and the President use to justify their not signing a 7-year balanced budget agreement.

One is the Medicare scare. Right now the difference between what the President and we are proposing is .7 percent a year or $11 billion. So how can Americans believe the President when he said, ''I simply cannot sign a budget that devastates Medicare to the elderly.'' Come on, Mr. President, we are in agreement on Medicare so stop the scare.

The other sound bite for Democrats and the President is tax cuts. The American people have suffered through at least 19 different major tax increases since 1981 without one single tax cut. There is no reason why they should have to wait another 7 to 10 years for tax relief.

Our tax cuts were paid for on April 5, 1995, before the debate began on saving Medicare. And they have nothing to do with saving Medicare. In fact we have a lock box in the Medicare legislation to keep all savings there.

The President and the Democrats have fabricated the Medicare-scare and tax cut connection because it is useful politically. ''It allows them to attack and to duck responsibility, both at the same time.'' Those are not my words. That is from the Washington Post editorial on September 25, 1995.

Come on, Mr. President, sign the agreement and let us stop ducking responsibility.

GET VETERANS' CHECKS OUT ON TIME

(Mr. MONTGOMERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MONTGOMERY. Mr. Speaker, first we must be sure that the 3 million

veterans' checks get out on time. The deadline is tomorrow. Really, let us not let these veterans down. Let us get these checks out on time.

OUR TROOPS IN BOSNIA

Mr. Speaker, like most Americans, I have watched our American forces move into Bosnia on the ground and in the air. Mr. Speaker, even though I am not happy with the mission, I am very impressed with the way our Armed Forces are handling themselves. With temperatures below freezing, fog, snow and ice, our military is operating as well-trained unit in Bosnia.

Next time that our soldiers and Air Force personnel are wearing their uniforms and equipment the way they are and the way they were trained, look at them; I am not one that has seen any Americans walking around without his or her helmet being on, and as you look, they are carrying their individual weapons, plus they are doing an outstanding job with our great airplanes in landing in the fog, ice, and snow.

Mr. Speaker, we must remember that all of our personnel in Bosnia are from the all-volunteer system. They are the finest military force in the world, and it shows. Just look at them tonight on television.

WHAT REALLY WENT ON LAST NIGHT?

(Mr. DELAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELAY. Mr. Speaker, the United States, the President, and Washington, DC, better understand what went on last night. The Speaker, the majority leader, and the President negotiated for 2½ hours.

We were under the impression that the President was absolutely adamant about making a deal and bringing a balanced budget now. Within 15 to 30 minutes, the vice president walked out and contradicted what the Speaker understood to be the beginning of a deal. This is deja vu all over again. This is exactly what happened on November 20 that we have been manipulated for now going on 30 days.

The President obviously is not interested in balancing the budget. This administration cannot be trusted. They can not keep their word. They cannot keep their promises.

And so make no mistake about it, there will be no CR until the administration proves that they can be trusted.

MAJORITY PARTY SHOULD GOVERN

(Mr. PALLONE asked and was given permission to address the House for 1 minute.)

Mr. PALLONE. Mr. Speaker, there goes the Republican leadership again, saying they want to keep the Government shut down because they do not get their way, and that is the problem here. The Republican majority has an obligation to keep this Government going. They are the only ones that can bring up a continuing resolution. They refuse to do so, because they do not get their way.

The President has stood strong, and he has said, ''I will negotiate, I will sit down with you, but I will not negotiate away Medicare, I will not negotiate away Medicaid, the environment, and education.'' He is being fair. He is being strong.

But this Republican leadership, and there you heard it said very clearly, they want to keep the Government shut down and they want to hold this Government hostage. That is not what the majority party is supposed to do. They are supposed to govern. They are supposed to care about the Government and all the Government agencies and all the things that people need in order to continue functioning in this country. It is not fair. They are the problem.

THE BASIC PREMISE OF STRENGTH

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, once again I listened with great interest to my friend from New Jersey set down his parameters for what a majority party should do and offer us an interesting definition of strength. I respectfully beg to differ.

The most stirring example of strength is to keep your promise to the American people. The most stirring example of responsibility is to save this country and this Government from fiscal disaster for generations yet unborn. The most stirring example of true responsibility is to provide for our seniors by making sure that their health care is still here in 7 years, to make plans for the next generation and not just the next election.

The sad fact is that the liberals on this side of the aisle and the liberals at the other end of Pennsylvania Avenue do not seem to understand that basic premise of strength.

Once again, the new majority says to our friends on the other side, join with us and govern, but let us play by the rules.

WE MUST BALANCE PRIORITIES

(Mr. KLINK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLINK. Mr. Speaker, we have got some disagreements and, indeed, sometimes the rhetoric gets a little heated around here from both sides.

Let me explain, we are not just talking dollars and cents as some of our colleagues on the other side who spoke earlier. We are not talking about the fact we are a few billion dollars apart.

We are talking about balancing priorities as well as balancing the budget. There are a lot of us on our side of the aisle that say, look, if we are going to force adult children of the elderly who are in nursing homes to pick up the cost of that nursing home care because we have changed Medicaid, we have made a medigrant program, we have not guaranteed that all of these senior citizens are even going to have a nursing home, we have not guaranteed the standard of care, we have not guaranteed that spouses are not going to be impoverished.

Let me tell you something, in the committee, 100 percent of the Republicans on the other side voted against each one of those amendments protecting adult children, protecting spouses from impoverishment, protecting people so that they have at least some standard of care.

I understand, in the conference report, that may have begun to change. It has not changed enough. We must protect those care standards.

WORDS FROM A PROMINENT AMERICAN POLITICIAN

(Mr. HEFLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HEFLEY. Mr. Speaker, I would like to quote from a prominent American politician:

> We have to cut the deficit, because the more we spend paying off the debt, the less tax dollars we have to invest in jobs and education and the future of this country. The more money we take out of the pool available savings, the harder it is for people in the private sector to borrow money at affordable interest rates for a college loan or for their children, for a home mortgage or to start a new business. That is why we have got to reduce the debt, because it is crowding out other activities we ought to be engaged in and the American people ought to be engaged in. We cut the deficit so that our children will be able to buy a home, so that our companies can invest in the future, retaining their workers, so our government can make the kinds of investments we need to be strong and smarter and safer.

These are not the words of NEWT GINGRICH, but the words of Bill Clinton on February 2, 1993, in his budget address. He said it. We agree with it. Let us do it. Let us do it now.

AMERICA, TAKE A LOOK AT THE LOSS OF JOBS

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, I would like to talk about budget deficits. Polaroid has announced they are laying off 1,300 Americans, 1,300 more Americans losing their livable-wage jobs.

But Polaroid said, ''Don't worry.'' They are going to join forces with the Federal Government and provide retraining. What are we retraining American workers to do? How many more

welders and auto body specialists do we need? Pantyhose crotch-closers?

Beam me up, Mr. Speaker. Since NAFTA, 50,000 American workers have lost their jobs. Just last week Boeing laid off 3,200 Americans, moved to Mexico. They were making $18 an hour in Seattle. They will make 76 cents in Mexicali.

Ladies and gentlemen, you are talking about balancing the budget? America and Congress will never balance the budget with jobs at Mickey D's.

It is time to take a look at the loss of jobs, ladies and gentlemen.

GET RID OF SECRETARY O'LEARY

(Mr. CHABOT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHABOT. Mr. Speaker, as we continue to try to achieve a balanced budget, I think we ought to keep in mind the one Cabinet Secretary who has been singled out by Vice President GORE for doing, and I quote the Vice President, ''a fabulous job on eliminating unnecessary spending.'' Yes, I am talking about the administration's poster child for government frugality, Hazel O'Leary.

How can we be so callous, so downright mean-spirited, Mr. Speaker, as to work for a balanced budget at a time when the Secretary of Energy already may be going a whole night or two without staying in a 5-star European hotel at taxpayer expense?

The Vice President insists that she is doing, in his words, a fabulous job. But here is a question: The law clearly states in title 5, section 3107, that a Cabinet Secretary may not use appropriated funds to pay a publicity expert unless the money has been appropriated specifically for that purpose. Was that law violated by Mrs. O'Leary when she used taxpayer dollars to hire a private PR firm?

Let us look into that. Let us balance the budget. Let us get rid of Secretary O'Leary.

□ 1015

GET ECONOMIC HOUSE IN ORDER

(Mr. BARRETT of Wisconsin asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARRETT of Wisconsin. Mr. Speaker, when the Republicans took over this House in January, they said they would run this Government like a business. Well, Mr. Speaker, I am still looking for the business that would run this Government like the Republicans are running it. They are sending home workers because they are upset they are not getting their own way, and in the end they are going to pay them. I would like to see one business, just one business in this country, that is going to send home its employees because it is so mad it is not getting its own way, and then is going to pay them in the end.

There is no reason to send these people home. They should work if they want to work. And why are they sending them home? They are not getting their own way, because President Clinton and the Democrats in Congress are saying ''No, we don't want seniors' monthly premiums for Medicare to raise at four times the rate of inflation. We think that is wrong. And we think it is wrong that you have tax cuts that disproportionately go to the richest people in this country.''

Yes, Mr. Speaker, some day we should have a tax cut, but we should not have the hot fudge sundae until after we eat the vegetables. Let us get our economic house in order first, and then let us talk about tax cuts.

AFL–CIO SPENDING UNION MONEY TO ATTACK BALANCED BUDGET

(Mr. BALLENGER asked and was given permission to address the House for 1 minute.)

Mr. BALLENGER. Mr. Speaker, opponents of the Republican effort to balance the budget have made a number of attempts to frighten the American people. It began with medi-scare, continued with edu-scare, and now it culminates with union-scare. The Washington based leadership of the AFL–CIO intends to spend $22 million on a campaign that attacks Republican efforts to balance the budget. Their campaign, however, is not based on the facts of the Republican plan to balance the budget, but rather on a series of lies, half-truths, and distortions.

The interesting part of this campaign is that the $22 million is being financed by dues, fees, fines, and other special assessments on the hardworking men and women who are members of the AFL–CIO and their affiliate unions. Moreover, it is also important to note that this money is not being spent to further the interests of the union members, but rather is being spent to advance the political interests and agenda of the AFL–CIO's newly elected leadership. I wonder if the men and women who are paying for this campaign would support the use of their $22 million, if they were aware that it was being used to advance purely political objectives that stand in the way of a balanced Federal budget and brighter future for all Americans.

BALANCED BUDGET PLAN AFFECTS RETIREES

(Mr. STUPAK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STUPAK. Mr. Speaker, what this budget debate is all about is the Republican plan to give a $253 billion tax break to wealthy individuals and to repeal the minimum corporate tax. And where does the GOP balanced budget plan leave real people, like Mrs. Johnson, who wrote to me and said:

I will be 65 years old next month, but have been disabled for 9 years. At this point in time I'm very concerned about what will happen to me and my husband when changes in Medicare are made. My check is for $332, which doesn't cover the cost of the supplemental health insurance. My husband's check is $670 a month. At present he is quite ill and in the VA hospital.

We tried to save for our retirement years, but I had to quit my job as a nursing assistant because of many health problems. This means we have spent more just to get by than we have in income. At this rate, our small savings will not go too far. I don't know what the answers are to these problems, but I desperately hope a solution can be found that won't make life harder.

BALANCING RIGHTS OF ALL PARTIES IN COLLECTIVE BARGAINING

(Mr. FAWELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FAWELL. Mr. Speaker, in two hearings earlier this year, the Committee on Economic and Educational Opportunities heard from witnesses who shared their experiences with so-called ''union salters.'' In many cases, paid union organizers, known as salters, sought employment simply to disrupt the employer's workplace or to force the employer out of business or to defend itself against frivolous charges filed with the National Labor Relations Board [NLRB]. For most of these companies—many of which were smaller businesses—the economic harm inflicted by the union's salting campaigns was devastating.

Mr. Speaker, last month the Supreme Court issued a decision that such salters were nevertheless employees under the National Labor Relations Act [NLRA] and thus entitled to all rights and protections of that act.

Mr. Speaker, I believe that any employer is entitled to know that its employees are loyal employees not being paid by others to be destructive to its business. I am therefore exploring legislative alternatives for curbing the abusive practices involved with salting. The Court's decision notwithstanding, we must retain and ensure the balance of rights of employers and employees that is fundamental to the system of collective bargaining.

FAMILY FRIENDLY CONGRESS

(Mr. BENTSEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENTSEN. Mr. Speaker, welcome to the family friendly Congress. If you are a Federal employee, say, at NASA, tell the kids ''Sorry, no Christmas. Dad is out of work. Santa ain't coming. The grinch stole Christmas.''

If you are a tourist visiting the Smithsonian with your kids, sorry, no Air and Space Museum. But what about buying a coin?

If you are a veteran, sorry, no Veterans Administration.

Mr. Speaker, this is family unfriendly, because this House, your House, has failed to do its duty. You did not pass your budget in time, you did not pass your appropriations in time, you failed to realize how the Constitution works. And if all of America does not accept your budget, Medicare cuts, tax cuts and all, then there is no deal, no Christmas, sorry, kids, sorry, America.

The Constitution does not work that way. This Congress is not working the way that our forefathers intended it to.

TIME TO BALANCE BUDGET IS NOW

(Mrs. SEASTRAND asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SEASTRAND. Mr. Speaker, the time to balance the budget is now. For 40 years, the liberal politicians in this town were willing to put off decisions until tomorrow. And look what it got us—a 5 trillion dollar debt.

No, let me rephrase that. Look what it got our children—a 5 trillion dollar debt. You see, Mr. Speaker, that's what this debate is really about. It's about our children and it's about our children's children. Unless we stand firm now, their future doesn't look very bright. But if we can just restrain our spending, we can help restore the American dream for our children.

That is a Christmas gift worth giving the American people. Mr. Speaker, I'm tired of hearing excuses from the President. It's time to do the right thing for our children's future—it's time to balance the budget. So we ask the President, put a real plan on the table. Help us save the next generation. Balance the budget now.

FREE THE NATION'S CAPITAL

(Ms. NORTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. NORTON. Mr. Speaker, I rise this morning to alert this body that the Capital of the United States is still hanging out there about to choke. The conference report that was to materialize yesterday did not because of the complications here and in the Senate.

The conference report, I am told, will come forward today. That would be the ball game. That is the right way to handle this. We are already into extra innings that are killing the Capital of the United States.

An agreement structured by the Speaker himself will come before us as the conference report. Vouchers will be out, not because this body wanted them out or because the Speaker wanted them out, but because of a filibuster in the Senate. It is an act of leadership for the Speaker to bring it forward, and I appreciate that. I understand he will speak for it.

It would be easy for this body to sit this out, but nobody wants to shut the Capital of the United States down. We are now running on empty. Even the gentleman from New York [Mr. WALSH], who does not support this report, does not want to shut the District down. Do the responsible thing; free the District of Columbia.

TIME FOR SECRETARY O'LEARY TO RESIGN AND FOR THE PRESIDENT TO NEGOTIATE A BALANCED BUDGET

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, it is no wonder the President is unable to come up with a balanced budget. He has Secretary O'Leary tied around his neck like a millstone. Secretary O'Leary has taken 16 international trips, she takes as many as 50 staffers with her, 60 other guests, she hires photographers and video crews to catch her at her best. She has 520 public relations employees. She has a personal media consultant, even hired a private investigative firm to see what reporters and Congressmen are trying to see which reporters and Congressmen tarnish her image, all at a cost of about $30 million to taxpayers.

Mr. Speaker, it is not about the tax breaks for the rich or Medicare. That is all bogus. It is about wasting millions of dollars. Mike Royko of the Washington Times had it right:

> Buy a rope, tie one end of the rope to Mrs. O'Leary's ankle, tie the other end to her desk. See, whipping the deficit doesn't seem to be so complicated.

Mr. Speaker, it is time for Secretary O'Leary to resign, and it is time for the President to honestly negotiate a balanced budget.

TIME TO STOP PLAYING GAMES

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, last month, Speaker GINGRICH shut down the Government because he did not like his seat on Air Force One. Now he is at it again.

This time Speaker GINGRICH has shut down the Government to try to get his way on the budget, throwing more than 200,000 people out of work a week before Christmas. These families are being used as pawns in the Speaker's attempt to force through huge cuts in Medicare, Medicaid, education, and the environment, all to pay for a $245 billion tax break for the wealthiest Americans.

Mr. Speaker, they are so wedded to this tax break, the crown jewel of the Contract on America, that they are willing to put the lives of 200,000 working Americans at risk. These folks are not being paid one week before Christmas holidays, and they are willing to put those lives at risk in order to give their rich CEO friends this tax break.

Stop playing games with people's lives. Have a budget that protects Medicare, Medicaid, and America's priorities.

BEAM ME UP

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. Mr. Speaker, I would just like to point out to the gentlewoman who just spoke that as she well knows, it was the President who vetoed three bills that could have put all of those workers back to back.

Ms. DELAURO. Mr. Speaker, will the gentleman yield?

Mr. HOKE. No, I will not yield.

Ms. DELAURO. If the gentleman will yield, he knows that is not true.

Mr. HOKE. Mr. Speaker, I have got to tell you about something I read in the paper this morning. It says Clinton told reporters before yesterday's meeting that now he thinks it is possible to reach the GOP goal of a balanced budget by 2002, using the conservative economic calculations by CBO.

Mr. Speaker, in the words of my good friend, fellow Ohioan and honorary theme team member, ''Beam me up.'' Beam me up. It is unbelievable. The President says that he thinks it is possible to reach the GOP goal of a balanced budget by 2002. Did he read the language of the CR that he personally signed into law before he signed it? Did he read that language agreeing to do exactly that 30 days ago? And now he tells us, now he tells us that he thinks well, maybe it is possible to do that.

Mr. Speaker, what planet is the President on? This is just incredible.

AMBASSADOR SPIEGEL DESERVES OUR RESPECT

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, in the Washington Post this morning there is a report about the majority leader and the Speaker expressing concern about remarks made by Ambassador Dan Spiegel, our U.N. representative in Geneva, for allegedly attacking the Congress.

Mr. Speaker, Ambassador Spiegel's remarks were taken out of context. He was not attacking the Congress. He was discussing the impact of a growing isolationist trend which has had a devastating impact on our payments to the United Nations and its specialized agencies.

Dan Spiegel worked in the U.S. Senate for 6 years for Senator Hubert Humphrey. He has great respect for this institution. In any event, Ambassador Spiegel has apologized and the matter should be put to rest.

Mr. Speaker, Ambassador Spiegel is one of our best ambassadors. We should now move on, now that his remarks have been clarified. He deserves our

strong support, as he has an outstanding record, both from the private as well as the public sector.

TIME FOR THE PRESIDENT TO LEAD

(Mr. LEWIS of Kentucky asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of Kentucky. Mr. Speaker, the most frightening thing today is the fact that we have a President that is not leading, but that he engages in fear tactics to scare the elderly about Medicare, when the fact is there is only 2 percent difference in the Medicare plan that we have and what the President has, $138 difference over a whole year in the year 2002.

The fact of the matter is the President is not concerned about Medicare, he is concerned about AmeriCorps, he is concerned about all the liberal social programs that he wants to spend dollars on and bankrupt our economy and not provide a future for our children.

Mr. Speaker, it is time the President starts to lead us into the 21st century and save this Nation from economic disaster. It is time to save the future for my 13-year-old daughter and my 24-year-old son. It is time for the President to be the President and lead this Nation and do the right thing.

PROGRESS REPORT ON THE 104TH CONGRESS

(Mr. FARR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FARR. Mr. Speaker, I rise on this cold, wintry day here at the end of the year to remind us how it all got started. Remember we were here last January with all our families when a new leadership took over, a leadership that promised that this Congress would be family friendly, that we would have an ambitious agenda, that they would deliver their Contract on America, and that first 100 days they really went to work. They did a lot and celebrated here with great big circuses and things like that.

Mr. Speaker, look at it at the end of the year. We have been in Congress more days, cast more votes, and done less than any Congress in history. No budget bill was adopted on time, none of the appropriation bills were adopted on time. Why? All because of stubbornness of the Speaker to keep a tax break, keep a promise.

□ 1030

Look at what the Speaker said. He said, ''I do not care what the price is. I do not care if we have no executive offices and no bonds for 30 days. Not at this time.''

This Speaker has shut down Washington just at Christmas time. Well, Mr. Speaker, join the spirit of Christmas, start giving. Give up the tax break.

FEDERAL EMPLOYEES AND OTHERS HURT DUE TO SHUTDOWN CAUSED BY DISAGREEMENT ON BUDGET

(Mrs. MORELLA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MORELLA. Mr. Speaker, we hear there is a ray of light and hope in the Budget Balancing Act that is going on. I certainly hope so, because it is about time. I urge the President to work with the leadership to develop the balanced budget plan.

We have 260,000 families who have been furloughed, Federal employees furloughed. And their families and their friends, they are worried, demoralized, filled with anguish, lacking self-esteem, and here it is during a holiday season. They do want to work.

I have also heard from Federal employees who are not furloughed. They are frustrated that they cannot get their work done during the shutdown. It poses serious threats when a pharmacist cannot send out a prescription, NIH must stop research and CDC has furloughed 61 percent of its employees.

Some of the other effects of the shutdown will cost $40 million a day in lost wages in the private sector. For each day of the shutdown 2,500 families will not be able to close on their mortgages because new Federal housing insurance guarantees were stopped, removing $200 million a day in housing transacted from the economy. Two hundred sixty businesses that receive SBA loans will not get financing, and maybe later on welfare and veterans benefits will be delayed. Let us get on and let the light shine through and come to a conclusion.

GOVERNMENT SHUTDOWN DUE TO FISCAL MISMANAGEMENT BY NEW MAJORITY

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I do not think there is one American business or one American family that would dare run their finances the way the Republican leadership is running the finances of this country. We are now one quarter of the way, almost, into this fiscal year, and 75 percent of the domestic budget has not passed yet; 75 percent. Imagine.

What is their excuse? They do not like, or they cannot agree on projections as to what is going to happen 7 years from now. Hey, try that when they come and ask us to pay our bills, and we say I cannot pay my bills yet because I have not put my budget together yet because I have not figured out what kind of predictions are going to be 7 years out.

This is all to distract people on the fact of the tremendous mismanagement, the fiscal mismanagement of this Government. It is an outrage that many people are out on the streets, that veterans may not get their checks, that we can go on and on and on, and this is the first time in history we have had two shutdowns.

This is outrageous.

PRESIDENT AND DEMOCRATS WISH TO AVOID BALANCING THE BUDGET

(Mr. BAKER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BAKER of California. Mr. Speaker, this morning I want to read a brief section from this morning's New York Times concerning yesterday's budget meeting between the President, Vice President, Speaker GINGRICH, and Senator DOLE:

> Vice President Al Gore, who attended the oval office session and called it ''constructive,'' said there was a ''slight misunderstanding,'' and that there had been no pledge to use the Congressional Budget Office's assumptions. He also said no timetable had been set.
>
> ''But minutes later, Michael D. McCurry, the White House Press Secretary, scurried,'' this is their quote, ''to amend Mr. GORE's remarks and said the President has agreed that when any individual part of the budget was discussed, the parties would use Congressional Budget Office estimates of how much it would save or cost.''

Mr. Speaker, this revealing exchange points up a simple fact. We are hearing from the White House the dying gasp of liberalism, the ferocious efforts of our Democratic colleagues to avoid balancing the budget, reflected by the Vice President's frantic efforts to back away from fiscal integrity.

The President signed a law he has now reaffirmed: to balance the budget. Mr. Speaker, the Republican Congress will stay here as long as it takes to get a balanced budget, lower taxes, less centralized government, lower interest rates, a brighter future for America's seniors and children and all future generations.

REPUBLICANS' IDEA OF BALANCING THE BUDGET IS NOT BALANCED FOR ALL AMERICANS

(Mr. DOGGETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DOGGETT. Mr. Speaker, could it be too much Christmas eggnog? Surely there must be some explanation as to why our Republican colleagues continue to insist on a balanced budget that has no balance for ordinary American families. For the privileged, of course, this budget is what one might call the eat-dessert-first approach.

They propose to provide tax breaks to the privileged in our society and to give a lot of them out next year on election eve. They will actually, under

the budget they insist the President should capitulate to, they will actually solve the budget deficit by increasing the budget next year, not decreasing it.

And what happens later on, after 2002? Well, within 10 years, this budget deficit will explode because of their tax breaks for the privileged, costing a total of $416 billion.

That is no way to balance the budget. Indeed, it is the same way they are handling this government shutdown. Waste a billion dollars of taxpayers' money to pay Federal employees not to work because they do not like the Government. Some logic, some approach to a budget that is not balanced for ordinary Americans.

PRESIDENT'S REASONS FOR VETOING OF SECURITIES LITIGATION REFORM BILL WERE WRONG

(Mr. TAUZIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TAUZIN. Mr. Speaker, just a couple of weeks ago this House, by a vote of 320 Members in support, nearly 100 Democrats joining Republicans, voted for landmark securities litigation reform, a bill to stop frivolous lawsuits that are driving up the cost of doing business in America unnecessarily.

Yesterday, amazingly, the President vetoed that legislation. He did so in a veto message that is equally amazing. He did it with the following excuses:

One, that the pleading requirements were too strong. The pleading requirements are simply what one alleges in a lawsuit. That is all one has to do is allege a proper cause of action. Second, he did not like the statement of the managers. Not the bill, the statement of the managers included with the bill. And, third, he did not like the notion that rule XI, the provision that gives the court the right to assess costs on a frivolous lawsuit lawyer, the plaintiff's lawyer, he thought that was too hard on the plaintiff, not hard enough on the defendant.

Mr. President, it is plaintiffs who file frivolous lawsuits, not defendants. Those are not good reasons to veto this bill. Why did he do it? My conclusion. He wants this House and the Senate to take responsibility for making this good bill law. He wants us to override. We will have that chance today. Let us override the veto.

DEMOCRATS REFUSE TO GIVE IN TO REPUBLICANS' MEAN-SPIRITED APPROACH TO BALANCING THE BUDGET

(Mr. WATT of North Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WATT of North Carolina. Mr. Speaker, I have two questions for my Republican colleagues this morning. How in the world does one justify giving a $240 billion tax break to the richest people in the United States when they are cutting $270 billion from Medicare and $180 billion from Medicaid?

Second, how does one justify shutting down the Government when the President and the Democrats refuse to give in to that insane, mean-spirited approach to balancing the budget?

Imagine that, the rich get richer, the poor and the elderly get sicker, and GINGRICH does, in fact, steal Christmas.

DEMOCRATS' LEFT-WING EXTREMIST PROGRAMS STEAL FROM AMERICA'S CHILDREN

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, the Democratic party has truly confused their role with Santa Claus, but not with giving gifts of their own making, with money they have confiscated from the overworked, overtaxed, underappreciated, middle-income working families. But what is worse, realizing that Christmas is about children, the Democrats have stolen the majority of their money for their left-wing extremist programs from America's children.

Yes, that is true, today's children, taxpayers of tomorrow, will get a gift from President Clinton and his extreme liberal Democrat allies: a $5 trillion debt. If a baby is born today, over the next 75 years he or she will owe $187,000 as his or her portion of the debt above and beyond local State and Federal taxes.

Mr. Speaker, if that is compassion, if that is the Christmas spirit, I would just as soon be celebrating ground-hog day.

REPUBLICANS CHANGING OUR FAVORITE CHRISTMAS CAROLS

(Mr. MENENDEZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MENENDEZ. Mr. Speaker, we all know that the Republicans said things would change when they took over the Congress, but nobody thought they'd be changing some of our favorite Christmas carols.

Have you heard the new version of this old favorite carol about the latest Government shutdown?

The weather on the Hill is frightful,
and the budget cutting so spiteful.
But the Republican Scrooges, pose,
let it close, let it close, let it close.

It's time for Republicans to understand that there are some things better left untouched, and that includes keeping government open so that veterans and seniors can get their claims processed, taxpayers don't lose out on the valuable services they pay for, and visitors to the Nation's capital from throughout the world don't find themselves shut out.

And finally, Federal workers don't find themselves with the Gingrich that stole Christmas.

We can balance the budget—but it must be balanced not only by the numbers—but in its affect on seniors, children, families & working Americans.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
Washington, DC, December 20, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 5 of Rule III of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on Tuesday, December 19, 1995 at 11:11 p.m. and said to contain a message from the President whereby he returns without his approval H.R. 1058 the ''Private Securities Litigation Reform Act of 1995.''

With warm regards,

ROBIN H. CARLE,
Clerk.

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 104–150)

The SPEAKER pro tempore laid before the House the following veto message from the President of the United States:

To the House of Representatives:

I am returning herewith without my approval H.R. 1058, the ''Private Securities Litigation Reform Act of 1995.'' This legislation is designed to reform portions of the Federal securities laws to end frivolous lawsuits and to ensure that investors receive the best possible information by reducing the litigation risk to companies that make forward-looking statements.

I support those goals. Indeed, I made clear my willingness to support the bill passed by the Senate with appropriate ''safe harbor'' language, even though it did not include certain provisions that I favor—such as enhanced provisions with respect to joint and several liability, aider and abettor liability, and statute of limitations.

I am not, however, willing to sign legislation that will have the effect of closing the courthouse door on investors who have legitimate claims. Those who are the victims of fraud should have recourse in our courts. Unfortunately, changes made in this bill during conference could well prevent that.

This country is blessed by strong and vibrant markets and I believe that they function best when corporations can raise capital by providing investors with their best good-faith assessment of future prospects, without fear of costly, unwarranted litigation. But I

also know that our markets are as strong and effective as they are because they operate—and are seen to operate—with integrity. I believe that this bill, as modified in conference, could erode this crucial basis of our markets' strength.

Specifically, I object to the following elements of this bill. First, I believe that the pleading requirements of the Conference Report with regard to a defendant's state of mind impose an unacceptable procedural hurdle to meritorious claims being heard in Federal courts. I am prepared to support the high pleading standard of the U.S. Court of Appeals for the Second Circuit—the highest pleading standard of any Federal circuit court. But the conferees make crystal clear in the Statement of Managers their intent to raise the standard even beyond that level. I am not prepared to accept that.

The conferees deleted an amendment offered by Senator Specter and adopted by the Senate that specifically incorporated Second Circuit case law with respect to pleading a claim of fraud. Then they specifically indicated that they were not adopting Second Circuit case law but instead intended to ''strengthen'' the existing pleading requirements of the Second Circuit. All this shows that the conferees meant to erect a higher barrier to bringing suit than any now existing—one so high that even the most aggrieved investors with the most painful losses may get tossed out of court before they have a chance to prove their case.

Second, while I support the language of the Conference Report providing a ''safe harbor'' for companies that include meaningful cautionary statements in their projections of earnings, the Statement of Managers—which will be used by courts as a guide to the intent of the Congress with regard to the meaning of the bill—attempts to weaken the cautionary language that the bill itself requires. Once again, the end result may be that investors find their legitimate claims unfairly dismissed.

Third, the Conference Report's Rule 11 provision lacks balance, treating plaintiffs more harshly than defendants in a manner that comes too close to the ''loser pays'' standard I oppose.

I want to sign a good bill and I am prepared to do exactly that if the Congress will make the following changes to this legislation: first, adopt the Second Circuit pleading standards and reinsert the Specter amendment into the bill. I will support a bill that submits all plaintiffs to the tough pleading standards of the Second Circuit, but I am not prepared to go beyond that. Second, remove the language in the Statement of Managers that waters down the nature of the cautionary language that must be included to make the safe harbor safe. Third, restore the Rule 11 language to that of the Senate bill.

While it is true that innocent companies are hurt by frivolous lawsuits and that valuable information may be withheld from investors when companies fear the risk of such suits, it is also true that there are innocent investors who are defrauded and who are able to recover their losses only because they can go to court. It is appropriate to change the law to ensure that companies can make reasonable statements and future projections without getting sued every time earnings turn out to be lower than expected or stock prices drop. But it is not appropriate to erect procedural barriers that will keep wrongly injured persons from having their day in court.

I ask the Congress to send me a bill promptly that will put an end to litigation abuses while still protecting the legitimate rights of ordinary investors. I will sign such a bill as soon as it reaches my desk.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *December 19, 1995.*

□ 1045

The SPEAKER pro tempore (Mr. WICKER). The objections of the president will be spread at large upon the Journal, and the veto message and the bill will be printed as a House document.

The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

The gentleman from Virginia [Mr. BLILEY] is recognized for 1 hour.

Mr. BLILEY. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Massachusetts [Mr. MARKEY], pending which, I yield myself such time as I may consume.

(Mr. BLILEY asked and was given permission to revise and extend his remarks.)

Mr. BLILEY. Mr. Speaker, the conference report on securities litigation reform passed this House on December 6 by a vote of 320 to 102. It had previously cleared the Senate by a vote of 65 to 30. Strong bipartisan majorities have embraced this legislation as a way to end the scandalous state of securities strike suits. Testimony has revealed that these suits amount to legalized extortion by the plaintiffs bar.

The plaintiffs bar is not more important than the investors who lose their savings to these extortion artists.

In the floor debate we learned that every single one of the top 10 companies in Silicon Valley—world class multinational competitors like Hewlett-Packard, Intel, Sun Microsystems and Apple Computer—have been accused of violating the antifraud provisions of the securities laws. Not all of these companies are guilty of fraud, they are at least as worthy of protection as is the plaintiff bar.

We do know that the safe harbor in Securities Litigation Reform has been endorsed by the President's own SEC Chairman, Arthur Levitt. We do know that CHRIS DODD, the general chairman of the Democratic Party supports securities litigation reform I rise today to urge an override of this veto which flies in the face of common sense and the hard work of bipartisan majorities in both Houses of Congress.

This is extremely important legislation for investors and for our economy. It is designed to curb frivolous and abusive securities litigation. This kind of litigation exacts a tax on this country's most productive and competitive companies and their shareholders.

Job creating, wealth producing companies that have done nothing wrong, too often find themselves subject to class action lawsuits whenever their stock price drops. They are forced to pay extortionate settlements, because the costs of defending these lawsuits are prohibitive. And, when companies are forced to settle, their shareholders, ultimately, pay the costs.

We have tolerated this scandalous situation long enough. Let's end these strike suits. Stand with investors, professionals, and jobs. Vote to override the veto.

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

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

Mr. Speaker, the President has determined that a veto is appropriate for this particular piece of legislation, and has sent back to this Congress a number of concerns which I think he has legitimately raised about the legislation in its present form.

I think that it is ill-advised for us to be debating a veto and its override at this particular time. I think that the more appropriate course for this House would have been for there to now have been conducted a conversation, a negotiation between the White House and the Members of Congress who have an interest in this bill to determine whether or not changes could have been made which would have dealt with the very legitimate concerns which were raised in the President's veto message.

That has not been the case. Instead, what we see is a rush here to the floor to override the President's veto without any real deliberation as to the substantive issues which were raised in his message. I think that is a big mistake, Mr. Speaker. I think that this House should have, in fact, engaged today at least in a discussion of the very important issues that have been raised.

Mr. Speaker, let us begin with a number of these concerns and try our best to lay out why the President did take the time to pour over this particular bill and to dissect it, as the good law professor which he used to be, in an attempt to come to some common sense resolution of a very troublesome set of issues.

Clearly, the President agrees with just about every Member out here that frivolous lawsuits have to be cut off. We cannot allow the courts to be used in a way that have frivolous lawsuits being brought by unscrupulous lawyers in an attempt to hold up legitimate businesspeople across this country.

But at the same time, the President does not want the law changed in a way

that prohibits meritorious lawsuits from being brought. He makes quite clear his concern that, in fact, that would be the necessary result of passage and ultimate implementation of the bill as it had originally been passed through the House and the Senate.

The pleading requirement, as it has been included in the legislation originally, must be modified so that it is tough, but that it is also reasonable.

The Second Circuit's existing standard for pleading, which passed the Senate, by the way, in June, should be included in the bill, in my opinion. This is the second highest priority, I think, overall in this legislation, along with a number of other concerns which I will raise a little bit later.

My colleagues should note that the ninth circuit, which includes California, rejected the second circuit standard in favor of a much more relaxed approach. So, the codification of the second circuit's standard is something which in my opinion is something that we should be debating out here on the floor.

The issue has been raised by Senator SPECTER who has taken the time to write to the White House and he strenuously objects to the bill in its present form. Leading legal scholars, including the dean of the NYU Law School, believes that this is one of the most harmful issues in the bill.

In addition, and something that is quite important in the overall deliberations, is the safe-harbor provision for forward-looking statements, which would give blanket immunity to those who would commit intentional fraud. A scienter requirement should be added to the safe-harbor so that intentional wrongdoers cannot cloak them in immunity that was intended only for those who make good-faith projections in estimates. That is, in fact, a contention which has to be debated throughout this entire proceeding.

Mr. Speaker, it is important to note that the statement of managers accompanying the conference report instructs courts to look only at the adequacy of the meaningful cautionary language to determine if the safe-harbor should apply. The state of mind of the company's executives, meaning whether not they intended to deceive or to mislead investors, is supposed to be irrelevant, even if the executive of the company, of the financial firm, intentionally lies to the investing public.

Now, that is wrong; simply wrong, and it must be addressed in this debate that we are having on such an important piece of legislation.

I also want to note that this revision would be consistent with a statement previously attributed to the President, which I think is now quite clear in his veto message, that he could not sign a bill that allowed someone to lie intentionally and to get away with it. That is the core of his message, and it is something that I think we are going to have to deal with today, and in the subsequent days ahead, as we with what the ramifications of passage of this bill without inclusion of the very wise recommendations that have been made by the President to the Congress in his veto message.

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

Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. FIELDS], the chairman of the Subcommittee on Telecommunications and Finance.

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. FIELDS of Texas. Mr. Speaker, it is with a heavy heart that I rise today. The Congress crafted strong bipartisan legislation designed to curb securities litigation abuse. The legislation was approved by veto-proof majorities in both houses. The President obviously does not see the wisdom of the approach and vetoed the legislation.

Mr. Speaker, I call on all Members to override this veto on this very important piece of legislation. As was pointed out in the floor debate, American companies, paticularly high-technology companies in California, have become the target of speculative, abusive securities litigation which enriches lawyers at the expense of shareholders and the economy.

These abusive securities lawsuits are brought by a relatively small number of lawyers specializing in initiating this type of litigation. In many cases, the plaintiffs are investors who own only a few shares of the defendant corporation and the corporations are frequently high-technology companies whose share price volatility precipitates that lawsuit.

The plaintiffs do not need to allege any specific fraud. Many of these suits are brought only because the market price on the securities has dropped. The plaintiff's attorneys name, as individual defendants, the officers and directors of the corporation and proceed to engulf management in a time-consuming and a costly fishing expedition for the alleged fraud.

Mr. Speaker, it has been pointed out that one of the most compelling statistics for reform, I believe, comes from Silicon Valley where one out of every two companies has been the subject of a 10(b)(5) securities class action.

Mr. Speaker, the current securities litigation system is seriously affecting the competitiveness and the productivity of America's high-technology companies, and it is also affecting our ability to create jobs.

In summary, Mr. Speaker, I believe we have demonstrated that the current securities litigation system promotes meritless litigation, shortchanges investors and it costs jobs. It is a showcase example of the legal system gone awry.

Mr. Speaker, I urge Members to override this veto to support wise and prudent litigation reform.

Mr. MARKEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, a bad bill, conceived with bad process, badly handled, leading to serious abuses in the marketplace, putting innocent and helpful investors at mercy of scoundrels and rogues, has been vetoed by the President.

☐ 1100

The President said that he is prepared to sign a good bill, that he is prepared to work with the Congress to end the litigation abuses while at the same time protecting the legitimate rights of ordinary investors. He says that in his message.

I urge my colleagues to listen to the President of the United States and to read the veto message, to see why it is this iniquitous piece of legislation was vetoed. It is a poor piece of legislation. It favors rascals and rogues over the innocent and the honest. It creates a situation where a law-abiding citizen cannot get decent redress in the courts. It raises questions as to the integrity of the American process for offering securities, and it will raise questions about the integrity of our markets. It will ultimately hurt the process of developing capital in this country because it will threaten the thing which is absolutely essential to the workings of the capital markets of the United States, and that is public confidence.

A lot of people think that the public securities offerings and the industry in this country run on money. That is not true. The market runs on public confidence, and if it produces the public confidence it has been doing since the 1934 act was passed, the market produces a lot of money for everybody involved.

What is wrong with this bill? First, the process was unfair, and no careful attention was given to responsible amendments or to intelligent discussion of the abuses that were going to be unleashed upon the investing public.

But beyond that, the President points out why he has vetoed it. The pleading requirements require not a genius but a psychiatrist, and the discovery process is closed until such time as it is impossible to deal with the claims that an honest claimant would make who had been improperly treated and had been hurt by improper behavior of scoundrels in the securities industry.

Second, it has a most curious safe harbor provision, a safe harbor provision which permits active fraud, active fraud, deceit, deceit and serious misbehavior.

I would urge my colleagues to not permit a safe harbor provision which allows such scandalous behavior to be inflicted upon the trusting and the innocent investor by slippery managers of corporations interested in maximizing stock prices or their particular earnings.

Last of all, it treats the plaintiffs in suits of this kind in a way which makes the loser pay, a situation which

will deny honest citizens who might not prevail in a lawsuit an opportunity to expect fair treatment from the courts of their country.

I would urge my colleagues to support the President. The veto is a good one. If the veto is sustained, we can come back and write a decent bill. We can write a bill which addresses the real problems which exist with regard to litigation abuses, and at the same time we can protect American investors and protect the confidence of the American people in their securities industry and their securities markets. That is the step which would be in the best interests of not only the country, the securities market, the securities industry, public confidence in the securities that are offered in this country, but also something which is best and fairest to those who do not have the means to protect themselves against malefactors of great wealth.

I urge my colleagues to vote to sustain the veto. I urge my colleagues on the committee who have the ability to do these things to then work with us to achieve a decent bill which protects the interests of all.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from California [Ms. ESHOO], a member of the committee.

(Ms. ESHOO asked and was given permission to revise and extend her remarks.)

Ms. ESHOO. Mr. Speaker, I rise in strong support this morning of this measure to override the President's veto of the securities litigation conference report. I think that it is highly regrettable that the President chose to send up a veto message to us. With all due respect to that veto message, I think that it is an excuse slip.

On every point that is mentioned in the veto, in a bipartisan effort all of this year we have worked to satisfy the concerns of the Securities and Exchange Commission, the administration, and the Senate in the key areas, certainly on pleadings and second circuit language, certainly on safe harbor, and that is also mentioned in the veto message, and certainly on statute of limitations. This bill is a strong bipartisan bill. It is good for investors, and it is good for our economy.

In my view, the price of not passing this conference report this year is simply too high. As the Representative from Silicon Valley, I know that businesses in my region cannot wait for an answer. The legislation provides companies with relief, but not a blank check. The right of investors to sue in cases of actual fraud is protected by this bill. In fact, the bill's safe harbor provision meets the demands set down by CALPERS, the Nation's largest pension fund, representing nearly 1 million shareholders.

Members who supported the conference report are now being asked to change their vote to satisfy its concerns about report language. I do not remember when report language was reason for a veto, and that is why I call it an excuse slip and not a true veto message.

Mr. Speaker, I urge my colleagues to override the President's veto. I think it is regrettable, but I think that this bill needs to become law.

Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, Members of the House, I, too, rise in support of this bill and for the motion to override the veto.

Let me point out what the President did not do. He did not say this was a bad bill. In fact, he complimented it. He said he supported goals of this bill. He did not say that he objected to the safe harbor provisions of this bill. In fact, he said he supported the language of the safe harbor provisions of this bill.

In fact, all he has said he objected to was the pleading requirements of this bill. Now, the pleading requirements are what the plaintiff lawyer does when he files a lawsuit, and what we have done is to make sure that the lawyer alleges a case, that you just do not go on a fishing expedition. Is that terrible?

I suggest if we are trying to deal with frivolous lawsuits, that is the very least we ought to do is require the plaintiff lawyer to plead a case, to have a decent and not a frivolous lawsuit before the court.

Second, he objected to the managers' language, not the language of the bill. I would remind the House that when a bill is sent to the President, the managers' language, the legislative history is not sent to the President. He does not veto the legislative history. He vetoes the language of the bill. He does not veto the language in the bill. He only objected to the language of the managers' report in that area. He suports, in fact, the safe harbor provisions that a previous speaker objected to this in this bill.

Finally, he objected to what is called the rule 11 section, where frivolous lawsuits are punished; that is, the plaintiff is required to put up the cost of the lawsuit. I want point out to you that he said in his veto message that we did something wrong here; we did not have a balance between plaintiffs and defendants.

First of all, it is plaintiffs who file frivolous lawsuits, not defendants. That is the problem. And rule 11 seeks to make sure when plaintiff lawyers file frivolous lawsuits that they have the obligation of paying the costs of the parties who are necessarily brought to court and required to hire attorneys.

Let me point out our language was very fair. It said that existing rules would apply to each party, plaintiffs and defendants, and that a violation by a party, plaintiff or defendant, would require mandatory sanctions by the court.

We have a balanced provision in here. What I concluded when I read this veto message is, one, the President likes the bill; two, he does not really want to sign it. He would rather we overrode his veto and we made it law. And, three, that we have huge bipartisan support for this bill, and we ought to, in fact, override the veto. Nearly 100 members of the Democratic side joined the Republican Party in this bill. It is a bill that has been in the works for well over 6, perhaps 8, years now. It is a bill in which a veto-proof majority in the House and Senate adopted the bill. It is a bill, in fact, that ought to become law. If the President will not sign it, then he is telling us to do it, and I suggest we do like Mikey, we just do it, override this veto.

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

Mr. Speaker, at this point, the Members are presented with a very narrow issue: Will the House block meritorious suits, or will it allow meritorious suits to go forward in the courts of this country as they have throughout our history?

The President has asked for a very narrow set of changes. This is not about frivolous lawsuits any longer. The President agrees that frivolous lawsuits must be discontinued.

This is now a battle over whether or not we will support the President's veto, sustain him and, in fact, then begin the discussion over the narrow set of issues which he has raised to ensure that this bill does not go too far in cutting off the meritorious cases which citizens of our country have been allowed to bring throughout our history.

The President has said that he will sign just about anything in the bill except those provisions which block meritorious suits. The veto message makes very clear what changes he is seeking, and that those changes are meant to protect investors who have been defrauded.

Let me emphasize again that the President is not seeking to allow frivolous suits. The only issue raised by his veto message is whether or not, in fact, we will deal with the points in the legislation which have gone too far, which have raised pleadings standards too far, which have changed the safe harbor provisions to the point where actual lying is permitted, which put an unfair burden upon plaintiffs in terms of the risks which they must assume in terms of loser-pays. That is what we are talking about now. The rest of it the President says is acceptable to him.

Now, he is in good company. Let me read to you some of the people who side with the President. We begin with the Fraternal Order of Police, the Fraternal Order of Police, ''I urge you to reject the bill which would make it less risky for white-collar criminals to steal from police pension funds while the police are risking their lives against violent criminals.'' That is the national president of the Fraternal Order of Police.

□ 1115

The International Association of Firefighters: ''Firefighters put their lives at risk to save others. Should they also have to put their hard-earning savings at risk too?'' That is the general president of the International Association of Firefighters.

The Consumer Federation of America: ''The bill would immunize knowing and reckless violations of the securities laws, reduce compensation to victims of fraud, and undermine public confidence in the market. It represents special interest politics at its worst.'' That is the Consumer Federation of America.

Here are the Attorneys General of the United States, 11 attorneys general writing to the Congress: ''We cannot countenance such a weakening of critical enforcement against white collar fraud. The bill goes too far beyond what is necessary. It would likely result in a dramatic increase in securities fraud.''

Here is the U.S. Conference of Mayors and the National League of Cities commenting on this bill: ''Over 1,000 letters from state and local officials from all regions of the country have been sent to Washington, representing an extraordinary bipartisan national consensus that this bill would imperil the ability of public officials to protect billions of dollars of taxpayers monies in short-term investments and pension funds.''

The changes which the President recommends in his veto message will still guarantee that the frivolous lawsuits will be straight-armed out of court. But what it also does is ensure that we do not raise the bar so high that the meritorious cases, in instances where individuals across this country have been defrauded, are also knocked out of court.

If we ask people to put at risk their money in a loser-pay provision, after they have already lost half of their life savings to some financial scam, who in this Chamber expects that person to now take the double or nothing risk of knowing that under loser-pays they would be held responsible for the additional cost of trying to defend themselves against the fraud which had been perpetrated against them under these extremely high barriers that are being constructed in this bill?

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Michigan.

Mr. CONYERS. That is, if they have any money left.

Mr. MARKEY. Exactly. I am saying they would have to put at risk the money they do have left after they have been defrauded.

Who in the world as an ordinary citizen would do that to their family, to take on a major financial or corporate entity, with the sure uncertain knowledge, not that they could lose, but that there is the risk? The risk itself it could happen, no matter how small, would serve as an absolute bar to an ordinary citizen participating in these lawsuits. That is what this debate is about; not immunizing ordinary lawsuits, just the opposite.

Let us join together to ban frivolous lawsuits with the President, but let us not wall out the capacity to have the meritorious lawsuits which we all know, we all know in our souls, should be continued to be brought in court.

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

Mr. BLILEY. Mr. Speaker, I yield 1½ minutes to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Speaker, I think the gentleman from Massachusetts knows how much I respect and like him, and I would hope that the President would know as well, how much I respect him, even though I must urge my colleagues to vote to override this veto. I am surprised, frankly, that the President vetoed this, because I know that one of his favorite books is ''The Death of Common Sense'' by Phillip Howard. This is commonsense legislation. It is necessary legislation. If in faith it does get vetoed, we may not get another shot at it.

Frankly, when you read this message, much of his objection is of a nitpicking nature. It is legalistic. We know we are going to have the Second Circuit standard applied, and that in fact when legislation is at variance with legislative history or report language, that it is the bill itself that prevails.

But I do not want to speak as a lawyer, I want to speak as a stockbroker, which I was for 10 years. The fact is the most frustrating thing we encounter is the need for accurate, informative, relevant information. But I have to say, if I were the CEO of a high growth company, I would not provide that information, because of the number of people out there that will game the system. These people who exploit the deficiency of our legal system do not put any money into capital, they do not do anything for our economy. They find ways to make themselves wealthy by abusing the system. What this is is an antifraud and abuse bill that ought to be passed.

Mr. MARKEY. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan [Mr. CONYERS].

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, well, it is nice to find out stockbrokers would advise us to vote on this special interest legislation. Some believe the President perhaps overreacted last night with the veto. But could I suggest another route? What about making some common sense revisions he is recommending and then coming back and unanimously passing this bill?

Besides, I think there is another body that has something to say about the override. So let us not get too carried away on the vote here. Let us all settle down here for just a minute.

Now, the bill simply goes too far. We are not talking about simply limiting frivolous cases with this bill. So could all the rest of the speakers comport all of the passion that they have about frivolous cases just a little bit? We want to stop frivolous cases. What we do not want to do is stop meritorious cases. And, there are a few meritorious cases around.

This House was mistaken in trying to gauge the President's determination about these matters. The gentleman from Massachusetts told you repeatedly the President was going to veto the bill because you overreached, and now he did it today. So now we are faced with an extreme measure that requires a two-house override.

Why do we not do something more reasonable? Let us go back and look at what we can do to repair what provoked the veto, and then come back with a bill that we can all agree on. Is there something wrong with that? I do not think so.

Even the conservative Money Magazine told you the bill went too far, once, twice, three times, four times, and the local officials, 15 Attorneys General, told you the same. Thank you, Mr. President, for having the courage to do the right thing.

So, Mr. Speaker, I rise in strong opposition to this matter. The gentleman from Michigan [Mr. DINGELL] pointed out that this is classic special interest lobbying legislation.

So now we are at a point of where the American people are not going to get robbed. The Nation's seniors, whose life savings are tied up in investments, depend on honesty in investment transactions. They are being robbed with this bill.

Now, American investors know they may be robbed by swindlers, but they do not expect to be robbed from the House of Representatives. So let us get a little bit of reason in here. I think a few of our leaders on this measure, Mr. MARKEY for instance, have some suggestions that would make for a decent agreement, and that would meet White House objections, and we could go home feeling that we have not involved ourselves in this rather large rip-off that is occurring.

Now, does somebody not have something to explain about Money Magazine and the 15 Attorneys General and the thousands of local officials, the 150 outspoken editorials all who believe this bill is to extreme? Are we all nuts and you are all right?

Mr. Speaker, I thank the gentleman for allowing me to make a few comments on the floor.

Mr. BLILEY. Mr. Speaker, I yield 1½ minutes to the gentleman from Washington [Mr. WHITE], a member of the committee.

Mr. WHITE. Mr. Speaker, I thank the gentleman very much for yielding me this time.

Mr. Speaker, I would like to respond to a couple of things we heard this morning. As I told members of the

committee many times, it is only 11 months ago that I was a practicing lawyer, and I can tell you that anybody who is out there in the real world practicing law knows that this system is broken and badly needs to be fixed. It is just not something that most people who are objective about it can disagree about.

Mr. Speaker, I would have to express a little bit of concern at some of the arguments we have heard from the other side. We are hearing maybe if we just made a few changes, just took a little more time, we can come up with a better bill. The fact is we have been working on this bill for 6 or 7 years. For some people the time is just never right to make this fundamental change. The time is now; it is time to make sure we enact this.

We have also heard a lot of pious remarks about how we have to protect the investors, protect our grandmothers, all the people investing money in these companies. But the fact is, we have not really heard from the investors. It is not the investors who are concerned about this bill; it is their lawyers. It is the trial lawyers who are concerned about this bill, not the people who are supposed to be.

The great tragedy of the system we have right now is that it makes a mockery of our legal system. It sets up a system where you win not if you are right, but you win because you are able to game the system, and it is a system where even if you do win, you do not get the money. You may get a little bit of money, but most of the money goes to trial lawyers. Our system right now is a jackpot for trial lawyers. It needs to be fixed, and we need to override this veto.

Mr. BLILEY. Mr. Speaker, I yield 2½ minutes to the gentleman from California [Mr. FAZIO].

Mr. FAZIO of California. Mr. Speaker, I supported the conference agreement that passed the House because I believe it was a balanced bill and I believe it sought to solve a significant problem in the securities market while, I believe, protecting legitimately defrauded investors.

I and over 60 of my colleagues wrote to the President not long ago, since the conference committee completed its work, urging him to support the securities legislation compromise, which I think was the appropriate product of that deliberation, which did smooth some of the rough edges off the bill that passed the House.

Our letter outlined many of the changes that had been made to provide added protection to those with legitimate claims. No one wants to keep those people out of court. These improvements met all the goals that would benefit investors and companies alike. The compromise I believe would stimulate the economy, curb abuses, increase the flow of information to investors, reduce fraud, and strengthen our capital markets.

The man in charge of the Securities and Exchange Commission has written a letter that reassures many of us to that extent. The most important element of the conference agreement is the fact that it reduces the need for lawsuits. The extreme litigious environment that currently exists certainly suggests that the ability to sue is readily protected.

Under present circumstances, a plaintiff can sue first and collect evidence of fraud later through discovery motions; as a result, a number of class action attorneys actively seek to put together lawsuits out of unforeseeable investor losses. High-tech companies in my State of California, are particularly susceptible to this kind of predatory action. It has helped dry up capital in our markets, and I believe made it harder to create jobs for Americans.

All we want to do is restore common sense to this process. We do not want to prevent legitimate actions from going forward. I understand the President has questions about the potential impact of this measure.

□ 1130

What he should not question is the impact the lack of protection is having on American businesses. Efforts to prevent frivolous actions should be supported. We need to restore the faith of the American public and the business community that when we see evidence of abuse we do something about it.

I urge the President to reconsider his position and accept this very well-crafted, well-thought-out, carefully negotiated compromise. The confidence in our markets, in our system of funding startup ventures requires it.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. PAXON], a member of the committee.

Mr. PAXON. Mr. Speaker, the President's decision to veto this legislation, I believe, is a serious blow to economic opportunity, job creation and entrepreneurship in our Nation. The goal of this bipartisan legislation is to provide some protection from frivolous securities lawsuits filed against businesses, often small cutting-edge technology companies.

More and more these companies are truly the engine of growth in our economy, creating new high-paying jobs, developing new and innovative technologies, and increasing America's exports. Unfortunately, this pro-growth reform legislation fell victim to some of the Nation's most powerful special interests. A win for these special interests is unfortunately a loss for the American economy.

The good news is we can turn this around today. I urge my colleagues to override the President's ill-advised veto of this vitally important securities lawsuit reform legislation.

Mr. BLILEY. Mr. Speaker, I yield 1 minute and 10 seconds to the gentlewoman from California [Ms. LOFGREN].

Ms. LOFGREN. Mr. Speaker, I have been reading through the veto message of the President. I think there is some good news and some misplaced rhetoric here on the floor today.

The President supports the securities bill, I believe, that is before us. And what remains are sort of nerd-like lawyers issues on the technical details of the language.

The President says he supports the second circuit standard for pleading. So do I. That is what is included in this bill. The President says he supports the safe harbor language in the bill, but he is concerned about the legislative history.

I am mindful that years ago the President of the United States taught law school, and years ago so did I, and this is an issue that lawyers can argue about, but I think the sounder course is to override this veto and get this bill done.

I am not meaning to say that the President does not disagree on these technical issues, but in his veto message he does support it overall. I would like to say the overheated rhetoric about fraud is entirely misplaced. These are very technical issues, and I think the sounder course is to override this veto.

Mr. BLILEY. Mr. Speaker, I yield 1-½ minutes to the gentleman from California [Mr. DREIER], a member of the Committee on Rules.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, clearly, the vanguard of economic revitalization in this country has been the high-technology industry and the cutting edge biotechnology industry. Unfortunately, if we look at the State of California, where we have gained tremendous jobs from exports, this legislation is designed to expand that rather than jeopardize it.

We have seen very, very strong statements made by those industries from the Silicon Valley that have been victimized by this; Hewlett Packard, Sun Microsystems, Intel, Apple Computer. A wide range of companies have been impacted, and we need to realize that job creation is very important, but there is also the compassionate side to this.

I wonder how much research is not being done in the area of AIDS and cancer because of the threat of these kinds of lawsuits. When Speaker GINGRICH established his task force on California, passage of the legislation authored by the gentleman from California, [Mr. COX] was among our very top priorities, and we hope very much that in a bipartisan way, in a bipartisan way, we will be able to come together and successfully override this veto so that we, as a Congress, can send the very important signal to the largest State in the Union that we are committed to job creation, economic growth and the very important research to meet some of our most important societal needs.

Mr. BLILEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. HASTERT].

(Mr. HASTERT asked and was given permission to revise and extend his remarks.)

Mr. HASTERT. Mr. Speaker, I rise in favor of the legislation.

Mr. Speaker, I rise in support of the motion to override the President's veto.

Clearly, securities litigation reform is needed. It is good for investors and good for America's economy.

SEC rules were designed to protect investors. Investors need accurate and timely information from companies in which they invest their money. However, spectators are misusing the law to virtually extort money from honest companies when no fraud has taken place.

Frivolous class action suits are being filed—sometimes multiple suits with the same typing errors—often forcing innocent companies to settle out of court rather than face massive court fees—again, after no fraud has taken place.

Investors still have solid protection against fraud under this bill. However, this unwarranted litigation is harming U.S. companies and the economy. Business capital that could be used for technical innovation, capital investment, job creation, and investor dividends are diverted to lawsuits. In a sense, these suits represent a tax on capital.

Lest we forget that frivolous lawsuits really exist, it is interesting to note that during the last 3 years, one out of every 12 companies listed on the New York Stock Exchange was sued for securities fraud. As the author of this survey remarked, ''Either you have to believe there's rampant fraud on the New York Stock Exchange, or there are a lot of people getting sued who shouldn't be.''

Some may claim to be in support of getting rid of these meritless suits, but unless they are in support of this legislation, they are doing nothing to change the current problem. Suits with merit should be brought before the proper authorities and will continue to be brought and won under this legislation.

Mr. Speaker, investors need better information. The changes to prospectuses contained in this bill encourage companies to give more and better information to investors. That is why numerous citizen investor groups have been running advertisements in favor of this bill.

They know their dividends are going to be higher if the companies they invest in are not fighting off frivolous lawsuits.

I urge my colleagues to support this bill, which serves investors, small business and the American economy well.

Mr. BLILEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. GANSKE].

(Mr. GANSKE asked and was given permission to revise and extend his remarks.)

Mr. GANSKE. Mr. Speaker, I rise in favor of this legislation.

Mr. Speaker, last night the President vetoed the securities litigation reform measure placed on his desk. This legislation is needed for two main reasons. First, so proper plaintiffs will have a place to redress valid grievances in a system ensuring fraud victims recover their losses and not merely the estimated pennies on the dollar. Second, the securities industry must be allowed to get back to its intended functions. A veto-proof majority in both Houses of Congress supported this legislation.

The President gave three major reasons for vetoing the legislation. First, he objects to the mandatory sanctions imposed if the court finds a rule 11 violation. Sanctions are mandatory against any party violating the rule. He claims that the provision is unreasonably harsh on plaintiffs' lawyers found in violation of the rule and that this will have a chilling effect on a plaintiff's right to sue.

The only thing chilled by this provision is meritless lawsuits that shouldn't have been brought in the first place. Plaintiffs should be forced to more carefully weigh the merits of their case before filing suit. With less meritless suits clogging up the court system, valid plaintiffs will more quickly be able to redress their grievances.

Second, the President claims the safe harbor provision will allow wrongdoers to get off scot-free. This could not be further from the truth. The provision protects companies and executives when they have done their job from meritless suits being brought against them. Companies are protected only if they have adequately informed the investor of risks associated with the investment, and if they have not made a knowing misinformation. It does not prevent plaintiffs from bringing meritless suits.

Third, tougher pleading standards ensure that the plaintiff's lawyer actually has a case before bringing a frivolous suit. Frivolous suits serve no purpose. They waste everyone's time and money. Nobody benefits—not plaintiffs and defendants involved in litigation that will go nowhere despite countless amounts of time and money expended, not the court system which gets clogged, and future plaintiffs who can't get in the courthouse door because it is so jammed.

This bill has broad bipartisan support and is endorsed by the SEC Chairman, Arthur Levitt. So why did the President veto this bill?

Does he want to put the Silicon Valley out of business as it continues to spend time defending frivolous suits rather than advancing the technological future of our country?

Does he want to keep valid plaintiffs out of court?

According to some newspaper reports, the President's decision may have been influenced by a leading member of the trial bar. We must ask whether the President's veto was designed to protect the American people or a special interest that has funneled millions of dollars to the Democratic Party.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. DEUTSCH], a member of the committee.

Mr. DEUTSCH. Mr. Speaker, I rise today in support of an override of the veto on this legislation, and I do that as a member of the Democratic Caucus and a member of the committee.

I would, once again, point out to my colleagues that this is a bipartisan bill. A majority of Democrats in this Chamber voted for this bill, both as it originally passed the House as well as the conference report. The President's veto message highlights several specific things, and I want to discuss those in the short time that I have.

The first is the issue of pleadings. Let me be very clear about that. That particular issue was in the bill at the request of the judicial conference, not at the request of any particular industry group, but by a group of judges that deal with pleading requirements. That is why that particular issue was in the bill.

The other issue that the President raises is the issue of report language. And let me focus on that for my colleagues. What courts in this country have determined in terms of our legislative intent is that report language is not considered. It is the language that we pass in the bill. So the President's focus actually might have been accurate when he was a professor of law several decades ago in Arkansas, but by the latest court decisions that is just not accurate. Report language has no effect on the bill.

But let me talk about what the President did agree with. He agreed with the safe-harbor provisions. He had no objections to the aiding-and-abetting provisions or for the issue of fraud, because the facts of this bill are that this bill is an antifraud bill. It creates an affirmative duty by accountants to report fraud, which does not exist under existing law. So, if anything, this bill truly is an antifraud bill.

Finally, I would close just on the substance of the bill itself. This bill is really at the heart of what we are as Democrats as well. This is a jobs bill. Because the reality is the existing law stops access to capital, stops job creation in this country today. I urge support of the override of the President's veto.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. OXLEY], vice chairman of the subcommittee.

Mr. OXLEY. Mr. Speaker, I rise in support of securities litigation reform and the veto override attempt.

As Members know, and the White House must know, legislation to curb abusive securities-fraud lawsuits was approved by veto-proof margins by both Houses of Congress earlier in the year.

I think this is a case where the Congress needs to act to save the President from himself.

The legislation before us takes a moderate approach to the problem of frivolous securities class-action lawsuits.

There is a collection of class-action lawyers out there who are filing meritless fraud suits against publicly traded companies, especially high-technology firms, whenever their stock prices fall. They have used the securities laws to win billions from corporations and their accountants.

Meanwhile, defrauded mom-and-pop investors recover only 7 cents for every dollar lost in the market.

This legislation will return the focus of securities laws to their original purpose—protecting investors and helping actual victims of fraud.

This legislation has been described as a boon for securities firms, accounting firms, and public companies. I might add that it is a boon for employees of those companies, as well as

anyone who invests in them in the hope that their stock will go up, not down.

These reforms are long overdue, the President's veto message notwithstanding. They're good for American business, they're good for American competitiveness, and they're good for American investors.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. KLINK].

Mr. KLINK. Mr. Speaker, I thank the gentleman for yielding me this time. First of all, I want to make a few points and that is that there really is not a difference of opinion between the two sides that are arguing this case about what to do concerning frivolous assembly-line lawsuits. We all agree. There are some suits where we have anecdotal evidence that this occurs, but when we look at the numbers, when we look at statistics on those studies that have been done when stock prices fluctuate, the evidence is not there that there is this avalanche of frivolous suits. It exists, it does inhibit capital, and we should take some action, but indeed the President is correct when he says this legislation goes too far.

Now, there are two ways we can deal with this problem. No. 1, we can expand the bureaucracy, which I do not think that there is anyone on the other side of the aisle and very few on our side of the aisle who would like to see that happen. We can expand the bureaucracy and allow some bureaucrats to be able to police whether or not securities are being misrepresented to the plaintiffs; or we can do what SEC Chairman Levitt said in front of the committee, and that is identify ways to make the system more efficient while preserving the essential role that many private actions play in supporting the integrity of our markets. That is where we have gone too far.

We can have self-policing of the markets by allowing a private right of action when an individual has been hurt, and this legislation simply goes too far.

The conference report's rule XI, the President states, this provision lacks balance. It treats the plaintiffs more harshly than the defendants in a manner that comes so close to loser pay. Now, I ask my colleagues, when we start getting close to loser pay, how many people, and the gentleman from Michigan [Mr. CONYERS] brought this up a few moments ago, how many people are going to take the action after they have lost so much of their resources to lose more of it by bringing a meritorious case? We must allow room for meritorious lawsuits.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. BROWN], a member of the committee.

Mr. BROWN of Ohio. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of H.R. 1058. Many of us on this side of the aisle have opposed extreme tort reform because we want consumers and workers protected through sensible regulation and through the specter of potential lawsuits. H.R. 1058, however, does provide that investor protection.

H.R. 1058 is a jobs protection bill. I represent an area in northeast Ohio which is a hotbed of innovation and entrepreneurial spirit. Exporting is important, small business is important, high-tech companies are important. H.R. 1058 is a mechanism, as a bipartisan effort, to create jobs in my district and throughout this country. I urge a ''yes'' vote.

Mr. MARKEY. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Illinois [Mrs. COLLINS].

(Mrs. COLLINS of Illinois asked and was given permission to revise and extend her remarks.)

Mrs. COLLINS of Illinois. Mr. Speaker, I am in opposition to the motion to override the President's veto.

Mr. Speaker, I rise in opposition to the motion to override the President's veto of the conference report to accompany H.R. 1058, the Securities Litigation Reform Act. This so-called agreement would slam the doors of justice on hard-working Americans who unwittingly fall victim to corporate misconduct and fraud. It is shamelessly anticonsumer, anti-small investor, and antitaxpayer.

Every Member of this body recognizes that there continue to be some cases in which meritless securities class action lawsuits are brought and we must take steps to deter such behavior. But the GOP's approach on this issue, as with many other issues throughout this Congress, has been to blow a minor problem way out of proportion for short-term political gain. This is simply irresponsible Mr. Speaker.

The facts are these: Of the 225,000 suits filed in Federal courts annually, only about 300 or so are securities fraud class action suits, and the courts currently have the full authority to dismiss those suits they deem to be without just cause.

Private securities lawsuits have provided a very powerful deterrent to fraud and have been invaluable in supplementing and enhancing Securities and Exchange Commission [SEC] enforcement of Federal securities laws. The Lincoln S&L/Charles Keating debacle and the Drexel Burnham/Michael Milken disaster were just two high-profile cases that were initiated as a result of private investor action.

In these two cases alone, $262 million in hard-earned taxpayer dollars, mostly the dollars of senior citizens, was recovered. Under the conference report for H.R. 1058, a mere $16 million of this money would have been retrievable.

It is not justifiable to throw the baby out with the bath water in the name of so-called reform. However, that is what the conference report does.

It offers a great number of incentives for corporate misconduct. Most distressing to me is the fact that the bill imposes ''loser pays'' requirements forcing a losing small investor in a securities fraud suit to shoulder the legal fees of the investment banking houses, accounting firms, megacorporations, etc. I don't want to tell my constituents who lose their life savings that they had invested in mutual funds, IRAs, or pension plans because of a fraudulent action that they must then risk their homes and whatever else they may have left to have even a chance of recovering a small portion of what they lost. Do you think these investors will pursue any suit, regardless of its merits?

In addition, the measure's ''safe harbor'' liability exemption for ''forward-looking'' statements excuses unethical corporate wolves from prosecution. With these provisions, any statements made by a defendant in a securities fraud case would be exempt from liability—even if the statement is deliberately false—as long as it is accompanied by vaguely defined ''cautionary'' language.

I urge my colleagues to vote no on this motion, support the President, and help prevent a grave injustice to our Nation's consumers and small investors from occurring.

Mr. MARKEY. Mr. Speaker, I yield 2½ minutes to the gentleman from New Jersey [Mr. TORRICELLI].

Mr. TORRICELLI. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, when securities litigation reform legislation came to this House earlier this year, I voted for it. The Clinton administration supported it. Democrats and Republicans in this body overwhelmingly gave their assent.

☐ 1145

This is not that bill.

Mr. Speaker, this is a good example of what happens when this institution does not function according to its own rules and procedures.

The bill the President vetoed is not the result of a conference committee. The conference committee did not meet. It is not the result of a bipartisan effort. Democrats were never consulted. We started with Democrats, Republicans, both bodies of the Congress, and the administration toward a common language, largely with common language, with a good purpose, and because we could not work together in good faith, we came up with a product that forced the President to issue a veto and many of us to oppose the legislation.

Mr. Speaker, that is why 15 attorneys general have stated their concerns, and leaders of the business community themselves. Look how far we went wrong, and be careful that you want to be identified with this legislation if you do not vote to sustain the veto.

The conference report drops language exempting from the safe-harbor provisions ''statements knowingly made with the purpose and actual intent of misleading investors.'' That was dropped.

Mr. Speaker, I know we all want to do right by the business community. How about your retirees? Small business people? Pension fund managers? Ultimately, the strength of this economy rests on the confidence of our people to invest. This is not a small Latin American nation where a few large families carry the raising of capital. Our people must feel confident. We cannot pass this bill and have people

believe that they can go and make an investment and have recourse. The President will sign a bill with modest changes. It is the bill many of you voted for originally.

Mr. Speaker, I urge the Members of this body, sustain this veto. Let us get a bill worth voting for.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from California from [Mr. BILBRAY].

Mr. BILBRAY. Mr. Speaker, I rise in support of H.R. 1058, and I rise in support for many reasons, but one of them being the fact that I think the American people have a chance today to see a bipartisan effort to protect the most critical resource of our country; that is, the ability of people to venture into agreements to invest their capital.

Mr. Speaker, I think that one of the things we see again and again, contrary to what some speakers would like to say, is that this is a bipartisan effort. You see the Representatives from California especially, from both sides of the aisle, do what we do not do enough, cross the aisle and work together for the benefit of the public.

Mr. Speaker, I wish to point out this is not just an issue of jobs. This is not just an issue of investing money. This is an issue of life and death because the companies that are being attacked are not those that are big companies, but these are the small dynamic companies that are working on issues that are absolutely essential for our citizens, such as cures for cancer, looking for a cure for AIDS, looking for those items that will save lives.

So, Mr. Speaker, I ask Members to support the override not just for the jobs, not just for the bipartisan effort, but for the citizens' lives too.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentlewoman from California [Ms. HARMAN].

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Speaker, I represent a district in California that I consider the aerospace center of the universe, and its future depends on two things. One is a right-sized defense, but the second is diversification, so that the industrial base can prosper in industries like medical research, communications, biotechnology, green technologies, and so forth.

Mr. Speaker, that diversification will be hampered if we do not have securities law reform. I am very sorry that the White House has chosen to veto this bill, as it chose or will choose to veto our Defense authorization bill. I think in both cases the growth of California, its export potential, and its cutting-edge technology in the twenty-first century depend on policies opposite those the White House has chosen to take.

Mr. Speaker, I would make this point in closing. As a corporate lawyer, I know that there are investors on both sides of securities litigation and victims on both sides. These reforms will protect those who invest and are subsequently defrauded as well as those who invest in companies that are unfairly targeted by strike suits.

These reforms are critical to all investors, to our Nation's future economic growth, and to the leading-edge advances that high-technology companies make to improve the quality of our lives.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. BOEHNER].

Mr. BOEHNER. Mr. Speaker, there is nothing wrong with this bill. It went through the House and the Senate in a bipartisan way. And during the whole process, we worked with the SEC, we worked with the administration, and we had an agreed-upon bill.

All the sudden, at the eleventh hour, the President decides to veto it. Everybody in this Chamber knows what this is. This is nothing more than raw politics. The President, having a few of his friends over for dinner and deciding, ''Well, I really do not want to tell those trial lawyers, no. I really do not want to stand up and do the right thing for the American people.''

Mr. Speaker, it is very simple. It is time to send the President a message that we are not going to negotiate this way. This is the same thing we have been going through with the budget for the last several months. All we get is idle talk, idle talk, but we never get serious negotiations.

Mr. Speaker, we had serious negotiations on this bill. We came to an agreement, and the fact is we ought to override it and we ought to do it today.

Mr. BLILEY. Mr. Speaker, I yield 30 seconds to the gentleman from California [Mr. FARR].

Mr. FARR. Mr. Speaker, I voted for this bill because it addressed things that were broken and needed fixing. We had a bipartisan effort to fix those things, and we did. We need to keep America competitive. Technology development depends on risk-taking. This bill allows risks to be taken and rights to be protected.

Mr. Speaker, I was shocked by this veto. It is the first time I have ever not agreed with the President on a veto, and I am going to vote to override it. I urge my colleagues who supported it in the first instance to do so in the latter.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. BERMAN].

(Mr. BERMAN asked and was given permission to revise and extend his remarks.)

Mr. BERMAN. Mr. Speaker, I hear a lot of talk, general talk, about climate for investors and climate for new ventures, and trial lawyers, and bipartisan efforts. No one seems to want to address the specific points of the veto, I suggest, because there is no good answers to those specific points.

Mr. Speaker, if I heard it once, I heard it ten times from the gentleman from California when this bill passed: We want a pleading standard that matches the Second Circuit, not the lose pleading requirement of the Ninth Circuit.

Why do they come back? The Second Circuit standard is not enough. We want to make it even tougher to file a suit based on fraud and defrauding investors.

The question of sanctions; I think there should be tough sanctions on frivolous lawsuits. I think there should be tough sanctions on frivolous defenses. Here we presume a frivolous plaintiff pays all the legal costs and we specifically prohibit a presumption of all the costs of the plaintiff by frivolous defenses by the defendant.

Finally, on the safe-harbor provisions, they allow an individual to lie to potential investors, make some cautionary statements, and state specifically they cannot make any general allegation with respect to the state of mind of the person who is lying, and then allows omission of major, major kinds of cautionary statement.

Mr. Speaker, a new drug company could represent future earnings, make forward-looking statements, talk about the problem of floods and talk about the problem of earthquakes and the problem of labor disputes, and never mention that the company that their drug is based on has not yet had FDA approval.

All we are asking is to clean this bill up so that my colleagues can achieve the purposes they say they want, without undermining the ability of fraudulent actors to pay the penalties they should be paying to the investors they have defrauded.

Mr. BLILEY. Mr. Speaker, I yield 30 seconds to the gentleman from New York [Mr. FRISA], a member of the committee.

Mr. FRISA. Mr. Speaker, the President, as is his right, chose to use his pen to veto legislation that I feel is very important for our high-tech companies to encourage growth, to encourage innovation, to encourage the creation of more jobs, to protect our accounting profession and other professions that deal with especially new, emerging companies that create growth.

So, Mr. Speaker, I would urge all of the Members of the House to exercise their right to override the ill-advised veto of the President so that we can accomplish these objectives.

Mr. BLILEY. Mr. Speaker, I yield 30 seconds to the gentleman from Wisconsin [Mr. ROTH], a member of the Committee on Banking and Financial Services.

Mr. ROTH. Mr. Speaker, as chairman of the Subcommittee on Economic Policy and Trade, I, along with the gentleman from Connecticut [Mr. GEJDENSON], have looked at this issue of jobs. The reason this bill is so important, this securities legislation, is because it really revolving around jobs.

Many of our companies are moving overseas. Why? Because of frivolous lawsuits. Many of our companies are

not bringing in the innovation that we need today. Why? Because they are afraid of frivolous lawsuits.

Mr. Speaker, in his opening remarks, the gentleman from Virginia [Mr. BLILEY] pointed to a ''T'' to the central nub of the problem, and that is what we want to focus on. I know if the President had a chance to reconsider, he would sign this legislation.

Mr. BLILEY. Mr. Speaker, I yield 30 seconds to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Mr. Speaker, just to follow my colleague's remarks, 53 percent of our high-technology companies in Silicon Valley have been hit with the type of fraudulent lawsuits that this legislation would prohibit. If my colleagues want to bring back the California economy—and it is still struggling—and if the President wants to bring back the California economy and get a little credit for it, let us get this legislation passed. Please support this override.

The SPEAKER pro tempore. The gentleman from Virginia [Mr. BLILEY] has 2½ minutes remaining, and the gentleman from Massachusetts [Mr. MARKEY] has 2 minutes remaining.

Mr. BLILEY. Mr. Speaker, we have one speaker left to close, and I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, when a hurricane or a tornado causes a billion dollars' worth of damage to homes and families, the Nation races to their aid. But when investors are defrauded of $1 billion, such as the Prudential Securities case, it is a silent hurricane that ravages the life savings of families across this country.

The President wants to protect growing companies and growing families. We must help him to fix this bill. We must have a ''no'' vote on this override. It is absolutely critical for us to block all frivolous cases. The President, and those of us who are supporting the President's position, want to block all frivolous lawsuits, and we will do so. But we do not want to block meritorious cases.

Mr. Speaker, what a sad state of affairs in this country if, in the name of job creation, we block meritorious cases brought by defrauded investors against financial scam artists who have lied and deceived investors in this country.

Mr. Speaker, a ''no'' vote is the only correct vote here to defend against the defrauding of investors in this country; to ensure that meritorious cases can be brought; to ensure that the pleadings are not too high; to ensure that, in fact, loser-pays does not become an absolute block to ordinary individuals in bringing cases; to ensure that companies and financial experts cannot lie, deliberately lie, deliberately defraud individuals across this country.

Support the President. Vote ''no''. Vote ''no'' here to protect average investors in this country. Mr. Speaker, I tell my colleagues, we will come back and we will give them a bill which will block all frivolous lawsuits that will be brought in this country. Vote ''no.''

□ 1200

Mr. BLILEY. Mr. Speaker, I yield the remainder of our time to the gentleman from California [Mr. COX], a member of the committee who has done more work on this bill perhaps than almost anyone else on our side.

Mr. COX of California. Mr. Speaker, I thank the gentleman for yielding me this time.

Christmas Day is approaching. We are still hard at work because we are in the midst of a historic effort to pass the first balanced budget in 30 years. It is a difficult time. There is some partisan rhetoric on the floor.

But in the midst of this we have managed to produce one of the most bipartisan, carefully crafted pieces of legislation in congressional history. It is no accident that this bill passed the House of Representatives and the Senate by overwhelming, more than two-thirds, more than veto-proof margins.

Fraudulent litigation, everyone has accepted, is a serious problem in America. The manipulation and abuse of our securities laws by unethical multimillionaire bandits is a serious problem in need of a remedy. This bill comes after long and hard work, not just between the House and the Senate, not just Democrats, a majority of whom have voted to support this legislation, and Republicans, but with the administration and with the Securities and Exchange Commission.

We wanted to craft a careful balance because this is such a serious issue that affects all of us. In California, it affects us at least as much as anywhere else. That is why the Governor of California has asked for your support. That is why you have seen so many California Democrats and Republicans on the floor today asking for an override of this ill-considered veto.

The President made three points. First, he believes that people who bring cases in violation of existing Federal rule 11 should not be subject to sanctions. Let me read you what rule 11 says: Only those cases that are brought for the purpose of harassment are subject to these sanctions; cases brought for an improper purpose, to intentionally delay; frivolous cases. That is what rule 11 says. Those cases have no place in our system.

And, yes, at the end of a lawsuit after the judge has heard all of the evidence, he should, or she should, be able to impose sanctions in those cases.

Second, the President said the pleadings standards, which are changed in our bill to prevent fishing expeditions, should be weakened. But we do not wish to see fishing expedition lawsuits. That is why the President's own Securities and Exchange Commission did not level this objection to this part of the bill. * * * complaint about the safe harbor. The SEC chairman approved it. The Administration's own SEC approved this part of the bill.

It took 12 months to craft this legislation. It took 12 seconds for the President to set these efforts back. Let us put ourselves back on track and vote now to override the President's veto and support this most bipartisan and most important legislation.

The SPEAKER pro tempore (Mr. WICKER). Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

Under the Constitution, this vote must be by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 319, nays 100, answered ''present'' 1, not voting 14, as follows:

[Roll No. 870]

YEAS—319

Ackerman	Davis	Hilleary
Allard	Deal	Hobson
Andrews	DeLauro	Hoekstra
Archer	DeLay	Hoke
Armey	Deutsch	Holden
Bachus	Diaz-Balart	Horn
Baesler	Dickey	Hostettler
Baker (CA)	Doolittle	Houghton
Baker (LA)	Doyle	Hoyer
Ballenger	Dreier	Hunter
Barcia	Duncan	Hutchinson
Barr	Dunn	Hyde
Barrett (NE)	Ehlers	Inglis
Barrett (WI)	Ehrlich	Istook
Bartlett	English	Jackson (IL)
Barton	Ensign	Jackson-Lee
Bass	Eshoo	(TX)
Bateman	Everett	Jefferson
Bentsen	Ewing	Johnson (CT)
Bereuter	Farr	Johnson, Sam
Bevill	Fawell	Jones
Bilbray	Fazio	Kasich
Bilirakis	Fields (LA)	Kelly
Bishop	Fields (TX)	Kennedy (MA)
Bliley	Flake	Kennedy (RI)
Blute	Flanagan	Kennelly
Boehlert	Foley	Kim
Boehner	Forbes	King
Bonilla	Fowler	Kingston
Bono	Fox	Kleczka
Boucher	Frank (MA)	Klug
Brewster	Franks (CT)	Knollenberg
Browder	Franks (NJ)	Kolbe
Brown (OH)	Frelinghuysen	LaFalce
Brownback	Frisa	LaHood
Bryant (TN)	Frost	Largent
Bunn	Funderburk	Latham
Bunning	Furse	LaTourette
Burr	Gallegly	Laughlin
Burton	Ganske	Lazio
Buyer	Gejdenson	Leach
Callahan	Gekas	Lewis (CA)
Calvert	Geren	Lewis (KY)
Camp	Gilchrest	Lightfoot
Campbell	Gillmor	Lincoln
Canady	Gilman	Linder
Cardin	Gingrich	Lipinski
Castle	Goodlatte	Livingston
Chabot	Goodling	LoBiondo
Chambliss	Gordon	Lofgren
Chenoweth	Goss	Longley
Christensen	Graham	Lucas
Chrysler	Green	Luther
Clement	Greenwood	Maloney
Clinger	Gunderson	Manton
Coble	Gutknecht	Manzullo
Coburn	Hall (TX)	Martini
Collins (GA)	Hamilton	McCarthy
Combest	Hancock	McCollum
Condit	Hansen	McCrery
Cooley	Harman	McDade
Cox	Hastert	McHale
Cramer	Hastings (WA)	McHugh
Crapo	Hayes	McInnis
Cremeans	Hayworth	McIntosh
Cubin	Hefley	McKeon
Cunningham	Heineman	McNulty
Danner	Herger	Meehan

Metcalf	Regula	Stearns
Meyers	Riggs	Stenholm
Mica	Roberts	Stockman
Miller (FL)	Roemer	Stump
Minge	Rogers	Talent
Molinari	Rohrabacher	Tanner
Montgomery	Ros-Lehtinen	Tate
Moorhead	Rose	Tauzin
Moran	Roth	Taylor (NC)
Morella	Roukema	Tejeda
Murtha	Royce	Thomas
Myers	Rush	Thornberry
Myrick	Sabo	Thornton
Neal	Salmon	Tiahrt
Nethercutt	Sanford	Torkildsen
Neumann	Sawyer	Towns
Ney	Saxton	Traficant
Norwood	Scarborough	Upton
Nussle	Schaefer	Vento
Ortiz	Schiff	Visclosky
Orton	Schumer	Vucanovich
Oxley	Seastrand	Waldholtz
Packard	Sensenbrenner	Walker
Pallone	Shadegg	Walsh
Parker	Shaw	Wamp
Paxon	Shays	Ward
Payne (VA)	Shuster	Weldon (FL)
Pelosi	Sisisky	Weldon (PA)
Peterson (FL)	Skeen	Weller
Petri	Skelton	White
Pickett	Slaughter	Whitfield
Pombo	Smith (MI)	Wicker
Porter	Smith (NJ)	Wolf
Portman	Smith (TX)	Wyden
Quillen	Smith (WA)	Wynn
Quinn	Solomon	Young (FL)
Radanovich	Souder	Zeliff
Ramstad	Spence	Zimmer
Reed	Spratt	

NAYS—100

Baldacci	Hall (OH)	Payne (NJ)
Becerra	Hastings (FL)	Pomeroy
Beilenson	Hefner	Poshard
Berman	Hilliard	Rahall
Bonior	Hinchey	Rangel
Borski	Jacobs	Richardson
Brown (CA)	Johnson (SD)	Rivers
Brown (FL)	Johnson, E. B.	Roybal-Allard
Bryant (TX)	Johnston	Sanders
Clay	Kanjorski	Schroeder
Clayton	Kaptur	Scott
Clyburn	Kildee	Serrano
Coleman	Klink	Skaggs
Collins (IL)	Levin	Stark
Collins (MI)	Lewis (GA)	Stokes
Conyers	Markey	Studds
Costello	Martinez	Stupak
Coyne	Mascara	Taylor (MS)
DeFazio	Matsui	Thompson
Dellums	McDermott	Thurman
Dicks	McKinney	Torres
Dingell	Meek	Torricelli
Dixon	Menendez	Velazquez
Doggett	Mfume	Volkmer
Durbin	Miller (CA)	Waters
Engel	Mink	Watt (NC)
Evans	Moakley	Waxman
Fattah	Mollohan	Williams
Foglietta	Nadler	Wilson
Ford	Oberstar	Wise
Gephardt	Obey	Woolsey
Gibbons	Olver	Yates
Gonzalez	Owens	
Gutierrez	Pastor	

ANSWERED ''PRESENT''—1

Lowey

NOT VOTING—14

Abercrombie	Dornan	Peterson (MN)
Chapman	Edwards	Pryce
Crane	Emerson	Watts (OK)
de la Garza	Filner	Young (AK)
Dooley	Lantos	

□ 1220

The Clerk announced the following pair:

On this vote:

Mr. Edwards for, with Mr. Filner against.

Mr. ROSE changed his vote from ''nay'' to ''yea.''

So, two-thirds having voted in favor thereof, the bill was passed, the objections of the President to the contrary notwithstanding.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The clerk will notify the Senate of the action of the House.

PERSONAL EXPLANATION

Mr. ABERCROMBIE. Mr. Speaker, on the last vote, rollcall 870, I was unavoidably detained. Had I been here, I would have voted ''nay.''

PERSONAL EXPLANATION

Mr. WATTS of Oklahoma. Mr. Speaker, on rollcall No. 870, I was inadvertently detained with constituents. Had I been present, I would have voted ''yea.''

GENERAL LEAVE

Mr. BLILEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1058.

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

There was no objection.

CONFERENCE REPORT ON H.R. 1655, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1996

Mr. COMBEST submitted the following conference report and statement on the bill (H.R. 1655) to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes:

CONFERENCE REPORT (H. REPT. 104–427)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1655), to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Intelligence Authorization Act for Fiscal Year 1996''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 1996 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of Treasury.
(8) The Department of Energy.

(9) The Federal Bureau of Investigation.
(10) The Drug Enforcement Administration.
(11) The National Reconnaissance Office.
(12) The Central Imagery Office.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1996, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill H.R. 1655 of the One Hundred Fourth Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 1996 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed two percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

SEC. 104. COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Community Management Account of the Director of Central Intelligence for fiscal year 1996 the sum of $90,713,000. Within such amounts authorized, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for the Advanced Research and Development Committee and the Environmental Task Force shall remain available until September 30, 1997.

(b) AUTHORIZED PERSONNEL LEVELS.—The Community Management Staff of the Director of Central Intelligence is authorized 247 full-time personnel as of September 30, 1996. Such personnel of the Community Management Staff may be permanent employees of the Community Management Staff or personnel detailed from other elements of the United States Government.

(c) REIMBURSEMENT.—During fiscal year 1996, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Community Management Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1996 the sum of $213,900,000.

TITLE III—GENERAL PROVISIONS

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

SEC. 303. APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES.

(a) GENERAL PROVISIONS.—The National Security Act of 1947 (50 U.S.C. 401 et seq.), is amended by adding at the end thereof the following new title:

"TITLE IX—APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES

"STAY OF SANCTIONS

"SEC. 901. Notwithstanding any provision of law identified in section 904, the President may stay the imposition of an economic, cultural, diplomatic, or other sanction or related action by the United States Government concerning a foreign country, organization, or person when the President determines and reports to Congress in accordance with section 903 that to proceed without delay would seriously risk the compromise of an ongoing criminal investigation directly related to the activities giving rise to the sanction or an intelligence source or method directly related to the activities giving rise to the sanction. Any such stay shall be effective for a period of time specified by the President, which period may not exceed 120 days, unless such period is extended in accordance with section 902.

"EXTENSION OF STAY

"SEC. 902. Whenever the President determines and reports to Congress in accordance with section 903 that a stay of sanctions or related actions pursuant to section 901 has not afforded sufficient time to obviate the risk to an ongoing criminal investigation or to an intelligence source or method that gave rise to the stay, he may extend such stay for a period of time specified by the President, which period may not exceed 120 days. The authority of this section may be used to extend the period of a stay pursuant to section 901 for successive periods of not more than 120 days each.

"REPORTS

"SEC. 903. Reports to Congress pursuant to sections 901 and 902 shall be submitted promptly upon determinations under this title. Such reports shall be submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. With respect to determinations relating to intelligence sources and methods, reports shall also be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate. With respect to determinations relating to ongoing criminal investigations, reports shall also be submitted to the Committees on the Judiciary of the House of Representatives and the Senate.

"LAWS SUBJECT TO STAY

"SEC. 904. The President may use the authority of sections 901 and 902 to stay the imposition of an economic, cultural, diplomatic, or other sanction or related action by the United States Government related to the proliferation of weapons of mass destruction, their delivery systems, or advanced conventional weapons otherwise required to be imposed by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III of Public Law 102–182); the Nuclear Proliferation Prevention Act of 1994 (title VIII of Public Law 103–236); title XVII of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510) (relating to the nonproliferation of missile technology); the Iran-Iraq Arms Nonproliferation Act of 1992 (title XVI of Public Law 102–484); section 573 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1994 (Public Law 103–87); section 563 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1995 (Public Law 103–306); and comparable provisions.

"APPLICATION

"SEC. 905. This title shall cease to be effective on the date which is one year after the date of the enactment of this title.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by adding at the end thereof the following:

"TITLE IX—APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES

"Sec. 901. Stay of sanctions.
"Sec. 902. Extension of stay.
"Sec. 903. Reports.
"Sec. 904. Laws subject to stay.
"Sec. 905. Application.".

SEC. 304. THRIFT SAVINGS PLAN FORFEITURE.

(a) IN GENERAL.—Section 8432(g) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(5) Notwithstanding any other provision of law, contributions made by the Government for the benefit of an employee or Member under subsection (c), and all earnings attributable to such contributions, shall be forfeited if the annuity of the employee or Member, or that of a survivor or beneficiary, is forfeited under subchapter II of chapter 83.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to offenses upon which the requisite annuity forfeitures are based occurring on or after the date of the enactment of this Act.

SEC. 305. AUTHORITY TO RESTORE SPOUSAL PENSION BENEFITS TO SPOUSES WHO COOPERATE IN CRIMINAL INVESTIGATIONS AND PROSECUTIONS FOR NATIONAL SECURITY OFFENSES.

Section 8318 of title 5, United States Code, is amended by adding at the end the following:

"(e) The spouse of an individual whose annuity or retired pay is forfeited under section 8312 or 8313 after the date of enactment of this subsection shall be eligible for spousal pension benefits if the Attorney General of the United States determines that the spouse fully cooperated with Federal authorities in the conduct of a criminal investigation and subsequent prosecution of the individual which resulted in such forfeiture.".

SEC. 306. SECRECY AGREEMENTS USED IN INTELLIGENCE ACTIVITIES.

Notwithstanding any other provision of law not specifically referencing this section, a nondisclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum—

(1) require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government; and

(2) provide that the form or agreement does not bar—

(A) disclosures to Congress; or

(B) disclosures to an authorized official of an executive agency that are deemed essential to reporting a violation of United States law.

SEC. 307. LIMITATION ON AVAILABILITY OF FUNDS FOR AUTOMATIC DECLASSIFICATION OF RECORDS OVER 25 YEARS OLD.

(a) IN GENERAL.—The Director of Central Intelligence shall use no more than $25,000,000 of

the amounts authorized to be appropriated for fiscal year 1996 by this Act for the National Foreign Intelligence Program to carry out the provisions of section 3.4 of Executive Order 12958. The Director may, in the Director's discretion, draw on this amount for allocation to the agencies within the National Foreign Intelligence Program for the purpose of automatic declassification of records over 25 years old.

(b) REQUIRED BUDGET SUBMISSION.—The President shall submit for fiscal year 1997 and each of the following fiscal years through fiscal year 2000 a budget request which specifically sets forth the funds requested for implementation of section 3.4 of Executive Order 12958.

SEC. 308. AMENDMENT TO THE HATCH ACT REFORM AMENDMENTS OF 1993.

Section 7325 of title 5, United States Code, is amended by adding after ''section 7323(a)'' the following: ''and paragraph (2) of section 7323(b)''.

SEC. 309. REPORT ON PERSONNEL POLICIES.

(a) REPORT REQUIRED.—Not later than three months after the date of enactment of this Act, the Director of Central Intelligence shall submit to the intelligence committees of Congress a report describing personnel procedures, and recommending necessary legislation, to provide for mandatory retirement for expiration of time in class, comparable to the applicable provisions of section 607 of the Foreign Service Act of 1980 (22 U.S.C. 4007), and termination based on relative performance, comparable to section 608 of the Foreign Service Act of 1980 (22 U.S.C. 4008), and to provide for other personnel review systems for all civilian employees of the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, and the intelligence elements of the Army, Navy, Air Force, and Marine Corps. Such report shall contain a description and analysis of voluntary separation incentive options, including a waiver of the 2 percent penalty reduction for early retirement under certain Federal retirement systems.

(b) COORDINATION.—The preparation of the report required by subsection (a) shall be coordinated as appropriate with elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(4)).

(c) DEFINITION.—As used in this section, the term ''intelligence committees of Congress'' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 310. ASSISTANCE TO FOREIGN COUNTRIES.

Notwithstanding any other provision of law, funds authorized to be appropriated by this Act may be used to provide assistance to a foreign country for counterterrorism efforts if—

(1) such assistance is provided for the purpose of protecting the property of the United States Government or the life and property of any United States citizen, or furthering the apprehension of any individual involved in any act of terrorism against such property or persons; and

(2) the Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives are notified not later than 15 days prior to the provision of such assistance.

SEC. 311. FINANCIAL MANAGEMENT OF THE NATIONAL RECONNAISSANCE OFFICE.

(a) MANAGEMENT REVIEW.—(1) The Inspector General for the Central Intelligence Agency, assisted by the Inspector General of the Department of Defense, shall undertake a comprehensive review of the financial management of the National Reconnaissance Office to evaluate the effectiveness of policies and internal controls over the budget of the National Reconnaissance Office, including the use of carry-forward funding, to ensure that National Reconnaissance Office funds are used in accordance with applicable Federal acquisition regulations and the policies of the Director of Central Intelligence and consistent with those of the Department of Defense, the guidelines of the National Reconnaissance Office, and congressional direction.

(2) The review required by paragraph (1) shall—

(A) determine the quality of the development and implementation of the budget process within the National Reconnaissance Office at both the comptroller and directorate level;

(B) assess the advantages and disadvantages of the use of incremental versus full funding for contracts entered into by the National Reconnaissance Office;

(C) assess the advantages and disadvantages of the National Reconnaissance Office's use of carry-forward funding;

(D) determine how the National Reconnaissance Office defines, identifies, and justifies carry-forward funding requirements;

(E) determine how the National Reconnaissance Office tracks and manages carry-forward funding;

(F) determine how the National Reconnaissance Office plans to comply with congressional direction regarding carry-forward funding;

(G) determine whether or not a contract entered into by the National Reconnaissance Office has ever encountered a contingency which required the utilization of more than 30 days of carry-forward funding;

(H) consider the proposal by the Director of Central Intelligence for the establishment of a position of a Chief Financial Officer, and assess how the functions to be performed by that officer would enhance the financial management of the National Reconnaissance Office; and

(I) make recommendations, as appropriate, to improve control and management of the budget process of the National Reconnaissance Office.

(3) The Director of Central Intelligence shall submit a report to the Congress setting forth the findings of the review required by paragraph (1) not later than March 1, 1996, with an interim report provided to the Congress not later than 2 weeks after the enactment of this Act.

(b) REPORT.—(1) Not later than January 30, 1996, the President shall submit a report to the appropriate committees of the Congress on a proposal to subject the budget of the intelligence community to greater oversight by the executive branch of Government.

(2) Such report shall include (among other things)—

(A) consideration of establishing by statute a financial control officer for the National Reconnaissance Office, other elements of the intelligence community, and for the intelligence community as a whole;

(B) recommendations for procedures to be used by the Office of Management and Budget for review of the budget of the National Reconnaissance Office;

(C) a proposed statutory provision that would require the Director of Central Intelligence to establish a policy to restrict the National Reconnaissance Office authority on carry-forward funding in a manner consistent with the restriction on such authority within the Department of Defense; and

(D) an evaluation of how changes proposed as a result of the review required by subsection (a) will affect, directly or indirectly, the National Reconnaissance Office's streamlined acquisition process and, ultimately, program costs.

(c) DEFINITION.—As used in this section, the term ''intelligence community'' has the meaning given to the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. EXTENSION OF THE CIA VOLUNTARY SEPARATION PAY ACT.

(a) EXTENSION OF AUTHORITY.—Section 2(f) of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4(f)) is amended by striking ''September 30, 1997'' and inserting ''September 30, 1999''.

(b) REMITTANCE OF FUNDS.—Section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4) is amended by inserting at the end the following new subsection:

''(i) REMITTANCE OF FUNDS.—The Director shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund (in addition to any other payments which the Director is required to make under subchapter III of chapter 83 and subchapter II of chapter 84 of title 5, United States Code), an amount equal to 15 percent of the final basic pay of each employee who, in fiscal year 1998 or fiscal year 1999, retires voluntarily under section 8336, 8412, or 8414 of such title or resigns and to whom a voluntary separation incentive payment has been or is to be paid under this section.''.

SEC. 402. VOLUNTEER SERVICE PROGRAM.

(a) GENERAL AUTHORITY.—The Director of Central Intelligence is authorized to establish and maintain a program from fiscal years 1996 through 2001 to utilize the services contributed by not more than 50 annuitants who serve without compensation as volunteers in aid of the review for declassification or downgrading of classified information by the Central Intelligence Agency under applicable Executive orders governing the classification and declassification of national security information and Public Law 102–526.

(b) COSTS INCIDENTAL TO SERVICES.—The Director is authorized to use sums made available to the Central Intelligence Agency by appropriations or otherwise for paying the costs incidental to the utilization of services contributed by individuals under subsection (a). Such costs may include (but need not be limited to) training, transportation, lodging, subsistence, equipment, and supplies. The Director may authorize either direct procurement of equipment, supplies, and services, or reimbursement for expenses, incidental to the effective use of volunteers. Such expenses or services shall be in accordance with volunteer agreements made with such individuals. Sums made available for such costs may not exceed $100,000.

(c) APPLICATION OF CERTAIN PROVISIONS OF LAW.—A volunteer under this section shall be considered to be a Federal employee for the purposes of subchapter I of title 81 (relating to compensation of Federal employees for work injuries) and section 1346(b) and chapter 171 of title 28 (relating to tort claims). A volunteer under this section shall be covered by and subject to the provisions of chapter 11 of title 18 of the United States Code as if they were employees or special Government employees depending upon the days of expected service at the time they begin volunteering.

SEC. 403. AUTHORITIES OF THE INSPECTOR GENERAL OF THE CENTRAL INTELLIGENCE AGENCY.

(a) REPORTS BY THE INSPECTOR GENERAL.—Section 17(b)(5) of the Central Intelligence Act of 1949 (50 U.S.C. 403q(b)(5)) is amended to read as follows:

''(5) In accordance with section 535 of title 28, United States Code, the Inspector General shall report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involve a program or operation of the Agency, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of all such reports shall be furnished to the Director.''.

(b) EXCEPTION TO NONDISCLOSURE REQUIREMENT.—Section 17(e)(3)(A) of such Act is amended by inserting after ''investigation'' the following: ''or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken''.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

SEC. 501. DEFENSE INTELLIGENCE SENIOR LEVEL POSITIONS.

Section 1604 of title 10, United States Code, is amended to read as follows:

''§ 1604. Civilian personnel management

''(a) GENERAL PERSONNEL AUTHORITY.—The Secretary of Defense may, without regard to the provisions of any other law relating to the number, classification, or compensation of Federal employees—

''(1) establish such positions for employees in the Defense Intelligence Agency and the Central Imagery Office as the Secretary considers necessary to carry out the functions of that Agency and Office, including positions designated under subsection (f) as Defense Intelligence Senior Level positions;

''(2) appoint individuals to those positions; and

''(3) fix the compensation for service in those positions.

''(b) AUTHORITY TO FIX RATES OF BASIC PAY; OTHER ALLOWANCES AND BENEFITS.—(1) The Secretary of Defense shall, subject to subsection (c), fix the rates of basic pay for positions established under subsection (a) in relation to the rates of basic pay provided in subpart D of part III of title 5 for positions subject to that title which have corresponding levels of duties and responsibilities. Except as otherwise provided by law, an employee of the Defense Intelligence Agency or the Central Imagery Office may not be paid basic pay at a rate in excess of the maximum rate payable under section 5376 of title 5.

''(2) The Secretary of Defense may provide employees of the Defense Intelligence Agency and the Central Imagery Office compensation (in addition to basic pay under paragraph (1)) and benefits, incentives, and allowances consistent with, and not in excess of the levels authorized for, comparable positions authorized by title 5.

''(c) PREVAILING RATES SYSTEMS.—The Secretary of Defense may, consistent with section 5341 of title 5, adopt such provisions of that title as provide for prevailing rate systems of basic pay and may apply those provisions to positions in or under which the Defense Intelligence Agency or the Central Imagery Office may employ individuals described by section 5342(a)(2)(A) of such title.

''(d) ALLOWANCES BASED ON LIVING COSTS AND ENVIRONMENT FOR EMPLOYEES STATIONED OUTSIDE CONTINENTAL UNITED STATES OR IN ALASKA.—(1) In addition to the basic compensation payable under subsection (b), employees of the Defense Intelligence Agency and the Central Imagery Office described in paragraph (3) may be paid an allowance, in accordance with regulations prescribed by the Secretary of Defense, at a rate not in excess of the allowance authorized to be paid under section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute.

''(2) Such allowance shall be based on—

''(A) living costs substantially higher than in the District of Columbia;

''(B) conditions of environment which—

''(i) differ substantially from conditions of environment in the continental United States; and

''(ii) warrant an allowance as a recruitment incentive; or

''(C) both of those factors.

''(3) This subsection applies to employees who—

''(A) are citizens or nationals of the United States; and

''(B) are stationed outside the continental United States or in Alaska.

''(e) TERMINATION OF EMPLOYEES.—(1) Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any employee of the Defense Intelligence Agency or the Central Imagery Office if the Secretary—

''(A) considers such action to be in the interests of the United States; and

''(B) determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such employee cannot be invoked in a manner consistent with the national security.

''(2) A decision by the Secretary of Defense to terminate the employment of an employee under this subsection is final and may not be appealed or reviewed outside the Department of Defense.

''(3) The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever the Secretary terminates the employment of any employee under the authority of this subsection.

''(4) Any termination of employment under this subsection shall not affect the right of the employee involved to seek or accept employment with any other department or agency of the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

''(5) The authority of the Secretary of Defense under this subsection may be delegated only to the Deputy Secretary of Defense, the Director of the Defense Intelligence Agency (with respect to employees of the Defense Intelligence Agency), and the Director of the Central Imagery Office (with respect to employees of the Central Imagery Office). An action to terminate employment of an employee by any such officer may be appealed to the Secretary of Defense.

''(f) DEFENSE INTELLIGENCE SENIOR LEVEL POSITIONS.—(1) In carrying out subsection (a)(1), the Secretary may designate positions described in paragraph (3) as Defense Intelligence Senior Level positions. The total number of positions designated under this subsection, when combined with the total number of positions in the Defense Intelligence Senior Executive Service under section 1601 of this title, may not exceed the total number of positions in the Defense Intelligence Senior Executive Service as of June 1, 1995.

''(2) Positions designated under this subsection shall be treated as equivalent for purposes of compensation to the senior level positions to which section 5376 of title 5 is applicable.

''(3) Positions that may be designated as Defense Intelligence Senior Level positions are positions in the Defense Intelligence Agency and Central Imagery Office that (A) are classified above the GS–15 level, (B) emphasize functional expertise and advisory activity, but (C) do not have the organizational or program management functions necessary for inclusion in the Defense Intelligence Senior Executive Service.

''(4) Positions referred to in paragraph (3) include Defense Intelligence Senior Technical positions and Defense Intelligence Senior Professional positions. For purposes of this subsection—

''(A) Defense Intelligence Senior Technical positions are positions covered by paragraph (3) that involve any of the following:

''(i) Research and development.

''(ii) Test and evaluation.

''(iii) Substantive analysis, liaison, or advisory activity focusing on engineering, physical sciences, computer science, mathematics, biology, chemistry, medicine, or other closely related scientific and technical fields.

''(iv) Intelligence disciplines including production, collection, and operations in close association with any of the activities described in clauses (i), (ii), and (iii) or related activities; and

''(B) Defense Intelligence Senior Professional positions are positions covered by paragraph (3) that emphasize staff, liaison, analytical, advisory, or other activity focusing on intelligence, law, finance and accounting, program and budget, human resources management, training, information services, logistics, security, and other appropriate fields.

''(g) 'EMPLOYEE' DEFINED AS INCLUDING OFFICERS.—In this section, the term 'employee', with respect to the Defense Intelligence Agency or the Central Imagery Office, includes any civilian officer of that Agency or Office.''.

SEC. 502. COMPARABLE BENEFITS AND ALLOWANCES FOR CIVILIAN AND MILITARY PERSONNEL ASSIGNED TO DEFENSE INTELLIGENCE FUNCTIONS OVERSEAS.

(a) CIVILIAN PERSONNEL.—Section 1605 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting ''(1)'' after ''(a)'';

(B) by striking ''of the Department of Defense'' and all that follows through ''this subsection,'' and inserting ''described in subsection (d)''; and

(C) by designating the second sentence as paragraph (2);

(2) by striking subsection (c) and inserting the following:

''(c) Regulations prescribed under subsection (a) may not take effect until the Secretary of Defense has submitted such regulations to—

''(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

''(2) the Committee on National Security and the Permanent Select Committee on Intelligence of the House of Representatives.''; and

(3) by adding at the end the following new subsection:

''(d) Subsection (a) applies to civilian personnel of the Department of Defense who—

''(1) are United States nationals;

''(2) in the case of employees of the Defense Intelligence Agency, are assigned to duty outside the United States and, in the case of other employees, are assigned to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; and

''(3) are designated by the Secretary of Defense for the purposes of subsection (a).''.

(b) MILITARY PERSONNEL.—Section 431 of title 37, United States Code, is amended—

(1) in subsection (a), by striking ''who are assigned to'' and all that follows through ''of this subsection'' and inserting ''described in subsection (e)'';

(2) by striking subsection (d) and inserting the following:

''(d) Regulations prescribed under subsection (a) may not take effect until the Secretary of Defense has submitted such regulations to—

''(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

''(2) the Committee on National Security and the Permanent Select Committee on Intelligence of the House of Representatives.''; and

(3) by adding at the end the following new subsection:

''(e) Subsection (a) applies to members of the armed forces who—

''(1) are assigned—

''(A) to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; or

''(B) to the Defense Intelligence Agency and engaged in intelligence-related duties outside the United States; and

''(2) are designated by the Secretary of Defense for the purposes of subsection (a).''.

SEC. 503. EXTENSION OF AUTHORITY TO CONDUCT INTELLIGENCE COMMERCIAL ACTIVITIES.

Section 431(a) of title 10, United States Code, is amended by striking ''1995'' and inserting ''1998''.

SEC. 504. AVAILABILITY OF FUNDS FOR TIER II UAV.

All funds appropriated for fiscal year 1995 for the Medium Altitude Endurance Unmanned Aerial Vehicle (Tier II) are specifically authorized, within the meaning of section 504 of the National Security Act of 1947 (50 U.S.C. 414), for such purpose.

SEC. 505. MILITARY DEPARTMENT CIVILIAN INTELLIGENCE PERSONNEL MANAGEMENT SYSTEM.

(a) ESTABLISHMENT OF TRAINING PROGRAM.—Chapter 81 of title 10, United States Code, is amended by adding at the end thereof the following new section:

''§ 1599a. Financial assistance to certain employees in acquisition of critical skills

''(a) TRAINING PROGRAM.—The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees in the Military Department Civilian Intelligence Personnel Management System that is similar in purpose, conditions, content, and administration to the program established by the Secretary of Defense under section 16 of the National Security Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

''(b) USE OF FUNDS FOR TRAINING PROGRAM.—Any payment made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of that chapter is amended by adding at the end thereof the following new item:

''Sec. 1599a. Financial assistance to certain employees in acquisition of critical skills.''.

SEC. 506. ENHANCEMENT OF CAPABILITIES OF CERTAIN ARMY FACILITIES.

(a) AUTHORITY.—(1) In addition to funds otherwise available for such purpose, the Secretary of the Army may transfer or reprogram funds for the enhancement of the capabilities of the Bad Aibling Station and the Menwith Hill Station, including improvements of facility infrastructure and quality of life programs at those installations.

(2) The authority of paragraph (1) may be exercised notwithstanding any other provision of law.

(b) SOURCE OF FUNDS.—Funds available for the Army for operations and maintenance for fiscal years 1996 and 1997 shall be available to carry out subsection (a).

(c) CONGRESSIONAL NOTIFICATION.—Whenever the Secretary of the Army determines that an amount to be transferred or reprogrammed under this section would cause the total amount transferred or reprogrammed in that fiscal year under this section to exceed $1,000,000, the Secretary shall notify in advance the Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the Senate and the Permanent Select Committee on Intelligence, the Committee on National Security, and the Committee on Appropriations of the House of Representatives and provide a justification for the increased expenditure.

(d) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to modify or obviate existing law or practice with regard to the transfer or reprogramming of funds in excess of $2,000,000 from the Department of the Army to the Bad Aibling Station and the Menwith Hill Station.

TITLE VI—FEDERAL BUREAU OF INVESTIGATION

SEC. 601. DISCLOSURE OF INFORMATION AND CONSUMER REPORTS TO FBI FOR COUNTERINTELLIGENCE PURPOSES.

(a) IN GENERAL.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by adding after section 623 the following new section:

''§ 624. Disclosures to FBI for counterintelligence purposes

''(a) IDENTITY OF FINANCIAL INSTITUTIONS.—Notwithstanding section 604 or any other provision of this title, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 1101 of the Right to Financial Privacy Act of 1978) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Director's designee, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that—

''(1) such information is necessary for the conduct of an authorized foreign counterintelligence investigation; and

''(2) there are specific and articulable facts giving reason to believe that the consumer—

''(A) is a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978) or a person who is not a United States person (as defined in such section 101) and is an official of a foreign power; or

''(B) is an agent of a foreign power and is engaging or has engaged in an act of international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

''(b) IDENTIFYING INFORMATION.—Notwithstanding the provisions of section 604 or any other provision of this title, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee, which certifies compliance with this subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that—

''(1) such information is necessary to the conduct of an authorized counterintelligence investigation; and

''(2) there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978).

''(c) COURT ORDER FOR DISCLOSURE OF CONSUMER REPORTS.—Notwithstanding section 604 or any other provision of this title, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in camera that—

''(1) the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation; and

''(2) there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought—

''(A) is an agent of a foreign power, and

''(B) is engaging or has engaged in an act of international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

The terms of an order issued under this subsection shall not disclose that the order is issued for purposes of a counterintelligence investigation.

''(d) CONFIDENTIALITY.—No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than those officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c), and no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report.

''(e) PAYMENT OF FEES.—The Federal Bureau of Investigation shall, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing report or information in accordance with procedures established under this section a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

''(f) LIMIT ON DISSEMINATION.—The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except to other Federal agencies as may be necessary for the approval or conduct of a foreign counterintelligence investigation, or, where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

''(g) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, in connection with a judicial or administrative proceeding to enforce the provisions of this Act. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

''(h) REPORTS TO CONGRESS.—On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c).

''(i) DAMAGES.—Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of—

''(1) $100, without regard to the volume of consumer reports, records, or information involved;

''(2) any actual damages sustained by the consumer as a result of the disclosure;

''(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

''(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

''(j) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

''(k) GOOD-FAITH EXCEPTION.—Notwithstanding any other provision of this title, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or

identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

''(l) LIMITATION OF REMEDIES.—Notwithstanding any other provision of this title, the remedies and sanctions set forth in this section shall be the only judicial remedies and sanctions for violation of this section.

''(m) INJUNCTIVE RELIEF.—In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by adding after the item relating to section 623 the following new item:

''624. Disclosures to FBI for counterintelligence purposes.''.

TITLE VII—TECHNICAL AMENDMENTS

SEC. 701. CLARIFICATION WITH RESPECT TO PAY FOR DIRECTOR OR DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE APPOINTED FROM COMMISSIONED OFFICERS OF THE ARMED FORCES.

(a) CLARIFICATION.—Subparagraph (C) of section 102(c)(3) of the National Security Act of 1947 (50 U.S.C. 403(c)(3)) is amended to read as follows:

''(C) A commissioned officer of the Armed Forces on active duty who is appointed to the position of Director or Deputy Director, while serving in such position and while remaining on active duty, shall continue to receive military pay and allowances and shall not receive the pay prescribed for the Director or Deputy Director. Funds from which such pay and allowances are paid shall be reimbursed from funds available to the Director.''.

(b) TECHNICAL CORRECTIONS.—(1) Subparagraphs (A) and (B) of such section are amended by striking ''pursuant to paragraph (2) or (3)'' and inserting ''to the position of Director or Deputy Director''.

(2) Subparagraph (B) of such section is amended by striking ''paragraph (A)'' and inserting ''subparagraph (A)''.

SEC. 702. CHANGE OF DESIGNATION OF CIA OFFICE OF SECURITY.

Section 701(b)(3) of the National Security Act of 1947 (50 U.S.C. 431(b)(3)), is amended by striking ''Office of Security'' and inserting ''Office of Personnel Security''.

And the Senate agree to the same.

From the Permanent Select Committee on Intelligence, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

LARRY COMBEST,
R.K. DORNAN,
BILL YOUNG,
JAMES V. HANSEN,
JERRY LEWIS,
PROTER J. GOSS,
BUD SHUSTER,
BILL MCCOLLUM,
MICHAEL N. CASTLE,
NORMAN DICKS,
BILL RICHARDSON,
JULIAN C. DIXON,
ROBERT G. TORRICELLI,
RON COLEMAN,
DAVID E. SKAGGS,
NANCY PELOSI,

As additional conferees from the Committee on National Security, for consideration of defense tactical intelligence and related activities:

FLOYD SPENCE,
BOB STUMP,

As additional conferees from the Committee on International Relations, for consideration of section 303 of the House bill, and section 303 of the Senate amendment, and modifications committed to conference:

BENJAMIN A. GILMAN,
CHRISTOPHER SMITH,
HOWARD L. BERMAN,

Managers on the Part of the House.

ARLEN SPECTER,
RICHARD G. LUGAR,
RICHARD SHELBY,
MIKE DEWINE,
JON KYL,
JIM INHOFE,
KAY BAILEY HUTCHISON,
CONNIE MACK,
BILL COHEN,
STROM THURMOND,
ROBERT KERREY,
JOHN GLENN,
RICHARD H. BRYAN,
BOB GRAHAM,
JOHN F. KERRY,
MAX BAUCUS,
J. BENNETT JOHNSTON,
CHARLES ROBB,
SAM NUNN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1655) to authorize appropriations for fiscal year 1996 for intelligence and the intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION FOR APPROPRIATIONS.

Section 101 of the conference report lists the departments, agencies and other elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for fiscal year 1996.

SEC. 102—CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

Section 102 of the conference report makes clear that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and applicable personnel ceilings covered under this title for fiscal year 1996 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section. The details of the Schedule are explained in the classified annex to this report.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

Section 103 of the conference report authorizes the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, in fiscal year 1996 to exceed the personnel ceilings applicable to the components of the Intelligence Community under section 102 by an amount not to exceed two percent of the total of the ceilings applicable under section 102. The Director may exercise this authority only when doing so is necessary to the performance of important intelligence functions. Any exercise of this authority must be reported to the two intelligence committees of the Congress.

The conferees emphasize that the authority conferred by Section 103 is not intended to permit the whosesale raising of personnel strength in any intelligence component. Rather, the section provides the Director of Central Intelligence with flexibility to adjust personnel levels temporarily for contingencies and for overages caused by an imbalance between hiring of new employees and attrition of current employees. The conferees do not expect the Director of Central Intelligence to allow heads of intelligence components to plan to exceed levels set in the Schedule of Authorizations except for the satisfaction of clearly identified hiring needs which are consistent with the authorization of personnel strengths in this bill. In no case is this authority to be used to provide for positions denied by this bill.

SEC. 104. COMMUNITY MANAGEMENT ACCOUNT.

Section 104 of the conference report authorizes appropriations for the Community Management Account of the Director of Central Intelligence and sets the personnel end-strength for the Intelligence Community Management Staff for fiscal year 1996.

Subsection (a) authorizes appropriations of $90,713,000 for fiscal year 1996 for the activities of the Community Management Account of the Director of Central Intelligence. It also authorizes funds identified for the Advanced Research and Development Committee and the Environmental Task Force to remain available for two years.

Subsection (b) authorizes 247 full-time personnel for the Community Management Staff for fiscal year 1996 and provides that such personnel may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (c) requires that personnel be detailed on a reimbursable basis except for temporary situations of less than one year.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Section 201 authorizes appropriations in the amount of $213,900,000 for fiscal year 1996 for the Central Intelligence Agency Retirement and Disability Fund.

TITLE III—GENERAL PROVISIONS

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Section 301 of the conference report provides that appropriations authorized by the conference report for salary, pay, retirement and other benefits for federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law. Section 301 is identical to section 301 of the House bill and section 301 of the Senate amendment.

SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

Section 302 provides that the authorization of appropriations by the conference report shall not be deemed to constitute authority for the conduct of any intelligence activity that is not otherwise authorized by the Constitution or laws of the United States. Section 302 is identical to section 302 of the

House bill and section 302 of the Senate amendment.

SEC. 303. APPLICATION OF SANCTIONS LAWS TO INTELLIGENCE ACTIVITIES.

Section 303 of the conference report amends the National Security Act of 1947 with a new Title IX to permit the President to stay the imposition of an economic, cultural, diplomatic, or other sanction or related action when the President determines and reports to Congress that to proceed without delay would seriously risk the compromise of an intelligence source or method or an ongoing criminal investigation. Both the House bill and the Senate amendment contained provisions pertaining to deferrals of sanctions.

Section 901 of the new Title IX of the National Security Act of 1947 grants the President the authority to stay the imposition of a sanction or related action. Section 901 requires that when a sanction or related action is to be deferred due to the risk of compromise of a source or method or an ongoing criminal investigation, the source or method or the law enforcement matter in question must be related to the activities giving rise to the sanction. The section allows the President to stay the imposition of a sanction or related action for a specified period not to exceed 120 days.

Section 902 of the new Title IX provides that when the President determines and reports to Congress that a stay of an imposition of a sanction or related action has not afforded sufficient time to obviate the risk to an ongoing criminal investigation or to an intelligence source or method that gave rise to the stay, the President may extend the stay for successive periods of not more than 120 days.

Section 903 of the new Title IX requires that reports to Congress pursuant to section 901 and 902 be submitted promptly upon the President's determination to stay the imposition of a sanction or related action. Reports required under the new title are to be submitted to the Committee on International Relations of the House and the Committee on Foreign Relations of the Senate. Those reports pertaining to determinations related to intelligence sources and methods are also to be submitted to the Permanent Select Committee on Intelligence of the House and the Select Committee on Intelligence of the Senate. Those reports pertaining to determinations related to ongoing criminal investigations are also to be submitted to the Judiciary Committees of the House and Senate. The conferees further recognize that the actual structure and content of the reports to the Senate and House committees of jurisdiction will be achieved as a result of ongoing dialogue between the Congress and the Executive Branch. The conferees expect that the reports submitted pursuant to the new title will indicate the nature of the activities giving rise to the sanction or related action, the applicable law concerned, the country or countries in which the activity took place, and other pertinent details, to the maximum extent practicable consistent with the protection of intelligence sources and methods. The reports should also include a determination that the delay in the imposition of a sanction or related action will not be seriously prejudicial to the achievement of the United States' nonproliferation objectives or significantly increase the threat or risk to United States' military forces.

Section 904 of the new Title IX enumerates specific nonproliferation laws requiring a sanction or related action, the imposition of which the President may stay pursuant to sections 901 and 902. The section also grants the President the authority to stay the imposition of a sanction or related action contained in laws comparable to the enumerated acts.

Section 905 of the new Title IX states that the title ceases to be effective one year from the date of its enactment. The conferees believe this will afford Congress an opportunity to evaluate the use and effect of this provision in relation to sanctions laws. The Senate bill did not contain a similar provision.

The conferees expect that when the President chooses to exercise the deferral authority, the utmost will be done to resolve sources or methods or law enforcement problems as soon as possible so as to permit sanctions to be imposed as required by law. The intelligence and judiciary committees, as appropriate, should be informed fully of the efforts being made to address the circumstances that led to the delay. The conferees understand that instances where sanctions would be deferred would be rare, and that the deferral authority will be exercised only when an intelligence source or method or a criminal investigation is seriously at risk, and not to protect generic or speculative intelligence or law enforcement interests. Moreover, the presidential determination should not be used as a pretext for some other reason not to impose sanctions such as economic or foreign policy reasons. The President should lift the stay when the President determines that it is no longer necessary to protect against compromise.

The President must have sufficient information to determine whether the risk to intelligence sources and methods or an ongoing criminal investigation is significant and outweighs any potential harm to U.S. nonproliferation objectives. The conferees expect that determinations to invoke a stay authorized under this new title will be preceded by a rigorous interagency review process in which the recommendations of all relevant agencies, together with supporting facts, are made available to the President. The conferees intend to closely monitor the use of the authority provided under this title.

SEC. 304. THRIFT SAVINGS PLAN FORFEITURE.

Section 304 of the conference report adds a new subsection to section 8432(g) of title 5, United States Code, to provide that the Government's contribution to the Thrift Savings Plan under the Federal Employees Retirement System (FERS) and interest earned on that contribution shall be forfeited if the employee's annuity has been forfeited under subchapter II of Chapter 83, title 5, United States Code. This provision closes a loophole that was created when the FERS was established.

Prior to the enactment of the FERS, an employee's retirement annuity was based entirely on contributions made by the employee and by the Government to the applicable retirement fund. Under subchapter II of Chapter 83, any employee convicted of various national security offenses, including espionage, would forfeit his annuity and be entitled to receive only his monetary contributions to the annuity. A new retirement benefit, however, was created with the establishment of FERS, payable under the Thrift Savings Plan.

The Thrift Savings Plan now permits the employee to contribute into the Government-managed fund and requires that the Government also contribute to the fund on the employee's behalf. When FERS was enacted, the forfeiture provisions of subchapter II were not amended to cover the Government's contributions to the Plan. This situation clearly undermines the intent of subchapter II by permitting an employee convicted of espionage to retain the Government's contributions to the Plan. Section 304 corrects this anomaly by requiring the forfeiture of the Government's contribution to the Plan and attributable earnings on that contribution in situations where an individual's annuity is forfeited under subchapter II. Section 304 is identical to section 304 of the House bill and section 304 of the Senate amendment.

SEC. 305. AUTHORITY TO RESTORE SPOUSAL PENSION BENEFITS TO SPOUSES WHO COOPERATE IN CRIMINAL INVESTIGATIONS AND PROSECUTIONS FOR NATIONAL SECURITY OFFENSES.

Section 304 of the conference report amends section 8318 of title 5, United States Code, to make the spouse of an individual whose annuity or retired pay has been forfeited under section 8312 or 8313 of title 5 eligible for spousal pension benefits if the Attorney General determines that the spouse fully cooperated in the criminal investigation and prosecution of the individual. Enactment of this legislation will help to protect the national security interests of the United States by encouraging the spouses of federal employees who know or suspect that their husband or wife is engaged in espionage activities to inform the Government and to cooperate in a subsequent criminal investigation and prosecution. Current law actually discourages cooperation with the Government, since under current law pension benefits are lost upon conviction and forfeiture of the husband's or wife's annuity, even if the spouse has cooperated with the Government. Section 305 is identical to section 305 of the House bill and section 305 of the Senate amendment.

SEC. 306. SECRECY AGREEMENTS USED IN INTELLIGENCE ACTIVITIES.

Section 306 addresses a problem that CIA has experienced with secrecy agreements in the conduct of authorized intelligence activities. Beginning with the Treasury, Postal Service, and General Government Appropriations Act for fiscal year 1991 and in each year thereafter, Congress has required that agreements to protect classified information must contain certain prescribed language to put the executor on notice that the agreement does not supersede specified laws and Executive Order 12356. The language is as follows:

These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse of public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into the Agreement and are controlling.

Notwithstanding that several of the laws cited apply only to federal employees, the Treasury appropriations acts have required CIA to include the specified language in nondisclosure agreements intended to be executed by private parties. The prescribed

language is required in every secrecy agreement entered into, so federal employees and private entities alike must have such language included in the agreement that they sign. The recitation of numerous statutes in the overbearing but required ''legalese'' has caused confusion, complicated authorized intelligence activities, and even disrupted them when parties refuse to sign agreements containing provisions that do not apply to them. The required language is intimidating and has chilled otherwise promising intelligence relationships with private entities.

Consequently, section 306 clarifies that CIA and other intelligence agencies have the flexibility to tailor nondisclosure agreements according to the needs of the intelligence activity at hand, as long as the agreement at a minimum requires nondisclosure without specific authorization by the United States Government. The form or agreement must also make clear that the form or agreement does not bar disclosures to Congress or disclosures to an authorized official of an executive agency that are deemed essential to reporting a violation of United States laws. This section, when enacted, will permit the use of secrecy agreements stated in plain and understandable English and that will not intimidate the layman. The provision will make it easier for people to understand their rights and obligations when signing a secrecy agreement, which will ultimately enhance the protection of national security information.

SEC. 307. LIMITATION ON AVAILABILITY OF FUNDS FOR AUTOMATIC DECLASSIFICATION OF RECORDS OVER 25 YEARS OLD.

Section 307 limits the availability of funds authorized to be appropriated by this Act to implement section 3.4 of Executive Order 12958 to $25 million in fiscal year 1996. The Director of Central Intelligence, at the Director's discretion, may allocate this amount among the agencies of the National Foreign Intelligence Program for this purpose. Section 307 requires the President to submit budget requests that specifically identify the funds necessary to implement section 3.4 for fiscal years 1997 through 2000.

Given that the conferees have received four different estimates of the cost of implementing section 3.4 since the beginning of the year, the conferees believe there needs to be a continuing effort to fully evaluate the potential costs associated with the declassification review programs. The conferees further urge that this declassification effort be coordinated closely with CIA's Historical Review Program Office so as to enhance the intellectual coherence of the declassification process. In the budget submission for FY1997, the President is to provide a detailed request supported by firm estimates of declassification costs.

Section 307 of the House bill limited each agency of the National Foreign Intelligence Program to $2.5 million to carry out the provisions of section 3.4. The Senate amendment had no similar provision.

SEC. 308. AMENDMENT TO THE HATCH ACT REFORM AMENDMENTS OF 1993.

Section 308 restores the authority of the Office of Personnel Management (OPM) to extend ''de-Hatching'' to employees of the agencies listed in 5 U.S.C. §7323(b)(2)(B)(i).

Previously, under 5 U.S.C. §7323, OPM had the authority to designate certain municipalities and other political subdivisions in which federal employees in both competitive and excepted services could actively participate in local partisan elections. (Such designation of municipalities and political subdivisions by OPM is commonly referred to as ''de-Hatching''.) However, when this authority was amended by Public Law 103–94 and recodified in 5 U.S.C. §7325, the authority was granted only ''without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a)''. The prohibitions in section 7323(a) apply to the federal employees, both competitive and excepted service. However, employees of NSA, CIA, DIA and the other agencies listed in 5 U.S.C. §7323(b)(2)(B)(i) are subject to additional prohibitions under section 7323(b)(2)(A) which section 7325 does not permit OPM to disregard. Thus, OPM cannot extend de-Hatching to employees of the listed agencies and the implementing interim regulations issued by OPM (59 Fed. Reg. 5313 (1994) to be codified at 5 C.F.R. Part 733) reflect this restriction.

This provision would amend the ''de-Hatching'' provision (5 U.S.C. §7325) to include the excepted services in the category of federal employees that OPM may permit to take an active part in local (not Federal) political campaigns.

Section 308 is identical to section 306 of the Senate amendment. The House bill did not contain a similar provision.

SEC. 309.—REPORT ON PERSONNEL POLICIES.

Section 309 of the conference report requires the DCI to report to the intelligence oversight committees within three months detailed personnel procedures that could be implemented across the intelligence community to provide for mandatory retirement at expiration of time in class and termination based on relative performance similar to comparable provisions in sections 607 and 608 of the Foreign Service Act of 1980 (Title 22 U.S.C. 4007 and 4008) for civilian employees.

The Director of Central Intelligence and Secretary of Defense were directed in the FY 1995 Intelligence Authorization Act to provide a report by December 1, 1994 on the advisability of providing for mandatory retirement at expiration of time in class. The oversight committees have reviewed the issue and determined that a performance-based policy is advisable and are now directing the DCI to develop and report on procedures that could be implemented.

Senate floor action added a provision requiring that the DCI's report include a description and analysis of voluntary separation incentives, including a waiver of the ''two percent penalty'' reduction for early retirement under certain federal retirement systems. Section 309 is substantially similar to section 307 of the Senate amendment. The House bill did not contain a similar provision.

SEC. 310.—ASSISTANCE TO FOREIGN COUNTRIES.

Section 310 of the conference report authorizes assistance to a foreign country for counterterrorism efforts, notwithstanding any other provision of law, for the purpose of protecting the property of the United States Government or the life and property of any United States citizen or furthering the apprehension of any individual involved in any act of terrorism against such property or persons. The appropriate committees of Congress are to be notified not later than 15 days prior to the provision of such assistance. This authority is needed for the purpose of furthering United States interests. By providing this authority, there will be no doubt that the United States will be able to provide assistance to foreign countries that are willing to help identify, track and apprehend persons who have destroyed American property or harmed American citizens. Section 310 is identical to section 308 of the Senate amendment. There was no comparable language in the House bill.

SEC. 311.—FINANCIAL MANAGEMENT OF THE NATIONAL RECONNAISSANCE OFFICE.

Section 311 of the conference report seeks to improve accountability and financial management control over the National Reconnaissance Office. The section further requires a review of NRO's financial management by the Inspector General of CIA, assisted by the Inspector General of DOD, to evaluate the effectiveness of policies and internal controls over the NRO budget, particularly wit regard to carry-forward funding. It is the intention of the conferees that the Director of Central Intelligence notify the intelligence oversight committees prior to reprogramming, reallocating, and/or rescinding funds previously authorized and appropriated for NRO programs, projects, and activities. The section also requires the President to report no later than January 30, 1996 on a proposal to subject the budget of the Intelligence Community to greater Executive Branch oversight, including the possibility of a statutory financial control officer for the NRO and greater Office of Management and Budget review of the NRO's budget. The report must include an analysis of the option for a statutory provision requiring the DCI to establish a policy to restrict the NRO's authority on carry-forward funding consistent with the restriction on such authority within the Department of Defense. The President shall also report on how changes proposed as a result of this review will affect, directly or indirectly, the NRO's streamlined acquisition process and ultimately, program costs.

Elements of section 311 were added to the Senate amendment in floor action, but the provision has been substantially changed in subsequent discussions among conferees. There was no comparable provision in the House bill.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. EXTENSION OF THE CIA VOLUNTARY SEPARATION PAY ACT.

Section 401 amends section 2(f) of the CIA Voluntary Separation Pay Act, 50 U.S.C. §403–4(f), to extend the Agency's authority to offer separation incentives until September 30, 1999. Without this amendment, the Agency's authority to offer such incentives will expire on September 30, 1997.

CIA's separation incentive program has been an effective force reduction tool. It is necessary to extend this authority until September 30, 1999, because CIA, Like DoD, will continue to downsize through that year. Enactment of this provision will ensure that CIA can minimize the need to separate employees involuntarily. In light of the conferees' concern that this authority may have been used in the past in lieu of more rigorous personnel policies, this authority is extended with the understanding that the Intelligence Community will be pursuing such policies, and that this authority can be used to ease the transition to the more rigorous, performance-based criteria and policy.

Section 401(b) is designed to offset the direct spending cost of the extension of the authority provided for in the CIA Voluntary Separation Pay Act. Specifically, it establishes procedures to conform with the pay-as-you-go provision, section 252, of the Balanced Budget and Emergency Deficit Control Act, by requiring the Director of Central Intelligence to remit to the Treasury an amount equal to 15 percent of the final basic pay of each employee who, in fiscal year 1998 or fiscal year 1999, retires voluntarily or who resigns and to whom a voluntary separation incentive has been or is to be paid.

Section 401(a) is identical to section 401 of the House bill. Section 401(b) is identical to section 401(b) of the Senate amendment. The House bill did not contain a similar offset provision.

SEC. 402. VOLUNTEER SERVICE PROGRAM.

Section 402 authorizes the Director to establish, as a demonstration project, a limited volunteer service program for fiscal years 1996 through 2001, whereby no more

than 50 retirees can volunteer their services to the CIA to assist the Agency in its systematic or mandatory review for declassification or downgrading of classified information under certain Executive Orders and Public Law 102–526. The provision limits expenditures to no more than $100,000.

This section authorizes the Agency to pay costs incidental to the use of the services of volunteers, such as training, equipment, lodging, subsistence, equipment and supplies. It also ensures that volunteers are covered by workers compensation and the Federal Torts Claim Act. Without this legislation, the CIA would be unable to pay costs incident to the use of gratuitous services provided by volunteers, such as training and equipment. The program established under this section will be temporary and limited. Section 402 is identical to section 402 of the House bill and section 402 of the Senate amendment.

SEC. 403. AUTHORITIES OF THE INSPECTOR GENERAL OF THE CENTRAL INTELLIGENCE AGENCY.

Section 403(a) of the conference report modifies the CIA Inspector General statute to require the IG to report violations of Federal law by any person, as opposed to violations by officers or employees of the CIA. It also allows the reports to go directly from OIG to the Department of Justice, rather than through the DCI, although the DCI must receive a copy of the report. This is consistent with the Inspector General Statute of 1978 and enhances the independence of the IG. The conferees understand that the Inspector General has agreed to give advanced notice to the DCI and the conferees strongly support this agreement. The conferees further understand that this advance notice will not be used to prevent reports from going to the Department of Justice. Section 403(a) is identical to section 403(a) of the Senate amendment. The House bill did not contain a similar provision.

Section 403(b) of the conference report clarifies the CIA Inspector General statute to ensure that the identity of an employee who has been granted confidentiality can be disclosed to the Department of Justice official responsible for determining whether a prosecution should be undertaken. Current law already provides for this but this provision would clarify and simplify the process. Section 403(b) is identical to section 403(b) of the Senate amendment. The House bill did not contain a similar provision.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

SEC. 501. DEFENSE INTELLIGENCE SENIOR LEVEL POSITIONS.

Section 501 of the conference report amends section 1604 of title 10, United States Code, by authorizing the Secretary of Defense to establish the Defense Intelligence Senior Level (DISL) personnel system for the Defense Intelligence Agency (DIA) and the Central Imagery Office (CIO). Section 1604 currently authorizes the Secretary of Defense to establish positions for civilian officers and employees in DIA and CIO. The rates of basic pay for these positions are fixed in relation to the rates of basic pay provided in the General Schedule under section 5332 of title 5. Section 5332, however, which limits the grades of employees to GS–15, is insufficient for the needs of DIA and CIO.

In 1991, two Army field activities were transferred to DIA. The employees at the Missile and Space Intelligence Center and the Armed Forces Medical Intelligence Center are high-level technical employees. Their positions do not meet the management and program criteria for Senior Executive Service (SES) inclusion, but they do exceed the GS–15 criteria. DIA is also acquiring the Human Intelligence (HUMINT) resources of the Military Services. This functional transfer will add over 1,000 civilian and military personnel to DIA's rolls, and there may be a need to structure at least one senior advisory assignment as part of the Defense HUMINT Service (DHS) architecture. Additionally, the increased Defense intelligence leadership roles of DIA and CIO require increased high level activity in technical analysis, liaison and advisory services.

The primary purpose of DISL positions will be to provide technical expertise and advisory services beyond the GS–15 level established by DIA and CIO. Employees in DISL positions will not be responsible for managerial and program oversight, which are functions of the SES. DISL positions will include Defense Intelligence Senior Technical (DIST) and Defense Intelligence Senior Professional (DISP) assignments. These positions are classifiable above the DIA and CIO GS–15 level but do not involve the organizational or program management functions necessary for the Defense Intelligence Senior Executive Service.

DIST positions are those that involve research and development; test and evaluation; or substantive analysis, liaison, and/or advisory activity focusing on engineering, physical sciences, computer science, mathematics, medicine, biology, chemistry, or other closely related scientific and technical fields; and intelligence disciplines including production, collection, and operations in close association with the preceding or related activities.

DISP positions are those that emphasize staff, liaison, analytical, advisory, or other activity focusing on intelligence, law, finance and accounting, program and budget, human resources management, training, information services, logistics, and other appropriate support fields.

DISL positions will provide DIA and CIO with the flexibility that is essential to recruit effectively and to retain highly competent employees with scientific, technical, or other complex skills. This provision allows the Secretary of Defense to establish a basic rate of pay that does not exceed the rate paid to Executive Level IV. It also authorizes the Secretary of Defense to provide to DIA and CIO employees other benefits, allowances, incentives, or compensation that similarly situated federal employees are eligible to receive under title 5, United States Code. Section 501 is identical to section 501 of the House bill. The Senate amendment did not contain a similar provision.

SEC. 502. COMPARABLE BENEFITS AND ALLOWANCES FOR CIVILIAN AND MILITARY PERSONNEL ASSIGNED TO DEFENSE INTELLIGENCE FUNCTIONS OVERSEAS.

Section 502 of the conference report amends section 1605 of title 10, United States Code, and section 431 of title 37, United States Code, to provide to civilian personnel and members of the armed forces serving with the Defense HUMINT Service outside the United States benefits and allowances comparable to those provided by the Secretary of State to officers and employees of the Foreign Service.

The Secretary of Defense has the authority to provide to civilian personnel and members of the armed forces assigned to the Defense Attaché Offices and the Defense Intelligence Agency Liaison Offices outside the United States benefits and allowances comparable to those provided by the Secretary of State to officers and employees of the Foreign Service. This authority was attained in 1983 (Public Law 98–215) because travel allowances and related benefits for overseas personnel at the Defense Attaché Offices and the Defense Intelligence Agency Liaison Offices were different from Foreign Service personnel assigned overseas.

With the consolidation of Department of Defense human intelligence into the Defense HUMINT Service, the Defense Intelligence Agency will be responsible for a significant number of employees overseas. Although a number of these employees may be assigned to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States, there will be some assigned to other overseas locations. Since the Agency's authority to provide benefits and allowances to overseas employees is limited to the Defense Attaché Office and the Defense Intelligence Agency Liaison Offices, inequities will once again occur. Section 502 ensures comparable benefits for civilian and military personnel assigned to the Defense HUMINT Service overseas. Section 502 is virtually identical to Section 501 of the Senate amendment and section 502 of the House bill.

SEC. 503. EXTENSION OF AUTHORITY TO CONDUCT INTELLIGENCE COMMERCIAL ACTIVITIES.

Section 503 of the conference report would extend for three years, until December 31, 1998, the authority of the Secretary of Defense to initiate intelligence commercial activities to provide cover security to intelligence collection activities undertaken abroad by the Defense Department. This authority permits the Secretary to waive compliance with certain types of federal laws and regulations pertaining to the management and administration of federal entities when he determines that compliance by the commercial cover activity would create an unacceptable risk of compromise of an authorized intelligence collection activity. This authority is similar to the authority granted to the Central Intelligence Agency and the Federal Bureau of Investigation.

The Secretary's intelligence commercial cover authority was originally enacted as part of the FY 1991 Intelligence Authorization Act (Public Law 102–88) August 14, 1991. However, the intelligence commercial cover authority did not become effective until December 2, 1992, after the statutorily required promulgation and submission to Congress of a directive from the Secretary governing the implementation of the statute. Due to a variety of reasons, including the launching of a plan in 1993 to create a new Defense Humint Service under which all Defense Department human intelligence activities are being consolidated, this intelligence commercial activities authority has not yet been used, due largely to significant budget cuts effected in December 1992. Recently, however, DoD has enhanced its HUMINT efforts and is working closely with CIA to develop the skills, plans, and infrastructure necessary to effectively utilize this authority. Thus, the conference report extends the sunset provision to December 31, 1998.

The Administration's intelligence authorization legislative proposal sought repeal of the existing ''sunset'' clause, thus making the Secretary's intelligence commercial activities authority permanent. Senior officials from both the Defense Department and the Central Intelligence Agency testified to the continuing and growing need for the Secretary to have this authority under certain circumstances to provide bona fide commercial cover that can withstand detailed investigation by hostile foreign intelligence services as well as domestic scrutiny. The conferees agreed to the extension of the authority. However, in view of the lack of a record of use thus far, Section 503 extends the authority for three years, instead of the permanent extension originally sought by the Administration. Three years should provide time for the development and oversight of a

track record on the use of this authority without encouraging overuse of it, and particularly its more elaborate and sophisticated applications. At the end of that time, and based on its oversight of the record, the Intelligence Committees can address whether to make this authority permanent, extend it for a specific period or allow it to lapse. Section 503 is the same as section 503 of the House bill. Section 502 of the Senate amendment had extended the authority for five years.

SEC. 504. AVAILABILITY OF FUNDS FOR TIER II UAV.

The Fiscal Year 1995 authorization bill authorized full funding of the Defense Department's request for the Tier-2 Medium Altitude Endurance Unmanned Aerial Vehicle (UAV) Advanced Concept Technology Demonstration. The Fiscal Year 1995 defense appropriations bill included appropriations $20 million above the amount authorized for the program. As these additional funds were not specifically authorized, as required by Section 504 of the National Security Act of 1947, the Department of Defense could not spend them. To remedy this problem, Section 504 of the conference report specifically authorizes an additional $20 million for this program. Section 504 is identical to section 504 of the House bill. The Senate bill did not contain a similar provision.

SEC. 505. MILITARY DEPARTMENT CIVILIAN INTELLIGENCE PERSONNEL MANAGEMENT SYSTEM.

Section 505 of the conference report authorizes the Secretary of Defense to send civilian employees in the Military Departments' Civilian Intelligence Personnel Management System (CIPMS) to be students at accredited professional, technical, and other institutions of higher learning for training at the undergraduate level. This authority would be similar to that already granted to the Defense Intelligence Agency (DIA) in 10 U.S.C. section 1608 (Public Law 101–93, title V, section 507(a)(1), Nov 30, 1989, 103 Stat. 1710) and the National Security Agency (NSA) in 50 U.S.C. 402 note. The purpose of the new section is to establish an undergraduate training program, including training which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority, women, and handicapped high school students with a demonstrated capability to develop skills critical to the intelligence missions of the Military Departments in areas such as computer science, engineering, foreign language, and area studies. In exchange for this financial assistance from the respective CIPMS organization, the student participant would undertake an obligation to work for a period of one-and-one half year for each year or partial yea of schooling.

The missions of the intelligence entities of the United States Government demand employees of extraordinary aptitude and strong undergraduate training. These same entities must compete with a private sector—capable of offering more favorable compensation arrangements—that in most instances has been able to outbid the USG in terms of attracting qualified minority candidates. Statistics in recent years indicate that the success of the Military Departments' CIPMS to attract minority group candidates has been marginal.

This proposal is designed to enhance the capabilities of the intelligence elements of the Military Departments to: (i) ensure equal employment opportunity with their civilian ranks through affirmative action; (ii) develop and retain personnel trained in the skills essential to the effective performance of their intelligence mission; and, (iii) compete on equal footing with other intelligence Community entities for personnel with critical skills. Section 505 is identical to section 503 of the Senate amendment. The House bill did not contain a similar provision.

SEC. 506. ENHANCEMENT OF CAPABILITIES OF CERTAIN ARMY FACILITIES.

Section 506 of the conference report is intended to assist the Department of the Army as it assumes executive agent responsibility for the Bad Aibling, Germany and Menwith Hill, England stations. Specifically, this provision would permit the Department of the Army to use up to $2 million of appropriated operations and maintenance funds to rectify infrastructure and quality of life problems at Menwith Hill and Bad Aibling. At the present time, the Army is prohibited by statute from using appropriated funds to support certain activities. Section 506 was added to the Senate amendment in floor action. The House bill did not include a similar provision.

TITLE VI—FEDERAL BUREAU OF INVESTIGATION

SEC. 601. DISCLOSURE OF INFORMATION AND CONSUMER REPORTS TO FBI FOR COUNTERINTELLIGENCE PURPOSES.

Section 601 of the conference report would amend the Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681f) to grant the Federal Bureau of Investigation (FBI) access to certain information in consumer credit records in counterintelligence investigations.

A similar provision was included in the Intelligence Authorization Act for FY 1995 as reported by the Senate Select Committee on Intelligence. The provision was dropped in conference at the request of the House Committee on Banking, Finance, and Urban Affairs upon assurances that it would pursue similar legislation. The U.S. House of Representatives ultimately adopted H.R. 5143 which was substantially the same as section 601 of this Act. The bill was never acted upon by the Senate during the last Congress. The conferees have recently received a letter from the Chairman of the House Committee on Banking and Financial Services in support of this provision. The language of that letter is as follows:

HOUSE OF REPRESENTATIVES, COMMITTEE ON BANKING AND FINANCIAL SERVICES,
Washington, DC, October 11, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I am writing concerning H.R. 1655, the ''Intelligence Authorization Act for Fiscal Year 1996'' on which the House will soon appoint conferees to reconcile differences with the Senate. Section 601 of H.R. 1655, as added by the Senate amends the Fair Credit Reporting Act (FCRA) and thereby falls under the jurisdiction of the Committee on Banking and Financial Services, as provided for under Rule X of the Rules of the House of Representatives.

Section 601 of the Senate reported bill amends the FCRA to allow the FBI greater access to consumer reports when investigating foreign terrorism. The FCRA imposes certain obligations and liabilities on consumer reporting agencies in assembling, evaluating and maintaining consumer credit reports. Section 601 amends the FCRA to grant authority to the FBI to obtain certain information from a consumer report on a suspected terrorist without a court order.

The section is carefully crafted to protect consumers' rights to privacy while allowing law enforcement agencies to obtain necessary information in order to conduct authorized foreign counterintelligence investigations. This issue was considered by the Banking Committee in the last several Congresses and a provision similar to section 601 was passed by the full House in the 103rd Congress. In addition, Banking Committee conferees were appointed by the House to the Intelligence Authorization conference (H.R. 4299) last Congress on this issue. Given past precedent of the House and the fact that the language of this section was developed in consultation with the House Banking Committee.

I would strongly urge the House conferees to recede to the Senate on Section 601 or to consult with the Banking Committee in the event of any substantive modifications.

Sincerely,

JAMES A. LEACH,
Chairman.

This provision would provide a limited expansion of the FBI's authority in counterintelligence investigations (including terrorism investigations), to obtain a consumer credit report with a court order. In addition, it would allow the FBI to use a ''National Security Letter,'' i.e. a written certification by the FBI Director or the Director's designee, to obtain from a consumer credit agency the names and addresses of all financial institutions at which a consumer maintains an account, as well as certain identifying information.

Under current law, when appropriate legal standards are met, FBI is able to obtain mandatory access to credit records by means of a court order or grand jury subpoena (see the FCRA, 15 U.S.C. 168b(1)), but such an option is available to the FBI only after a counterintelligence investigation has been converted to a criminal investigation or proceeding. Many counterintelligence investigations never reach the criminal stage but proceed for intelligence purposes or are handled in diplomatic channels.

In addition, FBI presently has authority to use the National Security Letter mechanism to obtain two types of records; financial institution records (under the Right to Financial Privacy Act, 12 U.S.C. 3414(a)(5)) and telephone subscriber and toll billing information (under the Electronic Communications Privacy Act, 18 U.S.C. 2709). Expansion of this extraordinary authority is not taken lightly by the conferees, but the conferees have concluded that in this instance the need is genuine, the threshold for use is sufficiently rigorous, and, given the safeguards built in to the legislation, the threat to privacy is minimized.

Under a provision of the Right to Financial Privacy Act (RFPA) (12 U.S.C. 3414(a)(5)), the FBI is entitled to obtain financial records from financial institutions, such as banks and credit card companies, by means of a National Security Letter when the Director or the Director's designee certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power, as those terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

The FBI considers such access to financial records crucial to trace the activities of suspected spies or terrorists. The need to follow financial dealings in counterintelligence investigations has grown as foreign intelligence service increasingly operate under non-official over, i.e., pose as business entities or executives, and as foreign intelligence service activity has focused increasingly on U.S. economic information.

FBI's right of access under the Right of Financial Privacy Act cannot be effectively used, however, until the FBI discovers which financial institutions are being utilized by

the subject of a counterintelligence investigation. Consumer reports maintained by credit bureaus are a ready source of such information, but, although such report are readily available to the private sector, they are not available to FBI counterintelligence investigators. Under section 608 of the Fair Credit Reporting Act, without a court order, FBI counterintelligence officials, like other government agencies, are entitled to obtain only limited information from credit reporting agencies—the name, address, former addresses, places of employment, and former places of employment, of a person—and this information can be obtained only with the consent of the credit bureau.

FBI has made a specific showing to the conferees that the effort to identify financial institutions in order to make use of FBI authority under the Right to Financial Privacy Act can not only be time-consuming and resource-intensive, but can also require the use of investigative techniques—such as physical and electronic surveillance, review of mail covers, and canvassing of all banks in an area—that would appear to be more intrusive than the review of credit reports. FBI has offered a number of specific examples in which lengthy, intensive and intrusive surveillance activity was required to identify financial institutions doing business with a suspected spy or terrorist.

Section 601 of the instant legislation would amend FCRA by adding a new section 624, consisting of 13 paragraphs.

Paragraph 624(a) of the amended FCRA requires a consumer reporting agency to furnish to the FBI the names and addresses of all financial institutions at which a consumer maintains or has maintained an account, to the extent the agency has that information, when presented with a written request signed by the FBI Director or the Director's designee, which certifies compliance with the subsection. The FBI Director or the Director's designee may make such certification only if the Director or the Director's designee has determined in writing that such records are necessary for the conduct of an authorized foreign counterintelligence investigation and that there are specific and articulable facts giving reason to believe that the person whose consumer report is sought is a foreign power, a non-U.S. official of a foreign power, or an agent of a foreign power (as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)) and is engaged in terrorism or other criminal clandestine intelligence activities.

The requirement that there be specific and articulable facts giving reasons to believe that a U.S. person is an agent of a foreign power before FBI can obtain access to a consumer report is consistent with the standards in the Right to Financial Privacy Act, U.S.C. 3414(a)(5)(A), and the Electronic Communications Privacy Act, 18 U.S.C. 2709(b).

However, in contrast to those statutes, the conferees have drafted the FCRA certification requirement to provide that the FBI demand submitted to the consumer reporting agency make reference to the statutory provision without providing the agency with a written certification that the subject of the consumer report is believed to be an agent of a foreign power. FBI would still be required to record in writing its determination regarding the subject, and the credit reporting agency would be able to draw the necessary conclusion, but the conferees believe that this approach would reduce the risk of harm from the certification process itself to the person under investigation. A similar approach is taken in paragraph 624(b), described below.

Section 605 of the FCRA, 15 U.S.C. 1681c, defines ''consumer report'' in a manner that prohibits the dissemination by credit reporting agencies of certain older information except in limited circumstances. None of these excepted circumstances would apply to FBI access under proposed FCRA paragraph 624(a) (or proposed FCRA paragraph 624(b)). Accordingly, FBI access would be limited to ''consumer reports'' as defined in section 605.

The term ''an authorized foreign counterintelligence investigation'' includes those FBI investigations conducted for the purpose of countering international terrorist activities as well as those FBI investigations conducted for the purpose of countering the intelligence activities of foreign powers. Both types of investigations are conducted under the auspices of the FBI's Intelligence Division, headed by an FBI Assistant Director.

As is the case with the FBI's existing National Security Letter authority under the Right to Financial Privacy Act (see Senate Report 99–307, May 21, 1986, p. 16; House Report 99–952, October 1. 1986, p. 23), the conferees expect that, if the Director of the FBI delegates this function under paragraph 624(a), as well as under paragraph 624(b) discussed below, the Director will delegate it no further than the level of FBI Deputy Assistant Director. (There are presently two Deputy Assistant Directors for the National Security Division, one with primary responsibility for counterintelligence investigations and the other with primary responsibility for international terrorism investigations.)

Paragraph 624(b) would give the FBI mandatory access to the consumer identifying information—name address, former addresses, places of employment, or former places of employment—that it may obtain under current section 608 only with the consent of the credit reporting agency. A consumer reporting agency would be required signed by the FBI Director or the Director's designee, which certifies compliance with the subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that such information is necessary to the conduct of an authorized foreign counterintelligence investigation and that there is information giving reason to believe that the person about whom the information is sought has been or is about to be, in contact with a foreign power or an agent of a foreign power, as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et. seq.).

FBI officials have indicated that they seek mandatory access to this identifying information in order to determine if a person who has been in contact with a foreign power or agent is a government or industry employee who might have access to sensitive information of interest to a foreign intelligence service. Accordingly, the conferees have drafted this provision to require that such limited information can be provided only in circumstances where the consumer has been or is about to be in contact with the foreign power or agent.

The conferees have also drafted paragraphs 624(a) and 624(b) in a manner intended to make clear the conferees' intent that the FBI may use this authority to obtain this information only as regard those persons who either are a foreign power or agent there of or have been or will be in contact with a foreign power or agent. Although the consumer records of another person, such as a relative or friend of an agent of a foreign power, or identifying information respecting a relative or friend of a person in contact with an agent of a foreign power, may be of interest to FBI counterintelligence investigators, they are not subject to access under paragraphs 624(a) and 624(b).

It is not the intent of the conferees to require any credit reporting agency to gather credit or identifying information on a person for the purpose of fulfilling an FBI request under paragraphs 624(a) and 624(b). A credit reporting agency's obligation under these provision is to provide information responsive to the FBI's request that the credit reporting agency already has in its possession.

Paragraph 624(c) provides that, if requested in writing by the FBI, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the FBI upon a showing in camera that the report is necessary for the conduct of an authorized foreign counterintelligence investigation and that there are specific and articulable facts giving reason to believe the consumer is an agent of a foreign power and is engaged in international terrorism or clandestine intelligence activities that may involve a crime.

Paragraph 624(d) provides that no consumer reporting agency or officer, employee, or agent of such institution shall disclose to any person, other than those officers, employees or agents of such institution necessary to fulfill the requirement to disclose information to the FBI under subsection 624, that the FBI has sought or obtained a consumer report or financial institution, or identifying information respecting any consumer under paragraphs 624, nor shall such agency, officer, employee, or agent include in any consumer report any information that would indicate that the FBI has sought or obtained such information. The prohibition against including such information in a consumer report is intended to clarify the obligations of the consumer reporting agencies. It is not intended to preclude employees of consumer reporting agencies from complying with company regulations or policies concerning the reporting of information, nor to preclude their complying with a subpoena for such information issued pursuant to appropriate legal authority.

Paragraph 624(d) departs from the parallel provision of the RFPA by clarifying that disclosure is permitted within the contacted institution to the extent necessary to fulfill the FBI request. The conferees have not concluded that, or otherwise taken a position whether, disclosure for such purpose would be forbidden by the RFPA; indeed, practicalities would dictate that the provision not be interpreted to exclude such disclosure. However, the conferees believe that clarification of the obligation for purposes of the FCRA is desirable.

Paragraph 624(e) requires the FBI, subject to the availability of appropriations, to pay to the consumer reporting agency assembling or providing credit records a fee in accordance with FCRA procedures for reimbursement for costs reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced under section 624. The FBI informs the Committee that such reports are commercially available for approximately $7 to $25 and that FBI could expect to pay fees in approximately that range. FBI officials have advised the conferees that the costs of such reports would be easily recouped from the savings afforded by the reduced need for other investigative techniques aimed at obtaining the same information.

Paragraph 624(f) prohibits the FBI from disseminating information obtained pursuant to section 624 outside the FBI, except as may be necessary for the approval of conduct of a foreign counterintelligence investigation, or, where the information concerns military service personnel subject to the Uniform Code of Military Justice, to appropriate investigation authorities in the military department concerned as may be necessary for the conduct of a joint foreign

counterintelligence investigation with the FBI. Since the military departments have concurrent jurisdiction to investigate and prosecute military personnel subject to the Uniform Code of Military Justice, paragraph 624(g) permits the FBI to disseminate consumer credit reports it obtains pursuant to this section to appropriate military investigative authorities where a foreign counterintelligence investigation involves a military service person and is being conducted jointly with the FBI.

Paragraph 624(g) provides that nothing in section 624 shall be construed to prohibit information from being furnished by the FBI pursuant to subpoena or court order, or in connection with judicial or administrative proceeding to enforce the provisions of the FCRA. The paragraph further provides that nothing in section 624 shall be construed to authorize or permit the withholding of information from the Congress.

Paragraph 634(h) provides that on a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance, and Urban Affairs of the U.S. House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate concerning all requests made pursuant to section 624.

Semiannual reports are required to be submitted to the intelligence committees on (1) use of FBI's mandatory access provision of the RFPA by section 3414(a)(5)(C) of title 15, United States Code; and (2) use of the FBI's counterintelligence authority, under the Electronic Privacy Communications Act of 1986, to access telephone subscriber and toll billing information by section 2709(e) of title 18, United States Code. The conferees expect the reports required by FCRA paragraph 624(h) to match the level of detail included in these reports, i.e., a breakdown by quarter, by number of requests, by number or persons or organizations subject to requests, and by U.S. persons and organizations and non-U.S. persons and organizations.

Paragraphs 624(i) through 624(m) parallel the enforcement provisions of the Right to Financial Privacy Act, 12 U.S.C. 3417 and 3418.

Paragraph 624(i) establishes civil penalties for access or disclosure by an agency or department of the United States in violation of section 624. Damages, costs and attorney fees would be awarded to the person to whom the consumer reports related in the event of a violation.

Paragraph 624(j) provides that whenever a court determines that any agency or department of the United States has violated any provision of section 624 and that the circumstances surrounding the violation raise questions of whether an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was responsible for the violation.

Paragraph 624(k) provides that any credit reporting institution or agent or employee thereof making a disclosure of credit records pursuant to section 624 in good-faith reliance upon a certificate by the FBI pursuant to the provisions of section 624 shall not be liable to any person for such disclosure under title 15, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

Paragraph 624(l) provides that the remedies and sanctions set forth in section 624 shall be the only judicial remedies and sanctions for violations of the section.

Paragraph 624(m) provides that in addition to any other remedy contained in section 624, injunctive relief shall be available to require that the procedures of the section are compiled with and that in the event of any successful action, costs together with reasonable attorney's fees, as determined by the court, may be recovered.

Section 601 is identical to section 601 of the Senate amendment. The House bill did not contain a similar provision.

TITLE VII—TECHNICAL AMENDMENTS

SEC. 701. CLARIFICATION WITH RESPECT TO PAY FOR DIRECTOR OR DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE APPOINTED FROM COMMISSIONED OFFICERS OF THE ARMED FORCES.

Section 701 of the conference report amends section 102(c)(3)(C) of the National Security Act of 1947 to make clear that a retired military officer appointed as Director or Deputy Director of Central Intelligence can receive compensation at the appropriate level of the Executive Schedule under 5 U.S.C. §5313 (Director) or 5 U.S.C. §5314 (Deputy Director). This was clearly the intent of the drafters of this provision. The conferees are aware of the restriction on compensation that applies to active duty military personnel appointed as DCI or DDCI, and in no way wish to change this restriction. Section 701 is similar to Section 601 in the House bill and Section 701 in the Senate amendment.

SEC. 702. CHANGE OF DESIGNATION OF CIA OFFICE OF SECURITY.

Section 702 of the conference report amends the CIA Information Act of 1984 to reflect the recent reorganization of the CIA Office of Security into the Office of Personnel Security and the Office of Security Operations. The amendment will ensure that the Office of Personnel Security, where the records intended to be subject to the Act are kept, will continue to receive the benefit of the Act's exception from search and review under the Freedom of Information Act. Section 701 is similar to Section 602 in the House bill and Section 702 in the Senate amendment.

PROVISIONS NOT INCLUDED IN THE CONFERENCE REPORT

The Senate amendment included, at Section 404, a requirement for an annual report on liaison relationships. While the Conferees are committed to ensuring that the oversight committees are appropriately informed on liaison relationships, they do not believe that a statutory reporting requirement is the best way to achieve that result. Consequently, the conferees agreed to delete section 404.

From the Permanent Select Committee on Intelligence, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

LARRY COMBEST,
R. K. DORNAN,
BILL YOUNG,
JAMES V. HANSEN,
JERRY LEWIS,
PORTER J. GOSS,
BUD SHUSTER,
BILL MCCOLLUM,
MICHAEL N. CASTLE,
NORMAN DICKS,
BILL RICHARDSON,
JULIAN C. DIXON,
ROBERT G. TORRICELLI,
RON COLEMAN,
DAVID E. SKAGGS,
NANCY PELOSI,

As additional conferees from the Committee on National Security, for consideration of defense tactical intelligence and related activities:

FLOYD SPENCE,
BOB STUMP,

As additional conferees from the Committee on International Relations, for consideration of section 303 of the House bill, and section 303 of the Senate amendment, and modifications committed to conference:

BENJAMIN A. GILMAN,
CHRISTOPHER SMITH,
HOWARD L. BERMAN,
Managers on the Part of the House.

ARLEN SPECTER,
RICHARD G. LUGAR,
RICHARD SHELBY,
MIKE DEWINE,
JON KYL,
JIM INHOFE,
KAY BAILEY HUTCHISON,
CONNIE MACK,
BILL COHEN,
STROM THURMOND,
ROBERT KERREY,
JOHN GLENN,
RICHARD H. BRYAN,
BOB GRAHAM,
JOHN F. KERRY,
MAX BAUCUS,
J. BENNETT JOHNSTON,
CHARLES ROBB,
SAM NUNN,
Managers on the Part of the Senate.

N O T I C E

Incomplete record of House proceedings. Except for concluding business which follows, today's House proceedings will be continued in the next issue of the Record.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. EDWARDS of Texas (at the request of Mr. GEPHARDT), for today, on account of his son's birth.

Mr. EMERSON (at the request of Mr. ARMEY), for today until 7 p.m., on account of chemotherapy treatment.

Mr. YATES (at the request of Mr. GEPHARDT), for today, on account of personal reasons.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. COLEMAN) to revise and extend their remarks and include extraneous material:)

Mr. DOGGETT, today, for 5 minutes.

Mr. POSHARD, today, for 5 minutes.

Ms. WATERS, today, for 5 minutes.

Ms. DELAURO, today, for 5 minutes.

Mr. STUPAK, today, for 5 minutes.

Ms. BROWN of Florida, today, for 5 minutes.

Mr. VOLKMER, today, for 5 minutes.

Mr. FRANK of Massachusetts, today, for 5 minutes.

(The following Members (at the request of Mr. MCINNIS) to revise and extend their remarks and include extraneous material:)

Mr. BARR, today, for 5 minutes.

Mr. GEKAS, today, for 5 minutes.

Mr. FOLEY, today, for 5 minutes.

Mr. LEWIS of Kentucky, today, for 5 minutes.

Mr. BARTLETT of Maryland, today, for 5 minutes.

Mr. KIM, today, for 5 minutes.

Mr. LONGLEY, today, for 5 minutes.

(The following Members (at their own request) to revise and extend their remarks and include extraneous material:)

Mr. KENNEDY of Massachusetts, for 5 minutes, today.

Mr. LINDER, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. GEPHARDT, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. HAYWORTH, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. MORAN, today, for 5 minutes.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. FRANK of Massachusetts, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. HOYER, today, for 5 minutes.

(The following Members (at their own request) to revise and extend their remarks and include extraneous material:)

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

Mrs. SCHROEDER, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. FATTAH, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. COBLE, for 5 minutes, today.

(The following Members (at their own request) to revise and extend their remarks and include extraneous material:)

Mr. KANJORSKI, for 5 minutes, today.

Mr. DAVIS, for 5 minutes, today.

Mr. DICKS, for 5 minutes, today.

(The following Members (at their own request) and to include extraneous matter:)

Mrs. EDDIE BERNICE JOHNSON of Texas.

Mr. HEFNER.

(The following Member (at his own request) and to include extraneous matter:)

Mr. UPTON.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. PETERSON of Florida, for 5 minutes, today.

(The following Member (at this own request) to revise and extend his remarks and include extraneous material:)

Mr. SHAYS, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. WYNN, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous materials:)

Mr. HUTCHINSON, for 5 minutes, today.

(The following Members (at their own request) to revise and extend their remarks and include extraneous materials:)

Mr. SCARBOROUGH, for 5 minutes, today.

Mr. POMEROY, for 5 minutes, today.

Mr. WELDON of Florida, for 5 minutes, today.

(The following Members (at the request of Mr. HAYWORTH) to revise and extend their remarks and include extraneous material:)

Mr. DUNCAN, for 5 minutes, on December 21.

Mr. FOLEY, for 5 minutes, on December 21.

Mr. FOX, for 5 minutes, today.

Mr. METCALF, for 5 minutes, today.

ADJOURNMENT

Mr. GOSS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 11 minutes a.m.), the House adjourned until today, Thursday, December 21, 1995, at 10 a.m.

OATH OF OFFICE, MEMBERS, RESIDENT COMMISSIONER, AND DELEGATES

The oath of office required by the sixth article of the Constitution of the United States, and as provided by section 2 of the act of May 13, 1884 (23 Stat. 22), to be administered to Members, Resident Commissioner, and Delegates of the House of Representatives, the text of which is carried in 5 U.S.C. 3331:

> ''I AB, do solemnly swear (or affirm) 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.''

has been subscribed to in person and filed in duplicate with the Clerk of the House of Representatives by the following Members of the 104th Congress, pursuant to the provisions of 2 U.S.C. 2b:

Honorable JESSE L. JACKSON, Second District, Illinois.

Honorable TOM CAMPBELL, 15th District, California.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 or rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1855. A letter from the Chief, Programs and Legislation Division, Office of Legislative Liaison, Department of the Air Force; transmitting a report concerning contracting of work currently performed at Newark Air Force Base [AFB], OH, pursuant to 10 U.S.C. 2304 note; to the Committee on National Security.

1856. A letter from the Secretary of Health and Human Services, transmitting a report on activities of the Office of Minority Health, pursuant to Public Law 101–527, section (104 Stat. 2313); to the Committee on Commerce.

1857. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of the Secretary's determination and justification for authorizing the use of $8.1 million in fiscal year 1996 funds made available to carry out chapter 6 of part II of the FAA for assistance for states participating in the ECOMOG peacekeeping mission in Liberia, pursuant to 22 U.S.C. 2261(a)(2); to the Committee on International Relations.

1858. A letter from the Director, Division of Commissioned Personnel, Department of Health and human Services, transmitting the annual report of the Public Health Service Commissioned Corps retirement system, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Reform and Oversight.

1859. A letter from the President, National Railroad Passenger Corporation [Amtrak], transmitting the semiannual report on activities of the inspector general for the period April 1, 1995, through September 30, 1995, and management's response for the same period, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform and Oversight.

1860. A letter from the Secretary of Transportation, transmitting a report on the U.S. Coast Guard military retirement system for fiscal year 1994, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Reform and Oversight.

1861. A letter from the Chairman, Federal Election Commission, transmitting reports

regarding the receipt and use of Federal funds by candidates who accepted public financing for the 1992 Presidential primary and general elections, pursuant to 26 U.S.C. 9009(a)(5)(A) and 9039(a); to the Committee on House Oversight.

1862. A letter from the Administrator, Federal Highway Administration, transmitting the Administration's status report entitled, ''Progress Made in Implementing Sections 6016 and 1038 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA),'' pursuant to Public Law 102–240, section 6016(e) (105 Stat. 2183); to the Committee on Transportation and Infrastructure.

1863. A letter from the Secretary of Transportation, transmitting the Department's report entitled, ''Ability of Crewmembers to Take Emergency Actions,'' pursuant to Public Law 101–380, section 4111(c) (104 Stat. 516); to the Committee on Transportation and Infrastructure.

1864. A letter from the Administrator, Environmental Protection Agency, transmitting the 1994 National Water Quality Inventory Report, pursuant to 33 U.S.C. 1315(b)(2); to the Committee on Transportation and Infrastructure.

1865. A letter from the Secretary of Labor, transmitting the Department's report on the impact of the Andean Trade Preference Act, pursuant to Public Law 102–182, section 207 (105 Stat. 1244); to the Committee on Ways and Means.

1866. A letter from the Secretary of Labor, transmitting the 11th report on trade and employment effects of the Caribbean Basin Economic Recovery Act, pursuant to 19 U.S.C. 2705; to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. COMBEST: Committee of Conference. Conference report on H.R. 1655. A bill to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the U.S. Government, the community management account, and the Central Intelligence Agency retirement and disability system, and for other purposes (Rept. 104–427). Ordered to be printed.

Mr. LINDER: Committee on Rules. House Resolution 317. Resolution providing for consideration of the joint resolution (H.J. Res. 134) making further continuing appropriations for the fiscal year 1996, and for other purposes (Rept. 104–428). Referred to the House Calendar.

Mr. GOSS: Committee on Rules. House Resolution 318. Resolution waiving points of order against the conference report to accompany the bill (H.R. 1655) to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the U.S. Government, the community management account, and the Central Intelligence Agency retirement and disability system, and for other purposes (Rept. 104–429). Referred to the House Calendar.

Mr. ARCHER: Committee of Conference. Conference report on H.R. 4. A bill to restore the American family, reduce illegitimacy, control welfare spending, and reduce welfare dependence (Rept. 104–430). Ordered to be printed.

Mr. SOLOMON: Committee on Rules. House Resolution 319. Resolution waiving points of order against the conference report to accompany the bill (H.R. 4) to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence (Rept. 104–431). Referred to the House Calendar.

Ms. PRYCE: Committee on Rules. House Resolution 320. Resolution authorizing the Speaker to declare recesses subject to the call of the Chair from December 23, 1995, through December 27, 1995 (Rept. 104–432). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. HUTCHINSON (for himself, Mr. STUMP, Mr. SMITH of New Jersey, Mr. BILIRAKIS, Mr. BUYER, Mr. QUINN, Mr. BACHUS, Mr. STEARNS, Mr. NEY, Mr. FOX, Mr. BARR, Mr. HAYWORTH, Mr. COOLEY, Mr. SCHAEFER, Mr. CHABOT, Mr. WELDON of Florida, Mr. THORNBERRY, Mr. COBURN, Mr. MONTGOMERY, Mr. EDWARDS, Mr. SPENCE, Mr. MASCARA, Mr. KENNEDY of Massachusetts, Mr. DOYLE, Mr. CUNNINGHAM, Mr. TEJEDA, Mr. EVERETT, Mr. WELLER, Mr. FLANAGAN, Ms. BROWN of Florida, Mr. NEUMANN, Mr. HOEKSTRA, Mr. RIGGS, Mr. TAYLOR of North Carolina, Mr. TOWNS, Mr. DAVIS, Mr. DEAL of Georgia, Mr. DELLUMS, Mr. DICKS, Mr. EHRLICH, Mr. DICKEY, Mr. TRAFICANT, Mr. HASTINGS of Florida, Mr. HEFLEY, Mr. PACKARD, Mr. MICA, Mr. BUNN of Oregon, Mr. PARKER, Mr. LAHOOD, Ms. DANNER, Mr. DIAZ-BALART, Ms. DUNN of Washington, Mr. EHLERS, Mr. ENGLISH of Pennsylvania, Mr. EWING, Mr. BALLENGER, Mr. LATOURETTE, Mr. LUCAS, Mr. DORNAN, Mr. EMERSON, Mr. LARGENT, Mr. HALL of Ohio, Mr. HEINEMAN, Mr. HANCOCK, Mrs. LINCOLN, Mr. LAUGHLIN, Mr. TANNER, Mr. DUNCAN, Mr. MCHUGH, Mr. NORWOOD, Mr. NETHERCUTT, Mr. MCINNIS, Mr. LINDER, Mr. MCINTOSH, Mr. METCALF, Mr. MARTINI, Mr. MCCOLLUM, Mr. HAYES, Mr. MCKEON, Mr. MCDADE, Mr. MCCRERY, Mr. BAKER of California, Mr. LAZIO of New York, and Mr. HORN):

H.R. 2813. A bill to ensure that payments during fiscal year 1996 of compensation for veterans with service-connected disabilities, of dependency and indemnity compensation for survivors of such veterans, and of other veterans benefits, and payments to Department of Veterans Affairs contractors providing services directly related to patient health and safety, are made regardless of Government financial shortfalls; to the Committee on Appropriations, and in addition to the Committee on Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STUMP (for himself, Mr. MONTGOMERY, Mr. HUTCHINSON, and Mr. EDWARDS):

H.R. 2814. A bill to authorize major medical facility projects and major medical facility leases for the Department of Veterans Affairs for fiscal year 1996, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. KNOLLENBERG (for himself, Mr. BONO, Mr. BOUCHER, Mr. HEINEMAN, Mr. SCHIFF, and Mr. SMITH of Texas):

H.R. 2815. A bill to amend section 101 of title 11 of the United States Code to modify the definition of single asset real estate and to make technical corrections; to the Committee on the Judiciary.

By Mr. NEY (for himself and Mr. REGULA):

H.R. 2816. A bill to reinstate the license for, and extend the deadline under the Federal Power Act applicable to the construction of, a hydroelectric project in Ohio, and for other purposes; to the Committee on Commerce.

By Mr. SCHUMER:

H.R. 2817. A bill to treat juvenile records in the same manner as adult records in certain cases; to the Committee on Economic and Educational Opportunities, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SERRANO:

H.R. 2818. A bill to provide demonstration grants to establish clearing houses for the distribution to community-based organizations of information on prevention of youth violence and crime; to the Committee on the Judiciary, and in addition to the Committee on Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WILLIAMS:

H.R. 2819. A bill to authorize the construction of the Fort Peck Rural County Water Supply System, to authorize assistance to the Fort Peck Rural County Water District, Inc., a nonprofit corporation, for the planning, design, and construction of the water supply system, and for other purposes; to the Committee on Resources.

By Mr. WATTS of Oklahoma:

H.R. 2820. A bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes; to the Committee on Banking and Financial Services.

By Mr. STUPAK:

H.R. 2821. A bill to provide for the transfer of six obsolete tugboats of the Navy; to the Committee on National Security.

By Mr. LIVINGSTON:

H.J. Res. 134. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes; to the Committee on Appropriations.

By Mr. DORNAN:

H.J. Res. 135. Joint resolution to establish a joint committee to oversee the conduct of Operation Joint Endeavor/Task Force Eagle; to the Committee on Rules.

By Mr. GILMAN (for himself, Mr. YATES, Mr. LANTOS, Mr. LATOURETTE, and Mr. REGULA):

H. Res. 316. Resolution deploring individuals who deny the historical reality of the Holocaust and commending the vital, ongoing work of the U.S. Holocaust Memorial Museum; to the Committee on Resources.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 104: Mr. MORAN.
H.R. 359: Mr. SOUDER.
H.R. 885: Mr. KING and Mr. HOUGHTON.
H.R. 969: Mr. SHAW.
H.R. 1073: Mrs. CLAYTON.
H.R. 1074: Mrs. CLAYTON.

H.R. 1305: Mrs. CLAYTON.
H.R. 1656: Mr. OLVER.
H.R. 1674: Mr. JOHNSON of South Dakota.
H.R. 1972: Mr. MCHUGH, Mr. SCHIFF, Mr. MARTINI, and Mr. PACKARD.
H.R. 2223: Mr. ZIMMER.
H.R. 2246: Mr. FRAZER, Mr. FOGLIETTA, Mr. BURR, Mr. LIPINSKI, and Ms. PELOSI.
H.R. 2309: Mr. MATSUI.
H.R. 2406: Mr. BACHUS, Mr. KING, Mr. HAYWORTH, Mr. NEY, Mr. CHRYSLER, and Mr. STOCKMAN.
H.R. 2407: Mr. ZIMMER.
H.R. 2531: Mr. ENSIGN and Mr. HAYWORTH.
H.R. 2535: Mr. HANCOCK.
H.R. 2540: Mr. COBURN.
H.R. 2575: Mr. LEWIS of Georgia.
H.R. 2579: Mr. HOBSON and Mr. RIGGS.
H.R. 2632: Mr. BILIRAKIS.
H.R. 2657: Mr. EHRLICH.
H.R. 2697: Mr. CONYERS, Mr. TOWNS, Mr. REED, Mr. SABO, Mr. WAXMAN, and Mrs. CLAYTON.
H.R. 2727: Mr. NORWOOD, Mr. JACOBS, Mr. STOCKMAN, and Mr. CHRYSLER.
H.R. 2729: Mr. PASTOR.
H.R. 2747: Mrs. KELLY and Mr. CLYBURN.
H.R. 2757: Mr. REGULA, Mr. WAMP, Mr. WILSON, Ms. PELOSI, and Mr. NEY.
H.R. 2785: Mr. OBERSTAR, Mr. FAZIO of California, Ms. PELOSI, Mr. LIPINSKI, Mr. SAWYER, Mr. SCOTT, and Mr. BORSKI.
H.R. 2807: Mr. GENE GREEN of Texas.
H. Con. Res. 50: Ms. ROS-LEHTINEN.
H. Res. 283: Mr. WALSH, Mr. ZIMMER, Mrs. CHENOWETH, and Mr. ROTH.
H. Res. 286: Mr. WARD.
H. Res. 315: Mr. GILMAN, Mr. CLINGER, Mr. PACKARD, Mr. HEFLEY, Mr. LEACH, Mr. VISCLOSKY, Mr. LATHAM, Mr. HEINEMAN, Mr. KNOLLENBERG, and Mr. MANZULLO.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 558

OFFERED BY: MR. BRYANT OF TEXAS

AMENDMENT NO. 1: Page 2, line 9, ''(a) IN GENERAL.—'' before ''The consent'', in line 15 strike ''and'', in line 18 strike the period and insert ''; and'', and after line 18 insert the following:

(4) is granted subject to the condition described in subsection (b).

(b) CONDITION.—The consent of the Congress to the compact set forth in section 5 is granted on the condition that no compact facility (as defined in section 2.01(3) of the compact) may be sited within an active earthquake zone. For purposes of this subsection, an active earthquake zone is an area within 150 miles from the epicenter of an earthquake which measured in excess of 5.0 on the Richter scale and which occurred in 1995.

H.R. 558

OFFERED BY: MR. COLEMAN

AMENDMENT NO. 2: Page 2, line 9, insert ''(a) IN GENERAL.—'' before ''The consent'', in line 15 strike ''and'', in line 18 strike the period and insert ''; and'', and after line 18 insert the following:

(4) is granted subject to the condition described in subsection (b).

(b) CONDITION.—The consent of the Congress to the compact set forth in section 5 is granted on the condition that no compact facility (as defined in section 2.01(3) of the compact) may be sited within 60 miles of an international boundary which is a river and which is within an active earthquake zone. For purposes of this subsection, an active earthquake zone is an area within 150 miles from the epicenter of an earthquake which measured in excess of 5.0 on the Richter scale and which occurred in 1995.

United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *104th* CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, WEDNESDAY, DECEMBER 20, 1995 *No. 205*

Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

God moves in mysterious ways
His wonders to perform.
He plants His footsteps in the sea
And rides upon the storm.
His purposes will ripen fast,
Unfolding every hour.
[Leave to history what is past
And receive His mighty power.]
Blind unbelief is sure to err
And scan His work in vain.
God is His own interpreter,
And He will make it plain.—William Cowper.

Dear God, we thank You for the progress being made in negotiations on the balanced budget. Keep us steady on the course. It is the set of the sail and not the gale that determines the way the ship will go. We pray for Your spirit to continue to guide the President and Vice President, our majority leader, and the Speaker of the House. Keep them open to You and each other. Give strength to those charged with hammering out the specifics of an emerging agreement. We trust You to bring this crucial process to a successful completion. There is no limit to what can be accomplished when we give You the glory. In the name of our Lord. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator DOLE, is recognized.

SCHEDULE

Mr. DOLE. Mr. President, for the information of my colleagues, immediately we will begin consideration of Senate Resolution 199, regarding the Whitewater subpoena. That will start as soon as we can. There is no time limit on the resolution; however, we hope we will be able to dispose of this resolution after a reasonable amount of debate.

Following the disposition of Senate Resolution 199, there are a number of possible items for consideration. We would like to complete action on House Joint Resolution 132. The Democratic leader objected to its consideration last night but indicated in a positive way that, if we could make one change and clear one other bill, we could probably pass that today. I assume there will be a request for a rollcall. It will have to go back to the House where I assume they would take the Senate amendment and send it on to the President.

A cloture vote could occur on the motion to proceed to Labor-HHS appropriations. It is my hope we will get a continuing resolution today from the House. I am not certain what the length would be, but it could go until Friday, or it could go until next Tuesday or Wednesday—probably until Friday.

We still have three appropriations bills: D.C. appropriations, foreign ops, and Labor-HHS, which we are unable to bring to the floor because of opposition on the other side.

So, there could be rollcall votes throughout the day. Let me indicate that it seems to me we ought to make a decision here that we stop the legislative business no later than Friday of this week. It is going to be difficult for those of us involved in budget negotiations if there is legislation every day in the next week. It is my hope we can complete action on a budget agreement Friday or Saturday of this week and that only the principals might have to return next week.

In any event, I ask staff and others to determine if that is a possibility, to say—of course, we are at a point now where any one Senator can object to anything and it will not come up unless you have unanimous consent or unless it is privileged. So I hope we could take a look at that.

I would just say, one thing we have agreed to—I think it is fair to state this—is if we do reach an agreement on sort of the format, framework, and scheduling, there will not be press conferences. There will be a news blackout, unless there is an agreement at the end of each day to issue a joint press statement. I think that has been part of the problem. There have been so many press conferences, so many people reacting to other people that it makes it difficult to proceed. So, hopefully we can work that out.

MEASURE PLACED ON THE CALENDAR—HOUSE JOINT RESOLUTION 132

The PRESIDING OFFICER (Mr. KEMPTHORNE). The clerk will read a bill for the second time.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 132) affirming the budget resolution will be based on the most recent technical and economic assumptions of the Congressional Budget Office and shall achieve a balanced budget by fiscal year 2002 based on those assumptions.

Mr. DOLE. I object to further consideration at this time.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

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

THE 175TH ANNIVERSARY OF TUSCUMBIA, AL

Mr. HEFLIN. Mr. President, my hometown of Tuscumbia, AL is in the midst of celebrating a very special day in its history. On December 20, 1820—175 years ago—Tuscumbia was officially declared to be a city in the State of Alabama. Hers is a rich and colorful history, steeped in the tradition and development of Alabama and of the Nation.

Tuscumbia's recorded story is, first, one of French settlers, who as far back as 1780 established a trading post on Cold Water Creek near the Tennessee River about 1 mile from the present-day northern city limit. This creek, which runs through Tuscumbia, is the outlet for the immense spring which rises from the ground near the center of the city. It had probably been a center of Indian activity for many centuries prior to that.

When the French colony was established, Nashville, TN was the most important American trading station in what was then the southwestern United States. Nashville and the settlements to its south were frequently subjected to hostile incursions by Indians stirred up by the French.

In 1787, Col. James Robertson organized an expedition, marching south and across the shoals of the Tennessee River where he found the Indian village near the mouth of Cold Water Creek. The Indians and their French allies retreated a short distance up the creek to where Tuscumbia is located and here Col. Robertson attacked and defeated them, capturing the trading post and a large quantity of supplies.

In March 1817, Congress passed an act establishing the Territory of Alabama. The town was first surveyed and laid out as a city by Gen. Coffee that same year, 1817. When the territorial legislature assembled at Huntsville in October 1819, a bill was passed incorporating the town of ''Ococopoosa,'' which means ''cold water.'' At another session of the territorial legislature a few months later, the name of the town was changed to Big Spring, and on December 20, 1820, the legislature of the new State of Alabama officially incorporated it as a town. The name was changed on December 31, 1822 to Tuscumbia, after a celebrated chief of the Chickasaw Indians who had befriended the Dickson family, the first American settlers who arrived in 1815.

When Tuscumbia was established, the Tennessee River was navigable from the Ohio River until it reached the shoals near Tuscumbia. The shoals extended to nearby Decatur, where the Tennessee River again became navigable up into the State of Tennessee. About this time, a new enterprise known as the railroad became commercially viable in the United States.

The very first railroad to be built west of the Allegheny mountains was one that connected Tuscumbia to the Tennessee River. It was completed in 1832, 2⅛ miles long. In 1834, the Tuscumbia, Courtland, and Decatur Railroad was built in order to serve as a connecting link between the 2 portions of navigable waters of the Tennessee River. Over the next 25 years, there was an enormous amount of trade with New Orleans by water. Magnificent steamers, some of them carrying as much as 6,000 bales of cotton, glided up and down the rivers. Some of these ships were palatial in their accommodations and furnishings. Excursions on one of these elegant boats to the Crescent City were very popular. Other steamers ran to cities along the Ohio River and to St. Louis. River traffic became less popular around 1857, when the Memphis and Charleston Railroad was connected with the Tuscumbia, Courtland, and Decatur Railroad.

Until completion of the Memphis and Charleston Railroad, the Tuscumbia Post Office was a major distributing office, and probably the largest and most important one between Nashville and New Orleans. A number of State lines converged here.

Tuscumbia's story is also a tragic one of war and destruction. During the War Between the States from 1861 to 1865, there were few areas of the South more completely devastated than the beautiful Tennessee Valley. Tuscumbia was at the center of the fiery track of the armies of both sides. Large blocks of brick stores and many private homes were destroyed and condemned. Cavalry horses roamed at will through grounds that were the pride of their owners.

Americans have, thankfully, rarely experienced the infliction from an enemy army's occupation. But the people of the Tennessee Valley area, including Tuscumbia, during the time of the Civil War were all-too-familiar with looting, burning, and other atrocities. In her book 200 Years at Muscle Shoals, Nina Leftwich recalls some of the conditions these citizens faced. The following passage appears in her historical writings:

> The story of the wrongs inflicted upon the defenseless citizens of Tuscumbia during the occupation by the Federals is best told by an account of it written by Mr. L.B. Thornton [the editor of the local newspaper] soon after it occurred:
>
> ''The Federal army first made its appearance in Tuscumbia on the 16th of April 1862 under General Mitchell . . . They broke open nearly every store in the town, and robbed them of everything they wanted, arrested a great many peaceable citizens, forcing some to take the oath of allegiance to the U.S. government, robbed the masonic hall of its jewels and maps, and broke open and destroyed the safes in the stores and offices. They destroyed my office by breaking my desk and book cases, and destroying the papers, and took them from my office 30 maps of the state of Alabama . . .
>
> ''Ladies could not safely go out of their houses. Citizens were arrested and held in confinement, or sent off to the North, in many cases without any charge being made against them, and the citizens were not permitted to meet on the streets and converse together. Person nor property was safe from the soldiers. They took from private citizens whatever they wanted—hogs, sheep, cattle of every kind, vegetables, corn, potatoes, fowl of every description . . . When they evacuated the town, they set fire to it in 4 or 5 different places * * *''

More than 30 of Tuscumbia's brave young men were killed during the war, and for years after the sound of battle had died away, the town sat on the ashes of desolation, waiting for a brighter day to dawn. That day did come when the industrial city of Sheffield was founded, bringing jobs and trade to Tuscumbia.

Colbert County was established on February 6, 1867, when it was separated from Franklin County, one of the original Alabama counties. Later that same year, the county was abolished by the Constitutional Convention. After Alabama was readmitted to the Union in 1868, the new government reestablished Colbert County. This new county need a county seat, and on March 7, 1870, an election was held to determine if Tuscumbia or Cherokee would be the permanent county seat. Tuscumbia won by a vote of 1367 to 794.

Writing in 1888, Capt. Arthur Henley Keller, who authored the book History of Tuscumbia, Alabama, described Tuscumbia as having ''caught the contagion of progress and enterprise, and within the last 2 years has doubled her population. Observant and far-seeing men recognize the fact that she has every natural advantage that any other place in Northern Alabama has, and that which money can never secure. Her society is as good as can be found anywhere. She has churches of all denominations and first-rate schools. The Deshler Female Institute stands in the front rank of Southern schools. It stands as a monument to the memory of Brigadier Gen. James Deshler, of Tuscumbia, who was killed at the battle of Chickamauga.''

The story of Tuscumbia is that of leaders like Robert Burns Lindsay, who served as Governor of Alabama in the early years of the 1870's, which were difficult years of Reconstruction. He opposed secession, along with most of the residents of north Alabama, but after Alabama's ordinance of secession was enacted, he remained loyal to his adopted state.

In 1870, Lindsay was elected Governor of Alabama. His leadership was important during those tough Reconstruction years and he fought mightily to end that difficult era of occupation.

Governor Lindsay and his wife Sarah had a daughter named Maud McKnight Lindsay. She attended Deshler Female Institute and received kindergarten training. She went on to teach kindergarten in Tuscumbia and served as the principal of the Florence Free Kindergarten, the first free kindergarten in Alabama. She became a great leader in the cause of educating young children and was the author of many childrens' books. She passed away in 1941.

No history of Tuscumbia would be complete without the story of Helen Keller, who was born at Ivy Green in

1880. In fact, the Keller family first settled in Tuscumbia around the time of its founding in 1820. Her grandfather was very involved in the railroad development. His son was Captain Arthur Henley Keller, a colorful confederate soldier, lawyer, and newspaper editor who wrote the history from which I quoted earlier. Capt. Keller was Helen's father.

When she was only 19 months old, she suffered acute congestion of the stomach and brain which left her deaf and blind. It was right behind the main house at Ivy Green at the water pump that Helen Keller, under the tutelage of her teacher Anne Sullivan, first learned that every object had a name. The word ''w-a-t-e-r'' was the first one she understood, but ''teacher'' became the most important word in her life.

Tuscumbia native Helen Keller contributed so much in her lifetime as an educator, author, and advocate for the disabled. She furthered the cause of improving education and general conditions for the handicapped and disabled around the world. During World War II, she visited the sick and wounded in military hospitals. Today, Ivy Green is host to an annual weekend festival celebrating the life and accomplishments of the ''First Lady of Courage.'' Thousands of people from all across the world pay visits to see where Helen Keller lived as a child and where she learned to overcome obstacles to become an inspiring heroine. Each summer, thousands also attend live performances of the play ''The Miracle Worker.'' This most famous daughter of Tuscumbia is a symbol of hope to those around the world who have ever doubted their ability to persevere and achieve. She passed away in 1968.

An integral part of the story of Tuscumbia is the founding of the Tennessee Valley Authority, one of the great achievements of the New Deal. Congress created TVA in 1933 and gave it the overall goal of conserving the resources of the valley region. Congress also directed TVA to speed the region's economic development and, in case of war, to use the Tennessee Valley's resources for national defense. It provided many much-needed jobs during the dark years of the Great Depression and contributed to our military success during World War II.

Congress established TVA after many years of debate on how to use the Federal Ggovernment's two nitrate plants and Wilson Dam at Muscle Shoals. During the ensuing 62 years, TVA has built dams to control floods, create electrical power, and deepen rivers for shipping. It has planted new forests and preserved existing ones, led the development of new fertilizers, and is now involved in solving the nation's environmental problems. The lakes created by damming the Tennessee River and its branches add to the beauty of our region. Besides providing electrical power, water recreation, and navigable waterways, TVA has been a major contributor in the economic growth and development of this area and all of north Alabama.

Attracted by TVA electrical power, Reynolds Metals Co. was located at Listerhill, AL, and for more than 50 years, many Tuscumbians have been provided jobs there. During a somewhat similar period, the Robbins plants located in Tuscumbia have impacted the economy of the city and region.

During a very crucial period in the development of the Tennessee Valley, the northern part of Alabama was represented in Congress by a Tuscumbian, the Hon. Edward B. Almon. He was elected in 1914 and was very much involved in the congressional authorizations for Wilson Dam and the two government nitrate plants. He played an important role in passing the National Defense Act of 1916, which was highly instrumental in the development of this area. He was the Congressman when the TVA was created. He died a short time after the TVA act was signed into law, and was succeeded by another Tuscumbian, Archibald Hill Carmichael. He served during the most formative years of the Roosevelt era.

Earlier, I mentioned Brig. Gen. James Deshler, for whom Deshler Female Institute was named and whose name our high school bears. I should also mention that his father, Maj. David Deshler, played an important role in the development of Tuscumbia, particularly with regard to the railroads.

The name of Gen. John Daniel Rather is also indelibly etched into the railroad history of Tuscumbia. He served as a director and officer of the Memphis and Charleston Railroad. While he was its president, it was merged with the East Tennessee, Virginia, and Georgia Railroad to become the Southern Railway System.

Tremendous contributions to the State's educational system came from 2 Tuscumbians, Dr. George Washington Trenholm and his son, Dr. Harper Councill Trenholm. And no history of Tuscumbia would be complete without mentioning Heinie Manush, a professional baseball player who was the first Alabamian to be enshrined in the Baseball Hall of Fame at Cooperstown, NY. He compiled a life-time batting average of .330.

I hope the celebrations and events over the last 3 weeks have brought Tuscumbians a better understanding of the city and area's history. As the 175th birthday of our beloved Tuscumbia comes to a close, and as we start speeding toward her 200th anniversary in the year 2020, I hope that each resident will take a moment to reflect upon how blessed they are to be from there.

I think back upon my life and career there and cannot imagine them having been anywhere else. It is a progressive little city that has changed a great deal over the years, but it is also one that has always retained its small-town charm and the many qualities that make it such a unique place to live. Since her birthday 175 years ago, Tuscumbia has aged gracefully and improved with time. As I said back in March when I announced my retirement from the Senate, I will enjoy the remainder of my days in my hometown after I retire, for Tuscumbia is a wonderful little town to be from and the best little town in America to go home to. I wish Tuscumbia a happy birthday and look forward to enjoying many more with her well into the next century.

PRIVILEGE OF THE FLOOR

Mr. HEFLIN. Mr. President, on behalf of Senator SARBANES, I ask unanimous consent that Richad Ben-Veniste, Lance Cole, Neal Kravitz, Timothy Mitchell, Glenn Ivey, James Portnoy, Steven Fromewick, David Luna, Jeffrey Winter, and Amy Windt be granted floor privileges during consideration of Senate Resolution 199.

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

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business.

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

SHUTDOWN II: THE RIGHT NOT TO PASS MONEY BILLS

Mr. BINGAMAN. Mr. President, we are now in the second Government shutdown of the year. This is the second one we have had in a month.

There have been many Government shutdowns in the past. In fact, I have been here in the Senate during some of those. But the shutdowns of this year seem very different than previous ones.

Prior to this Congress, the shutdowns of Government were short, and they were generally regretted by the congressional leaders. And, even when the Congress and the President continued to be at odds, those involved were eager to pass continuing resolutions to restart the Government and maintain basic services.

In this Congress we have a very different situation. In this Congress, the shutdowns are longer, and the Republican leadership in Congress sees the shutdown and the maintenance of the shutdown as an essential part of their strategy to gain leverage on the President in their negotiations with him about major policy issues.

Monday morning, when I was reading the Wall Street Journal, I saw a statement in the front page article. The statement was from Speaker GINGRICH. In reading that, I gained an insight into how we arrived at this year's shutdowns, and why these shutdowns are so different from those of the past.

The paper describes the strategy that Speaker GINGRICH devised to get his way in disagreements with the President. I will quote very briefly from that article.

''He''—that is Speaker GINGRICH—''would need to make heavy use of the only weapon at his disposal that could possibly match President Clinton's veto: The power of the purse.''

Here is a quote from the Speaker.

'' 'That's the key strategic decision made on election night a year ago,' Mr. Gingrich says. 'If you are going to operate with his veto being the ultimate trump, you have to operate within a very narrow range of change . . . You had to find a trump to match his trump. And the right not to pass money bills is the only trump that is equally strong.' ''

Mr. President, I want to focus people's attention on this phrase ''the right not to pass money bills.'' The Speaker talks about this right, this so-called right. The obvious question is whether this is an appropriate and an acceptable trump for the Presidential veto, as the Speaker seems to believe, or whether, on the contrary, it is an abuse of power, whether it is a proper use of the power vested in the congressional majority under the Constitution, or whether it is a perversion or destruction of the delicate system of checks and balances set out by the Framers of the Constitution.

I have done my best to analyze the Constitution in light of the Speaker's remarks, and it is my conclusion that the refusal to maintain funding for basic Government services is, in fact, an abuse of the power granted by the people to the Congress and the Constitution. I would like to take a few minutes to explain that reason.

The Founding Fathers set up a very delicate system of checks and balances. In article I, Congress is given authority to make laws in a wide range of areas. For instance, Congress is given exclusive authority to appropriate money.

Article I, section 9, reads:

> No money shall be drawn from the Treasury, but in consequence of appropriations made by law.

The Framers recognized the need to have a check on irresponsible legislation by the Congress and they gave the President the power to veto.

Article I, section 7 contains that power. It says:

> Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law . . . be presented to the President of the United States; if he approve, he shall sign it, but if not he shall return it. . . .

Clearly, when there would be a disagreement between the Congress and the President, the Framers of the Constitution wanted to provide a method for reconciling the differences, and in this language, this language describing the veto, they established a procedure to determine which side should prevail. When in disagreement with the Congress, the President would veto the bill and return it to Congress. If no agreement were reached, the Congress could pass the bill again, and if they had the votes, the two-thirds votes in each House to override the President's veto, the bill would become law.

This system of checks and balances has served us reasonably well for 206 years, with both the Congress and the President generally agreeing to abide by the procedures set out in the Constitution. There was one major departure, and that was with the action by President Nixon to impound funds which the Congress had appropriated for spending. In that case, the final determination was that the President had, in fact, abused his power, that appropriations legally made and passed, in some cases over the veto of the President, prevailed over the contrary desire of the President to get his way. And just as the President in that case abused his power under the Constitution when he impounded funds that were legally appropriated over his objection, I believe that by shutting down Government services and maintaining those services shut down in order to gain leverage with the President on larger policy issues, the Congress is similarly abusing its authority under the Constitution.

Those who wrote the Constitution were focused on how to resolve legislative differences between the Congress and the President. The Supreme Court has recognized this focus of the Founding Fathers. Mr. Justice Jackson in Youngstown Sheet & Tube Ccompany versus Sawyer stated:

> While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable Government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity. 343 U.S. 579,635 (1952).

The Founders of the country assumed that the failure of the President to sign legislation or the failure of Congress to enact legislation would be based on specific disagreements on what that legislation should contain, not on the desire of either the Congress or the President to extort concessions from the other on basic policy differences.

Mr. President, I use the word ''extort'' here because I believe it actively describes the current situation. The dictionary defines ''extort'' as ''to wrest or wring from a person by violence, intimidation or abuse of authority.''

I believe we have an attempt here to wrest or wring concessions from the President by abuse of authority. Mr. GINGRICH talks about Congress' so-called right not to pass money bills—in other words, the right to shut down the Government to get his way in disagreements with the President. He is not just asserting his right to disagree with the President on spending levels or levels of taxation. He is not just asserting the right to pass legislation reflecting his view of what is the right level of spending or taxation. He is not just asserting the Congress' right to pass those laws again over the President's veto if the disagreement continues.

No, here the Speaker's position goes well beyond the constitutional framework for resolving disagreements between the Congress and the President. Here we have Mr. GINGRICH's majority in Congress arguing for major changes in authorizing legislation in Medicare, in Medicaid, and in numerous other areas of policy in seeking to get its way by, in fact, refusing to fund the Government itself, the entire Government or what is left of the Government to be funded, if the President does not bow to their wishes—not just refusing to fund the portion of the Government that the President wants to fund and the majority wants to defund but refusing to fund other broadly supported areas of Government activity.

This abuse of power or extorting of concessions from the President by refusing to maintain the basic services of Government is not part of the checks and balances that the Framers of the Constitution envisioned. They assumed that the maintenance of Government activities which both the Congress and the President deemed to be worthwhile would be supported by mutual consent of the two branches of Government. They did not anticipate that one branch would be willing to kill its own children unless the other branch agreed to give ground on policy disputes.

The obvious question is whether in fact this so-called right not to pass money bills is the ultimate trump or even the best trump. I suggest it is not. I suggest that the Founding Fathers put one more trump in this delicate balance of Government structure, and that is the trump of the people's vote every 2 years.

Abuse of power is always possible in politics and government, and the Framers of our Constitution were more keenly aware of the danger than any of us. In fact, the entire Constitution was written in reaction to the very abusive power which they suffered at the hands of the British monarchy.

For that very reason, they provided what is literally the ultimate—and certainly the best—trump, the right of the people to express their will every 2 years on who comprises the House of Representatives and on who holds one-third of the seats in the Senate.

Article I, section 2, and article I, section 3, set out that the House of Representatives shall be composed of Members chosen every 2 years and that a third of the Senate shall be elected every 2 years.

Time will tell whether the people of the country decide to use that ultimate trump to remedy what appears to me to be a clear abuse of the power granted by the people to the Congress by way of the Constitution. Until that time, this extortion, this abuse of power, should stop. It should stop today.

Today we should pass a continuing resolution to bring the Government back to full operation. Today we should pass a continuing resolution for a period long enough to allow careful negotiation on the budget and serious negotiation on the budget, not for the

2 or 3 days for which we were just advised by the majority leader we are likely to be passing a continuing resolution.

And today we should resolve that the power not to pass money bills, which the Congress clearly has—and I do not dispute that Congress has that power, but that power should never become or never be seen as a right not to pass money bills, as Mr. GINGRICH asserts. Today we should fully restore the checks and balances between the President and the Congress which the Constitution of the United States contemplated at the time of the founding of the Republic.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will read the roll.

The legislative clerk proceeded to call the roll.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

DIRECTING THE SENATE LEGAL COUNSEL TO BRING A CIVIL ACTION

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of Senate resolution 199, which the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 199) directing the Senate Legal Counsel to bring a civil action to enforce a subpoena of the Special Committee to Investigate Whitewater Development Corporation and Related Matters to William H. Kennedy, III.

The Senate proceeded to consider the resolution.

PRIVILEGE OF THE FLOOR

Mr. D'AMATO. Mr. President, I ask unanimous consent that the privilege of the floor be granted to staff during consideration of Senate Resolution 199, whose names shall be submitted to the desk at this time.

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

The staff names are as follows:

Alice Fisher, Chris Bartolomucci, Jennifer Swartz, David Bossie, Vinezo Deleo, Richard Ben Veniste, Lance Cole, Neal Kravitz, Tim Mitchell, Jim Portnoy, Glenn Ivey, Steve Fromewick, David Luna, Jeffrey Winter, and Amy Wendt.

PRIVILEGE OF THE FLOOR

Mr. SARBANES. Mr. President, I ask unanimous consent that Joanne Wilson, a congressional fellow with Senator SIMON's office, be granted privileges of the floor for the consideration of Senate Resolution 199.

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

Mr. D'AMATO. Mr. President, I regret that we find ourselves here today. I must say that I believe my colleague, Senator SARBANES, has made every reasonable effort to see if we could resolve this problem. And, indeed, in the past we have been able to resolve many of the outstanding issues with our professional staff and counsel working together—even some that might be considered contentious. I believe this one is beyond the control of my friend and colleague on the other side. We have made every reasonable effort to attempt to settle this matter. That is a question of the enforcement of a subpoena on Mr. Kennedy for his notes—William Kennedy was formerly associated with the Rose law firm, former associate counsel in the White House—regarding a meeting of November 3, 1993.

I summarize that because it is well known. To go over every single aspect of it, I think, would draw this out unnecessarily.

It was but a short time ago that my colleague and friend, Senator SARBANES, requested that I speak to Chairman LEACH in the House of Representatives in regard to an offer that was made, apparently, to the Speaker in regard to a possible settlement of the manner in which to produce these notes. Let me first say that I find the conduct of the White House to be absolutely one based upon delay and obfuscation—delay, delay, delay, delay, delay.

Let me tell you, with some specificity, what I am talking about. We asked for this information, and information was covered going back to August. We had numerous conferences with the White House with regard to not only this, but all of the relevant information. Throughout these proceedings, we have had the continued posture, publicly, of cooperation and, yet, when it came to producing relevant material evidence that goes to the heart of the matter, we have had delay.

This is not the first time. Only when the issuance, or the threat of the issuance, of a subpoena and bringing this public would we get cooperation—in numerous instances. But this one takes the cake. Let me tell you why. Because after our August 25 request, ensuing meetings took place in September, October, and November. On November 2, it gets down to specificity as it relates to these notes of Mr. Kennedy. November 2. Here we are now in December. It comes to the issue of privilege for the first time and, remember, this is the same administration, and these people are working for the same President, who says, ''I will go to great lengths, and I cannot imagine raising the issue of privilege.'' And privilege is raised.

Now, clearly, in looking at the legislative history of the Congress of the United States as it relates to the Executive, there has never been an instance where a committee, in its capacity of investigating, has been turned down or has the claim of privilege succeeded in thwarting that committee's request for documents. Never. There is a history on that. Clearly, bringing up the issue of privilege in this case is very, very doubtful, very, very tenuous. But I suggest, Mr. President, it flies in the face of what Mr. Clinton, the President of the United States, promised and said publicly: ''We will cooperate.'' What sense is it if you have 50,000 pages of documents? You can give us the Federal Registry. So what? You can give us a million pages. But when it comes to the relevant information that we request, there is repeated delay, delay, obfuscation.

That is what we have had to deal with. This is a perfect example. Only when we say that we would vote these subpoenas, move this, do we begin to get any kind of response. Let me say that it is absolutely disingenuous, it is wrong, and it is a contrivance for the White House to say that it has offered us conditions by which to accept this agreement. The fact of the matter is, those conditions that they have added to it are over and above what was reasonable, and that back on November 2—again, almost 6 weeks ago—we said to them, ''You do not have to concede anything. Give us the information and indeed it will not be deemed a waiver.'' So we offered that to them.

The whole month of November goes by, right up until the recess this time, and delay, delay, delay. They come back and they say, ''Oh, by the way, we will be willing, if you will agree that this is not a waiver of privilege, first, and then attach other conditions—conditions to say that we, the Senate, should get approval from other bodies.''

Now, I do not have any objection and, indeed, would suggest and recommend that other bodies have no reason—be they my colleagues in the House or investigatory bodies, or the independent counsel—to go along with this. But to make this public and then to claim that they have conceded something that we offered weeks ago is wrong. Spin doctors. They are very good at this spinning.

In an effort, just a little less than an hour ago, to come about some kind of suggestion, some kind of resolve of this matter, my friend and colleagues suggested that I reach out to Chairman LEACH, chairman of the House Banking Committee, which is also conducting its investigation into the matter known as Whitewater/Madison, and related matters.

I said that I would, and I did. I have seen now for the first time a letter of response or a letter from Chairman LEACH to Speaker GINGRICH. I do not know if my friend and colleague has a copy of this letter. I will make a copy available. We just received this by fax at 10:30. Mr. President, I ask unanimous consent that the complete letter be printed in the RECORD.

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

COMMITTEE ON BANKING AND
FINANCIAL SERVICES,
Washington, DC, December 19, 1995.

Hon. NEWT GINGRICH,
Speaker, Office of the Speaker,
Washington, DC.

DEAR MR. SPEAKER: I have reviewed the letter of December 18, 1995, to you from Jack Quinn, Counsel to the President.

Committees of the Congress may from time to time consider entering arrangements of one kind or another with the White House. However, House determinations should not be contingent on Senate agreement or vice versa.

What the White House is attempting to do in this instance is position the House of Representatives—and particularly the Committee on Banking and Financial Services and the Committee on Government Reform and Oversight—in opposition to the Senate and the Independent Counsel. This is a circumstance we should prudently avoid.

In his cover letter Mr. Quinn suggests that ''our interest is not in maintaining the confidentiality of the notes, but rather in ensuring that the disclosure of the notes not be deemed to waive the President's right to confidentiality with respect to other communications on the same subject covered in the notes.'' In the letter of December 14, 1995, from Ms. Jane Sherburne to Mr. Michael Chertoff it is noted that ''our concern about disclosing the Kennedy notes has not had to do with the notes themselves, but instead the possibility that disclosure would result in an argument that there had been a waiver (in whole or in part) of the President's privileged relationship with counsel.''

It is my view that while these may be credible concerns for the Counsel to the President to raise, they are inconsistent with the objectives of the Congress concerning full and complete disclosure in this matter. Just as the White House is concerned with precedent from its perspective, so must Congress be for its oversight prerogatives.

To my knowledge, this request by the White House of the House for a commitment relative to a Senate request is unprecedented. It underscores the gravity of the issues at stake and hints at White House concerns that a new path of inquiry could be opened by the information transferred. In this context, what the White House is inappropriately attempting to do is hamstring one congressional body by holding hostage documents subject to a constraining agreement by the other body.

What appears to be at issue with regard to the requested documentation is that there may have been a transfer of confidential law enforcement information related to an investigation touching on an office holder to outside attorneys representing the office holder in his personal capacity. The then House Committee on Banking, Housing and Urban Affairs was assured in 1994 that such disclosure did not occur and would not be appropriate. In this regard, for example, Bernard Nussbaum, former White House Counsel, testified that he had on his staff at the White House Neil Eggleston and Bruce Lindsey, both of whom attended the meeting the notes for which are at issue. Under oath Nussbaum stated that Lindsey and Eggleston ''would not release confidential information which they received in the course of [their] official capacities to anyone outside the White House for any improper purpose, or for any purpose.''

The White House's reluctance to turn over the requested documents may cast doubt on the accuracy of this and similar testimony by other White House officials before a committee of the House of Representatives.

On process grounds, I have sought to be as deferential as prudently possible to the White House, but with each new revelation, some of which if viewed in isolation might seem relatively inconsequential, the evidence of a consistent pattern of delay and obfuscation is clearly emerging.

Accordingly, my advice is that a respectful letter be sent to Mr. Quinn denying his request.

Sincerely,

JAMES A. LEACH,
Chairman.

Mr. D'AMATO. Mr. President, let me read part of the letter. I made that call because if there was an attempt to settle this and we could get the documents—let me start by saying this: If we are given the documents at any time—any time; at any time—why, we will cease and suspend. It is not necessary to go forward. We are asking the Secretary or the Senate legal counsel to seek enforcement of this subpoena, whether after the vote, prior to the vote—whatever.

Let me suggest that the White House and the President has it within his discretion and within his hands to deliver those documents to us. We could end it tomorrow. If people say you are unnecessarily going forward—no, it is because we have had nothing but delay, delay, conditions that we have not been able to accept. We have had a rebuttal of our efforts going back to November 2 when we offered to say we will put aside the question of privilege, you have not waived it. Yet it is at the last moment when we finally say we will vote to issue a subpoena that they come forth with what I consider to be another tactic of delay.

Let me read part of Chairman LEACH's letter:

What appears to be at issue with regard to the requested documentation is that there may have been a transfer of confidential law enforcement information related to an investigation touching on an office holder to outside attorneys representing the office holder in his personnel capacity. The then House Committee on Banking, Housing and Urban Affairs was assured in 1994 that such disclosure did not occur and would not be appropriate. In this regard, for example, Bernard Nussbaum, former White House counsel, testified that he had on his staff at the White House, Neil Eggleston and Bruce Lindsey, both of whom attended the meeting the notes for which are at issue. Under oath Nussbaum stated that Lindsey and Eggleston ''would not release confidential information which they received in the course of [their] official capacities to anyone outside the White House for any improper purpose, or for any purpose.''

I have a copy of a hearing before the Committee on Banking, Finance and Urban Affairs, dated July 28, 1994, page 18. Chairman LEACH furnished this to me, again by fax at 10:32, less than half an hour ago.

Mr. Nussbaum's testimony:

On my staff, I had a number of very experienced people, Congressman. I had Cliff Sloan, who was a former assistant solicitor general, a partner in a distinguished law firm. I had Neil Eggleston, a former assistant U.S. attorney in the Southern District of New York and an experienced litigator, Bruce Lindsey, who is on the White House staff is a lawyer of high competence and high integrity. I didn't feel it necessary to issue those kind of instructions to those people.

I knew and I still know to this day that those people would not release confidential information which they received in the course of our official capacities to anyone outside the White House for any improper purpose, or for any purpose.

A letter that Chairman Leach sent to me says:

The White House's reluctance to turn over the requested documents may cast doubt on the accuracy of this and similar testimony by other White House officials before a committee of the House of Representatives.

On process grounds, I have sought to be as deferential as prudently possible to the White House, but with each new revelation, some of which viewed in isolation might seem relatively inconsequential, the evidence of a consistent pattern of delay and obfuscation is clearly emerging.

Accordingly, my advice is that a respectful letter be sent to Mr. Quinn denying his request.

Sincerely, Chairman Leach.

The chairman advised me he might have additional letters on this matter.

I have made an attempt, as its relates to asserting what the position of my colleagues—I have explained our position that we have no problem in going forward under the conditions that we had offered to this administration, to this White House, back in early November, and which was the subject matter of discussions, repeatedly, for weeks and weeks and weeks as it related to this and other matters.

So when we want to talk about avoiding constitutional clashes, I say right now, Mr. President, please, keep your promise to the American people. Give us the information that Congress is entitled to, that the people are entitled to.

Let me, if I might, refer to the New York Times of yesterday, and, Mr. President, I will ask that the complete editorial be printed in the RECORD.

The editorial is entitled: ''Averting a Constitutional Clash.''

If Mr. Clinton relinquishes the documents, it would be a positive departure from the evasive tactics that have marked the Clintons' handling of questions about Whitewater since the 1992 campaign. Mr. Clinton's assertion that the subpoenaed material is protected by lawyer-client privilege, and his quieter claim of executive privilege, are legally dubious and risk a damaging precedent.

As it relates to this, let me read just part of the editorial of December 14 of the Washington Post:

The privilege claims also undercut Mr. Clinton's much-professed interest in getting the facts out.

Mr. President, I suggest again that attempting to raise this claim and raising and delaying this matter for months—for months, now—and forcing us to demonstrate that we are absolutely serious in terms of our determination to get the facts that we are entitled to, that the Congress of the United States and the Senate of the United States, the American people are entitled to, will not be delayed any longer.

Again, I said at any point, at any time the White House says we will deliver and we are going to deliver these

within a period of time—and I do not mean days; I do not mean weeks; I mean within an hour or 2 hours—we will stop, but not until that takes place.

The privilege claims also undercut Mr. Clinton's much-professed interest in getting the facts out. To the contrary, these actions of administration officials and associates—like other of their actions in this long, evolving Whitewater affair—look cagey, not candid, and are suggestive of people with something to hide.

Let me go on:

It is fair to ask whether the White House exploited information it obtained improperly from Federal agencies that were looking into possible criminal matters involving the Clintons.

That is the Washington Post editorial Thursday, December 14.

We can go on and on. December 12, New York Times, an editorial:

The committee reasonably wants to know about government matters that may have been discussed, such as the handling of investigations by the Treasury Department . . .

That is exactly what Chairman LEACH points out. Those questions were raised. Now we know, at least this Senator knows, for the first time, Mr. Nussbaum said, no, materials would not be turned over of this nature, or words to that effect.

A court will decide whether notes taken at the meeting and a White House memo about the session can be deemed personal legal papers. That will take an expansive interpretation on Mr. Clinton's behalf.

To be sure, citizen Bill Clinton is entitled to claim whatever privacy the courts will give him. But President Clinton, the politician and national leader, cannot expect the public to be reassured by mysterious mobile files and promises of openness that disappear behind the lawyer-client veil.

Mr. President, I ask unanimous consent these editorials be printed in the RECORD in their entirety for completeness.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, December 19, 1995]

AVERTING A CONSTITUTIONAL CLASH

President Clinton may be moving to avoid a constitutional confrontation with Congress over the Senate Whitewater committee's access to notes taken by a White House lawyer at a Whitewater meeting two years ago that was attended by senior officials and personal lawyers for Mr. Clinton and his wife, Hillary Rodham Clinton.

If Mr. Clinton relinquishes the documents, it would be a positive departure from the evasive tactics that have marked the Clintons' handling of questions about Whitewater since the 1992 campaign. Mr. Clinton's assertion that the subpoenaed material is protected by lawyer-client privilege, and his quieter claim of executive privilege, are legally dubious and risk a damaging precedent.

A forthcoming response to the Senate's request would seem especially timely in view of new disclosures that more records have disappeared from the Rose Law Firm. These documents deal with Mrs. Clinton's legal work for Madison Guaranty, the failed savings and loan run by their Whitewater partner. This news comes one week after the disclosure that Vincent Foster removed three files from the firm during the 1992 election campaign and turned them over to the Clintons' trusty political errand-runner, Webster Hubbell.

The dispute with the committee involves notes taken by William Kennedy 3d, an associate White House Counsel, at a November 1993 meeting at the offices of the Clintons' private attorneys. This meeting was attended by three members of the White House Counsel's office, three lawyers for the Clintons and Bruce Lindsey, one of the President's senior political aides. Clearly, lawyer-client confidentiality ought to apply to Mr. Clinton's exchanges with his personal lawyer. But to try to extend the privilege to such a broadly constituted meeting is a stretch, especially given the committee's mandate to find out whether Administration officials, including some at the meeting, may have improperly used confidential Government information to aid the Clinton's private defense.

Mr. Clinton's various lawyers, and some legal ethics experts, speak of the overlap of the President's public and private roles to justify the claim of lawyer-client privilege. But this argument misses the vastly different and even conflicting responsibilities of Mr. Clinton's two sets of attorneys.

As for executive privilege, it ought to be a way to protect a narrow band of Presidential privacy on important matters of governance, including national security. It is a distortion of the doctrine's history to raise it to block a legitimate Congressional inquiry into the Clintons' Arkansas financial dealings and the official conduct of senior Administration aides.

A decent resolution that had the White House handing over the notes seemed to be in sight over the weekend. But yesterday Senator Alfonse D'Amato, the committee chairman, complained that the White House was trying to bargain in the media instead of negotiating with the committee. It should still be possible to make arrangements before tomorrow, when the full Senate is due to take up the matter. If not, the Senate has no choice but to vote to go to court to enforce the committee's subpoena.

[From the Washington Post, December 14, 1995]

NOW A SUBPOENA CONTROVERSY

In refusing to honor a Senate Whitewater committee subpoena for notes taken by then-White House associate counsel William Kennedy during a Nov. 5, 1993, meeting between White House officials and the Clintons' attorneys, the administration risks traveling down a familiar dead-end. Seeking refuge from a legislative inquiry behind the twin shields of executive privilege and attorney-client privilege—as the administration is doing—may slow Congress. But it will do nothing to avoid a confrontation and a debilitating fight that is likely to end up in court.

Claims of executive and attorney-client privilege play directly into the hands of Republicans on the Hill who, despite their wails of protest, are not the least bit bothered by the image of a stonewalling Democratic administration. The privilege claims also undercut Mr. Clinton's much-professed interest in getting the facts out. To the contrary, these actions of administration officials and associates—like other of their actions in this long, evolving Whitewater affair—look cagey, not candid, and are suggestive of people with something to hide. The political affiliation of Sen. Alfonse D'Amato and company notwithstanding, there are aspects of the November 1993 meeting that raise legitimate questions.

It is fair to ask whether the White House exploited information it obtained improperly from federal agencies that were looking into possible criminal matters involving the Clintons. If, for instance, administration officials used confidential government information to try to shield Bill and Hillary Rodham Clinton from exposure to probes into Madison Guaranty, the failed Arkansas thrift partially owned by the Clintons, and the Small Business Administration-backed loan company owned by Judge David Hale, then they have something serious to answer for. Obviously Mr. Kennedy's notes on the Nov. 5 meeting can shed light on those questions. His notes, however, are what the administration seeks to withhold.

This impasse between the Senate committee and the White House over so-called privileged documents must and will be resolved. It would be better, however, if the dispute could be settled between the executive and legislative branches. A reasonable accommodation of each side's interests, not a legal challenge, is what's needed at this time. The overriding interest is to get at the truth. If, however, a satisfactory solution cannot be reached, then the courts must decide. It shouldn't have to come to that.

[From The New York Times, December 12, 1995]

TRAVELING WHITEWATER FILES

Just when it seemed possible that the White House could not handle Whitewater any more clumsily, here come two new moves to undermine public confidence.

The disclosure that Vincent Foster removed three files from Hillary Clinton's law firm during the 1992 election campaign and turned them over to the Clintons' political fixer, Webster Hubbell, is truly a blow to those who want to believe the Clintons have nothing to hide. The files related to Mrs. Clinton's work for Madison Guaranty, the savings and loan owned by the Clintons' Whitewater investment partner, James McDougal. The White House will no doubt argue that the files are innocuous.

But that claim seems lighter than air compared with the fact that they were stored in the basement of a lawyer later convicted of a felony and that they disappeared from the Rose Law Firm in a year when the Clinton campaign team was perfecting its stonewall defense on Whitewater.

The other matter has to do with the dubious claim of lawyer-client privilege being advanced by President Clinton about a 1993 meeting at which his senior lawyers and aides discussed Whitewater. Mr. Clinton seems headed for a messy legal showdown with the Senate Whitewater committee. But the President is stretching attorney-client privilege beyond any reasonable limit and also revoking his promise of openness about this matter.

Surely no one wants to intrude on exchanges between the President and his personal lawyers. But this meeting included a top political aide, Bruce Lindsey, and a battery of attorneys on the public payroll, including White House Counsel Bernard Nussbaum and two of his assistants.

The committee reasonably wants to know about government matters that may have been discussed, such as the handling of the investigation by the Treasury Department and the Resolution Trust Company into Madison Guaranty. A court will decide whether notes taken at the meeting and a White House memo about the session can be deemed personal legal papers. That will take an expansive interpretation in Mr. Clinton's behalf.

To be sure, citizen Bill Clinton is entitled to litigate all he wants and to claim whatever privacy the courts will give him. But

President Clinton, the politician and national leader, cannot expect the public to be reassured by mysteriously mobile files and promises of openness that disappear behind the lawyer-client veil.

Mr. D'AMATO. Mr. President, last Friday our committee voted out this resolution, asking that the full Senate authorize the Senate legal counsel to go to court to enforce the subpoena served on William Kennedy, former associate counsel to the President. The subpoena seeks the notes that Mr. Kennedy took at the Whitewater defense meeting, and which was attended by others, on November 5, 1993, with other White House officials and President and Mrs. Clinton's personal attorneys, a meeting that took place at the Clintons' personal attorney's office.

The President has repeatedly claimed that he would not assert privilege with regard to Whitewater matters. He has promised to cooperate fully with our committee investigation. But over the past weeks, President Clinton has chosen to resist our committee's investigation by preventing Mr. Kennedy from turning over his notes. Our committee must obtain Mr. Kennedy's notes in order to fulfill our obligation to the Senate and to the American people.

I could go on and on. I, indeed, will raise other matters. I will say that what we are attempting to do is to find the truth about the failure of an Arkansas savings and loan called Madison Guaranty that cost the American people $65 million. We want to find the truth about what happened to documents in Vincent Foster's office following his death, and why White House officials prevented law enforcement officials from seeing those documents; the truth about the activities of Hillary Clinton's law firm, the Rose Law Firm, in connection with their representation of Madison; the truth about White House efforts to obtain confidential law enforcement information about Madison and Whitewater and what they did with that information; the truth—not what Mr. Lindsey has said to us, that he gathered it so he could answer newspaper inquiries. But getting to the truth about these matters has proved to be rather difficult. And these notes, we believe, are relevant and will answer some of the questions and will lead us to other areas.

President Clinton's refusal to deal openly with our committee's investigations comes at a time when damaging facts have begun to mount and mount. These are facts that we have had to uncover on a daily basis, dragging out, dredging out, fighting for the information. So, again, to come before the American people and say we provided 50,000 pages of documentation means little, when the critical, crucial matters—which may be 8 pages, 10 pages, 2 pages of notes, telephone calls, logs that are missing, missing files—that is the key.

Vincent Foster was deeply concerned about Whitewater. That he was concerned about Whitewater can be attested to by his notes in which he said, ''Whitewater, can of worms you should not open.'' Vincent Foster had files about Madison that Webster Hubbell transferred to the Clintons' personal attorneys. Their phone records and White House entry and exit logs indicate that the President, that the First Lady, her chief of staff, Maggie Williams, and the First Lady's confidant, Susan Thomases, were deeply involved in the decision to prevent law enforcement officials from searching Vince Foster's office.

Let me again say, phone records indicate and the White House entry and exit logs indicate that the First Lady, the chief of staff, Maggie Williams, and the First Lady's confidant, Susan Thomases, were deeply involved.

That the First Lady was concerned about allowing law enforcement officers unfettered access to the documents in Mr. Foster's office; that a Secret Service officer saw Mrs. Clinton's chief of staff, Maggie Williams, carry files from Foster's office on the night of his death; that Hillary Clinton had not been forthcoming about the amount of work she did for Madison while a partner at the Rose Law Firm.

We have also learned that the critical billing records have disappeared, which raises the question: What was in the files Maggie Williams was carrying from Vince Foster's office? What did they contain? Are they the billing records? Where have the billing records gone to?

That former White House Counsel, Lloyd Cutler, misled the Banking Committee when he claimed, in the summer of 1994, that the Office of Government Ethics had exonerated the White House colleagues for their handling of confidential RTC information and that high White House officials sought to obtain confidential information from the Small Business Administration and in the Small Business Administration office in Little Rock about David Hale, a former Arkansas judge, who contended that the then Governor Clinton forced him to make an improper $300,000 loan to the Governor's Whitewater partner, Susan McDougal; that there was a deliberate effort to obstruct the RTC's criminal investigation of Madison and Whitewater; the U.S. attorney in Little Rock remained on the Madison case over the warnings of senior Justice Department officials in Washington and declined the first RTC referring.

Mr. President, our committee has uncovered these and other patterns, patterns of people who cannot remember where they were or what they were doing or who they were doing it with. We have a constant attempt at a diversion of information and the American people and the committee have a right to the facts.

Mr. President, let me say it is the intent of the committee to go forward. It is the intent of the committee to see to it that the subpoenas are enforced. It is the intent of the committee to bring this matter to a head.

I would say, even after a vote we stand ready to accept this information as we had outlined, going back to November. We had detailed that, I believe in writing, November 27. What we want is the facts. What we want is the information that the President has promised us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I am going to take a few minutes to discuss the legal issue because I think it is very important in terms of the Senate reaching a decision whether to go to court with respect to obtaining these notes. The fact of the matter is the White House has said that these notes will be available. The White House, in order to make the notes available, is seeking certain assurances that it will not have a general, broad waiver of the attorney-client relationship. Our committee has indicated that the conditions the White House is seeking are reasonable ones and our committee is prepared to agree to them.

The White House concern, then, is with respect to other investigative bodies. For example, the independent counsel and the House of Representatives.

As I understand it, I am told that the White House has reached an understanding with the independent counsel that I presume parallels what our committee is prepared to do regarding the turning over of the notes as not being a waiver. So we are very close to having a resolution of this matter.

The problem now becomes, will the House of Representatives treat it—are they unwilling, in effect, to say this is not a general waiver?

Let me discuss briefly why this is important. The White House has made a number of proposals to try to resolve this matter. I disagree with the chairman, in terms of the chronology he set out with respect to efforts, back and forth, and who was being uncooperative. I think, frankly, the committee staff, on occasions, was not seeking a resolution of this matter and was moving in the direction of provoking a confrontation and a crisis, constitutional confrontation.

The special committee has agreed that the production of the notes of Mr. Kennedy, taken at this November 5, 1993, meeting—on which there are strong assertions of attorney-client privilege—but our committee has agreed that the production of those notes shall not act as a general waiver of the attorney-client privilege.

The only remaining hurdle then to getting those notes is agreement by the independent counsel and the House. I understand the independent counsel now has worked out an understanding with the White House.

I believe that the concerns about a general waiver of the attorney-client privilege are meritorious, and that the

Senate should make additional efforts to accommodate them before sending this matter to the Federal court. It always should be borne in mind that when the executive and legislative branches fail to resolve a dispute between them and instead submit their disagreements to the courts for resolution, significant power is then placed in the judicial branch to write rules that will govern the relationship between the elected branches. In other words, we have a chance here to work this out in a way that we get the notes, the White House concern about a general waiver of a privilege is accommodated, and there is no need to go to court running the risk, I would suggest to some Senators, of an adverse precedent. And I will make reference to that shortly.

Since a mutually acceptable resolution of this matter is at hand, if we can just reach out and grasp it, I strongly urge the Senate not to precipitate unnecessary litigation by passing this resolution. The argument is made, well, there is a time factor. If you go to court on this matter, there certainly will be a time factor. I mean you are caught in a situation here, the choice as it were, between achieving a resolution which would make the notes immediately available to us and going through an extended court proceeding which would take an extended period of time even under the most expedited procedures.

Let me first simply state that a number of legal scholars have examined this meeting that was held on the 5th of November of 1993, a meeting between the private lawyers the President was engaging and the governmental lawyers who had been handling various aspects of these matters for the President. The meeting was to brief the new private counsel hired by the Clintons. Several legal scholars have examined that meeting and have concluded that a valid claim of privilege has been asserted.

For example, University of Pennsylvania law professor Geoffrey Hazard, a specialist in legal ethics and the attorney-client privilege, provided a legal view that the communications between White House lawyers and the President's private lawyers are protected by the attorney-client privilege.

Other legal experts have concurred with that view. New York University law school professor Stephen Gillers stated, and I quote—this was in the paper:

> The oddity here is that Clinton is in both sets of clients, in one way with his presidential hat on and in one way as a private individual. The lawyers who represent the President have information that the lawyer who represents the Clintons legitimately needs, and that is the common interest. It is true that Government lawyers cannot handle the private matters of Government officials. However, perhaps uniquely for the President, private and public are not distinct categories. So while the principle is clear, the application is going to be nearly impossible.

And there are other legal experts who have said that there is a privilege that applies here.

Efforts have been made over the last few weeks to try to resolve this matter in a way that the committee would get the information it was seeking, and the White House would get assurances that it was not broadly and generally waiving the lawyer-client privilege—not only with respect to this particular meeting but with respect to all other meetings that touched on this subject matter. That is what the law may well provide. And that is one of the things, of course, that seems to me is a legitimate concern on the part of counsel for the President.

There is an original proposal for Mr. Kendall, the President's private lawyer, that would allow for questioning of people at that meeting in terms of what they knew when they went in and what they did after they came out. But I will not get into the questioning about the meeting itself. I thought that was an effort to try to accommodate, and to give the committee the chance to gain information, and, yet, not intrude upon the lawyer-client privilege. The majority projected that proposal, and the White House went back and sort of obviously reconsidered and came forward with a new proposal that embraced providing the notes to the committee.

Mr. KENNEDY, it needs to be pointed out here, is sort of a stakeholder. He happens to have these notes. He is not providing them in response to the committee's subpoena because he is instructed that he has to observe the lawyer-client privilege and, therefore, cannot provide this information. The canon of lawyer ethics is that you have to abide by the lawyer-client privilege. So he in effect says, ''Well, I have these notes. This is what I have been told and this is what I am doing.'' The White House and Mr. Kendall, the President's lawyer who was brought in to handle the private side of this matter, have in effect said that those notes ought not to be provided until they can get assurances with respect to the lawyer-client privilege.

Let me just make a point that I think legitimate privilege issues have been raised. I think it is clear that an attorney-client privilege does apply here. It is one of the oldest of privileges for confidential communications known to the law. I mean, if anyone stops and thinks about it, it is obvious why you have it. People then say, ''Well, if you have nothing to hide, why do you not tell everything?'' Of course, the logic of that assertion is that there would be no lawyer-client privilege. The logic of that assertion is that there would be no lawyer-client privilege, and in this instance, the White House says we are prepared to give the notes. We are prepared to provide the notes. We just want assurances that providing the notes will not be seen as a general waiver of the lawyer-client privilege.

So that in other fora, and in other matters, it will be sort of, well, in fact here you waive the lawyer-client privilege.

So they are trying to be forthcoming. They are trying to meet the demands of the committee for this information, and at the same time not completely eliminate the lawyer-client privilege. And the committee in the conditions it is prepared to accept—our committee, this committee—has moved to address that problem. The question then is will others who may undertake an investigation be prepared to do the same? As I understand it, the independent counsel is prepared to do so as well.

So it now really is a question of whether the House, the relevant committees in the House of Representatives, are prepared to do the same. Will they in effect make the same undertaking our committee is prepared to take? I might point out it does not lose them any position. I mean I have read this letter from Chairman LEACH that Chairman D'AMATO provided me. I am not quite sure that it is understood that they will not lose any of the positions they now have. The notes will become available. But it is understood that the notes do not constitute a waiver of a privilege. And the question then becomes why will not that be acceptable? What is the difficulty with that? I mean we obviously asked the same question amongst ourselves and reached a conclusion that those conditions were reasonable. There were some others that the White House dropped by the wayside. But we are now back to these conditions as was mentioned in the committee hearing, the two or three which the committee had been prepared to accept.

Let me just talk briefly about the general waiver issue.

The concern here is that the production of these notes could constitute a general waiver of the attorney-client privilege, and it would be a waiver that would apply to all communications relating to the subject matter of the meeting. In other words, you could then turn to other meetings, other discussions between the President and his lawyers and say, oh, no, the privilege has been waived with respect to those meetings.

It is this far-reaching aspect of the law of attorney-client privilege, the subject matter waiver, that creates the difficulty the special committee is facing here. Production of the notes without these understandings could be construed as a waiver of the privilege as to all communications on this subject matter. Potentially such a waiver would encompass all communications between the President and his lawyers at any time up to the present that pertain to the subject matter of this meeting.

Obviously, that is very far-reaching. The committee itself recognized that. Our committee recognized that. And our committee in effect said, no, that is not what we want to do. We do not

want to intrude in that manner into the attorney-client privilege, and therefore we are willing to agree to the condition that it would not be used, the argument would not be used that this constituted a general waiver.

This is a complex issue, no question about it, and it seems to me that taking it to the courts instead of resolving it, especially when it appears we are very close to resolution of the matter—that must be understood. We have a situation now in which the White House says we are willing to make the notes available. Our committee has said we will accept them on certain conditions which constitute an accommodation between the legislative and the executive branch. The independent counsel apparently has taken the same view. And the question becomes, will the House of Representatives join in, so you do not end up having a whipsaw action in which notes are provided in good faith and on certain understandings and then another investigative body says, oh, no, we are going to treat that as a general waiver and we are going to proceed on that basis, after this committee has said it would not treat it as a general waiver and after apparently the independent counsel has taken the same position.

In my view, this dispute has escalated needlessly. The White House has offered to provide the Kennedy notes to the committee, provide the Government lawyers for testimony, and in my view, rather than proceeding to the court at this time, the Senate should make a further effort to obtain this information in a manner that protects against an unintended general waiver of the attorney-client privilege.

It seems to me there is a constructive role that the committee can play in trying to accomplish that. We are not very far away from it, in my view, and it comports I think with the advice and counsel that has generally been provided historically with respect to these potential confrontations between the Congress and the Executive.

First of all, let me note that Congress historically has respected the attorney-client privilege. Indeed, Congress first acknowledged the confidentiality of attorney-client discussions back in the middle of the last century. In the middle of this century, the Senate considered a rule that would have expressly recognized testimonial privileges that traditionally are protected in litigation. The Senate thought of adopting a rule. It ultimately decided that a rule was unnecessary and stated:

> With few exceptions, it has been committee practice to observe the testimonial privileges of witnesses with respect to communications between clergyman and parishioner, doctor and patient, lawyer and client, and husband and wife.

As recently as 1990, Senate majority leader Mitchell stated that:

> As a matter of actual experience, Senate committees have customarily honored the attorney-client privilege where it has been validly asserted.

That has been true even in highly charged political investigations with respect to respecting the attorney-client privilege. For instance, during Iran-Contra, Gen. Secord and Col. North successfully asserted the attorney-client privilege. During the proceedings against Judge HASTINGS, the impeachment trial committee considered his claim of attorney-client privilege and ruled that testimony would not be received in evidence.

The Senate's most recent experience with the attorney-client privilege arose in the disciplinary proceedings against Senator Packwood. Prior to the controversy over Senator Packwood's diaries—prior to that—the Select Committee on Ethics considered Senator Packwood's assertion that certain documents other than the diaries were covered by the attorney-client or work product privileges. That was the assertion he made, that he was covered by these privileges.

To resolve that claim, the Ethics Committee appointed a former jurist—interestingly enough, it was Ken Starr—as a hearing examiner to make recommendations to the committee and accepted his recommendation that the privilege be sustained. With respect to the diaries, the committee agreed to protect Senator Packwood's privacy concerns by allowing him to mask over the information dealing with attorney-client privilege.

So there was no intrusion into the attorney-client privilege claim in that instance. The Senate respected that. This committee has extended protection of the attorney-client privilege to witnesses that have been before the committee.

During the hearing testimony of Thomas Castleton, Chairman D'AMATO confirmed that Castleton need not testify about conversations with his attorney. Similarly, he limited questioning of Randall Coleman by minority counsel regarding an interview his client, David Hale, granted to a reporter for the New York Times during which Coleman was present. That was Coleman, the client, and this reporter for the New York Times, and that was given this protection.

It seems to me that the President and Mrs. Clinton ought to have protection for the lawyer-client privilege consistent with past Senate practice.

Let me turn to why we need to avoid a needless constitutional confrontation by pursuing a negotiated resolution to this dispute.

Congressional attempts to inquire into privileged executive branch communications are rare and with good reason. In fact, the courts on occasion have refused to determine the dispute and have encouraged the two branches to settle the differences without further judicial involvement. In other words, when it comes to the court, it says you ought to settle it between yourselves and not involve the court in trying to address this matter. The U.S. Court of Appeals for the District of Columbia has long held that Presidential communications are presumptively privileged, and therefore it would take this matter to court. The committee is taking on a heavy burden.

Really what you have to do here is balance the interests. And how do you reconcile these differences? William French Smith, when he was the Attorney General, commented:

> The accommodation required is not simply an exchange of concessions or a test of political strength, it is an obligation of each branch to make a principled effort to acknowledge and, if possible, to meet the legitimate needs of the other branch.

The White House is trying to meet our needs by providing the notes. The White House now is taking the position, we will provide to the committee. The committee asserts that it wants these notes and needs these notes in order to carry forward its inquiry. The White House has said we will make these notes available. The White House says there is one problem with doing that, that making these notes available will then be seen as a general waiver of the lawyer-client privilege. And we do not want to be in that posture. We want to have assurances with respect that this does not constitute a waiver of the lawyer-client relationship.

This committee has recognized that argument because the committee has indicated that it is willing to accept the conditions that preclude that general waiver. The White House says well, that works with the committee, but there are other investigative places that could make the providing of the notes to the committee say this constitutes a general waiver, which is, I think, what the law provides. So they say, ''We want assurances with respect to these other bodies.''

One such body was the independent counsel. It was my own view that we should all get the independent counsel in, have a meeting, see if we cannot resolve this matter, and that the committee could have, you know, played a constructive role in doing that.

In any event, the White House went and engaged in its own direct discussions with the independent counsel and I am told they reached an understanding as of yesterday evening that will make the notes available, will provide the assurances against the general waiver of the lawyer-client relationship.

The question now becomes with respect to the House of Representatives, the White House apparently wrote to the Speaker about this matter. The two chairman of the relevant committees have indicated that they will not agree to the assurance, the very one this committee is prepared the make. I find it difficult to understand that. In other words, there is nothing in these conditions that causes them to lose anything in terms of their position. It does not deny them their position in any way with respect to future assertions that they might choose to make.

It makes the notes available, which people say needs to be done, and it does it in a way that the White House is not confronted with the very high risk that they have waived the lawyer-client relationship.

The Senate has recognized and respected this relationship for more than a century. A waiver of the privilege would deprive the President and Mrs. Clinton of the right to communicate in confidence with their counsel, a basic right afforded to all Americans. It is my view that the committee ought to turn its attention to resolving this matter in a way that the committee is prepared to do with respect to itself, that the independent counsel is prepared to do.

If that is accomplished, then the notes become available and you do not have any risk of the waiver of the principle. If you go to court, who knows how a court will rule. I think there is a very substantial chance that the court will rule against the Senate, and may in fact establish limits with respect to the Senate's congressional investigatory power that some of those pressing this matter will come to regret. You do not know what the court's outcome will be, but I think that is a very real possibility in this situation.

There has been a lot of movement on this issue. And it seems to me that the offer now that the White House has made in an effort to try to resolve it is very reasonable, is justified on the law and that it behooves us to try the accommodate to it and find a solution to this matter, a solution which would make this information available now as opposed to going to court.

I have difficulty understanding why this matter is at this point. I do not understand—I do not begin to understand why the House committees are taking this position because I think if they make the accommodation they have something to gain and nothing to lose. Now, if they simply want to provoke a confrontation, if that is the objective, that is a different story.

Mr. D'AMATO. Will my friend yield for an observation?

Mr. SARBANES. Certainly.

Mr. D'AMATO. On this point, and I just got this letter faxed to me. It says 12:18, but indeed it was 11:18. It is off an hour, this time clock, wherever this fax is operating from, which I have just sent over to my colleague.

Mr. SARBANES. Still on daylight saving time.

Mr. D'AMATO. And it comes from Chairman LEACH. And he did point out to me in a conversation—and it has just taken me a little time to assimilate this—obviously Chairman LEACH is very perplexed and disturbed and will not agree to a limitation of his rights even as it relates to the possible lawyer-client relationship because he feels that there is testimony in the record before him to his question that Mr. Nussbaum indicated these people at the meeting would not transfer information that should not have been transferred that would be inappropriate. I am summarizing it in order to save time.

And he goes down to—I will go to the last two paragraphs on page two. He says:

> To accede to the White House position that disclosure of the notes of the Nov. 5, 1993 meeting does not constitute a waiver of the President's attorney-client privilege, one must accept the proposition that a privilege attaches to this meeting in the first place. Given the presence of three Government lawyers at the meeting—and the indication that confidential law enforcement information may have been improperly disclosed to the President's private lawyer—that is a proposition that legal experts the committee has consulted on the subject cannot accept.

I think more importantly is his last paragraph that he points out to me:

> Given White House denials under oath to a House Committee that a transfer of information to parties outside the White House occurred, White House efforts to place limitations upon the House's ability to gather information necessary to fulfill its legitimate oversight function takes particular chutzpah.

I did not know that my colleague from Iowa would use a term that was frequently used in the Northeast, particularly in the Northeast. But—

> To date the White House has not consulted in any manner on this issue with the House Banking Committee.

I do not mean to be arguing the case on behalf of the House, but I think that what Congressman LEACH is saying quite clearly is they are very much concerned that under oath, the question he raised, as it relates to the possible transfer of documents that would be inappropriate to be transferred, such as criminal referrals to people outside of the White House, being assured by Mr. Nussbaum that it did not take place, and it appearing that maybe it did take place, he is not willing to concede or give up or limit the ability of the House to proceed as related to what took place to those documents.

That raises the question, a very interesting question, of whether or not even that relationship, which this Senator under most circumstances would say absolutely exists between a lawyer and his client may come into sharp contrast if information improperly received is passed to a private attorney, whether or not that private attorney may be examined as it relates to what he did, what he did not do, et cetera.

I believe that that is—this is again outside of my particular knowledge—but it is certainly contained within this letter. And I think that is one of the things that Mr. LEACH is concerned about.

Again, coming back to our particular proposition, I will say to my friend and colleague, I think that you and I and the committee, Democrats and Republicans, the minority and majority, have really gone as far as we possibly could. And I do not think this is a failure on the part of the committee. We did put forth fact that we would not say that this constituted a waiver. That is not the issue.

The issue is, when will you produce this documentation? As it relates to the independent counsel, we contacted him and the office of independent counsel has informed this committee that they cannot confirm or deny. So maybe they have worked it out. Obviously if the White House says that their objections have been met, I am not going to contest that. But they are not in a position to confirm or deny this statement, and an agreement has been reached.

But once again what we are hearing is the White House and the President saying one thing, and he is willing to make these documents available, that ''I will not hide behind privilege,'' and yet doing exactly that. And that is what this Senator has difficulty understanding. We have gone, this committee and this Senate, as far as we can. We have made every reasonable effort, and that is what brings us to this point.

I might note that in the five cases we have come forward as relates to the enforcement of subpoenas, in every one of those cases Congress has gone forward to enforce the subpoenas.

I thank my friend for yielding. We just did get this communique, and I shared it with you as soon as we received it. I wanted to bring it to your attention.

Mr. SARBANES. I am glad the Senator brought it to my attention, because it really does underscore the problem the White House is concerned about. In fact, Chairman LEACH is wrong in asserting they would have limitations placed upon their ability to gather information, just as that is not happening to us.

So the question then becomes, if you can get the notes which everyone asserts would provide an important piece of information, if you can get the notes and the condition you agree to for getting the notes is that the providing of the notes will not be treated as a general waiver of the lawyer-client privilege, which is a perfectly reasonable condition, it seems to me, why would you not enter into that arrangement? What is the problem? Why are the House committees taking this position? What game is afoot?

It is not a reasonable position to take in the circumstance. They lose nothing by accepting the notes and agreeing to the condition. In fact, they get ahead of where they are now, because the notes then become available. They cannot use the furnishing of the notes to claim the privilege was waived somewhere else, but if the notes are not provided, they cannot make that claim elsewhere, in any event. So it is not as though this sets them back. This, in fact, makes some progress in the inquiry.

I just do not understand this position, and it seems to me what this committee ought to be doing, frankly, is seeing if we cannot get the accommodation—well, I hear the statement from the independent counsel, and we

would have to see what the story is there, but I understood that could be resolved in the direct communications and then with respect to the House. Then you get the notes and you do not intrude on the lawyer-client privilege.

This administration has provided an enormous amount of material and access. Of course, people say a long time ago, you made a quote everything would be provided and there would be no invocation of privilege. I was asked about that by a newspaper person the other day. They said, ''Well, what about that?''

I said, ''Well, I'm sure when the President made that statement,'' and, in my view, he has delivered on it essentially, ''he never anticipated that we would get to the point where you would make a kind of a sweeping request that would carry the risk of totally wiping out his lawyer-client relationship.''

Obviously, when he made that statement, it seems to me, he was assuming that the request that would come would be within the area of reasonableness and that he would not confront one that carried with it the very real risk of no more lawyer-client relationship.

Obviously, when it reached that point, the President's lawyer said, ''Wait a minute, the logic of this is that you will not be able to have any confidentiality in your relationship with your lawyer.'' Of course, then some say, ''Well, he doesn't need any, he should just tell everything.'' ''What do you have to hide?''

But the logic of that argument is that you would never have any confidential relationship.

In fact, when the committee sent letters down to the White House requesting various materials, we recognized in the letters that we sent that some of the material sought would be subject to claims of privilege. In fact, we told the White House, if that were the case, to provide a log identifying the date, the author, the recipient and the subject matter and the basis for the privilege.

So this committee recognized at the outset that we could make interests for which a privilege could be asserted. We did not start from the premise that asserting a privilege was off bounds. We recognized it in the request that we made to the White House.

We have had a tremendous number of depositions, witnesses. None of that has been impeded or inhibited. We have had 32 days of hearings. We have had about 150 people who have been deposed. We have had, I think, some 80 people who have been actually heard in open hearings.

Virtually all of the differences have been resolved with respect to providing information. This one could be resolved. I want to underscore that point again: This one could be resolved.

We are at the point where the White House, in effect, has said we will accept the conditions the committee was willing to validate to provide the notes. They are trying to find the same assurances from the independent counsel and from the House of Representatives. That is not unreasonable. In fact, I think that is very sensible. And, therefore, the opportunity is here, in effect, to resolve this matter, without going to the courts, without, in effect, running this risk of trespassing on this very important relationship.

The chairman says, ''Well, you have turned over a lot of pages of documents,'' but that is not the relevant matter. Well, it is partly relevant. They have turned over an incredible amount of material. The committee has worked through it. It constitutes the basis for our questioning. The committee has now focused on the notes of this meeting and has said, ''We want the notes of those meetings.''

Originally, the position that was taken by Mr. Kendall was, ''Well, you can get that information in a different way without actually getting the notes.''

The majority said, ''Well, we don't accept that. We want the notes.'' The White House now has made a bona fide offer to provide the notes with certain assurances. This committee is prepared to give those assurances.

So if we were the only forum in which this issue might arise about the waiver, there would be no problem if the committee was the only forum. But the fact is there are other forums, and I think the White House reasonably says if we give the notes to this special committee, others will argue in those other forums that this constitutes a waiver; therefore, we want assurances there as well—the independent counsel and the House committees.

It is a perfectly reasonable request. My own view is, frankly, that the committee ought to take a more positive role and, in effect, bring these parties in and say, ''Let's resolve this matter without a constitutional confrontation.'' It is obvious that it can be done, and that is the course we ought to take. That, in effect, would provide the information far, far sooner than going to court will provide the information, and it will meet, I think, a very reasonable concern on the part of the White House that there is a general waiver of the lawyer-client privilege.

I would be surprised if there were Members of this body who thought there should be a general waiver of all lawyer-client relationships.

That is not the way the Senate has acted in the past. It is not the position we have taken. It was clearly not the position we took with respect to witnesses before our very committee. It was not the position the Senate took in the Packwood matter. I can run on back through history with respect to the decision to accord a certain respect to the lawyer-client relationship.

So, Mr. President, I think it is important that the Senate shift its attention to resolving this matter without a constitutional conflict. In my view, that is within reach, and we ought to be engaged in the process of trying to bring that about. That would be a solution that would provide the information, protect against the general waiver. That is something this committee is prepared to do. I understand it is something the independent counsel is prepared to do. If our colleagues in the House were prepared to do it, this confrontation would be set aside and this issue would be resolved.

I yield the floor.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER (Mr. GREGG). The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I have listened with interest to my colleague from Maryland. We have discussed many of these issues in committee already, but I think it is necessary that we talk about them here on the floor.

Let me state to my colleague, and any other colleagues who may be listening, that I will stand absolutely with the Senator from Maryland to protect the attorney-client privilege in every circumstance, whether it regards the President of the United States, any citizen of the United States, or a convicted felon who is incarcerated by the United States. Wherever you wish to go where there is a legitimate attorney-client privilege, this Senator will stand to protect that privilege.

That is not an issue here. The President has the right to the attorney-client privilege. The President has the right to consult his attorneys on matters relating to his personal affairs, with the absolute assurance that no committee of Congress will ever intrude upon that consultation, and that no one will ever do anything that would weaken that right. It is one of the more fundamental rights established in American common law, and it must be protected.

I make that strong statement so that people will understand that the issue here is not the President's right to an attorney, or the President's right to protect the attorney-client privilege. The issue here is whether or not Government attorneys, paid for by the taxpayers, attending a meeting with the President's private attorneys, discussing matters that did not impact the Presidency, matters that took place prior to the President's election, have the same attorney-client privilege.

I am troubled by the number and type of people who attended the meeting with the President's private attorneys. This was a matter of discussing the President's private legal problems, so why was it necessary for four members of the White House staff to be present at this discussion, one of whom, though he has graduated from law school and has practiced as an attorney, at the time of his attendance, was not involved in legal matters for the White House. He was the head of White House personnel. He was not functioning in his capacity as an attorney when he attended that meeting.

I recall, Mr. President, when the office of counsel to the President was occupied by a single individual. It was not necessary for the President of the United States to have a substantial law firm operating under the cloak of ''counsel to the President,'' paid by the taxpayers, handling the President's personal affairs.

If I may, I will go all the way back to an era, which I realize has passed and cannot be reclaimed, to find an example and use it as an example of the kind of separation between personal affairs and private affairs that we once had. Harry Truman, as President of the United States, kept a roll of 3-cent stamps in his desk. Whenever he wrote a letter to his mother, which he did almost daily, he would reach into his desk and pull out the roll of 3-cent stamps, lick the stamp himself and put it on the envelope because, he said, ''Letters to my mother are not public business and, therefore, I will pay the postage myself.'' I realize we have come a long way from that point, and I would not expect the President of the United States to take the time now to say in his correspondence, ''Well, I must pay the postage on this one,'' or ''I will not pay the postage on that one.'' All of us in official life are so beset with correspondence that we never know whether the answer to a letter is a response from our official capacity or our private capacity. We pay for our Christmas cards ourselves, but much of the correspondence that comes out of our office could easily fall into either category.

But it is the mindset that there must be a separation between private affairs and public affairs that I want to appeal to. Here is a President who appoints—as it is his perfectly legitimate right to do—as deputy White House counsel a man whose principal activity in the White House turns out to be handling the Clintons' personal affairs—Vincent Foster, the focus of all of this investigation—who made himself the focus by virtue of his tragic suicide. He spent most of his time handling the Clintons' tax matters, the Clintons' investment matters, the Clintons' personal affairs. That came out in our hearings, as one of the support people on the White House staff—a secretary—was sufficiently concerned about the amount of time Mr. Foster was spending on nonpublic issues that she went to the general counsel for the President, Mr. Nussbaum, and asked the question, ''Is this a legitimate thing for Mr. Foster to be doing while being paid by the taxpayers?'' She made the comment that she, as a long-time employee of the White House counsel's office, had never seen anything like that being done in previous Presidencies. Specifically, she referenced the Bush Presidency. She was told that it is up to the counsel, Mr. Nussbaum, to make the decision as to what is appropriate and what is not in terms of time allocation, and as long as Mr. Nussbaum says that it is all right for Mr. Foster to spend the majority of his time handling the Clintons' personal affairs, that means it is all right for Mr. Foster to spend the majority of his time handling the Clintons' personal affairs.

I raise this because it is at the core of the controversy we find ourselves in. The Clintons obviously believe that anyone who works for the counsel to the President immediately becomes subject to the Clintons' private attorney-client privilege. If Mr. Foster was spending his time doing the Clintons' personal tax affairs, I think the case could be made that those tax matters could be covered by the attorney-client privilege. I certainly hope that my consultation with my attorney on tax matters is covered by the attorney-client privilege, if anybody should ever challenge me. And if I use Government lawyers to do that—I have not and will not—I guess the presumption in my mind would be that even though they are paid by the taxpayers, because they are doing this personal work for me, the work would be covered by the attorney-client privilege if they were private attorneys, so it should be covered by the attorney-client privilege now that they are public attorneys.

Let me digress, Mr. President, long enough to make the point that all of us in our official capacities do indeed have to call upon Government employees from time to time to advise us on private activities that impinge upon our public circumstance.

For example, when I was called upon to put my assets in a managed trust by virtue of my election as a Senator, I turned to the attorney in my Senate office who is familiar with Ethics Committee positions and requirements and asked him for advice as to how this should be done. I would expect those conversations to be covered by the attorney-client privilege as I discuss with him matters of some confidentiality.

The trust has been formed, the assets have been placed there, and documents have been filed with the Ethics Committee disclosing all of that. That is an example where I have a matter of personal concern that I discuss with an attorney who is on the payroll because he is in a position to advise me as to how my personal affairs impact in a public arena; in this case, the Senate Ethics Committee and the filings we are required to make here.

Accordingly, if the President were to turn to a member of the counsel to the President's office and say, ''I have a matter that stems from my personal affairs but that impacts on my public duties. I would like you to counsel me on those affairs, and I would expect that your counsel would fall within the attorney-client privilege.'' I have no argument with that.

The argument here is a meeting where the President's personal attorneys, concerned with actions that took place prior to his becoming President, concerned with allegations about impropriety if not illegality in those matters, holds a meeting with four employees of the White House to discuss those matters, and then says, ''Those employees of the White House are covered by attorney-client privilege, the same as we are.''

I find that a bit of a stretch, Mr. President. I made the point in the committee that there must be a dividing line somewhere between the President and Government employees. If you say, ''No, there is no such dividing line,'' you can then go to the point of saying any attorney who works for the executive branch anywhere in the executive branch can, by the President's direction, be covered by attorney-client privilege. Obviously, nobody would say that is common.

Where does the line move back to? Does the President have attorney-client privilege just with the counsel to the President? Does the President have personal attorney-client privilege with everyone in the counsel to the President's office no matter how large it gets? I am alarmed at how large it is getting. I remember when a President needed only one lawyer. If he wanted a legal opinion on something other than his own direct office matters he called the Attorney General. We are getting away from that now. We have a whole law firm under the title of counsel to the President. It seems to be supplanting the Attorney General in the role of advising the President on legal matters. That is another issue.

I think the line must be drawn as tightly to the President as possible. The President obviously thinks the line should be drawn as far away from him as possible. That is where the controversy for this Senator arises on this issue.

I am happy to exchange with my friend, the Senator from Maryland, in any colloquy or exchange, as long as I do not lose my right to the floor.

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

Mr. SARBANES. First, let me say I think the Senator has made a very reasoned statement about the matter. Let me simply say when Mr. Roger Adams was before the committee, he is a career person in the Department of Justice, and he is sort of the one who gives advice on Government ethics to attorneys in the Department of Justice. That is his specialty. He was asked about Foster doing private law work for the President and Mrs. Clinton. He says, ''That doesn't surprise me a bit. There is a thin line between public business and private business and it does not offend me at all that the counsel or deputy counsel to the President does work on some personal things of the President and the First Lady.''

Just as the Senator indicated you might have a member of your staff, suppose you are doing your disclosure statement——

Mr. BENNETT. Precisely, and I have no problem with that. I do have a personal problem, whether it is legal or not, with the extent to which this

President seems to use this White House staff. I am entitled to that concern.

Mr. SARBANES. When Lloyd Cutler took over as White House counsel he raised that and apparently changes were made in the workings of the White House to more clearly draw the line between personal and public matters.

Mr. BENNETT. I have Lloyd Cutler's statement to that effect, if the Senator would like to hear it.

Mr. SARBANES. I think he was on point with that.

Let me go a step further on this question about this particular meeting and your observations about the extent of it which apparently causes you to question whether the lawyer-client privilege applies to it. Of course that, ultimately, if we press forward will be resolved by a court.

Let me just read this letter from Geoffrey Hazard, a very distinguished legal scholar, professor of law at the University of Pennsylvania, and he travels all over the country talking about these very problems. This was a letter to the White House counsel.

You have asked my opinion whether the communications in a meeting between lawyers on the White House staff, engaged in providing legal representation, and lawyers privately engaged by the President are protected by the attorney-client privilege. In my opinion, they are so protected.

The facts, in essence, are that a conference was held among lawyers on the White House staff, and lawyers who had been engaged to represent the President personally. The conference concerned certain transactions that occurred before the President assumed office but which had significance after he took office. The Governmental lawyers were representing the President ex officio. The other lawyers were retained by the President to provide private representation to him. On this basis, it is my opinion that the attorney-client privilege is not waived or lost.

A preliminary question is whether the attorney-client privilege may be asserted by the President, with respect to communications with White House lawyers, as against other departments and agencies of Government, particularly Congress and the Attorney General. There are no judicial decisions on this question of which I am aware. However, Presidents of both political parties have asserted that the privilege is thus effective.

This position is, in my opinion, correct, reasoning from such precedents as can be applied by analogy. Accordingly, in my opinion, the President can properly invoke attorney-client privilege concerning communications with White House lawyers.

Then he goes as he draws toward a close:

The principal question, then, is whether the privilege is lost when the communications were shared with lawyers who represent the President personally. One way to analyze a situation is simply to say that the ''President'' has two sets of lawyers, engaged in conferring with each other. On that basis there is no question that the privilege is effective. Many legal consultations for a client involve the presence of more than one lawyer.

Another way to analyze the situation is to consider that the ''President'' has two legal capacities, that is, the capacity ex officio—in his office as President—and the capacity as an individual. The concept that a single individual can have two distinct legal capacities or identities has existed in law for centuries. On this basis, there are two ''clients'', corresponding to the two legal capacities or identities.

The matters under discussion were of concern to the President in each capacity as client. In my opinion, the situation is, therefore, the same as if lawyers for two different clients were in conference about a matter that was of concern to both clients. In that situation, in my opinion the attorney-client privilege is not lost by either client.

The recognized rule is set forth in the Restatement of the Law Governing Lawyers, Section 126 (Tent. Draft No. 2, 1989), as follows:

If two or more clients represented by separate lawyers share a common interest in a matter, the communications of each separately represented client . . .

(1) Are privileged against a third person. . .

Inasmuch as the White House lawyers and the privately engaged lawyers were addressing a matter of common interest to the President in both legal capacities, the attorney-client privilege is not waived or lost as against third parties.

Now, as he said, it has never been adjudicated in a court. It could be decided differently. But this is a leading expert, and I think that is a very strong letter with respect to this matter.

Mr. BENNETT. I understand. I agree he is a leading expert. And it is a very strong letter.

I also note, however, as you have, that the matter has not been adjudicated in a court, and I think that may well argue strongly for us to proceed and allow the court to so adjudicate, because if we solve these matters by getting legal opinions on opposite sides and then reading the opinions to each other, we do not need courts. The courts exist to take the legal opinions on one side and the other and listen to them and make a decision. Many of those decisions, as the Senator well knows, are decided on a five-to-four vote, with strong letters from real experts ending up on the side of the four, sometimes, when it goes to the Supreme Court, and the strong letters from real experts ending up, sometimes, on the side of the five.

I have heard from distinguished commentators, lawyers of sufficient reputation to require us to pay attention to their views, that the President, in this case, has little or no grounds to stand on. The lawyer you have just quoted obviously disagrees with those opinions. I think that is why we have courts. It may be that this matter is important enough to be resolved once and for all, and the way to get it resolved is to proceed with the subpoena and let the court hear the matter.

Mr. SARBANES. Will the Senator yield?

Mr. BENNETT. Sure.

Mr. SARBANES. If the reason you are proceeding is in order to get the notes, and if the notes can be made available under what I regard as perfectly reasonable conditions, why should we provoke a court controversy on this matter?

Mr. BENNETT. If I may respond to the Senator, quoting comments he made in his opening statement, he said, ''There has been a lot of movement here.'' I agree with him, that there has been some movement here. But it is my observation that the movement has always come after the committee has decided to get tough, that the movement on this issue has come after the chairman said, ''We are going to issue a subpoena. We are going to go to the floor. We are going to demand Senate action.'' That is when the movement started to come.

So when the Senator from Maryland says if it is my purpose to get the notes, we can drop this and get the notes through other means, I say to the Senator, I would be willing to drop this as soon as the notes appear. I would be willing to vacate the order for a subpoena as soon as the notes appear, and not provoke this kind of confrontation. But until the notes come along, the pattern of behavior that I have seen on the committee says to me the best way to keep the movement going is to keep the pressure on.

Mr. SARBANES. If the Senator will yield?

Mr. BENNETT. I will be happy to yield.

Mr. SARBANES. First of all, it is my view, as I indicated also in my remarks, that the White House has been trying to reach an accommodation, and to some extent I think the confrontation was provoked by the committee.

But putting that to one side, we are now at the point where the proposition that we are wrestling with is pretty simple. That is, if the White House can get the same assurances from the independent counsel and the House that it has gotten from our committee with respect to this waiver question, they are prepared to provide the notes at once. We obviously thought that the conditions were reasonable in dealing with the White House on this matter, because we have agreed to them.

I think it is reasonable for the White House then to say that we ought not to be blind-sided or whipsawed on this thing, by other investigatory bodies, in other forums. And, therefore, we need to get from them the same or comparable assurances.

As I understand it—I do not have anything definitive—but I am told that this matter has been worked out with the independent counsel. Of course, assuming that is the case, that itself is a further major step forward. Then it just, apparently, now leaves us with a question of the House of Representatives.

Mr. BENNETT. If I could respond to the Senator? I agree. If, in fact, the independent counsel has made this

agreement, that is a significant step forward. He says that leaves only the House with which to deal. I am glad to know that, because the original condition that was sent to the committee had other agencies besides the independent counsel and the House. It had the RTC and the FDIC. I am assuming from the Senator's statement that means the White House has now dropped the demand that those people also have a veto power on whether or not the notes will be given to us?

Mr. SARBANES. Let me just read a letter from the White House counsel to Chairman D'AMATO. A copy was sent to me.

Mr. BENNETT. Absolutely.

Mr. SARBANES. It said:

DEAR CHAIRMAN D'AMATO, As I informed you yesterday we would, Counsel for the President have undertaken to secure non-waiver agreements from the various entities with an investigative interest in Whitewater-Madison matters. I requested an opportunity to meet with your staff to determine how we might work together to facilitate this process. Mr. Chertoff declined to meet.

Nonetheless, we have succeeded in reaching an understanding with the Independent Counsel that he will not argue that turning over the Kennedy notes waives the attorney-client privilege claimed by the President. With this agreement in hand, the only thing standing in the way of giving these notes to your committee is the unwillingness of Republican House Chairmen similarly to agree. As I am sure you are aware, two of the Committee Chairmen who have asserted jurisdiction over Whitewater matters in the House have rejected our request that the House also enter a non-waiver agreement with respect to disclosure of these notes and related testimony.

We have said all along that we are prepared to make the notes public; that all we need is an assurance that other investigative bodies will not use this as an excuse to deny the President the right to lawyer confidentiality that all Americans enjoy. The response of the House Committee Chairmen suggests our concern has been well-founded.

If your primary objective in pursuing this exercise is to obtain the notes, we need to work together to achieve that result. You earlier stated that you were willing to urge the Independent Counsel to go along with a non-waiver agreement. We ask that you do the same with your Republican colleagues in the House. Be assured, as soon as we secure an agreement from the House, we will give the notes to the Committee.

Mr. BENNETT. If my colleague will yield——

Mr. SARBANES. Let me read the last paragraph because it is important to keep this thing current.

Mr. Chertoff has informed me that the Committee will not acknowledge that a reasonable claim of privilege has been asserted with respect to confidential communications between the President's personal lawyer and White House officials acting as lawyers for the President. In view of the overwhelming support exercised by legal scholars and experts for the White House position on this subject, we are prepared simply to agree to disagree with the Committee on this point.

Accordingly, the only remaining obstacle to resolution of this matter is the House.

So that is where the matter now stands.

Mr. BENNETT. I thank the Senator for that. It represents, in this Senator's view, a significant movement on the part of the White House from the position taken less than a week ago, when the same Jane Sherburne gave us five conditions, two of which the majority on the committee had recommended to her, and the other three of which many members of the committee found to be unacceptable.

The two most objectionable of those conditions that she placed on giving up the notes, Nos. 4 and 5, in her correspondence of the 14th of December have been dropped from the letter that the Senator from Maryland just talked about. There is no relevance.

Mr. SARBANES. If the Senator will yield, 4 and 5 have been dropped; 4 is still relevant because that involves trying to get those assurances from another investigatory body.

Mr. BENNETT. No. 4 has been dropped as proposed. It has been replaced, in my view, with the request that the House now be involved because she wanted the House involved in No. 4 in the original letter. It represents movement. But I think the tenor of No. 4 has, in fact, been dropped and replaced by the acceptance on her part of taking just the House. We no longer have any references to the Resolution Trust Corporation and its successor and the Federal Deposit Insurance Corporation, which were for this Senator the two most difficult requirements that the White House had placed. So we have had movement. We have had significant movement. We have seen that movement come in response to the pressure created by the requirement for this subpoena.

The only other comment I would make with respect to Ms. Sherburne's letter of the 20th that the Senator from Maryland has just quoted is a personal disagreement with the opening clause in her sentence in paragraph 3 when she says, ''We have said all along that we are prepared to make the notes public.'' That does not coincide with this Senator's memory of the way the White House has proceeded. I will take the notes. I will read the notes as soon as they are provided. But I personally do not agree that the White House has indeed said all along that they are prepared to make the notes public. As I have said, I believe they have responded as the committee has gotten tough, and they are now saying things that in fact do not coincide with this Senator's memory of history.

If I can proceed then, Mr. President, if my colleague from Maryland is finished with the colloquy on this issue, I want to make some general points about why it is necessary for the committee to continue this somewhat militant stance that we have taken. I have been interested to watch this thing unfold as covered by the media.

If we were to go back to the beginning of the hearing, the reaction on the part of people covering this issue was that it was, frankly, a gigantic yawn and nothing for anybody to pay any attention to, nothing for anybody to get very excited about. I will not go back with a quotation trail beyond the month of December. But someone who wants to do a historical pattern of this could follow the pattern of media comments from the summertime on through the fall and then into December and see that people are beginning to pick up in their understanding, pick up in their concern about this. And, interestingly enough, it has come not just from the media that one would automatically assume would be favorable to the Republican point of view, but it has come from sources that have been traditionally, shall we say, somewhat skeptical of Republican positions.

In this month alone, Mr. President, starting toward the first of the month we have the following paper trail, if you will, from some of the leading papers in this country.

The New York Times on the 6th of December with the lead editorial entitled ''Whitewater Evasions, Cont.'' That is an interesting lead, an interesting title for an editorial. ''Whitewater Evasions, Cont.'' The Times has had previous editorials on Whitewater evasions, and they talk about it.

The final sentence of the editorial says, ''* * * what we are left with is a portrait that grows cloudier by the day of an administration that always dodges full disclosure.''

I suggest that comment by the New York Times corresponds with my response to the Senator from Maryland about the latest White House letter that says ''We have said all along that we are prepared to make the notes public.''

On the 7th of December, the next day, the Washington Post has an editorial entitled ''The White House Mess.'' This editorial states ''And the conflicting statements keep coming. That is the problem. Ms. Williams told the Senate Whitewater Committee this summer that she has given the Clintons' lawyer access to some 24 files found in Mr. Foster's office that contained personal matters of the Clintons. But she did not say that she was with him when he reviewed the files or that the review occurred in the first family's residence, as he now maintains.'' The editorial continues with the specifics of that particular comment.

How does this editorial conclude following on the editorial of the New York Times? ''Has the White House, through these twists, managed to throw suspicion over matters of little consequence, or is there something serious being covered up? The question is everywhere these days, in large part because of all of the improbable and implausible responses that have been made to inquiries so far. If the White House can clear them up, it surely should. Congress and the independent counsel are clearly not going to let things stand as they are now.''

That was the Washington Post on Pearl Harbor day, the 7th of December.

We go on to the 12th of December. The New York Times again, in an editorial entitled ''Traveling Whitewater Files,'' talks about the mysterious movement of files back and forth from closet to attorneys' offices and back to attorneys with occasional stops at basements of other attorneys. And it concludes with the point we have been discussing at such length here this morning, Mr. President. ''To be sure, citizen Bill Clinton is entitled to litigate all he wants and to claim whatever privacy the courts will give him. But President Clinton, the politician and national leader, cannot expect the public to be reassured by mysteriously mobile files and promises of openness that disappear behind the lawyer-client veil.''

Then we go on. We get closer to today. On the 14th of December, the Washington Post has an editorial entitled ''Now a Subpoena Controversy.'' It begins, ''In refusing to honor a Senate Whitewater Committee subpoena for notes taken by then-White House associate counsel William Kennedy during a November 5, 1993, meeting between White House officials and the Clintons' attorneys, the administration risks traveling down a familiar dead end.''

The Washington Post apparently is losing patience.

The final comment of this editorial is: ''The overriding interest is to get at the truth. If, however, a satisfactory solution cannot be reached, then the courts must decide. It shouldn't have to come to that.''

Apparently, the lawyers that advise the editorial writers for the Washington Post are not as easily convinced as the lawyers who have sent their opinions to the Senator from Maryland.

Just yesterday, in the New York Times again, the editorial is headed ''Averting a Constitutional Clash.'' And I quote: ''If Mr. Clinton relinquishes the documents, it would be a positive departure from the evasive tactics that have marked the Clintons' handling of questions about Whitewater since the 1992 campaign.''

''Mr. Clinton's assertion that the subpoenaed material is protected by lawyer-client privilege, and his quieter claim of executive privilege, are legally dubious and risk a damaging precedent.''

Now, I cannot argue that the New York Times is as distinguished a legal source as the lawyer who gave the opinion that the Senator from Maryland quoted, but again the lawyers who advise the editorial writers in the New York Times must have looked at this and they find it, to quote, ''Legally dubious, risking a damaging precedent.''

Mr. D'AMATO. Will my colleague yield——

Mr. BENNETT. Yes, I will be happy to yield.

Mr. D'AMATO. Just for an observation. Given the posture which the White House has taken and given the difficulty we have had in getting documents or information, given the dubious claim as it relates to lawyer-client privilege, is it not even harder for us, the committee, to accept this claim in light of the President's public statements as it relates to not raising privilege as a manner by which to protect documents? Does this impact on the Senator?

This is a statement that comes from the President on March 8, 1994, when he is appointing Lloyd Cutler, and the question was, was he going to invoke Executive privilege or a lawyer-client relationship privilege, and he ends up with, as his answer, he says, ''It's hard for me to imagine circumstances in which that would be an appropriate thing for me to do.''

Does this square then, Ms. Sherburne raising this, with what the President has said, that he would not—it is hard for him to imagine raising that privilege?

Mr. BENNETT. The Senator is correct to raise that quote in this context. It simply demonstrates that there are now some circumstances that the President was unable to imagine that long time ago because he has now asserted the privilege and we confront it.

Mr. D'AMATO. The meeting took place. He was aware of this meeting, obviously.

Mr. BENNETT. I believe he was aware of the meeting.

Mr. D'AMATO. This meeting took place well before, in November, and he made the statement in March. So he was aware of the meeting. It was not a circumstance that took place after the meeting.

Mr. BENNETT. I do not wish to be flippant about these matters because they are important matters, but I find myself saying the lapse of memory seems to fit a pattern that we have seen from other people in the White House.

Mr. D'AMATO. I thank my friend.

Mr. BENNETT. Mr. President, going back to the editorial in the New York Times of yesterday, after they made the statement that I have quoted about the legally dubious claims, they conclude that editorial with this comment cutting straight to the issue that we are talking about today on the floor:

> It should still be possible to make arrangements before tomorrow when the Senate is due to take up the matter. If not, the Senate has no choice but to vote to go to court to enforce the committee's subpoena.

Now, I have gone to the trouble of quoting all of these editorials leading up to this to indicate that this is not a sudden decision on the part of the editorial writers of the New York Times or I would assume the Washington Post, whose stream of editorials has gone the same way. As I say, I have not quoted from all of the papers that have been considered to be Republican friendly. I have quoted from papers that would normally be expected to take the President's side on this issue, and I find it somewhat interesting that the leader of those papers concludes its editorial by saying that the Senate has no choice but to vote to go to court and enforce the committee's subpoena. I see my friend from Connecticut rising.

Mr. DODD. Will my colleague yield?

Mr. BENNETT. Under the same procedure, Mr. President, that it is understood I would not lose my right to the floor, I will be happy to engage in whatever colloquy and debate my friend from Connecticut may desire.

Mr. DODD. I thank my colleague from Utah, Mr. President.

I just ask my colleague if he could enlighten us on whether the media have ever taken a position, on any matter where access to documents was the issue, they should not have total access to everything they want?

Going back over time, when the issue was attorney-client privilege or executive privilege, can the Senator cite to me an editorial from the New York Times or the Washington Post or any other paper where the paper did not think they ought to have unfettered access to documents? My point is that the media always want all of the documents. So we should expect to see the editorials my colleague cites.

Does my colleague disagree with me that, unlike legal scholars who look at constitutional issues, the press always takes the position that materials should be turned over?

Mr. BENNETT. I have not done that kind of research. I will go back and take a look at the past media circumstance. It is my impression that no one has called for breaching the attorney-client privilege for the President or anybody else; that the concern here has to do with whether or not that privilege extends to Government lawyers. I do not know of anybody in the media who would say that if the meeting was confined entirely to the President and the lawyers who had been hired by him and are being paid by him to represent him in his personal matters, the notes should be turned over. I have not had anybody say that to me. The issue is whether or not the presence of Government lawyers at the meeting so changed the nature of the meeting as to make it appropriate for the committee to ask for those notes.

So I understand the point that my friend from Connecticut is making, and I am sure that he is correct in terms of the institutional bias of the press. I would stop short of saying that it applies to violating all kinds of privilege. I think it applies to the narrow issue here as to what happens by virtue of the Government lawyers having been present.

Mr. DODD. Let me further inquire. I appreciate my colleague's generosity in allowing me to inquire. As I understand this particular point, we are down to basically one problem that stands in the way of an agreement—we need the House to agree that the release of the notes by the White House will not constitute a general waiver of the attorney-client privilege. That seems like a small problem to work

out. Clearly, we would all like to avoid having to take this matter to the courts. After all, precedent suggests they may just throw it back in our lap and say ''resolve it.'' So we spend 2 months on this issue and we are back where we started.

Mr. BENNETT. Two months, if we are lucky.

Mr. DODD. My colleague from Utah is probably correct. As I understand it, the independent counsel has already reached an agreement with the White House. It occurs to me that if the independent counsel, which has a prosecutorial function, can reach an agreement, than the congressional committees, whose fundamental function is legislative, should also be able to reach an agreement. If the independent counsel is satisfied with the agreement, then we should also be able to reach an agreement.

I am just curious as to why it would not be in our interest to take some time to have the conversation with our colleagues in the other body who are apparently resisting this to see if we can work out an agreement and put this issue behind us.

Is there some compelling reason why we ought not try to do that? If the independent counsel said this is totally unacceptable, I need the subpoenas, I can almost understand at that point why we would have to go through this process. But that is not the case. I ask my colleague if he would not agree with that.

(Mr. KYL assumed the chair.)

Mr. BENNETT. I say to my colleague that I would be happy to sit down with him if it were just the two of us and see if we could arrive at an agreement on that point. I have learned long since, even though I am a relatively new Member here, not to try to guess what the House will do under any circumstance.

Mr. DODD. My colleague has become very wise in the few years he has been here.

Mr. BENNETT. So I would not presume to try to give instructions to my colleagues in the House. But I think it is appropriate that we have these kinds of conversations. I think the Senator from Connecticut raises a very logical course of action that we should consider.

But I am not prepared to remove the pressure that the existence of this vote creates toward getting a solution because, as I said to the senior Senator from Maryland, in my opinion, the movement to which he refers would not have taken place if the committee had not taken the tough stance that it has taken.

The movement that we have seen in the White House position in just the last 24 hours, I believe, is attributable to the pending vote that we are going to take. If we take the vote and the White House and the House can come to some kind of a conclusion, then the subpoena called for in this vote is rendered mute and the matter is taken care of. But I would rather not remove the pressure that this vote represents until after the agreement is reached because I believe that the pressure of this vote has had a salutary effect in moving us toward that.

Mr. DODD. I thank my colleague for the time he has given.

Mr. BENNETT. Mr. President, I had not planned to go on this long.

Mr. SARBANES. Would the Senator yield on this point? I think there is a chance, once the vote is taken and the matter is sent to the court, then the people may say, ''Well, let the court decide it.'' And if the court decides it, first, you do not know what opinion you will get. That is, people make their reasonable calculations. Second, the timeframe then becomes quite extended.

It seems to me, given all the admonitions about trying to avoid a confrontation between the executive and the legislative branches, it would behoove us to do that because I think we are at a point right now where that opportunity is right here in front of us.

Mr. BENNETT. The Senator has raised a possibility which may indeed turn out to be the outcome. The matter becomes a matter of judgment as to which scenario you believe is the one that will play out, the one I have posited or the one that the Senator from Maryland has posited. And we will all have to vote and see which of those two scenarios is the one that comes about.

Mr. President, I had not planned to go on this long. I will be happy to yield again to my colleague from Connecticut, but I would like to wrap up.

Mr. DODD. I will seek recognition later in my own right. I thank my colleague.

Mr. BENNETT. I thank the Senator.

Mr. President, before I leave the quotations from the media, I must share with my colleagues one last editorial which comes from a source that is clearly not generally favorable to Republican positions, from a man whose writings I am not familiar with. However, I can catch the flavor of his position simply from reading this particular editorial. His name is James M. Klurfeld. He is the editorial page editor for Newsday. I will just quote a few comments, but I think it summarizes what is happening on this issue.

He says:

> I have to admit that I haven't paid that much attention to the Whitewater investigation. That is not only because it's too complicated to figure out, but also because an essential element of any real scandal is missing: the anticipation that the high and the mighty are about to be brought down. There has been, to be blunt, no scent of blood. Until now.

Mr. Klurfeld then goes on to recite some of the specifics of what has come up. He says:

> At the crux of the Whitewater investigation is whether they knowingly got money from the Whitewater-related projects and mixed it illegally with campaign money for a gubernatorial re-election campaign. That case has not been made. But there has always been a second Whitewater issue: whether the Clintons have abused the power of the White House to obstruct the investigation. And here things begin to look more troubling. There are credible allegations of files removed from the White House, of improper interference with the investigation of Foster's death and, most recently, the White House has refused to give memos of conversations involving the Whitewater matter to the Senate committee, first claiming lawyer-client privileges and now invoking the doctrine of executive privilege.

He continues later on in the article:

> What keeps nagging at me is that if my first assumption is true—that there is no criminal wrongdoing involved in the matter—then why is the White House and Hillary Clinton, in particular, so reluctant to come clean about everything? What does she have to hide? Why not just open all the files? After all, Hillary Clinton worked as an investigator on the Watergate matter. We all know she as smart and as sharp as any lawyer in Washington, let alone Little Rock. She knows, as we all know, Richard Nixon got caught up by the coverup of Watergate, not the burglary itself. It is inconceivable she would blunder into the same type of mistake. Unless, of course, there is something to hide. Then a cover-up makes sense, at least from her point of view.

Once again we find a pattern. Mr. President, I quote the summary sentence. Mr Klurfeld says:

> There are enough unanswered questions and White House evasions to justify further investigation. And I am ready to pay some attention to it.

The one area that has struck me as I have listened to this whole thing, that for some reason reached out and grabbed my attention, concerns the law firm records relating to Mrs. Clinton's billing for her services to Madison Guaranty. This first came up, Mr. President, when Mr. Hubbell was before our committee, and as part of the documents that were furnished to us at that time, we received a summary—recap, to use the word that is on the document—a recap of fees, from Madison Savings and Loan, and then typed below it says ''FINAL RECAP.'' And that is in all caps.

Understand, Mr. President, to put it in context, this is the legal work for which Mr. McDougal has said Mrs. Clinton was paid a retainer of $2,000 a month. Mr. McDougal's testimony was that then-Governor Bill Clinton came to him and said, ''We're having financial troubles. Can you get Hillary some money?'' And he said, ''I'll pay $2,000 a month to the Rose law firm. And she can handle the Madison affairs.''

To be clear in the RECORD, denial from the Clintons that this ever happened has been entered in the record. So it is Mr. McDougal's word against the Clintons' word on that particular issue. But nonetheless, in the documents that came from Mr. Hubbell, here is the final recap of fees paid.

When Mrs. Clinton was asked about these fees, she said—and I am quoting from her press conference—''The young bank officer did all the work. And the letter was sent, but because I was what you call the billing attorney—in other words, I had to send the bill to get the

payment made, my name was put on the bottom of the letter.''

The strong implication there, you see, is she did little or no work, she simply signed the letter because she was the billing partner, and the client did not want to pay a bill if it was from an associate.

In an interview with the Office of Inspector General at the FDIC on the same matter, we find this characterization: ''Mrs. Clinton indicated she did not consider herself to be the attorney of record for Rose's representation of Madison before the ASD and presumed it to be Rick Massey. She recalled Massey came to her and asked her to be the billing attorney, which was a normal practice when an associate was handling a matter.''

Then, Mr. President, in her affidavit on this matter that was given to the FDIC Office of Inspector General, she, being duly sworn, says, ''While I was the billing partner on this matter, the great bulk of the work was done by Mr. Richard Massey, who was then an associate at Rose and whose specialty was securities law.''

''I was not involved in the day-to-day work on the project. My knowledge of the events concerning this representation, as set forth in this Answer, has been largely derived from a review of the relevant documents, rather than my contemporaneous involvement in the representation since Mr. Massey primarily handled the matter.''

The reason this is important, Mr. President, is that Mrs. Clinton clearly had some relevant documents she reviewed in order to conclude that she was not involved in the day-to-day work on the Madison matter. She had no contemporaneous memory of it. She had to go back to the relevant documents.

Now we have what I consider to be two relevant documents, and the first one is the one that came before the committee, the recap of fees for Madison Guaranty Savings & Loan. I questioned Mr. Hubbell about this at some length, and Mr. Hubbell finally said, ''Senator, I apologize that I am unable to articulate to you exactly the way things are handled so that you can really understand what happened.''

I said, ''Mr. Hubbell, I'm sorry, I can't articulate to you my reaction to these numbers. I am not a lawyer. I have never made out a time sheet, but I have paid lots of legal bills. I think I can read a time sheet.'' And I went over this as I would if it were submitted to me, and I find the following, Mr. President.

In the total amounts covered by this final recap, the amount billed by Mr. Massey by name is $5,000, rounded. I have not added up the odd dollars and cents, but I have rounded it. Mr. Massey, over the period of this representation by the Rose law firm, billed around $5,000. Mrs. Clinton, in that same period, billed approximately $7,700. She says she reviewed relevant documents that refreshed her memory, but that she was nothing more than the billing partner and that the work was done by Mr. Massey. But from these billings, Madison Guaranty was billed in Mr. Massey's name for around $5,000. If Mrs. Clinton was just the billing partner who signed for him, all of the billing should be in her name and his name should not appear. But if he is billing in his own name, then why was it necessary for her to bill significantly more than he did, if he was the one doing all the work?

There is an interesting pattern here, Mr. President, because in the month of May, Mr. Massey billed $695, Mrs. Clinton, $840. Thus Mrs. Clinton billed more than Mr. Massey when the account was brought in.

Then very dramatically the pattern changes. In June, she only billed $60. I assume that is a half hour's worth of work. Mr. Massey, $186. In July, she billed $144, he billed 10 times that, $1,400, and so on. Mr. Massey, in November billed $552; Mrs. Clinton does not appear. In December, he billed over a thousand; she billed around $4,200.

Then it changes very dramatically and Mr. Massey disappears, as Mrs. Clinton starts billing heavy-hitter numbers to the point where at the bottom of the sheet, when you add it all up, Mr. Massey billed around $5,000. Mrs. Clinton has billed around $7,700.

The other contemporary document which we have been able to obtain, which presumably Mrs. Clinton had available to her as she refreshed her memory, was the document that came before the committee this week where Susan Thomases took notes on a conversation during the campaign with Web Hubbell. These notes are very revealing against the background I have just outlined.

This is what Susan Thomases testified Mr. Hubbell told her. She made it clear she did not know whether this was the truth or not; she was simply recording what she was told. To put it in context, Mr. President, her assignment on the campaign at the time this conversation took place was damage control over the Whitewater controversy.

Mr. DODD. Will my colleague yield on that point?

Mr. BENNETT. Surely.

Mr. DODD. I appreciate going into these matters. As I understand it, we are debating the issue of subpoenas. We are kind of revisiting what we went over in the committee. My colleague has a right to do it. I am not suggesting he does not. I would like to debate the issue of subpoenas—that is what draws us to the floor today—instead of rehashing billing questions. At some point, are we going to get to the issue of subpoenas?

Mr. BENNETT. I say to my colleague, I will get to it as quickly as I can. If I had not had the exchanges I had, I would have been through with this a long time ago.

Mr. DODD. I thank my colleague.

Mr. BENNETT. Having started, I want to finish the point, and I think it important all Members of the Senate find out about this because it goes to the heart of why we are having this conversation at all.

Here are the notes that Ms. Thomases took of her telephone conversation with Web Hubbell: ''Massey has relationship with Latham and Hillary Clinton had relationship with McDougal. Rick''—that is to say Massey—''will say he had relationship with Latham and had a lot to do with getting the client in.''

These are the notes of the damage control person. ''This is what we're going to say about how Madison Guaranty came to the Rose law firm: Rick will say he had relationship with Latham and had a lot to do with getting the client in. She did all the billing. Hillary Clinton had number of conferences with Latham, Massey, and McDougal on both transactions. She reviewed some documents. She had one telephone conversation in 4–85 beginning of the deal with Bev.''

Bev is the appropriate Arkansas State regulator handling these matters.

''Neither deal went through. Broker dealer was opposed by staff but approved by Bev under certain conditions which they never met.''

Now here is a crucial sentence for me: ''But for Massey, it would not have been there. Rose firm prohibited from filing examiner's report.'' And at the bottom: ''Hillary Clinton was billing partner and attended conferences. He''—I am assuming ''he'' is Massey—''he had a major role blank hours versus Hillary Clinton's blank hours.''

We are trying to fill in the blank, and the only document we have with which to fill in the blank goes contrary to these notes. That is, Mrs. Clinton's hours are greater than Mr. Massey's hours rather than less. But the interesting thing for me is the statement flat out: ''Rick will say he had relationship with Latham and had a lot to do with getting the client in.''

Later on: ''But for Massey, it would not have been there.''

The December 18 New York Times has the following comment:

> In her 1992 notes, Ms. Thomases records how top campaign officials discussed how to answer questions about Madison and the Rose firm.
>
> Her notes show that Mr. Hubbell told her that an associate in the firm, Richard Massey, ''will say he had a lot to do with getting client in.'' Mrs. Clinton has also said, in sworn testimony to regulators, that Mr. Massey brought in Madison as a client. But Mr. Massey, now a partner in the Rose firm, has told Federal investigators that he does not know how the firm came to represent Madison.

Well, Mr. President, I think the Senator from Connecticut makes an appropriate point, and we should not rehash everything that happened in the hearings. I will now step down. But I go through all of this to demonstrate my conviction that pressure from the committee has been essential to the forthcoming of documents. Whether the

pressure has been continued badgering by the majority staff or whether it has been formal subpoenas or threats of subpoenas, it has taken pressure every step of the way for us to get documents. And in every case, when we have come close to getting a resolution to an issue, we were told, ''Well, that document does not exist,'' or ''I do not remember.'' And we find the same circumstance here. After we discussed the conflicting evidence, Web Hubbell told me, ''The only way you are going to find out what really happened, Senator, is to get the original billing sheets.'' We now find that the original billing sheets do not exist.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Alabama [Mr. SHELBY] is recognized.

Mr. DODD. Mr. President, point of order. This Senator was standing, and I have been here for some time to speak. Also, are we not going back and forth on either side of this matter?

The PRESIDING OFFICER. The Senator has made a point of order. It is my understanding that it is in the Chair's discretion to recognize the Senator from Alabama. I am advised that he has been here for 2 hours, which is a significantly longer period of time than the Senator from Connecticut.

The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, it is not surprising to me today that we are where we are today—forced to seek enforcement in the courts of a subpoena for documents from the White House.

It is no surprise to me, Mr. President, because the White House's refusal to release the notes sought under this resolution is part and parcel of this administration's consistent and continuous way of operating, its modus operandi, if you will, on how to cooperate with the special committee without really cooperating.

It goes something like this: ''Do not give up any information or documents unless you absolutely have to, and if forced to give them up, release it to the press first with your spin on it before giving it to the committee.''

Mr. President, throughout the committee's investigation, witnesses from the White House have come before the committee and, en masse, failed to recollect, remember, or to recall important meetings, conversations, and phone calls.

We have so much testimony on the record, reciting the lines, ''I cannot remember, I do not recall, I do not have a specific recollection,'' that you would begin to wonder whether amnesia is, in fact, contagious.

We had the dance of the seven veils from the White House witnesses, whom the committee was being forced to recall every time a new document or phone log previously unattainable mysteriously appeared in some way.

Interestingly, Mr. President, while White House officials were suffering under the debilitating loss of memory, or selective memory, career prosecutors and law enforcement personnel were able to remember phone calls, conversations, and meetings with great specificity.

Quite frankly, the testimony before the committee has come to be the tale of two stories. One story was told by the Clintons' political appointees and long-time business partners and friends, versus the story told by career professionals, civil servants, law enforcement personnel and, yes, investigators.

Mr. President, this wholesale memory loss, evasive answers, and claims of privilege against document production sounds strangely familiar, does it not?

Indeed, Mr. President, in the past couple of weeks I have noted what I believe is an increasing similarity between this White House and the Nixon White House. In my view, the committee's need to enforce the subpoena for the notes only reinforces the Nixonian comparison.

Last week, during the committee hearing on Whitewater, I compared some of the arguments that Mr. Clinton has made with the arguments that Mr. Nixon made in support of Executive privilege in 1973 and 1974. Now, some have suggested that this is purely a political exercise. But the fact is, Mr. President, that this is the first time that such a defense—that I am aware of—has been raised since the Nixon administration.

Furthermore, this same defense of privilege has been tried and tested in the courts, and it has failed. The comparison is, therefore, self-evident, Mr. President, and the exercise rather instructive, giving all of us an opportunity to examine the reasonableness of the White House's claim of attorney-client and possibly Executive privilege.

I would like to share some of the quotes with you. First, this is President Nixon's response to a question from a UPI reporter on March 15, 1973.

He said:

> Mr. Dean is counsel to the White House. He is also one who was counsel to a number of people on the White House staff. He has, in effect, what I would call a double privilege, the lawyer-client privilege relationship, as well as the Presidential privilege.

Those were the words of President Nixon. Compare those with the following words, which were sent up to the committee by the White House on December 12, 1995:

> The presence of White House lawyers at the meeting does not destroy the attorney-client privilege. On the contrary, because of the presence of White House lawyers, who themselves enjoy a privileged relationship with the President and who are his agents, was in furtherance of Mr. Kendall's and White House counsel's provision of effective legal advice to their mutual client, their presence reinforced, rather than contradicted, the meeting's privileged nature.

Think about that just a minute. Compare them in your own mind.

I will read President Nixon's address to the Nation announcing an answer to the House Judiciary Committee subpoena for additional Presidential tape recordings on April 29, 1974.

President Nixon said:

> Unless a President can protect the privacy of the advice he gets, he cannot get the advice he needs. This principle is recognized in the constitutional doctrine of executive privilege, which has been defended and maintained by every President since Washington and which has been recognized by the courts, whenever tested, as inherent in the Presidency.

Let us compare Nixon's statement to the White House brief on behalf of President Clinton to the committee, December 12, 1995:

> If notes of this type of meeting are accessible to a congressional investigating committee, then the White House counsel could never communicate, in confidence on behalf of the President, with the President's private counsel, even when the discussions in question are properly within the scope of the official duties of the governmental lawyers. Such a rule would deprive the White House counsel of the ability to advise the President and his White House staff most effectively regarding matters affecting the performance of their constitutional duties.

You be the judge. The words of Nixon and the words on behalf of President Clinton.

I will now share with you a statement President Nixon made to reporters' questions, the National Association of Broadcasters, on March 19, 1974:

> Now, I realize that many think, and I understand that, that this is simply a way of hiding information that they should be entitled to, but that isn't the real reason. The reason goes far deeper than that. In order to make decisions that a President must make, he must have free, uninhibited conversation with his advisers and others.

The words of President Nixon. Compare those with the words of the White House brief on behalf of President Clinton, December 12, 1995:

> The committee's action also implicates important governmental interests—namely, first, the ability of White House counsel to discuss in confidence with the President's private counsel matters of common interest that indisputably bear on both the proper performance of executive branch duties and the personal legal interests of the President, and second, the ability of White House counsel to provide effective legal advice to the President about matters within the scope of their duties, including the proper response of executive branch officials to inquiries and investigations arising out of the President's private legal interests.

Again, ''Private legal interests.'' Compare, again; you be the judge of the similarity.

Now, from the words of President Nixon in a letter responding to the House Judiciary Committee subpoenas requiring production of Presidential tape recordings and documents, June 10, 1974. What did he say?

> From the start of these proceedings, I have tried to cooperate as far as I reasonably could in order to avert a constitutional confrontation. But I am determined to do nothing which, by the precedents it set, would render the executive branch, henceforth and forevermore, subservient to the legislative branch, and would thereby destroy the constitutional balance. This is the key issue in

my insistence that the executive must remain the final arbiter of demands in its confidentiality, just as the legislative and judicial branches must remain the final arbiters of demand on their confidentiality.

The word of President Nixon.

Now, in the brief on behalf of President Clinton to the committee, December 12, 1995:

In a spirit of openness and with considerable expenditure of resources, the White House has produced thousands of pages of documents and made scores of White House officials available for testimony, foregoing assertion of applicable privileges. In view of this cooperation, the committee's attempt, after 18 months, to invade the relationship between the President and his private counsel smacks of an effort to force a claim of privilege by the President, who must assert that right to avoiding risking the loss, in all fora, of his confidential relationship with his lawyer.

Now, you compare it. You have seen the words and the comparison. I think they are relevant. This comparison, I believe, Mr. President, is self-evident and the exercise rather instructive.

I do not know whether the Clinton administration has anything to hide. But I do know this: The first administration to use these arguments certainly did have something to hide, and we know what happened there.

If the White House does not have anything to hide, and I hope they do not, if there is nothing of substance in these notes, nothing damaging in these notes as they claim, then they should comply with the subpoena and produce them to the committee without any reservations, without any conditions, because, Mr. President, if there is nothing damaging in these notes, it is incomprehensible to me why they would raise a defense clearly rejected over 20 years ago.

Mr. President, I also would ask unanimous consent that a letter from Mr. Hamilton, to the President, dated January 5, 1994 be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, December 14, 1995.

Michael Chertoff,
Special Counsel.
Richard Ben-Veniste,
Minority Special Counsel, U.S. Senate, Special Committee to Investigate Whitewater Development Corporation and Related Matters, Dirksen Building, Washington, DC.

GENTLEMEN: Pursuant to the agreement described in my letter to Mr. Chertoff of December 13, 1995, I am enclosing copies of the January 5, 1994, letter from James Hamilton to the President (S 012511–S 012516).

Please feel free to call me if you have any questions.

Sincerely yours,

JANE C. SHERBURNE,
Special Counsel to the President.

SWIDLER & BERLIN,
Washington, DC, January 5, 1994.

The President,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: At Renaissance you asked for my ideas on management of the Whitewater and trooper matters. This responds.

As a preface let me mention that, because of my representation of the Foster family, I've had numerous calls from the media about these issues and thus know the views that some of them hold. Let me also say that, so far, the White House generally has handled these matters well.

Here are my ideas, some of which are obvious and have been implemented, but perhaps bear repeating.

1. Despite the falsity of the allegations, these remain treacherous matters, *L.A. Times* reporters basically believe the troopers (although this confidence should now be shaken). *Washington Post* reporters consider the Lyons report a ''joke'' because of its incompleteness, and suspect a cover-up when it is cited in response to current inquiries. Reporters are intrigued by Vince's inexplicable death, and thus continue to search for Whitewater connections.

2. Investigations, like other significant matters, must be carefully managed. One person in the White House (Bruce, I assume) should be assigned responsibility for coordinating information gathering, responses to official inquiries and public statements about these matters. *This cannot be treated as an incidental assignment.*

3. The White House should say as little and produce as few documents as possible to the press. Statements and documents likely will be incomplete or inclusive, and could just fuel the fires.

4. The White House should ensure that what statements it does make are consistent and coordinated. Erroneous or conflicting statements could be disastrous; the Nixon White House brought huge trouble upon itself by issuing inaccurate, inconsistent statements about Watergate. *The Washington Times* in particular has been dissecting current White House communications.

5. Responses to official inquiries—both written and oral—must be carefully made. Even oral misstatements could result in investigations and sanctions. Moreover, the Department of Justice, FBI and Park Police all leak unconscionably (and already have as to these matters), and some officials obviously are inclined to attack the White House's handling of the inquiries.

6. The White House should not forget that attorney-client and executive privileges are legitimate doctrines in proper contexts. While the on-going release of Whitewater documents to Justice seems appropriate, Bernie initially acted properly in protecting the contents of Vince's files.

7. If politically possible, Janet Reno should stick to her guns in not appointing an independent counsel for Whitewater. An independent counsel—who might pursue his or her self-aggrandizement rather than the truth—is a recipe for trouble.

8. The White House must let Justice do its investigation without interference. Any hint of attempts at interdiction or manipulation would raise the spectre of Watergate.

9. The White House also should avoid any future contacts with subjects of the investigation that might provoke cover-up allegations.

10. You should continue to demonstrate that you are engaged fully in the business of running the government and not distracted by these side shows. If the press senses concern, its efforts redouble.

11. Because you will continue to receive reporter questions about these matters, I respectfully suggest that you always be prepared personally with a response to the issues of the day. I expect that ''no further comment'' often will suffice.

I hope the above views are at least somewhat useful. Kristina and I hugely enjoyed the opportunity to visit and recreate with you and Hillary in Hilton Head. The football game was stupendous fun; the ''scrum play'' was the call of the day. I only wish the rest of America knew you as the Renaissance family does and had heard your moving remarks on Saturday night.

Best regards,

JAMES HAMILTON.

Mr. SHELBY. Mr. President, just to paraphrase some of it, not all of it, in this advice to the President by Mr. Hamilton, the attorney:

The White House should say as little and produce as few documents as possible to the press. Statements and documents likely will be incomplete or inconclusive, and could just fuel the fire.

Listen to this advice to the President:

The White House should ensure that what statements it does make are consistent and coordinated. Erroneous or conflicting statements could be disastrous; the Nixon White House brought huge trouble upon itself by issuing inaccurate, inconsistent statements about Watergate. The Washington Times in particular has dissecting current White House communications.

Then, item No. 6 on the advice to the President:

The White House should not forget that attorney-client and executive privileges are legitimate doctrines in proper contexts. While the ongoing release of Whitewater documents to Justice seems appropriate, Bernie initially acted properly in protecting the contents of Vince's files.

Item 11:

Because you will continue to receive reporter questions about these matters, I respectfully suggest that you always be prepared personally with a response to the issues of the day. I expect that ''no further comment'' often will suffice.

Now, Mr. President, item No. 2, back on the first page of the letter which I have introduced, to the President by Mr. Hamilton says:

Investigations, like other significant matters, must be carefully managed. One person in the White House, (Bruce I assume) should be assigned responsibility for coordinating information gathering, responses to official inquiries and public statements about these matters. This cannot be treated as an incidental assignment.

However, Mr. President, rather than heeding the advice, this advice which has, in fact, led to the same mistakes that the Nixon White House made, I think the White House should be forthcoming on these subpoenas. If they have nothing to hide, and I hope they do not, why go through the exercise? Why go through this?

What are we interested in, Mr. President, as this committee? We are looking at the truth of what went on. Did they have information that they should not have had? Where did they get this information? I believe the President would serve himself well and the American people if he produced these documents with no conditions, without reservation.

Mr. DODD. Mr. President, let me begin by addressing some of the issues that have been raised by my colleague from Alabama.

Clearly, anytime there is a confrontation between the executive

branch and the legislative branch, which oftentimes happens, people are going to make similar arguments. We should not be surprised if some statements sound similar.

But comparing Watergate and Whitewater is just ridiculous in the mind of this Senator—there is just no comparison whatsoever. When someone tries to make that sort of comparison they are just creating some sort of sideshow.

The comparison is spurious. First, no one ever sought to invade the attorney-client privilege of President Nixon. President Nixon raised the issue of executive privilege. The appropriate committees during that period respected the attorney-client privilege when it was raised. Now, Executive privilege was another matter, but attorney-client privilege, even in Watergate, was never breached.

Second, when the executive privilege claims of President Nixon were overcome, it was only through a grand jury subpoena issued by Special Prosecutor Cox. As I mentioned earlier, the independent counsel in our case has reached an agreement with the White House concerning the notes that are at issue in the subpoena. So the situation is completely different.

Also, during the Watergate matter, the Senate's attempt to get the material obtained by Special Prosecutor Cox was rebuffed by the courts.

Finally, the Special Prosecutor's efforts to get materials in the Watergate matter occurred in the context of overwhelming evidence of criminal conduct—obstruction, misuse of the CIA, FBI, and IRS, the payment of hush money, clemency for burglars. By contrast, in the Whitewater matter, after months of hearings by the special committee, there is no evidence of impropriety much less illegality by the Clinton administration.

In fact, my colleagues may have seen buried away in the newspaper articles in the last couple of days, that Pillsbury Madison & Sutro, an independent law firm, just completed a report examining whether there should be any additional civil proceedings against the Clintons with regard to Madison Guaranty Savings & Loan and the Whitewater Development Corp. The report was commissioned by the RTC and it took 2 years and $4 million for it to be completed. Mr. President, this report, which I am going to ask unanimous consent be printed in this RECORD—it was made a part of our committee record the other day—goes into great detail, and concludes that no further action should be taken against the Clintons. It exonerates the Clintons.

So, when we compare the obstruction of justice and the great criminality that a special prosecutor saw in Watergate and compare that with this particular case, it just goes to confirm what many people, unfortunately, are feeling here. This is becoming a political sideshow, and it should not.

Every Member has the right to raise whatever issues they want, but I do not think it does us any good as an institution, nor the committee, when we start drawing comparisons that have no relevancy whatsoever when it comes to the particular matter that we are being asked to address.

Mr. President, let me also address one of the comments that was made by my friend and colleague from Utah, Senator BENNETT. He said, in effect, that we need this kind of pressure to get evidence from the witnesses.

Again, I just remind my colleagues here, this year alone we have had 32 days of hearings and meetings on this matter. Last year we had extensive hearings on this matter. We have spent now a total, if you take congressional committees and you take the independent counsel's activities, over the last year or so, we have spent in excess of $25 million. Let me repeat that, the taxpayers have paid over $25 million on these investigations. To date, there has been no substantial evidence of any illegalities or unethical behavior. That has been the conclusion of witness after witness.

The White House has submitted to the committee over 15,000 pages of official records without a single court order being necessary, not one. The President's personal attorney has produced 28,000 pages of documents. Every witness that has appeared, last year and this year, has come at the urging of the White House. So when my colleague from Utah says without the pressure of having a subpoena filed, or the Senate as a body taking an action—that is not borne out by the facts.

We can disagree with what witnesses say. We may have problems, as the chairman has had, with the testimony of a number of witnesses. I respect that. I am not suggesting that we have all agreed with all the testimony. But there is a significant difference between what has happened in this matter, and what has happened in the past. We are all familiar with previous administrations that fought congressional committees tooth and nail. That has not been the case here.

It is very important, I think, for our colleagues and the public at large to understand that significant difference. This White House has been extremely forthcoming, extremely forthcoming when it comes to documents and when it comes to witnesses appearing before our committee. So the notion that it would be impossible to get any kind of negotiated result on the issue now before us, based on what has happened previous to this, is not borne out by the facts.

To the contrary, we have been able to reach agreement on virtually every other issue that has come before us without having to go to the courts. So, for those of us who stand here today and urge this body and urge our colleagues here to try a little bit harder to resolve this issue without getting to the courts, that is based on the fact that we have not had to do that yet. We have completed an awful lot of work without any problems. The committee has taken over 150 depositions and over 70 witnesses have appeared before the committee. As the chairman pointed out the other day in committee, we are basically through with the first two phases, other than some witnesses that need to be brought back. But we are prepared now to move to the last phase.

So here we have gone through all of this without having to resort to the courts. We are down to a legitimate issue here. The White House is not being obstructionist, this is not Watergate. As our colleague from Maryland pointed out, there are significant legal scholars who believe that the executive branch assertion of attorney-client privilege here has merit. In fact, they go to some length and cite the case law and so forth that upholds their point. I know there are others who have a different point of view. I am not arguing there are others who have a different point of view.

To the chairman's credit and to his counsel's credit, there has been an effort here now to narrow this and get it done. As I said to my colleague from Utah a few minutes ago, the independent counsel now has agreed to conditions with the White House. He is satisfied with an agreement that will protect the White House from a waiver of the attorney-client privilege. Our chairman in our committee would be satisfied with a similar agreement. The one missing link in all of this is our colleagues in the other body, to get them to agree to what the independent counsel has agreed to, what the chairman has agreed to, and what the White House has agreed to; that is, to turn over these documents with the understanding there has not been a general waiver of the attorney-client privilege.

Clearly, it is not unreasonable for the White House to pursue these agreements. As has been pointed out by legal experts, there have been a number of cases where, if you waive the privilege in one instance, it is seen as subject matter waiver. So there is a legitimate interest in trying to make sure that, in order to comply with committee's request to look at the notes from this meeting, that the President has not waived his attorney-client privilege. Understandably, the President wants to avoid a fishing expedition that goes off in a number of directions. All of my colleagues can appreciate that concern.

We have to remember that we are setting a precedent with our actions today. And that precedent could also affect Members of this body. Like the President, we are public officials who have both public and private roles. Some of my colleagues on one side of the issue today may change their minds when, in the future, someone argues that they have waived their attorney-client privilege in similar circumstances. We can all understand the

President's argument, that he needed both his private attorneys and counsel for the Presidency in that meeting in order to properly address all of the issues that might arise. As has been noted, legal scholar after legal scholar after legal scholar has said that is an appropriate invocation of that privilege.

So it seems to me we ought to try to avoid going to court on this issue. That is why we make the strong case we do here. It is not because someone is trying to hide documents. If that were the case, then I suspect the executive branch might rely on the advice of legal experts and say let us just take it to court. But they have said they will turn over these documents, but do not ask us to waive, on the entire subject matter, the attorney-client privilege. We do not want to do that. And I do not blame them for not wanting to do that. I do not think anyone would, given the dangers associated with that particular approach.

So, I am still hopeful that, given the history of this White House, when you go back and look over the last 2 years, the dozens and dozens of witnesses, the thousands of pages of documents, an agreement can be worked out. I hope future administrations will look at how this administration has responded, again, never requiring the committee to go to court, never requiring the committee to drag witnesses in, never requiring the committee to fight for documents. So, with all due respect to my colleague from Utah, because of that cooperation, there is an opportunity to resolve this issue short of a vote by the full Senate. And the fact that the independent counsel has reached an agreement, the fact that the committee could settle for a similar agreement, suggests that we ought to try to meet with our colleagues in the House and resolve this matter quickly and efficiently. Lets get the notes and move on so this committee can complete its work.

My hope would be in these coming hours here that will be the result. Some may say, well, if we can vote on it here, we will put more pressure on them. There will then be the vote of the U.S. Senate, issuing subpoenas where attorney-client privilege has been invoked. I think that is a wrong approach to take on this matter.

I point out, Mr. President, I have referred to the Pillsbury Madison & Sutro report on the RTC issues. Again, I urge my colleagues to obtain a copy of this report and to review this report and to examine the results.

The Wall Street Journal reported the results the other day.

Let me quote, if I can, the Wall Street Journal story on this report:

> President Clinton and Hillary Rodham Clinton had little knowledge and no control over the Whitewater project in which they invested, and they weren't aware that any funds that went to Whitewater may have been taken from Madison. . . . Accordingly, there is no basis to sue them.

Mr. President, let me emphasize that: ''There is no basis to sue the President or the First Lady.'' That is not Democrats and Republicans sitting there squabbling about this; that is an independent investigation, which took 2 years, without the glare of hearings and cameras, and on the central issue they say that no further civil proceedings should take place. That is a very important piece conclusion.

So, again, I hope in the next few hours that our colleagues would adhere to the advice of our colleague from Maryland and others, and take care of this matter without going to the courts. Let us avoid a dangerous precedent.

I know what is happening here. Some of my colleagues are thinking, ''Well, you know, we have them on the ropes now. What are you trying to hide?''

Obviously, that is just politics. We all know that. You can cause some damage with just the photograph of witnesses huddling with lawyers. That is titillating. That is exciting stuff. ''Now they are bleeding. Now we have them.''

That is what we really have going on here now. We ought to try to avoid that. Our role, fundamentally, is legislative. We conduct investigations, of course, but that is primarily to help develop legislation. And it seems to me that, where you have a White House that is cooperating, you ought to avoid a confrontation with the executive branch.

After all, it is not clear what the third branch of government, the judiciary, will do. In similar cases, the courts have thrown the matter right back to us and have said, ''Look, you people sort this out your own way. We are not going to make the decision for you.'' So we may end up, after months of squabbling, in no better position than we are in today.

So I urge my colleagues, let us adopt a resolution, if you will, or language which would urge us all to stay at that table and resolve this over the next few days. I believe we can. As I say, we are down to one last entity here. We are down to our colleagues in the other body being satisfied that this is an acceptable agreement. The independent counsel agrees, we agree, and the White House agrees. This is not a time to provoke an unwarranted and unwise confrontation that would create problems for us in the years to come.

Mr. FAIRCLOTH addressed the Chair.

Mr. D'AMATO. Mr. President, I intend to yield to my friend and colleague who has been on the floor for quite a while. If I might, without prejudicing anybody, ask my colleague——

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. D'AMATO. Might I ask my colleague to give me a minute?

Mr. FAIRCLOTH. Sure.

Mr. D'AMATO. First of all, I want to thank the Senator from Connecticut for an observation that he has made. It is not easy when there are politically charged times and atmosphere. Admittedly, this is. We would be disingenuous at the least to say that it was not. So I admit that. Therefore, it takes even more courage for the Senator from Connecticut to recognize that the chairman—and, more importantly, that the committee—has really made every effort to avoid unnecessary confrontations, repeatedly, as it is related to documents that may have been in the possession of White House counsel, documents that may have been in the possession of Mr. Foster's counsel.

We have set up procedures whereby we could have review of notes, where counsel will agree, or where the ranking member and the chairman would agree, so that we would not put matters into the public domain that had no relationship to this committee. So we have made these extraordinary efforts, and indeed it was on the basis of the two suggestions that the White House did concede.

We indicated that we were quite content to get the notes. That still remains our position. We are not looking to invade any legitimate claim or to speak to the President's counsel. At least we are not as it relates to what he did, et cetera, or what advice he may have given to the President. We are not asking that. That is an important acknowledgment. I want to thank my colleague.

Unfortunately, we can only speak for ourselves and we can do on the committee—Democrats and Republicans. Unfortunately, that is not the connotation that has come from those many associated with the White House or from the White House spokesperson. If you could read their statements, there is a failure to acknowledge the great and extraordinary lengths that over a period of time—not just with respect to this matter—we have engaged in, and certainly I would submit that we made every effort not to move it, but it has finally reached a point where I determined that it was necessary for us if we are going to resolve this and move to this point. So I make that observation.

Mr. DODD. If my colleague will yield, I appreciate that, and I realize that we will at times have disagreements.

I also made the observation—I ask my chairman and friend —that this administration has been extremely forthcoming with witnesses and documents the committee has wanted.

Would not my colleague agree that is the case?

Mr. D'AMATO. There I have to say we have a disagreement, and we just do. I am not suggesting that there have not been many areas as it relates to documents that have come forth.

Mr. DODD. But we have not had to go to court.

Mr. D'AMATO. That is right. I think the reason that is because we have made an extraordinary effort—''we'' being the committee—on a bipartisan basis both before, when my friend and colleague and the Democrats were in

the majority, and since we have carried that further.

So I say the committee has made the extraordinary effort in a bipartisan effort to interact and to do our job appropriately. But as it relates to the ''forthcoming,'' some of this may not be fair, but I will make an observation as it relates to witnesses and production of documents. Without going through the whole thing, I believe that it has not been an exercise of the same faith and bipartisanship that we have operated with in the committee.

Mr. DODD. I appreciate my colleague's comments. I would just say, if you use other examples——

Mr. D'AMATO. There are always examples. Look, some people can do these things better in terms of an appearance, and I do not want to, ourselves, to degenerate into who did more and less and who withheld and who did not in terms of all of the administrations that the Congress has dealt with. But I would say it is not the quantity of records that are produced but it is the quality. It is the fact that information that is important and goes to the essence of this investigation has to be produced in a timely manner without there being bits and pieces. Of course, some of that comes from witnesses themselves who may not be fair. And it would not be fair, for example, as it relates to Mrs. Thomases' testimony and also the production of records as a kind of a trickling. But the same could be said in other areas as it relates to the White House. But again we could disagree on that. And I respect my colleague's right to share a difference of opinion on it.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. FAIRCLOTH. I rise in strong support of Senate Resolution 199. Mr. President, Whitewater has come to mean many things to many people, but it is worth discussing how we arrived at this point. It is worth reviewing how Whitewater became a national story because it tells us something about the failure of the savings and loan industry and it also tells us a lot about the ethics of Bill and Hillary Clinton.

In February 1989, Madison Guaranty Savings & Loan failed. The failed cost to the American taxpayers was $60 million. This may not seem like a lot of money in Washington, but beyond the beltway it is still considered a sizable amount. In fact, the entire savings and loan crisis cost the American taxpayers $150 billion, which is truly a staggering amount. Is it any wonder that the Banking Committee has every right—in fact, a duty—to review the cause of the crisis? While Madison was a small institution, its failure ranks as one of the worst. It failed to the taxpayers; over 50 percent of its assets were lost. The taxpayers had to pick them up. Fifty percent of its assets were totally worthless.

Jim McDougal took over Madison from 1982 to 1986. In 4 short years, the so-called assets grew from $6 to $123 million. During McDougal's tenure at Madison, loans to insiders increased from $500,000 to $17 million—insider loans from $500,000 to $17 million. Madison, frankly, was typical of many savings and loans in Arkansas. During his tenure as Governor of Arkansas, 80 percent of Arkansas State chartered thrifts failed, costing U.S. taxpayers $3 billion. That is $3 billion in tax money because the savings and loan system in Arkansas was run as a cozy operation without any worthwhile regulatory oversight. The Whitewater debacle was among one of the those risky real estate ventures that caused Madison to fail. We know from the hearings held by the House Banking Committee that at least $80,000 in insured deposits was taken from Madison Guaranty and siphoned off to Whitewater—$80,000 of it was lost on Whitewater.

Furthermore, the claim that the Clintons lost money is just absolutely false. They never had their money at risk. It was a sweetheart deal for the new Governor and much like the commodities trade in which Hillary earned $100,000 because she read the Wall Street Journal. Madison was a high flier. It has been called a personal piggy bank for the politically elite in Arkansas. I called it a calabash of intrigue.

I do not often agree with the editorial pages of the New York Times, but they somewhat paraphrased me and they said it was ''a stew of evasion and memory lapses.'' I think they are absolutely correct.

Mr. President, the central issue in Whitewater has been whether Madison received favorable treatment from the Arkansas savings and loan regulators because of Jim McDougal's close ties to Bill Clinton. Essential to the question is this: Did the losses to the taxpayers increase because Jim McDougal hired the Rose law firm to press his case with the State regulators which Bill Clinton had appointed?

The answers are becoming more clear. In just the last few days, on Monday, evidence was revealed that Mrs. Clinton was a lead attorney on matters relating to Madison at the Rose law firm. Further, and most significant, Mrs. Clinton may have made false statements—a Federal crime—to the RTC about who was responsible for bringing Madison's business to the Rose law firm. Mrs. Clinton contended in writing to the RTC that Richard Massey, then a first-year associate at the firm, was responsible for bringing Madison's business to the Rose law firm.

This is incredible, to say the least. It is unbelievable to think that a first-year associate would be responsible for bringing Madison as a client to the Rose law firm given the Clintons' close ties to Jim McDougal who ran Madison.

The unbelievable nature of this contrived story may be borne out in the notes of one of Mrs. Clinton's best friends, Susan Thomases. Miss Thomases was the point person for press stories regarding Whitewater in the 1992 campaign. She was in charge of attempting to distance Hillary Clinton from the failure of Madison. But her own notes read that ''Mr. Massey will say he had a lot to do with getting the client in.'' Her own notes show that the Clintons intended Mr. Massey to fabricate a story about who got Madison as a client for the Rose firm. This is a direct contradiction to what Mrs. Clinton had told Federal investigators. Mr. Massey has told the FDIC that he had no idea how the Rose law firm was hired by Madison.

Mr. President, this is significant for two reasons. First, it demonstrates the Clintons were involved in obtaining lenient treatment from the regulators for Jim McDougal and his savings and loan that was deep in financial trouble. Why? Because at the same time their friend Mr. McDougal was covering the Clintons' loan payments for Whitewater. McDougal was covering the Clintons' loan payments for Whitewater.

Can you imagine two Yale-educated attorneys that have no idea how their indebtedness was being paid? They knew full well. In exchange, the Governor's wife was going to exert her influence with the State regulators to help her friend and business partner, Mr. McDougal. It was quid pro quo, pure and simple, and there is not any other way to describe it.

Second, Mr. President, it is becoming more apparent that Hillary Clinton may have lied to Federal investigators. Her story that it was Mr. Massey who obtained Madison as a client is belied by the notes of her best friend.

Mr. President, in my opinion, the Whitewater hearings and the entire episode have been so full of so many half-truths, misleading statements and selective memories that it is only a matter of time before someone is guilty or charged with perjury. I think we have reached that point for some already.

It is clear that the Clintons tried to distance themselves from Madison and Whitewater. Had the American public been given the real picture in the wake of the savings and loan crisis, I think they would have reacted very differently to the insider quid pro quo way of doing business in Arkansas, particularly since the American taxpayers paid for the lax regulations.

Mr. President, Whitewater extends even farther than Madison Guaranty. It involves a small business investment corporation called Capital Management Services. This company was run by a man named David Hale. It, too, served as a personal bank for the well-to-do in Arkansas.

Its purpose was to make loans to the disadvantaged—the disadvantaged. But that turned out to be the ruling class in Arkansas. Regrettably, the American taxpayers paid over $3 million for the failure of Capital Management.

Mr. President, it is fact that Capital Management made a $300,000 loan to Whitewater. Now, you remember, it was supposed to be making loans to the disadvantaged. But Whitewater got $300,000. We have strong evidence that Bill Clinton asked that this loan be made. I think time will tell that David Hale is telling the truth when he said that Bill Clinton pressured him to make the loan to help benefit Whitewater. Here again the American taxpayers have paid to subsidize Bill Clinton's failed real estate venture.

That is essentially what these hearings are about: The loss of taxpayers' money in Madison, Whitewater, and Capital Management. Mr. President, these instances may have remained Arkansas history and been laid to rest but for three defining events. First, the tragic death of Vince Foster, close friend and deputy counsel to the President; second, criminal referrals made to the RTC regarding Madison and Whitewater; and, finally, the closing of Capital Management, David Hale's small business company.

Mr. President, Vince Foster's death on July 20, 1993, and the handling of his papers on the night of his death have raised the most questions with the committee. We know for a fact the First Lady spoke with Maggie Williams before Maggie Williams went to the White House and Vince Foster's office. We know they spoke later that evening when Maggie Williams returned to her home from Vince Foster's office and called the First Lady. We also know that, at nearly 1 a.m., Maggie Williams and Susan Thomases spoke. We have the sworn testimony of uniformed Secret Service officer Henry O'Neil, who saw Maggie Williams remove documents from Vince Foster's office on the night of his death.

Officer O'Neil is an 18-year career man with the Secret Service. All of this is fact. Within the last few weeks we have gathered more information that I think gives credence to the notion that files were indeed removed on the night of Mr. Foster's death.

First, two files relating to the Madison Guaranty were sent back to the Rose law firm by David Kendall. Yet, files were never part of the box that Maggie Williams said she took from Foster's office 2 days after his death.

These documents were reviewed and cataloged by Bob Barnett, the Clintons' other lawyer. The two Madison files never appeared in any list compiled by Mr. Barnett. In other words, they had been removed from the boxes before they were given to Mr. Barnett.

I think the files were removed by Maggie Williams and given directly to Hillary Clinton. We have further evidence that Maggie Williams visited the First Lady on the Sunday following Mr. Foster's death. Previously, Maggie Williams has said she did not see the First Lady until later.

We have Secret Service logs that show Maggie Williams spent time on the second floor residence of the White House on Sunday immediately after Mrs. Clinton returned from the Foster funeral. I believe that at this time Maggie Williams personally delivered to Mrs. Clinton whatever material she removed from Mr. Foster's office that night.

What evidence do we have to suggest that Madison may have been a problem or a concern for the White House or Vince Foster on July 20, 1993? This was the same day that a search warrant was authorized for the office of David Hale in Little Rock. That warrant sought information about David Hale's $300,000 loan to Whitewater via Madison Marketing and Susan McDougal.

Again, our Whitewater hearings have uncovered that the White House was aware of the Hale investigation from the very beginning.

We have testimony from a career Small Business Administration official. The SBA briefed Mack McLarty in May 1993 about the SBA investigation of David Hale. I have no doubt that within the legal circles of Arkansas, the impending search of David Hale's office was a well-known fact within the community. If so, this information surely would have reached Vince Foster.

We know Mr. Foster thought Whitewater was a ''can of worms,'' his own words, even before he became deputy White House counsel. We also know that the failure of Madison and the first criminal referrals were known to the White House.

In March 1993, Roger Altman, the Deputy Secretary of the Treasury, was informed of this referral naming the Clintons. Do we know that he relayed this information to the White House? We know that about the same time Altman received his briefings, two articles were faxed to Bernie Nussbaum's office—one sent so hurriedly that its cover sheet was handwritten by Josh Steiner.

The next day the same fax was sent again, this time by Mr. Altman's secretary. It is clear he wanted the White House to know more about Whitewater.

All of these matters were known to the White House. Madison, criminal referrals, David Hale, all were on the White House's mind. Maybe not the public's at the time, but certainly the White House was tracking events closely. Whether this was a defining moment for Mr. Foster, we do not know. But the circumstantial evidence that has been brought out in these hearings is very strong.

Mr. President, now we begin to focus on the significance of the November 5 meeting that is the subject of this subpoena. The RTC issued more criminal referrals on October 8. However, the White House had prior knowledge of these referrals. This is laid out carefully in the report on this resolution.

Jean Hanson, Treasury's general counsel, imparted nonpublic information to Bernie Nussbaum. Nussbaum then directed this information to Bruce Lindsey. He told the President. The existence of these criminal referrals became null after an October 31, 1993, article in the Washington Post. Six days later the White House gathered their legal team in the private office of David Kendall.

There, I believe, the White House imparted the information they had received in a Government capacity and used it to aid them in the private legal problems of Bill and Hillary Clinton. In other words, I believe they took information that they received because of their governmental capacity and used it for their personal and private legal problems. Further, this private meeting may have led to an effort to gather more nonpublic information about the Clintons' problem.

Just days later Neil Eggleston, one of the White House attorneys present in the meeting, sought inside information from the SBA about David Hale. Finally, some of what may have been discussed at this meeting, I suspect, could be perceived as an obstruction of justice if the White House did anything that smacks of interfering with the RTC or the SBA investigation.

Mr. President, this is what is so important about the November 5 meeting. It is really the missing link for the White House hearings. We know from our hearings in 1994 that the White House received privileged information about the RTC's investigation of Madison. We do not know what the White House did with the information. The November 5 meeting may finally reveal what they did.

It is inexcusable that taxpayers paid for these attorneys to essentially function as a private legal team for the Clintons. It is inexcusable that they would engage in this activity on Government-paid time. And it is inexcusable that they have the audacity to claim privilege as if they were private attorneys.

Mr. President, in short, the real importance of this meeting is whether the heads-up the White House received from Treasury and others turned out to be a leg-up for the Clinton legal defense team. That would be wrong, unethical, and possibly illegal. This Congress needs to find out which.

Finally, Mr. President, let me turn to another subject I have raised often in committee. Time and time again the subject of the First Lady's involvement in all of these issues has surfaced over and over for—soon it will be 3 years.

She handled Madison work at the Rose law firm. She was active in Whitewater. She spoke with Maggie Williams twice on the night of Mr. Foster's death, before and after Ms. Williams went to the White House. She spoke with Susan Thomases who, in turn, spoke with Bernie Nussbaum about calling off the official search of Foster's office. Her chief of staff, Maggie Williams, was briefed about the statute of limitations issue, which may have affected her personally and the Rose law firm.

Over and over, the subject keeps coming back to Hillary Clinton. I have

called for her to appear before the committee. My friend and colleague from New York has been patient, very patient—sometimes I feel too patient—in getting the answers. I do not think we can wait any longer, and I do not think we should wait any longer. We have to have the First Lady as a witness and under oath so we can get the real answers to our questions. This is the key to finding out what happened, and I do not know any reason why she should not be willing to come and clarify the problems we have run into. Without her testimony, no investigation will be complete.

Mr. President, let me conclude by saying that Whitewater is a very serious concern. We have a witness in Arkansas, David Hale, that has made a serious allegation against the President: That he pressured David Hale to make a phony $300,000 loan to Whitewater.

The President has denied this, but with Mr. Hale's cooperation, the independent counsel's investigation has now resulted in nine guilty pleas and five more indictments, including Jim McDougal, Bill Clinton's business partner, and the current Governor of Arkansas, Jim Guy Tucker, friend of the President and friend to David Hale.

Mr. President, the tide of Whitewater is rising. The scandal is getting closer to the President and the First Lady. It is getting closer to the White House by the day and spelling trouble for this President. What we can do here today may be the beginning of the end of the Clinton White House. These notes may begin to unravel the scandal and the truth finally may at last be told.

I yield the floor.

The PRESIDING OFFICER (Ms. SNOWE). The Senator from California.

Mrs. BOXER. Madam President, I am very pleased I was on the floor to hear my colleague from North Carolina because he has a theory about Whitewater, and he has every right to hold any theory he chooses. I respect his right to his opinion, but I am here to tell my colleagues that not only are his views not backed up by the facts, but they are contradicted by the facts. I want to take just one example.

He says the Clintons were actively involved in Whitewater. He said the Clintons were actively involved. Jay Stephens of Pillsbury Madison & Sutro just got paid by the RTC $3.6 million, and what does their report say? It was referred to by Senator DODD. I am quoting:

> There is no basis to charge the Clintons with any kind of primary liability for fraud or intentional misconduct. This investigation has revealed no evidence to support such claims, nor would the record support any claim of secondary or derivative liability for the possible misdeeds of others.

It goes on:

> It is recommended that no further resources be expended on the Whitewater part of this investigation.

So here you have a Senator who comes to the floor and says that the Clintons were involved when a Republican, a former U.S. attorney—and you can remember there were some people in the Clinton White House who were very concerned that perhaps he would not be objective—finds that, in fact, they have no involvement.

So to come on this floor and stick to a theory that has been disproven I do not think does this Senate any good, especially since we are trying to work with the facts.

Madam President, $3.6 million was expended to find out that the Clintons did not have anything to do with it, and we have a Senator say, ''It's getting worse. The tide is rising. We have to have Mrs. Clinton come before the committee,'' and all the rest.

I suppose there is nothing that I can say to my friend that will dissuade him from his theory and, therefore, I am not going to try to do that, except to continue to rebut what he says with the facts.

He has talked about obstruction of justice. He has talked about perjury, and I urge him to be very careful with the kind of things he says on the Senate floor, because I have to say it is very hurtful to reputations of people to throw those kinds of charges around here.

I speak today as a member of the committee who voted all along to continue this Whitewater investigation. Some of my colleagues in the last vote did not vote to continue it. They felt it was a waste of money. I felt it was important to continue it under the leadership of my chairman and my ranking member.

Why did I think it was important, and why do I think it is still important to continue this until it is done? Because I feel when allegations are thrown around here, either on this floor or in the press, it is very dangerous to allow those things to go unchallenged. So what we have is a committee that can look at these allegations, can bring the witnesses forward and can ascertain the facts. If we do not do it, then there are always going to be people out there who suspect wrongdoing, reputations will be ruined, and we will never get to the facts. So I support the work of this committee and continuing to do it in a bipartisan way.

That leads me to where we are today with the subpoena. I know, because I am very familiar with my chairman and my ranking member, that when those two get together and agree on something, they can move mountains. I find it hard to believe that if, in fact, the Republicans on the committee have agreed wholeheartedly to the conditions of the White House, which it appears to be so, that they cannot take it a step further, get together with the ranking member and counsel and sit down in a room with the other parties and reach an agreement.

Why do I say that? I say that because I believe to get into this confrontation in the courts is, at a minimum, going to delay matters. It is also going to cost more dollars, and I want to talk about that for a minute.

We are in a Government shutdown. We are in a government shutdown because it is so important to Republicans, particularly in the House at this point, that negotiations go just the way they want before they will allow the Government to continue operating. Frankly, I think it is embarrassing for the greatest Nation on Earth to have a partial shutdown of the Government because certain people act like children and will not do what we have to do, which is get a clean continuing resolution, keep the Government operational and take the argument over the long-term balancing of the budget into a room and figure it out. I voted for two balanced budgets in 7 years. Others have voted for other forms of balancing the budget. We can do it. Everyone is so concerned about spending money, but not the Republicans when it comes to this investigation.

It is incredible to me. Madam President, $1,350,000 has been spent thus far by the Senate committee; $10,000 a week on little TV sets they have all across that room—$10,000 a week. But they are worried about balancing the budget. So you take documents and instead of handing them out, you put them on a screen. You cannot really see it anyway. It is a waste of money, but money does not matter when it comes to Whitewater. But I suppose it was too hard for our committees to hold hearings on the drastic cuts in Medicare, where we did not hold any on this side and there was one held in the House. But when it comes to Whitewater, we can meet and meet and meet. And we can enforce the subpoenas and waste more taxpayer dollars and not get the documentation we want. I want to see those documents. It seems to me that if we support the alternative that will be offered by our ranking member today, Senator SARBANES of Maryland, we can get everything we want. We can avoid a costly subpoena battle. We can avoid, frankly, losing in the courts, which would harm the U.S. Senate out into the future, and we can get the information if we sit down together with our colleagues in the House. I served over there for 10 years. I think JIM LEACH and PAUL SARBANES, AL D'AMATO, and the other principals can sit down and figure this out. But, oh, no, we are bringing this to a confrontation. Most of my Republican friends have not even talked about that. They just talked about their view of Whitewater.

Money is no object when it comes to this, friends. So when you wonder why they are shutting down the Government and they tell you, ''Oh, my goodness, it is the only way we can get a balanced budget,'' ask them why we are going to spend all this money on Whitewater. I do not think you will get a very good answer.

Waco—hearings and hearings and hearings. Ruby Ridge—hearings and

hearings and hearings. Whitewater—more hearings. Medicare cuts—no hearings. One begins to think, are we only here to deal with politics, or are we here to deal with substance? So we face an unnecessary legal confrontation, it seems to me. I think that the ranking member, Senator SARBANES, is going to offer us a very wise way out, a way that would result in getting the papers that we need and keeping this away from the courts, which is always costly and time consuming.

When you look at what has been spent so far on Whitewater, it is staggering—$1.350 million in the Senate. I told you about the RTC investigation, which was $3.6 million. We just referred to the Stephens report, which just was a recommendation not to file a civil lawsuit against Bill Clinton. Then you have the independent counsel, which has cost $22 million to date, and 100 FBI agents, not only looking at this President and his family and all of his dealings now, but all the way back to campaigns for Governor, and everything else. Well, I will tell you, when this is over, this President and his family will have had more scrutiny than a chest x-ray. Every detail—$27 million total—without including what the House has spent. We do not know what they have spent because it is hidden in their Banking Committee.

We have had 32 hearings, or public meetings, of our Senate committee. So how anybody can say, we better rush and do this subpoena and get to court because we have not had enough meetings, enough information—I think, frankly, the people are losing faith in this Whitewater investigation, and I would not blame them. We do not listen to the impact of cutting Medicare and Medicaid and education and the environment and shutting down the Government. We do not do that. But there is hearing after hearing, millions of dollars after millions of dollars spent to do what? So that the Senator from North Carolina can get his wish and the First Lady is going to come before the Senate committee. After the Clintons have been exonerated in a $3 million study by Jay Stephens, our Republican former U.S. attorney.

Madam President, I was not on the floor when the Senator from Alabama spoke, Senator SHELBY, but I understand that he took quotes from Richard Nixon and Bill Clinton, and the whole implication is that—it is not hard to get to the bottom line —this is terrible, and this is going to result in the President resigning. That is the implication. Well, I have to say, we have seen more smoking guns in this investigation than I ever saw in a cowboy movie.

Smoking gun No. 1: Jean Lewis' testimony—this was their star. She was billed as their star, and she came before us to show how the administration has muzzled her investigation. As it turns out, her appearance only showed, in my view, how biased her investigation was. She even planned to profit from it by going into the T-shirt business. It was embarrassing to think of a professional woman, who was their star, who took phone calls about her T-shirt business in her office. This was their star. By the way, she said her tape recorder went on by itself, miraculously, and she taped, without her knowing, a woman from the RTC, and then she gave that tape over to the committee to show this other smoking gun which turned out to be not very much.

We also learned in that questioning period that this woman had a bias against the President. Oh, that caused a big brouhaha. She had written about the President in a negative fashion, in an obscene fashion, right before she made the referrals, which named the Clintons as possible witnesses. That is the number-one smoking gun, the No. 1 star of their show.

The second smoking gun: The letter from the President's lawyer—

Oh, I must say, sadly, Miss Lewis got ill in front of the committee. I hope she is better now, I really do. But I was not finished with my questioning. I do not know if I will ever have a chance to continue it because I had a lot more questions. But she became ill, clearly, and had to leave.

The second smoking gun: The letter from the President's lawyer, David Kendall, to the Rose firm attaching three Madison Guaranty files. Our committee chairman, in a public hearing, called the letter a ''smoking gun,'' in his words, alleging that the attached files were likely taken from the White House office of Vince Foster. Mr. Kendall testified that he had not gotten the files at all from Vince Foster's office.

The third smoking gun: The Small Business Administration's mishandling of the David Hale matter. That has been referred to by my friend from North Carolina.

Another smoking gun was the allegation that the SBA delayed the investigation of David Hale's misuse of SBA money. Well, my goodness, what did the testimony show? Not only did the SBA move forward aggressively, under Erskine-Boles, with the investigation, but Hale was indicted in record time—in record time—leading some members of the committee to say that is a model for all administrations to follow because the administrator knew that David Hale, who knew the President and the First Lady, was from Arkansas, and he said, go after them, and they did.

Smoking gun No. 4: The secret telephone number called by the First Lady the night of the Foster suicide. This hung out there in the press. Who did she call? A secret number. Nobody knows. The telephone company did not know. No one knew. The investigative team could not find out. Well, it was a big smoking gun. It was a phone number that was used when the White House switchboard was overloaded. It was a White House switchboard number. And the testimony from Bill Burton, who spoke to the First Lady, was exactly this: The First Lady called him at the specific time that the committee was after, and said, ''Please make sure that Vince Foster's mother is told this news in the most caring way, with her minister present, so that she does not learn of it through news reports.'' That was smoking gun No. 4. Maybe having a compassionate First Lady is a bad thing. I happen to think it is a good thing.

Smoking gun No. 5, the Jay Stephens report. There we were again. What is going to happen with this civil investigation? Are we going to see that the Clintons spent a lot of time with Whitewater?

Madam President, $3.6 million smoking gun. Well, it just came out. They said Whitewater had cost Madison Guaranty a minimal amount of $60,000 to $150,000. At most, there was a $60 million loss to the institution. The Clintons, as far as they could tell, did not know much about Whitewater, and there was no case. Do not proceed.

Now we come to smoking gun No. 6, and nearing the end of my comments today, the notes of White House counsel William Kennedy. The notes were taken when the President's lawyers met together when they were handing over the information to the private attorney. The undercurrent that has been out there is the President has something to hide, except for one thing. They are ready to hand over the papers. They are ready to hand over the papers. First, they had five conditions. They are down to one condition. Down to one condition. We have agreed with that condition in a bipartisan fashion. We think the independent counsel has, although we have not confirmed it. That is our belief. Which leaves the House.

Now I know those people over in the House, and I like them. I think we ought to talk to them face to face and get them to understand that by taking the position they are taking, we are not going to get the papers.

Why do we want to have a court fight that would set a bad precedent? It does not make sense. All individuals have an attorney-client privilege. It does not matter whether you are the poorest of the poor, the richest of the rich, the most powerful or the least powerful. That is what is so great about our country. We do not go on political witch hunts and deny people their rights.

In this U.S. Senate in the Ethics Committee on the PACKWOOD case, Republicans and Democrats together said that the attorney-client privilege for Bob Packwood must take precedence. So I have got to be a little surprised when that occurs in the Ethics Committee, and we are bipartisan, and suddenly here we are splitting into Democrats and Republicans. That is bad for this institution. It is bad for this investigation. It is bad for the precedence of the United States. Frankly, I think it is bad for individual Senators.

Who knows some day when one of us might say, I do not want people to see the private notes of my attorney on a divorce. I do not want someone to see the private notes of my attorney in a child custody case, or an ethics proceeding, or any kind of matter where we may be involved.

We should stand together on the principle as we did in the Packwood case, and we know emotions were running high in that case, but we did not invade that attorney-client privilege, as our ranking member, Senator SARBANES, has pointed out far more eloquently than I because I am not a lawyer. I am just trying to bring some common sense to the discussion and to move along the process of the committee's work and getting the notes that we want to get.

I think we should send the resolution back to the committee with instructions to consider all reasonable ways of obtaining the notes. I think that we can do it. I have seen my chairman and my ranking member team up and be very persuasive, and I think if they teamed up on this and they sat down with their counterparts in the House, we could resolve this in a moment's time. That is the faith I have in their ability to work together.

The bottom line is, do you want to get the notes or do you want to play politics? That is the way I see it. I hope we decide we want to get the notes, we want to do it in a way that keeps this committee working in a bipartisan fashion because, frankly, if we do not stick together on this, on the procedures, I think the American people are going to think this is all politics and all the hard work that we do to put light on this subject will simply not be respected.

Thank you. I yield the floor.

Mr. HATCH. Madam President.

Mr. FAIRCLOTH. Will the Senator yield?

Mr. HATCH. Without losing my right to the floor, and I ask unanimous consent in that regard.

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

Mr. FAIRCLOTH. Very briefly, I reply to the honorable Senator from California. I do not intend to get into a point-by-point debate.

Mrs. Clinton has admitted while Jim McDougal was on trial in 1990, she took over Whitewater affairs. She even sought power of attorney in 1988. In fact, the Clintons have all of the Whitewater documents. They were so active that they had to turn back boxes of documents to Jim McDougal so he could do the return.

Finally, the reason Pillsbury Madison might have said there was no wrongdoing, they simply do not have the information that has been available to this committee and will be available to the committee.

To answer one three-line quote, and I am quoting Mrs. Clinton as to her involvement in Whitewater, her words:

Because my husband was a fourth owner of Whitewater Development Company while he was actually occupied as Governor of Arkansas, it fell to me to take certain steps to attempt to assure that Whitewater Development Corporation affairs were properly conducted and that they complied with the law.

If that does not involve her, I do not know what does. I thank the Senator from California.

Mrs. BOXER. If the Senator would yield for 30 seconds.

Mr. HATCH. Under the same unanimous-consent request.

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

Mrs. BOXER. I say to my friend from North Carolina, and I respect his right to hold any view he wishes, what he said is, essentially, that he does not agree with the conclusion of this report.

I just want to reiterate, Madam President, that $3 million was spent on it. It was headed by a very well-respected Republican former U.S. attorney, James Jay Stephens. Clearly, it says, ''The evidence does not suggest the Clintons had managerial control of the enterprise or even received annual reports or financial summaries. Instead, the main contact seems to consist of signing loans and renewals.''

To suggest some 3-point-some million dollars they spent here did not give them the information they need is, really, it seems to me, an indirect hit at Mr. Stephens and Pillsbury Madison & Sutro. I take great pride in that law firm because that is in San Francisco. I think the facts do not bear out the intentions.

Mr. BYRD. Madam President, the distinguished Senator from Utah was on the floor before I was here. It is not a great matter of importance that I speak immediately, but I do have some other things that are going to demand my attention later. I wonder if the distinguished Senator from Utah could tell me how long he might be speaking?

Mr. HATCH. I do not believe I will be very long, and I am happy to yield to my distinguished colleague, but I ask unanimous consent that he be permitted to speak immediately following my remarks, which should not be too long.

Mr. BYRD. That would be very fine.

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

Mr. BYRD. I thank the distinguished Senator for his characteristic courtesy. Could he tell me about when he might end?

Mr. HATCH. I do not think I will be much more than 15 minutes. Pretty close to 3 o'clock, maybe a little less than that.

Mr. BYRD. I hope the Senator will not hurry.

Mr. HATCH. I appreciate my colleague. I am happy to yield to him.

Mr. SARBANES. If the Senator would yield, given the agreement, maybe we could even put in a quorum call if it catches the Senator from West Virginia unaware at the conclusion of the time. I am sure that is agreeable to the chairman.

Mr. D'AMATO. Why do we not say—we have been trying to work this back and forth, and certainly the Senator from West Virginia would be recognized, and if he needs an opportunity to come to the floor, and I make an observation I would yield immediately. Why do we not just keep it at that, and he will be recognized thereafter or as soon as he comes to the floor.

Mr. BYRD. I thank the Senator from New York and I thank the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I appreciate the action of my friend from West Virginia because I know how busy he is, as all of us are, and my friends who are managing this bill. I think I would always yield to him, if I could. But he has been gracious enough to ask me to go forward.

It has been implied in this debate that I have been listening to that the Whitewater investigation has been a waste, that it has been too costly and too expensive. I have to say, I did not hear the same arguments during the Iran-contra problem. But let me say, I would note that the Whitewater investigation has resulted in five indictments, including the indictment of a sitting Governor, and nine guilty pleas so far.

We have also seen the No. 3 person at the Justice Department go to Federal prison. I personally feel badly about that because I liked him very much. I still like him very much and I am sorry he has had that difficulty. But I have to say, it shows that the Whitewater investigation has not been in vain, that it has been extremely important.

Frankly, the investigation is not complete. I wonder how much all of that work is worth to the country. It seems to me the American people would want to investigate wrongdoing. I think the record shows that the independent counsel is moving ahead in an appropriate manner. And I believe the distinguished committee on Whitewater is moving ahead very well, too. I commend the two leaders, Senators D'AMATO and SARBANES, for the good way that they worked together and the tremendous amount of work they have done on this—plus their counsel. Their respective counsel have been as good as any I have ever seen.

Having said that, Madam President, I rise in support of the resolution to authorize enforcement of the subpoena to obtain notes from a White House meeting concerning Whitewater. I do not take this step lightly, however. As chairman of the Judiciary Committee, I see it as my duty to defend the prerogatives of the executive branch and the separation of powers. Indeed, I recognize that the executive branch has a right to confidential communications regarding its core functions. After giving this issue careful thought and consideration, however, I have decided that enforcing the subpoena is the proper course of action to take. This

issue transcends claims of partisanship and goes to the very constitutional authority of Congress to investigate wrongdoing at the highest levels of Government.

The Senate has a constitutional obligation to conduct oversight hearings. It is a duty we must not surrender. The President has refused to comply with a legitimate request to obtain information relating to Whitewater. After President Clinton's initial refusal to provide the meeting notes, the Special Whitewater Committee took the wholly appropriate step of subpoenaing the notes. It is unfortunate that the President has chosen to resist the congressional subpoena. Not only has President Clinton defied a Congress that is in good faith attempting to investigate a matter of great public concern, he has chosen to do so by hiding behind a questionable claim of attorney-client privilege.

I would like to review the claim of privilege the President is asserting and explain to the American people why it is simply not credible.

First, the President not only claims that the November 5 Whitewater meeting is cloaked in attorney-client privilege, but that the privilege applies against Congress. No Congress in history, however, has recognized the existence of a common-law privilege that trumps the constitutionally authorized investigatory powers of Congress. While Congress has chosen, as a matter of discretion, to permit clear, legitimate claims of privilege, it has never allowed its constitutional authority to investigate wrongdoing in the executive branch to be undermined by universal recognition of the attorney-client privilege. As Senator SARBANES has noted, we have chosen, in our discretion, to recognize the privilege with respect to some of the witnesses who have testified before the Committee.

The attorney-client privilege exists as only a narrow exception to broad rules of disclosure. And the privilege exists only as a statutory creation, or by operation of State common law. No statute or Senate or House rule applies the attorney-client privilege to Congress. In fact, both the Senate and the House have explicitly refused to formally include the privilege in their rules. As the Clerk of the House stated in a memorandum opinion in 1985: ''attorney-client privilege cannot be claimed as a matter of right before a congressional committee.'' The attorney-client privilege is a rule of evidence that generally applies only in court; it does not apply to Congress which, under article I, section 5 of the Constitution, has the sole authority to ''determine the Rules of its Proceedings.''

The historical practice of congressional committees has borne this out. As Joseph diGenova, a special counsel and former U.S. attorney, has pointed out in an article in today's Wall Street Journal, as early as in the 19th century investigation of the Credit Mobilier scandal, Congress clearly refused to recognize attorney-client privilege. Indeed, in 1934, Senator Hugo Black, later one of the Supreme Court's great liberal justices, as chairman of a committee refused to recognize the privilege. As recently as 1986, a House subcommittee, Committee on Foreign Affairs, Subcommittee on Asian and Pacific Affairs, took pains to note that it need not recognize the privilege asserted by individuals involved in setting up a web of dummy corporations for the Marcos family.

This body cannot simply take the President's claim of privilege against Congress at face value. To do so would be to surrender an important constitutional obligation. We can not compromise the ability of the Congress to conduct investigatory hearings. I ask my colleagues on the other side of the aisle to place partisan politics aside and to support the institutional integrity of this body.

Second, the President has stated that he is merely asserting the type of attorney-client privilege that any American would claim with respect to his or her own attorney. I do not think that any of us would disagree that Mr. Clinton, as a private citizen dealing with personal legal troubles, has a claim of attorney-client privilege. That goes without saying. Certainly with regard to Mr. Kendall, his personal attorney.

The problem, however, is that we do not have an ordinary citizen here, nor are we in a court of law. An ordinary citizen does not supervise the law enforcement resources of the Federal Government; an ordinary citizen does not appoint or fire U.S. attorneys; an ordinary citizen does not direct the FBI; an ordinary citizen does not control IRS or the RTC. An ordinary citizen is not in the position to interfere with the legitimate law enforcement investigation of his own activities.

Indeed, President Richard Nixon did not assert attorney-client privilege. What would have happened if President Nixon had attempted to use the privilege to prevent White House counsel John Dean from testifying? That is essentially what is happening now. Even during the so-called Iran-Contra affair, Department of Justice lawyers concluded that the privilege could only be claimed by lawyers preparing for litigation, not preparing for congressional inquiries. Although the committee recognized attorney-client privilege for Oliver North and certain others, it did so only as a matter of discretion, which the committee has a right to do.

Thus, if we are going to recognize any attorney-client privilege of the President, we do so at our discretion. Now, in general I would be willing to recognize the privilege when it validly exists. Here, however, it clearly does not, and so Congress must issue the resolution to enforce the subpoena.

Courts recognize the privilege only for communications between a client and his attorney for the purpose of providing legal advice. It makes perfect sense that a person would be able to discuss legal matters with his or her lawyer that should not be revealed in court or to the opposing side. That is a well-established principle we can all agree with.

I, as well as legal experts such as former U.S. Attorney General William Barr, former U.S. Attorney Joseph diGenova, and Prof. Ronald Rotunda fail to see how Mr. Clinton can assert privilege over the November 1993 meeting. It is hard for me to understand how advice about a private legal matter could be given at a meeting where neither the President nor the First Lady were present.

An additional problem is that in addition to Mr. Kennedy and Mr. Kendall, other lawyers were at the meeting who represented the President in his official capacity. These White House lawyers had a duty to represent the American people as well as the Office of the President. It would be a violation of the basic ethical rules for Government lawyers to work on private legal matters for the President. A memo from the President's personal lawyers at Williams & Connolly concedes that each group of lawyers—the Government lawyers and the private lawyers—had a different client: the Government lawyers represented the Office of the President and the U.S. Government, the private lawyers represented the President in his personal capacity. Since they are representing different entities, they cannot share the same attorney-client privilege.

The administration responds to this straightforward legal point by drawing an analogy to the common-interest privilege that is given to coconspirators who are permitted to share advice and information in preparing a joint defense. This analogy collapses upon close examination. The supposed common interest is that both clients represented at the November 5 meeting—the Clintons in their private capacity and the Office of the President—faced adversarial legal proceedings. But in this setting, the only possible adversary for the Clintons is the U.S. Government, and one group of lawyers at the November 5 meeting—those representing the Office of the President, represent the U.S. Government, and were on the payroll of the U.S. Government.

Therefore, the U.S. Government and those lawyers who represented it could not possibly have a common interest with the Clintons in thwarting or defending against adversarial legal proceedings brought or potentially to be brought by the U.S. Government against the Clintons in their private capacities. In fact, the lawyers from the White House Counsel's Office represented the only possible adversaries of the President, and therefore there could not have been a common interest between the two groups of lawyers.

In fact, there is no claim that Whitewater involves the Office of the President; the issues should not involve the Presidency at all. At the

time that the Whitewater affair occurred, Mr. Clinton was not even President. It is hard to say that the Office of the Presidency was facing any adversary, with whom it would need to coordinate a common defense.

The White House, in a memorandum provided to the special committee, claims that this was a meeting in which the President's former private attorney, Mr. Kennedy, was handing off information to his newly retained counsel, Mr. Kendall. The White House's lawyers claim that they were serving necessary and important public interests at the meeting, and that they were at the meeting to ''impart information that had been provided to them in the course of official duties.'' What information was imparted? Surely the transmission of Government information to private attorneys is not protected by the attorney-client privilege.

I am deeply troubled by the fact that White House lawyers were present at this meeting. After all, these lawyers do not represent the President in his personal capacity. I am concerned about the possibility that Government lawyers, who have an obligation to the American people, as well as to the President, may have passed information to the Clinton's personal lawyers that the White House Counsel's Office may have gained through their official capacities. Is it the proper role of Government officials to act as messengers for Mr. Clinton in his private capacity to the President's private lawyers?

These lawyers were discussing Whitewater matters that were being investigated by the Department of Justice and the RTC—legal matters that would place Mr. Clinton in an adverse position to the U.S. Government. Essentially, Mr. Clinton is claiming attorney-client privilege over a meeting in which Government lawyers may have been involved in a strategy session to frustrate investigations conducted by other parts of the executive branch. I hope that nothing occurred during the meeting that would in any way sully the Office of the President. But to find out whether anything illegal occurred, the President must disclose the notes.

It is also likely that even if a privilege may have existed, it was waived. After all, Bruce Lindsey, who did not serve in the White House Counsel's Office at this time, but rather served in the White House Personnel Office, was at the meeting. He was not legal counsel to the President in either a personal or a professional capacity. To say that he represented the Office of the President as legal counsel at this meeting is dubious at best. Information discussed in his presence thus would constitute a waiver of the privilege. Were this legal fiction to survive judicial review, virtually any discussions or conspiracies involving lawyers could be claimed as privileges.

In order to avoid the brewing constitutional confrontation that will arise when this issue goes to court, I call upon the President to release the notes of the November 5 meeting now. It is in the best interests of the President, of the Congress, and, indeed, of the American people, for all the information concerning Whitewater to come out into the open. As Justice Louis Bradeis put so succinctly: ''Sunlight is the best of disinfectants.'' By being forthcoming with the American people, President Clinton can begin to put Whitewater behind this administration. While we must, in my opinion, vote today to enforce the subpoena, I would hope that we will not ultimately have to resolve this dispute in court. I would hope that the President would do as he has long promised: fully comply with the investigation into the Whitewater affair.

Having said all of that, again I note that this has not been a waste of time—the work these two leaders on the committee have done, the work the special counsel has done which has resulted in five indictments, nine guilty pleas, and the imprisonment of one of our top Justice Department officials.

I think those facts alone justify the work that the distinguished chairman of this committee has been trying to do.

So I want to commend him for the work he is doing, and I want to commend all members of committee for the attention that they have given to this work. And I hope that some of the comments that I have made will help on this matter.

I yield the floor.

Mr. D'AMATO. Madam President, let me, before Senator BYRD comes to the floor, first of all thank the Senator from Utah who also in his capacity as chairman of the Judiciary Committee has a keen insight, has been here and understands this area that sometimes might be somewhat difficult for people to grasp. But I think in the summation he went right to the heart of this matter. It is a matter of the President of the United States keeping faith with his commitment to the people, a matter of the President of the United States, President Clinton, keeping faith not only with the people but indeed with the Congress and the Senate. It is a matter of the President of the United States keeping faith with the commitment that he made on March 8. On March 8, 1994, the President held a press conference in connection with the appointment of Lloyd Cutler as interim White House counsel. During that press conference the President was asked about the possibility of asserting Executive privilege, and he gave a response. He said:

It is hard for me to imagine a circumstance in which that would be the appropriate thing for me to do.

Madam President, once again, the President has an opportunity to keep his commitment. It is not good enough to say one thing and to do another. It is not good enough to promise us cooperation and then hide behind technicalities. It is not good enough to say that I will produce everything that I can to be cooperative and getting to the bottom of this matter, and then assert privilege—and then put conditions on it and do it in a manner in which we are forced to come to this floor.

So I would hope that irrespective of the votes that we take, irrespective of our positions, that the President would come forward—and come forward now and make those notes available. People have a right to know the Congress has a right to know, and we have worked in the cooperative effort to avoid this. It is only because of the necessity to see to it that we get this information in a timely way, that we have taken this extraordinary action.

So I agree with Senator HATCH. The duty and the obligation is not upon this Senate. We should not have to be compelling this. It should be President of the United States who steps forward and who keeps his commitment; a commitment that right now he is failing to observe, a promise that has been made, a promise that has been made but a promise that has not been kept.

Mr. SARBANES. Will the chairman yield?

Mr. D'AMATO. I certainly will. I note that we are awaiting Senator BYRD because he is the next scheduled person, but certainly I will yield. Have we made inquiry? Has the Senator been advised?

Mr. SARBANES. We have sent a message to him and he is on his way, is what I am told.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I ask unanimous consent to have printed in the RECORD at this point, in light of the comments we just heard, a letter to Chairman D'AMATO from Jane Sherburne, special counsel to the President.

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

THE WHITE HOUSE,
Washington, December 20, 1995.

Hon. ALFONSE M. D'AMATO,
Chairman, U.S. Senate, Special Committee to Investigate Whitewater Development Corporation and Related Matters, Washington, DC.

DEAR CHAIRMAN D'AMATO: As I informed you yesterday we would, Counsel for the President have undertaken to secure non-waiver agreements from the various entities with an investigative interest in Whitewater-Madison matters. I requested an opportunity to meet with your staff to determine how we might work together to facilitate this process. Mr. Chertoff declined to meet.

Nonetheless, we have succeeded in reaching an understanding with the Independent Counsel that he will not argue that turning over the Kennedy notes waives the attorney-client privilege claimed by the President. With this agreement in hand, the only thing standing in the way of giving these notes to your Committee, is the unwillingness of Republican House Chairmen similarly to agree. As I am sure you are aware, two of the Committee Chairmen who have asserted jurisdiction over Whitewater matters in the House have rejected our request that the House

also enter a non-waiver agreement with respect to disclosure of these notes and related testimony.

We have said all along that we are prepared to make the notes public; that all we need is an assurance that other investigative bodies will not use this as an excuse to deny the President the right to lawyer confidentiality that all Americans enjoy. The response of the House Committee Chairmen suggests our concern has been well-founded.

If your primary objective in pursuing this exercise is to obtain the notes, we need to work together to achieve that result. You earlier stated that you were willing to urge the Independent Counsel to go along with a non-waiver agreement. We ask that you do the same with your Republican colleagues in the House. Be assured: as soon as we secure an agreement from the House, we will give the notes to the Committee.

Mr. Chertoff has informed me that the Committee will not acknowledge that a reasonable claim of privilege has been asserted with respect to confidential communications between the President's personal lawyer and White House officials acting as lawyers for the President. In view of the overwhelming support expressed by legal scholars and experts for the White House position on this subject, we are prepared simply to agree to disagree with the Committee on this point.

Accordingly, the only remaining obstacle to resolution of this matter is the House.

Sincerely yours,

JANE C. SHERBURNE,
Special Counsel to the President.

Mr. SARBANES. I thank the Chair.

She indicates in the letter that the President is prepared to turn over these notes as soon as they can achieve a formal waiver agreement with the House. They have such an agreement with our committee. We have indicated that is acceptable to us. And they apparently reached such an understanding with the independent counsel. In fact, this letters says:

We have succeeded in reaching an understanding with the independent counsel that he will not argue that turning over the Kennedy notes waives the attorney-client privilege claimed by the President. With this agreement in hand, the only thing standing in the way of giving these notes to your committee is the unwillingness of Republican House chairmen similarly to agree.

I understand they are going to be meeting with the House chairmen this afternoon, and hopefully out of that an understanding can be reached because the White House has indicated they are prepared to turn these notes over if they can get these agreements. They have an understanding with our committee; they have an understanding with the independent counsel, and the other relevant body where they need an understanding is with the House committees. And I gather that matter is being worked on, and hopefully it will be worked on in a successful way.

So I just wanted to enter this letter into the RECORD and make those comments in light of the observations that were just made.

I notice that Senator BYRD is in the Chamber.

I would like to say to the chairman, I take it Senator GRAMS would seek recognition next, is that correct, after Senator BYRD?

Mr. D'AMATO. Correct. Yes.

Mr. SARBANES. Could we then recognize Senator LEAHY after Senator GRAMS?

Mr. D'AMATO. Certainly.

Mr. SARBANES. I ask unanimous consent that following Senator BYRD, Senator GRAMS be recognized and following Senator GRAMS, Senator LEAHY be recognized.

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

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. If I might intrude for 30 seconds upon my friend and colleague from West Virginia, I think it is important to note I mentioned that on March 8 the President had a press conference made in connection with the appointment of Lloyd Cutler and specifically as it related to the question of bringing up privilege said it was hard for him to imagine any circumstance which would be appropriate.

That this took place almost 4 months to the day after, 4 months and 3 days after this meeting, it is inconceivable that the President was not aware of this meeting where his personal attorneys were in attendance. So this is not a question—it seems to me this would not be an extraordinary circumstance. This was the circumstance and the fact he was aware of when he indicated that he would not raise the issue of privilege.

I just thought it was important to note that for the RECORD. I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from West Virginia is recognized under the previous order.

Mr. BYRD. Mr. President, I thank the Chair.

Mr. President, has the Pastore rule run its course?

The PRESIDING OFFICER. The Pastore rule has run its course.

Mr. BYRD. I thank the Chair. Then I shall speak out of order, that being my privilege, in view of the fact that there is no controlled time at the moment.

Mr. President, I speak today with apologies to the two managers of the pending resolution.

Mr. President, I should also state to Senators that I expect to speak for no less than 45 minutes.

CIVILITY IN THE SENATE

Mr. BYRD. Mr. President, I speak from prepared remarks because I wanted to be most careful in how I chose my words and so that I might speak as the Apostle Paul in his epistle to the Colossians admonished us to do:

Let your speech be always with grace, seasoned with salt, that ye may know how ye ought to answer every man.

Mr. President, I rise today to express my deep concern at the growing incivility in this Chamber. It reached a peak of excess on last Friday during floor debate with respect to the budget negotiations and the Continuing Resolution. One Republican Senator said that he agreed with the Minority Leader that we do have legitimate differences. ''But you do not have the guts to put those legitimate differences on the table,'' that Senator said. He went on to state, ''and then you have the gall to come to us and tell us that we ought to put another proposal on the table.'' Now, Mr. President, I can only presume that the Senator was directing his remarks to the Minority Leader, although he was probably including all members on this side of the aisle. He also said that the President of the United States ''has, once again, proven that his commitment to principle is non-existent. He gave his word; he broke his word. It is a habit he does not seem able to break.''

Mr. President, I do not know what the matter of ''guts'' has to do with the Continuing Resolution or budget negotiations. Simply put, those words are fighting words when used off the Senate floor. One might expect to hear them in an alehouse or beer tavern, where the response would likely be the breaking of a bottle over the ear of the one uttering the provocation, or in a pool hall, where the results might be the cracking of a cue stick on the skull of the provocator. Do we have to resort to such language in this forum? In the past century, such words would be responded to by an invitation to a duel.

And who is to judge another person's commitment to principle as being nonexistent?

I am not in a position to judge that with respect to any other man or woman in this Chamber or on this Earth.

Mr. President, the Senator who made these statements is one whom I have known to be amiable and reasonable. I like him. And I was shocked to hear such strident words used by him, with such a strident tone. I hope that we will all exercise a greater restraint upon our passions and avoid making extreme statements that can only serve to further polarize the relationships between the two parties in this Chamber and between the executive and legislative branches. By all means, we should dampen our impulses to engage in personal invective.

Another Senator, who is very new around here, made the statement—and I quote from last Friday's RECORD: ''This President just does not know how to tell the truth anymore,'' and then accused the President of stating to ''the American public—bald-faced untruths.'' The Senator went on to say that, ''we are tired of stomaching untruths over here. We are downright getting angry over here''—the Senator was speaking from the other side of the aisle. Then with reference to the President again, the Senator said, ''This guy is not going to tell the truth,'' and then proceeded to accuse the President ''and many Senators''—''and many Senators''—of making statements that

tax cuts have been targeted for the wealthy, ''when they know that is a lie.'' Now, the Senator said, ''I am using strong terms like 'lie.' '' Then the Senator made reference to a lack of statesmanship: ''When are we going to get statesmen again in this country? When are we going to get these statesmen here in Washington again?'' And then answering his own question, he said, ''they are here,'' presumably, one would suppose, referring to himself as one such statesman.

Mr. President, such statements are harsh and severe, to say the least. And when made by a Senator who has not yet held the office of Senator a full year, they are really quite astonishing. In my 37 years in this Senate, I do not recall such insolence, and it is very sad that debate and discourse on the Senate floor have sunk to such a low level. The Senator said, ''We are downright getting angry over here.'' Now, what is that supposed to mean? Does it mean that we on this side should sit in fear and in trembling because someone is getting downright angry? Mr. President, those whom God wishes to destroy, he first makes mad. Solomon tells us: ''He that is slow to anger is better than the mighty; and he that ruleth his spirit than he that taketh a city.''

Moreover, Mr. President, for a Senator to make reference on the Senate floor to any President, Democrat or Republican, as ''this guy'' is to show an utter disrespect for the office of the presidency itself, and is also to show an uncaring regard for the disrespect that the Senator brings upon himself as a result. ''This guy is not going to tell the truth,'' the Senator said, and then he proceeded to state that the President ''and many Senators'' have made statements concerning tax cuts—and that would include almost all Senators on this side, because almost all of us have so stated—that ''they know that is a lie,''—and I am quoting—that ''they know that is a lie''—admitting, the Senator said, that the word ''lie'' is a strong term. I have never heard that word used in the Senate before in addressing other Senators. I have never heard other Senators called liars. I have never heard a Senator say that other Senators lie.

Mr. President, the use of such maledicent language on the Senate floor is quite out of place, and to accuse other Senators of being liars is to skate on very, very thin ice, indeed.

In his first of three epistles, John admonishes us: ''He that saith, I know him, and keepeth not his commandments, is a liar, and the truth is not in him.'' Mr. President, it seems to me that by that standard, all of us are certainly—or certainly most of us fall into the classification of liar, and before accusing other Senators of telling a lie, one should ''cast first the beam out of thine own eye, and then shalt thou see clearly to pull out the mote that is in thy brother's eye.''

Mr. President, can't we rein in our tongues and lower our voices and speak to each other and about each other in a more civil fashion? I can disagree with another Senator. I have done so many times in this Chamber. I can state that he is mistaken in his facts; I can state that he is in error. I can do all these things without assaulting his character by calling him a liar, by saying that he lies. Have civility and common courtesy and reasonableness taken leave of this Chamber? Surely the individual vocabularies of Members of this body have not deteriorated to the point that we can only express ourselves in such crude and coarse and offensive language. The proverb tells us that ''A fool uttereth all his mind: but a wise man keepeth it in till afterwards.'' Can we no longer engage in reasoned, even intense, partisan exchanges in the Senate without imputing evil motives to other Senators, without castigating the personal integrity of our colleagues? Such utterly reckless statements can only poison the waters of the well of mutual respect and comity which must prevail in this body if our two political parties are to work together in the best interests of the people whom we serve. The work of the two Leaders, the work of Mr. DOLE, the work of Mr. DASCHLE, is thus made more difficult. There is enough controversy in the natural course of things in this bitter year, without making statements that stir even greater controversy and divisiveness.

''If a House be divided against itself, that House cannot stand,'' we are told in Mark's Gospel. Surely the people who see and hear the Senate at its worst must become discouraged and throw up their hands in disgust at hearing such sour inflammatory rhetoric, which exhales itself fuliginously. What can our young people think—they listen to C–SPAN; they watch C–SPAN. What can our young people think when they hear grown men in the premiere upper body among the world's legislatures casting such rash aspersions upon the President of the United States and upon other Senators? Political partisanship is to be expected in a legislative body—we all engage in it—but bitter personal attacks go beyond the pale of respectable propriety. And let us all be scrupulously mindful of the role that vitriolic public statements can play in the stirring of the dark cauldron of violent passions which are far too evident in our land today. Oklahoma City is but 8 months behind us. Washington, in his farewell address, warned against party and factional strife. In remarks such as those that were made last Friday, we are seeing bitter partisanship and factionalism at their worst. I hope that the leaders of our two parties will attempt to impress upon our colleagues the need to tone down the rhetoric and to avoid engaging in vicious diatribes that impugn and question the motives and principles and the personal integrity of other Senators and of the President of the United States.

It is one thing to criticize the policies of the President and his administration. I have offered my own strong criticism of President Clinton and past Presidents of both parties in respect to some of their policies. I simply do not agree with some of them. But it is quite another matter to engage in personal attacks that hold the President up to obloquy and opprobrium and scorn. Senators ought to be bigger than that. Anyone who thinks of himself as a gentleman ought to be above such contumely. The bandying about of such words as liar, or lie, can only come from a contumelious lip, and for one, who has been honored by the electorate to serve in the high office of United States Senator, to engage in such rude language arising from haughtiness and contempt, is to lower himself in the eyes of his peers, and of the American people generally, to the status of a street brawler.

Mr. President, in 1863, Willard Saulsbury of Delaware, in lengthy remarks, referred to President Abraham Lincoln as a ''weak and imbecile man'' and accused other Senators of ''blackguardism.'' Saulsbury was ruled out of order by the Vice President who sat in the Chair and ordered to take his seat. Another Senator offered a resolution the following day for his expulsion, but Saulsbury appeared the next day and apologized to the Senate for his remarks, which were quite out of order, and that was the end of the matter. Senators should take note of this and try to restrain their indulgence for outlandish and extreme accusations and charges in public debate on this floor.

The kind of mindless gabble and rhetorical putridities as were voiced on this floor last Friday can only create bewilderment and doubt among the American people as to our ability to work with each other in this Chamber. And that is what they expect us to do. Certainly these are not the attributes and marks of a statesman. Statesmen do not call each other liars or engage in such execrations as fly from pillar to post in this Chamber. I have seen statesmen during my time in the Senate, and they have stood on both sides of the aisle. They have stood tall, suncrowned, and above the fog in public duty and in private thinking—above the fog of personal insinuations and malicious calumny.

The Bob Tafts, the Everett Dirksens—I have seen him stand at that desk—the Everett Dirksens, the Norris Cottons, the George Aikens, the Howard Bakers, the Jack Javitses, the Hugh Scotts, or the John Heinzes of yesteryear did not throw the word ''lie'' in the teeth of their colleagues. Nor do such honorable colleagues who serve today as THAD COCHRAN, MARK HATFIELD, TED STEVENS, JOHN CHAFEE, ARLEN SPECTER, NANCY KASSEBAUM, BILL COHEN, ORRIN HATCH, JOHN WARNER, DIRK KEMPTHORNE, ALAN SIMPSON—oh, there is one I will miss when he leaves this Chamber—and many

other Senators on that side of the aisle. BOB BENNETT of Utah recognized the rhetorical cesspool for what it was last Friday and he kept himself above it. He took note of it. I have never heard our majority leader, I have never heard our minority leader, I have never heard any majority leader or minority leader accuse other Senators of lying. I am confident that our leaders and most Senators find such gutter talk to be unacceptable in this forum.

Mr. President, in 1986, I helped to open the Senate floor to the televising of Senate debate. On the whole, I think it has worked rather well. I believed then and I still believe that TV coverage of Senate debate can and should educate and inspire the American people. But in my 37 years in the United States Senate, this has been a different year. William Manchester in his book ''The Glory and the Dream'' speaks of the year 1932 as the ''cruelest year.'' I was a boy growing up in the Depression in 1932. I remember it as the cruelest year. But, Mr. President, in some ways, I think this year has been even more cruel. I have seen the Senate deteriorate this year. The decorum in the Senate has deteriorated, and political partisanship has run rife. And when the American people see and hear such intellectual pemmican as was spewed forth on this floor last Friday, no wonder there is such a growing disrespect for Congress throughout the country. The American people have every right to think that we are just a miserable lot of bickering juveniles, and I have come to be sorry that television is here, when we make such a spectacle of ourselves. When we accuse our colleagues of lying—I have never done that. I have never heard it done in this Senate before. Clay and John Randolph fought a duel over less than that. Aaron Burr shot and killed Alexander Hamilton for less than that. When we accuse our colleagues of lying and deliver ourselves of reckless imprecations and vengeful maledictions against the President of the United States, and against other Senators, it is no wonder—no wonder—that good men and women who have served honorably and long in this body are saying they have had enough! They may not go out here publicly and say that, but they have had enough.

Mr. President, it is with profound sadness that I have taken the Floor today to express my alarm and concern at the poison that has settled in upon this chamber. There have been giants in this Senate, and I have seen some of them. Little did I know when I came here that I would live to see pygmies stride like colossuses while marveling, like Aesop's fly, sitting on the axle of a chariot, ''My, what a dust I do raise!''

Mr. President, party has a tendency to warp intelligence. I was chosen a Senator by a majority of the people of West Virginia seven times, but not for a majority only. I was chosen by a party, but not for a party. I try to represent all of the people of the state—Democrats and Republicans—who sent me here. I recognize no claim upon my action in the name and for the sake of party only. The oath I have taken 13 times, and in my 50 years of public service, is to support and defend the Constitution of my country's government, not the fiat of any political organization. This is not to say that political party is not important. It is. But party is not all important. Many times I have said that, and I have said that there are several things that are more important than political party. Sometimes as I sit and listen to Senate debate, I get the impression that to some of us, political party is above everything else. I sometimes get the impression that, more important than what serves the best interests of our country is what serves the political fortunes of a political party in the next elections. This Senate was not created for that purpose. This is not a forum that was created for the purpose of advancing one's political career or one's political party. In the day that the Senate was created, no such thing as political party in the United States was even a consideration. None of our forebears who created our republican form of government was for a party, but all were for the state. Political parties were formed afterward and have grown in strength since, and today the troubles that afflict our country, in many ways, chiefly may be said to arise from the dangerous excess of party feeling in our national councils. What does reason avail, when party spirit presides?

The welfare of the country is more dear than the mere victory of party. As George William Curtis once said, some may scorn this practical patriotism as impracticable folly. But such was the folly of the Spartan Leonidas, holding back, with his 300, the Persian horde, and teaching Greece the self reliance that saved her. Such was the folly of the Swiss Arnold von Winkelried, gathering into his own breast the points of Austrian spears, making his dead body the bridge of victory for his countrymen. Such was the folly of Nathan Hale, who, on September 22, 1776, gladly risked the seeming disgrace of his name, and grieved that he had but one life to give for his country. Such was the folly of Davy Crockett and 182 other defenders of the Alamo who were slain after holding out 13 days against a Mexican army in 1836, thus permitting Sam Houston time enough to perfect plans for the defense of Texas. Such are the beacon lights of a pure patriotism that burn forever in men's memories and shine forth brightly through the illuminated ages. What has happened to all of that?

Mr. President, when our forefathers were blackened by the smoke and grime at Shiloh and at Fredericksburg, they did not ask or care whether those who stood shoulder to shoulder beside them were Democrats or Republicans; they asked only that they might prove as true as was the steel in the rifles that they grasped in their hands. The cannonballs that mowed brave men down like stalks of corn were not labeled Republican cannonballs or Democrat cannonballs. When those intrepid soldiers fought with unfailing loyalty to General Thomas J. Jackson—who was born in what is now Harrison County, West Virginia—who stood like a wall of stone in the midst of shot and shell at the first battle of Bull Run, they did not ask each other whether that brave officer, who later fell the victim of a rifle ball, was a Democrat or Republican. They did not pause to question the politics of that cool gunner standing by his smoking cannon in the midst of death, whether the poor wounded, mangled, gasping comrades, crushed and torn, and dying in agony all about them—had voted for Lincoln or Douglas, for Breckinridge or Bell. No. They were full of other thoughts. Men were prized for what they were worth to the common country of us all, not for the party to which they belonged. The bones that molder today beneath the sod in Flanders Field and in Arlington Cemetery do not sleep in graves that are Republican or Democrat. These are Americans who gave their lives in the service of their country, not in the service of a political party. We who serve together in this Senate, must know this in our hearts.

I understand, and we understand, that partisanship plays a part in our work here. There is nothing inherently wrong with that. There is nothing inherently wrong with partisanship. But I hope that we will all take a look at ourselves on both sides of this aisle and understand also that we must work together in harmony and with mutual respect for one another. This very charter of government under which we live was created in a spirit of compromise and mutual concession. And it is only in that spirit that a continuance of this charter of government can be prolonged and sustained. When the Committee on Style and Revision of the Federal Convention of 1787 had prepared a digest of their plan, they reported a letter to accompany the plan to Congress, from which I take these words: ''And thus the Constitution which we now present is the result of a spirit of amity and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.''

Mr. President, Majorian, the Emperor of the West, in 457 A.D. said he was a prince ''who still gloried in the name of Senator.''

Mr. President, as one who has gloried in the name of Senator, I shudder to think of the day when, because of the shamelessness and reckless intemperance of a few, I might instead become one who is embarrassed by it.

Let us stop this seemingly irresistible urge to destroy all that we have always held sacred. Let us cease this childish need to resort to emotional strip-tease on the Senate Floor.

Let us remember that we are lucky enough to reside in the greatest country on earth and to have the further

fortune to have been selected by the American people to actively participate as their representatives in this miraculous experiment in freedom which has set the world afire with hope.

Mr. President, there are rules of the Senate and we simply cannot ignore those rules. We must defend them and cherish them. I will read to the Senate what Vice President Adlai E. Stevenson said with regard to the Senate's rules on March 3, 1897, because I believe his observation is as fitting today as it was at the end of the 19th century:

It must not be forgotten that the rules governing this body are founded deep in human experience; that they are the result of centuries of tireless effort in legislative hall, to conserve, to render stable and secure, the rights and liberties which have been achieved by conflict. By its rules the Senate wisely fixes the limits to its own power. Of those who clamor against the Senate, and its methods of procedure, it may be truly said: ''They know not what they do.'' In this Chamber alone are preserved, without restraint, two essentials of wise legislation and of good government—the right of amendment and of debate. Great evils often result from hasty legislation; rarely from the delay which follows full discussion and deliberation. In my humble judgment, the historic Senate—preserving the unrestricted right of amendment and of debate, maintaining intact, the time-honored parliamentary methods and amenities which unfailingly secure action after deliberation—possesses in our scheme of government a value which cannot be measured by words.

Mr. President, we must honor these rules. The distinguished Presiding Officer today, SLADE GORTON of Washington, respects and honors these rules. We simply have to stop this business of castigating the integrity of other Senators. We all have to abide by these rules.

Mr. President, may a temperate spirit return to this chamber and may it again reign in our public debates and political discourses, that the great eagle in our national seal may continue to look toward the sun with piercing eyes that survey, with majestic grace, all who come within the scope and shadow of its mighty wings.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader is informed under the previous order the next Senator to be recognized was the Senator from Minnesota [Mr. GRAMS].

Mr. DASCHLE. Mr. President, I ask unanimous consent to speak out of order for 2 minutes.

Mr. LOTT. Mr. President, I also ask to be allowed to speak out of order for 5 minutes. I do think that this has been a very important discourse, but I do think it is important that a response be heard from both sides of the aisle.

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

Mr. DASCHLE. I want to thank, first, the Senator from Minnesota for accommodating my unanimous-consent request.

I begin by saying I believe the Senate owes a debt of gratitude to the distinguished Senator from West Virginia for the appropriate lecture that he has given each and every one of us. That speech ought to be reprinted and sent to every civics class in the country. It ought to be reprinted and sent to every legal function that is held for the next several weeks, and perhaps most importantly it ought to be reprinted and sent to every U.S. Senator and Congressman sitting today. It ought to be reread. It ought to be studied. It ought to be respected. Never has his wisdom, clarity of his reasoning or his eloquence been more evident. It needed to be said.

The distinguished Senator from West Virginia mentioned many giants, past and present, of the U.S. Senate. I add to that list the name ROBERT C. BYRD, a Senator motivated by a profound respect for this institution, a Senator driven by a profound belief in what is right, what is good, and what is so critical in this remarkable institution.

Today, he is right. We have lost civility. The need for bipartisan spirit, as we debate the critical issues of the day, could never be more profound and more important. Excessive partisanship is as destructive to this institution as violence is to ourselves.

So I express the gratitude of many who have had the good fortune this afternoon to have heard his remarkable words. I simply urge each of our colleagues to reread his remarks, to think of them carefully, and to listen to them and take the advice. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Mississippi is recognized.

Mr. LOTT. Mr. President, I, too, came to the floor and listened to the entire presentation by the distinguished Senator from West Virginia. I knew it would be illuminating. No Senator, I am sure, knows as much about the history, the record, the decorum in this institution than the Senator from West Virginia. And he very often comes and reminds us of history and how it should relate to what we are doing today. I always find it extremely interesting. And he laces his remarks with quotations from history, from great statesmen, from the Bible. They are all woven together beautifully and we are all indebted for his presentations.

And I agree that it is timely and that we should all take stock of what he had to say, his admonitions, on both sides of the aisle.

I have been in this city, now, for 27 years—4 years as a staff member to the chairman of the Rules Committee in the House of Representatives, a Democrat; 16 years in the House of Representatives, including 8 years as the minority whip, and 7 years in the Senate. I remember how civility collapsed in the House of Representatives during the latter part of those years; the second half of the 1980's, 1985, 1986, 1987. I remember the night I decided to run for this body. It became so uncivil that the Members were literally shouting at each other. A vote was held open for over 30 minutes so that one Member from Texas could be brought back to the Chamber and, in effect, forced to switch his vote. I was ashamed of our conduct. I was ashamed of my own conduct that night. And I said there has to be a better place than this. I hoped I would find it here.

I remember one time in the House of Representatives, when the Speaker of the House of Representatives came from the chair down into the well, and impugned the integrity of a Member of the House of Representatives. And I rose to my feet and demanded that the Speaker's words be taken down, and the acting Speaker had to rule that the Speaker of the institution was out of order, at which point I asked unanimous consent that the RECORD be expunged of his remarks and we be allowed to proceed. He was out of order. I know about excessive partisanship, excessive rhetoric, and the breakdown of civility. I have seen it as a staff member, as a House Member.

And now we come to this body. It is a body that we should all have reverence for, and that is what the Senator from West Virginia seeks. It is a body that has always prided itself in respect for each other and for the rights of the individual Senator. I still chafe, sometimes, under the idea that one Senator can tie up this entire institution to the disadvantage of all the rest of us, or one Senator can keep us all waiting while he or she comes to vote and we all stand around, shuffling our feet. But that is this system. It is unique. It is special. While I, as an old House Member, grumble about it, I do not want a Rules Committee over here. I want the Senate to be the Senate. I understand its uniqueness.

So we do not want decorum to slip, and it has been slipping on both sides. But let me suggest that maybe you should think about it on both sides of the aisle. Because I have been seeing it slipping on the other side. The partisanship has been getting heated.

Party is not the most important thing here—not for me, not for most of us. I was a Democrat. I showed that party was not the important thing to me, that my philosophy was more important, because I ran as a Republican after having been raised, I guess, as a Democrat. I am here because I care for the country and because of the things that I think are important for the country.

I submit, one of the reasons why this year has been so tough is because this year we are dealing with big issues, fundamental changes—fundamental changes. I care about them, not because of my party or this President or that President. I care about them because of my daughter and my son. I want to make sure that they have the opportunities that I have had for the rest of their lives. So they do matter.

These are tense intense times. There are differences that really matter. But we do not have to be disrespectful to

each other to disagree. I have a great respect for the distinguished minority leader. I have known him for years, worked with him, talked to him. And the Senator from California, [Mrs. FEINSTEIN] we talk together, we work together. I believe in sharing information. One of the things that bothers me around here sometimes is you cannot get information from either side.

But I think we need to remember that these are important issues and I think maybe part of what is happening here is a little chafing that, after all, after 8 years we have a majority over here. We had it briefly in the 1980's, but there has been a switch back. The minority is just unhappy with not having the votes for their issues.

But when we do get right up in each other's faces on these issues and start using words like ''tawdry'' and ''sleazy,'' when you are talking about an action of the leader, that is not the way we ought to proceed.

So, whether it is partisanship, or strong political feelings, or words that are too strong, we should all just cool it a little bit. I think, perhaps, as a result of the speech of the Senator from West Virginia and others who feel that we do need to find a way to bring this under control, that we will find a way to do so. I hope we will work in that vein and I certainly will support that effort with my own efforts.

Mr. BYRD. Will the Senator yield?

Mr. LOTT. I do.

Mr. BYRD. The Senator calls to the attention of the Senate the words ''tawdry'' and ''sleazy'' that I once used on the floor. Of course he had a purpose in doing that.

May I say, I never called any Senator a liar. I was not talking about the personality of the majority leader in that instance. I was talking about an agreement that had been broken.

I am very careful, I try to be careful, and sometimes I speak in haste. And subsequent to that remark on this very floor one evening, I referred to my having spoken in haste, and to my having used some words, which I wish I had chosen differently. So nobody needs to remind this Senator as to what this Senator has said. I am ready to defend anything I say.

Never once have I said that any Senator lied, or that any Senator was a liar. And I do not intend ever to do that. That is what we are talking about here today.

Mr. LOTT. I agree and we should not be calling each other liars, or other people, or anybody here on the floor. But we all ought to be careful not to skate too close to the edge in the words we use, and try to find a way to make our case positively. I think we can all do that, and I hope that we will strive to do that, on both sides of the aisle, in the future.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Minnesota is entitled to be recognized.

Mr. D'AMATO. Mr. President, if I might, I believe under the previous order there is a unanimous consent for Senator GRAMS, to be followed by Senator LEAHY.

The PRESIDING OFFICER. The Senator is correct.

Mr. D'AMATO. I ask unanimous consent to expand that, so Senator MACK might be recognized after Senator LEAHY.

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

The Senator from Minnesota.

Mr. GRAMS. Mr. President, as a member of the special committee to investigate Whitewater, I rise today to urge my colleagues to support Senate Resolution 199.

For months, our committee has been trying to get to the bottom of the controversial affair known as Whitewater—the unsavory Arkansas land development deal whose principal investors included the President and the First Lady and which contributed in large part to the $60 million failure of Madison Guaranty Savings & Loan.

This committee was initially convened to investigate the failure of Madison, which was bailed out at the expense of the taxpayers, and the role that the Clintons' investments in Whitewater may have played in Madison's demise.

But as time has passed and the committee has dug deeper into this matter, new issues regarding the Clinton administration have arisen—issues related to arrogance, abuse of power, lack of accountability to the people, and obstruction of justice.

There is no clearer example of these unseemly traits than the issue facing the Senate today: the President's assertion of the attorney-client privilege to withhold notes taken by a taxpayer-paid public servant at a meeting to discuss Bill Clinton's personal legal problems.

On November 5, 1993, a meeting was held in Washington by seven men—three private attorneys and four White House officials: White House counsel Bernard Nussbaum, associate White House counsels William Kennedy and Neil Eggleston, and White House Personnel Director Bruce Lindsey.

From the information we have been able to collect, the meeting concerned: first, criminal referrals related to Madison Guaranty which named Bill and Hillary Clinton as potential witnesses; and second, the criminal lending practices of Capital Management Services—a federally licensed company which allegedly diverted funds to Whitewater.

When questioned by the special committee, both Mr. Lindsey and Mr. Kennedy refused to discuss the substance of that November 1993 meeting. In addition, Mr. Kennedy refused to provide us with his notes from the meeting, despite evidence showing that these notes may be significantly related to our investigation.

Mr. Kennedy, at the instruction of counsel for both the President and the First Lady, went so far as to ignore a subpoena from our committee for these notes. Instead, he and the President asserted that the attorney-client privilege protects them from disclosing these notes.

For reasons given by many of my colleagues today, this claim on a legal basis is at best questionable. But in the midst of this important debate over the legal ramifications of the President's abuse of this privilege, I hope that the ethical issues that have surrounded this event will not be ignored.

At the time of this meeting, Mr. Kennedy served as associate White House counsel. Like Mr. Nussbaum, Mr. Eggleston, and Mr. Lindsey, he was paid not by President Clinton, but by the taxpayers. His office was furnished by taxpayers' dollars. His business expenses were covered by taxpayers' dollars.

Given these facts, it is obvious to me that Mr. Kennedy's true clients, the people to whom he owned his legal services, were you and me: the taxpayers. This relationship, however, has still not been honestly recognized by President Clinton.

By asserting privilege over these notes, President Clinton essentially said that Mr. Kennedy worked for him, in spite of the fact that Bill Clinton did not pay Mr. Kennedy's salary. By using this legal tool, Bill Clinton in essence turned his own personal legal bills over to the taxpayers. And that, Mr. President, is dead wrong.

I suppose we should not be too surprised by President Clinton's actions. After all, Mr. Kennedy is just one of many current and former employees of the executive branch involved in this apparent coverup of Whitewater.

During our hearings, we have heard from a number of Federal employees—political appointees and civil servants alike—about their roles in keeping this whole matter quiet and away from the eye of public scrutiny.

It's clear to me and anyone else who has paid attention to our hearings that Bill Clinton has used every tool in his grasp to stonewall this investigation. This use of privilege to shield Mr. Kennedy's notes from the public was the most blatant abuse of power we have seen, but it has not been the only one.

Do not misunderstand me—I believe every citizen, including the President of the United States of America, is entitled to the protections of the attorney-client privilege. But no one, not even the President, has the right to abuse this privilege, especially when doing so means furthering one's personal gain over the public good.

And even with the White House inching toward some sort of agreement, the damage has already been done. The attorney-client privilege has already been asserted to protect not Just Bill Clinton, but also President Clinton.

Today, the Oliver Stone film ''Nixon'' is opening in theaters across America. I suggest that Bill Clinton arrange a private screening in the White House theater, as it should be most instructive for the future.

What the people hated most about the Watergate scandal was not the amateur break-in at the Democratic National Committee. What they could not tolerate and what led to the resignation of President Nixon was the cover-up, the stonewalling, the fact that the President placed himself above the law.

But Mr. President, even Richard Nixon did not hide behind the attorney-client privilege. Bill Clinton did.

Eighteen-months ago this was something that President Clinton said that he would never do, as we can see from a quote from President Clinton's remarks to a town meeting in Charlotte, NC on April 5, 1994. The President said:

I've looked for no procedural ways to get around this. I say, you tell me you want to know, I'll give you the information. I have done everything I could to be open and aboveboard.

Some have asked why it is so important that the special committee receive access to Mr. Kennedy's notes. I can only answer by asking President Clinton why it was so important to him that these notes not be seen. Why did he go to such lengths as to use privilege as a shield to hide these notes from the public?

Obviously, if there is nothing to hide, there is no reason to keep these notes a secret or to conditionally withhold them. If there is nothing incriminating in these pages, why not disclose them openly and honestly?

The fact of the matter is we will not know until we see them. And if there is something there, these notes may help us piece together the puzzle known as Whitewater.

Because unlike the witnesses from the administration who have been expertly coached to experience suspiciously selective memory during their testimony, these notes cannot hide anything. They cannot duck questions by saying, ''My memory fails me'' or ''I can't recollect at this time.''

And maybe that is what scares Bill Clinton the most.

Mr. President, it may surprise you, but I hope that these notes do not incriminate anyone. Like most Americans, I want to think the best of our President.

But we have a responsibility to get to the bottom of this whole affair, because, like everyone who has worked for the Clinton administration, we too are paid by the taxpayers. And we owe it to them to uncover the truth, no matter how dark or unsavory it might be.

That, Mr. President, is what this resolution before the Senate is all about—it is what this entire Whitewater investigation is about: Our obligation to tell the truth, the whole truth and nothing but the truth. I urge the President to unconditionally release these notes.

If he does not, I hope my colleagues will join me in a spirit of honesty and openness in supporting this resolution. We owe the American people that much.

Thank you, Mr. President. I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Vermont.

THE STATEMENT OF SENATOR BYRD

Mr. LEAHY. Mr. President, I am going to speak about the issue before us on Whitewater, but because of the extraordinary statement by the distinguished senior Senator from West Virginia, I wish to make a few additional comments.

I have been privileged to serve in this body for 21 years with Senator ROBERT C. BYRD. I have been privileged to serve with a number of giants—I consider him one, certainly—but giants on both sides of the aisle, both Republicans and Democrats. I think of the leadership of Senator BYRD, who has served both as majority and minority leader, and how much I appreciate and respect his leadership. I think also of our other Democratic leaders like Mike Mansfield, George Mitchell, and Tom DASCHLE and the great Republican leaders, BOB DOLE and Howard Baker, who have served with such distinction in this body.

I think, as I have been on this floor, of the remarkable opportunity I have been given to serve here. One set of my grandparents came to Vermont and came to these shores not speaking a word of English. My other great-grandparents left a distant country to come to Vermont to seek a better way of life. Both my grandfathers were stonecutters in Vermont. My paternal grandfather died when my father was just a youngster. He died in the stone sheds of Vermont leaving a widow and two children—my grandmother, my father, and his sister.

My father, as a teenager, had to help support the family and never completed the schooling that his son was later able to pursue. He became a self-taught historian, certainly one of the best I ever knew. And he revered and respected the U.S. Senate.

So many times my father would tell me, as I sat here on the floor of the Senate, that this body should be the conscience of our Nation. In my first two terms, when my father was still alive, he was able to come and listen to Senators debate. I remember him repeating almost verbatim statements made by Senators—again, both Republicans and Democrats. He spoke with a sense of admiration of the courage that those men, and now women, show in this body in speaking to the conscience of our Nation. He talked about how this is where leaders of our Nation reside.

Only 15 people in the present Senate have served in this body longer than I. No Democrat has served longer than Senator BYRD. I believe Senator BYRD has done a great service for this body today. I hope that each of us will read and reread what he said, because, in my 21 years here, I have seen the Senate degenerate. And I do not use that word casually. I have seen some of the finest Members leave, and in leaving say this body is not what it used to be.

People truly respect the Senate. My good friend from Arkansas, Senator PRYOR, who is on the floor today, one whose absence I will feel greatly in the next Congress, and Senator ALAN SIMPSON of Wyoming, another good friend, Senator KASSEBAUM, Senator HATFIELD, Senator BROWN, Senator BRADLEY, Senator NUNN, Senator PELL, Senator SIMON, Senator HEFLIN, and others with whom I have talked—these are people of great experience and great quality—every one of them will tell you the same thing: This Senate has changed.

Mr. President, we owe it to ourselves to listen to what Senator BYRD said, and we owe it to the Senate to listen. More than owing anything to Senator BYRD or me or any other Member, we owe it to the Senate because long after all of us leave, I pray to God this body will still be here. And I pray to God this body will be here as the conscience of the Nation.

If you go back and read the writings of Jefferson, if you go back and read the writings of the founders of this country, you know that this body is a place where ideas should be debated, where the direction of our Nation and the conscience of our Nation should be shaped.

Mr. President, I fear that we are not doing this. I fear that this country will suffer if we do not listen. All of us have a responsibility to listen, Republicans and Democrats alike. Presidents will come and Presidents will go. We will have great Presidents, and we will have Presidents who are not so great. They will come and go. Members of the Senate will come and go, and we will have great Members of the Senate and some not so great. But all of us take the same oath to uphold the Constitution of this great country, and we also come here privileged to help lead this country, but we ought to be humbled by the responsibility that gives us.

I have taken an oath to uphold this country's Constitution four times in this body, and five times as a prosecutor before that. I hold that oath as a very sacred trust. Each one of us ought to ask ourselves if we engage in debate or actions or votes that denigrate that Constitution or denigrate the country or denigrate the most important functions of our Government, do we really deserve to be here? Partisan positions are one thing. Positions that hurt the country are yet another.

So let us listen to what was said here. Let us listen to what was said and let us, each one of us, when we go home tonight or this weekend, ask ourselves what we have done to keep the Senate the institution it should be for the good of our country—not for our individual political fortunes but for the good of the country.

Let us ask ourselves what we have done this year to do that. I do not

think that Senator BYRD has to ask himself that question. We know his answer. It is one with which I agree. But all of us should ask ourselves that question.

Mr. President, in later days I will speak more on the subject.

DIRECTING THE SENATE LEGAL COUNSEL TO BRING A CIVIL ACTION

The Senate continued with the consideration of the resolution.

Mr. LEAHY. I would like, Mr. President, to speak about Senate Resolution 199. We have been asked this session to consider a number of matters with which I did not agree. I think, frankly, this one, Senate Resolution 199, may take a special holiday season award. I am not here to talk about the arguments over the attorney-client privilege issues or the precedent we are being asked to establish, or the failure fully to explore settlement of this matter in light of the President's willingness to produce the notes to the Whitewater special counsel and to the Senate so long as a general waiver of privilege does not result. I will not linger on being asked to enforce a subpoena that was not properly served.

Let me direct my colleagues' attention to one aspect of this matter that has not yet been explored: We are being asked to authorize Senate legal counsel to commence an action that cannot be brought.

Senate resolution 199 expressly proposes that we, the Senate, direct our Senate legal counsel to bring a civil action to enforce a subpoena of the Special Committee To Investigate Whitewater Development Corporation and Related Matters for notes taken by an associate counsel to the President. The statute under which we are being asked to authorize the proposed civil contempt proceeding expressly precludes just the kind of legal action we are being asked to authorize, one that would create a confrontation with the executive branch.

The second sentence of section 1365 of title 28, United States Code, provides:

> This section shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpoena or order issued to an officer or employee of the Federal Government acting within his official capacity.

This, of course, was put in the statute to avoid putting the courts in a position of having to resolve a conflict between the other two independent branches of government.

So long as it would not violate anyone's attorney-client privilege, I would be extremely interested in knowing what Senate legal counsel has advised the special committee with regard to subpoenas to the White House and for White House legal counsel notes and with regard to their enforceability by way of civil action. I think before the Senate is asked to authorize it, we ought to know whether the civil contempt proceeding we are being asked to authorize is even legal. Does the special committee have a legal opinion from our Senate legal counsel on the viability of the action proposed? If so, I would like to have it put in the RECORD.

This dispute arises, as the special committee's report explains, from a demand for documents to the White House in response to which the White House identified Mr. Kennedy's notes as privileged.

The special committee goes to great lengths in its report to argue Mr. Kennedy was not acting as a personal attorney to the President and the First Lady, but then dismisses the conclusion that follows. If Mr. Kennedy attended the meeting in his role as associate counsel to the President, then it would appear that no legal action can be brought under section 1365. The special committee cannot have it both ways.

So I think we should consider that which we are being asked to authorize. I know millions of dollars have been spent on this investigation. I know we will probably spend millions more. But at least when we vote we ought to know whether we are voting to do something that can be done.

We have no need to authorize legal action, least of all one that cannot be brought under the terms of the very statute under which authorization is being sought.

I appreciate the distinguished chairman arranging this time for me.

Mr. D'AMATO. Mr. President, in order to attempt to move the flow, I would ask unanimous consent that following Senator MACK, Senator SIMON be recognized, and following Senator SIMON, Senator THOMPSON be recognized.

Mr. SARBANES. And then Senator GLENN.

Mr. D'AMATO. And then followed by Senator GLENN.

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

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MACK. I thank the Chair.

CIVILITY IN SENATE DEBATE

Mr. MACK. Mr. President, I had initially come to participate in the debate on Whitewater, but there was a speech of some 45 minutes or so by Senator BYRD a little bit earlier that made reference to some comments I made in the Chamber of the Senate last Friday. The Senator referred to my use of the word ''guts'' and drew from that that I was implying that a number of Senators maybe did not have the guts to present an alternative proposal.

It would be easy for me to come here with a sense of defensiveness and anger, but I do not. I come to the floor to speak—I am not quite sure how long, and I am not quite sure what about, other than it was clearly not my intention to impugn the integrity or the intentions of my colleagues in the U.S. Senate.

I really have been, I think, driven to come to the floor this afternoon, as I said, not out of anger but, frankly, out of love. I have strived in my life to try to make civility one of my No. 1 concerns. And when I heard civility being talked about, and I heard it being talked about with reference to words that I had said last Friday, it made me take notice, it made me think about that impassioned speech that I gave last Friday.

Let me say that I feel very strongly about what I had to say about what was going on with respect to the budget and the failure to get a balanced budget and the importance of getting a balanced budget and what that means for this country, for America, for future generations, for children, for my grandchildren. I felt that very deeply.

But since I apparently—maybe I should take out the word ''apparently'' so there would be no question—since I have been charged with breaking rule IXX, I apologize to my colleagues in the U.S. Senate. I am driven to do this even though I know there are those who would say, ''Oh, you should never apologize, never engage in a defense of your actions because, you know, that brings too much attention to what you've done.'' But I come to the floor of the U.S. Senate to once again say to my friend and colleague, and somebody whom I respect tremendously, Senator DASCHLE, who in essence is kindness, that in no way did I attempt or did I mean to challenge the minority leader.

I have no ill-feelings toward Senator BYRD. He is right to remind us of the rules of the U.S. Senate. But I hope that we would all take notice of that, Democrat and Republican alike.

For me to stand here on the floor of the U.S. Senate and imply or allow others to conclude that I am the only one that might have pushed the envelope with respect to words used would, in fact, be a tragic mistake. So I hope that we would all listen to what Senator BYRD had to say.

If my coming forward today to react to Senator BYRD's comments will help reduce the rhetoric and allow us to return to a time of greater civility, then my coming to the floor will have been worth it.

I do not know how many times I thought of how we could begin the process of bridging the differences between us, of truly understanding how the other side truly believes the policies, the ideas, and the principles they put forward instead of always questioning the motive. And so I welcome those on the other side of the aisle who want to be engaged in discussions about how we bridge that divide, how we could begin the process of really truly finding out how it is that we can satisfy your concerns and at the same time satisfy ours, instead of there always having to be one winner.

If I did not mention it, again I will mention M. Scott Peck's book ''The World Waiting To Be Born'' and some of the other books that he has written, ''People of the Lie: The Hope for Healing Human Evil,'' his discussion about evil in America. His initial book, at least the one that most of us are familiar with is ''The Road Less Traveled.'' We do need more civility and more grace in our lives in America today.

So, Mr. President, I could not allow this situation to develop without again responding from my heart and from my soul to say that if my words the other day, in fact, have heightened or have increased the lack of civility, I apologize to my colleagues. But I ask you as I do this that you be honest with yourselves, ask yourself about your actions and about your rhetoric. Ask yourselves the question, How, in fact, can we find a way to work together?

Mr. President, I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER (Mr. D'AMATO). The Senator from Illinois.

SINCERITY IN THE U.S. SENATE

Mr. SIMON. Mr. President, first, if I may comment on the remarks of our colleague from Florida. It was a gracious and generous statement on his part. I think all of us—PAUL SIMON has been guilty, like most of us have been guilty from time to time, of getting—you know, we get a little wrought up more than we should from time to time.

Part of the answer to the question raised by Senator MACK is, if we assume that our colleagues are just as sincere about their position as we are, it makes for a different kind of an atmosphere.

If my colleagues have real good memories, you may remember I was a Presidential candidate at one time. I remember a reporter for one of the major newspapers telling me that he had been talking to Senator HELMS and Senator THURMOND, with whom I frequently disagree, and both of them spoke very highly of me. He wanted to know how that could be, and I mentioned, whenever I get into a debate I try to remind myself that the other person is just as sincere as I am.

I think that helps. But that is not the sole answer. The question that Senator MACK poses is, How can we work together more? It is not a question easily answered. But I think it is very important for the future of the Senate and the future of our country, and I thank him for posing the question.

DIRECTING THE SENATE LEGAL COUNSEL TO BRING A CIVIL ACTION

The Senate continued with the consideration of the resolution.

Mr. SIMON. Mr. President, I rise on the subject that the Presiding Officer knows more about than I do, because he has had to sit through all these Whitewater hearings. I have been designated by the Judiciary Committee as a Democrat to sit on that hearing along with Senator HATCH being designated by the Republicans from the Judiciary Committee.

What do we do? I think whenever—it really is kind of related to what we have just been talking about—whenever we can work things out without confrontation, I think we are better off in this body, and the Nation is better off.

I really believe the White House has gone about as far as they can go without just giving up completely on this constitutional right that people have in terms of the lawyer-client relationship.

I am also concerned about the amount of time that we are taking on this question. I cast one of three votes against creating the committee. Senator GLENN, who is on the floor, cast one and Senator BINGAMAN, who is on the floor, cast one. My feeling was, we were going to get preoccupied and spend a lot of time on something that really did not merit that amount of time.

We have spent infinitely more time: 32 days of hearings, as the Presiding Officer knows better than I, on this; 152 individuals have been deposed; the White House has produced more than 15,000 pages of documents; and Williams & Connolly, the President's personal attorney, has produced more than 28,000 pages of documents. We have spent a huge amount of time.

We have spent much more time on Whitewater in hearings than we spent on health care in hearings last year on an issue infinitely more important to the people of this country; much more time on Whitewater than on hearings on drugs, for example. We may have had 2 or 3 days of hearings on drugs this year. I do not know. It certainly is not more than that. We have had 1 day of hearings so far this year on Medicare.

I think when we spend huge amounts of time on this, we distort what happens in our country. I read the excellent autobiography of the Presiding Officer, Senator D'AMATO, and unlike a lot of autobiographies that are obviously written by someone else, it is pure vintage AL D'AMATO. But I know AL D'AMATO, our distinguished colleague, represents a State with a lot of poverty. We have spent infinitely more time on this issue than we have spent on the issue of poverty in our country. Mr. President, 24 percent of our children live in poverty. No other Western industrialized nation has anything close to that.

I hope we use the telephone a little more frequently, get together a little more and see if we cannot work this thing out without confrontation. I think everyone benefits.

Let me add one final thing. I am 67 years old now. I have been around long enough to know that when we get into these things, we really do not know the ultimate consequences. It is like throwing a boomerang: It may hit here, it may hit there, it may hit somewhere else.

I hope this resolution is turned down and the alternative of Senator SARBANES is approved. But I am a political realist. I know that is not likely to happen, because of the partisan kind of confrontation that has occurred and is occurring in this body much too much. But I hope we try, once this gets over, to pull our rhetoric down, and I think all of us benefit when that happens.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I want to thank the Senator from Illinois for his eloquent and heartfelt remarks. He has the admiration of us all. He is going to be missed in this institution.

Mr. President, I would like to speak for a few minutes with regard to the issue at hand having to do with the subpoena and the President's claim of privilege to resist that subpoena.

I have been called upon over the past several weeks and months on many occasions, by members of the media, and others, to comment on the Whitewater investigation, to give my opinion. Others have, too, I am sure. In my case, I was minority counsel to the Watergate committee many years ago. People want to draw those comparisons.

I refuse to make those comparisons. I do not think it is appropriate to make those comparisons. In fact, I have said as little as possible about the whole matter. I left town as a much younger man, having spent a year and a half investigating Watergate, and I had been on another committee assignment or two as counsel to the U.S. Senate. Some time ago, I kind of became tired of investigating and, frankly, would like to spend more of my time in trying to build things up than in trying to appear to be trying to tear things down.

I think there is something important going on here that has to be commented upon with regard to the issue at hand. It looks like perhaps something might be worked out with regard to this particular subpoena, with regard to the particular notes that are being sought by this subpoena, and I hope that is the case. But there is something more important that is happening here that is going to have ramifications, I am afraid, for the next several months in this body and in this country, and that is, we should not get so caught up in the fine print and lose sight of the fact that, once again, we have a President who is claiming privilege to shield information from a committee of the U.S. Senate and ultimately from the American people, and it is a very, very weak claim at best. But even if it were a strong claim, Mr. President, it concerns me greatly that the President, under these circumstances, with the history that we have in this country of congressional

investigations and the obvious need that the Congress has and congressional committees have for information to get to the bottom of any perceived wrongdoing, that the President would choose to stand behind a privilege to keep this information from coming out.

It cannot stand. It cannot be successful. I have watched the predicament that is unfolding in the Senate with increasing concern, thinking any day that it might be resolved, but by resisting this subpoena and trying to keep this information from the public, I believe the President is making a tragic mistake. His action will only serve to raise questions as to what is being hidden. It will keep this investigation alive much longer than it otherwise would. It will fuel the cynicism of a public that is already all too distrustful of its public institutions. And for what purpose?

The White House says that the President is taking this position in order to defend a principle, and that principle is the President's right to private conversations with his attorney. But nobody is disputing that right. What is being disputed is the President's right to privileged conversations with lawyers who are Government officials paid by the taxpayers when the matters involved are personal in nature and do not have to do with the Presidency.

This assertion of the attorney-client privilege by ordinary citizens in the face of congressional subpoenas have been consistently struck down by this Nation's courts. The privilege is designed, basically, for litigation between private parties. In case after case, the courts have concluded that allowing it to be used against Congress would be an impediment to Congress' obligation and duty to get to the truth and carry out its investigative and oversight responsibilities.

If the President is claiming special status because he is President, then his assertion is really one of executive privilege and not attorney-client privilege. While I can still remember Sam Ervin's repeated admonitions that no man is above the law and that we are entitled to every man's evidence, I still concede that executive privilege can be a valid claim, under some circumstances. However, the President must assert it.

As I understand it to this point, he has chosen not to assert executive privilege. Of course, there may be political consequences associated with the claim of executive privilege, but the President cannot have it both ways. He cannot assert attorney-client privilege as a defense to a congressional subpoena which, if asserted by a private citizen, would stand little chance of prevailing, and then try to place the shroud of the Presidency around it without claiming Executive privilege.

As best I can tell, Mr. President, no President in history has ever claimed attorney-client privilege to defeat a congressional subpoena.

Richard Nixon did not claim attorney-client privilege. He allowed White House counsel, John Dean, to testify. Ronald Reagan did not claim attorney-client privilege during Iran-Contra. Notes and documents of his White House counsel were produced, along with those of the lawyer for the National Security Council, the lawyer for the Foreign Intelligence Advisory Board, and the lawyer for the Intelligence Oversight Board. In both of these investigations, those documents were produced without the claim of any sort of privilege.

President Nixon finally claimed Executive privilege with regard to the White House tapes and, of course, ultimately saw his claim of privilege defeated in the Supreme Court in the case of U.S. versus Nixon. So if the President is going to assert greater privilege protection than any of his predecessors, perhaps he is doing it solely for the purpose of protecting a legal principle. But the President must understand that the people are going to assume that there may be other reasons, in light of this country's history.

So let us examine the strength of the President's legal position. In the first place, an invocation of the attorney-client privilege is not binding on Congress. It is well established that in exercising its constitutional investigatory powers, Congress possesses discretionary control over witnesses' claims of privilege. It is also undisputed that Congress can exercise its discretion completely without regard to the approach that courts might take with respect to that same claim.

In the 19th century, House committees refused to accede the claims of attorney-client privilege that developed from actions taken during the impeachment trial of Andrew Johnson and in the investigation of the Credit Mobilier scandal. House committees in the 1980's also rejected claims of attorney-client privilege. For example, in 1986, the House voted 352 to 34 to deny the privilege claims of Ferdinand Marcos' attorneys.

The Senate, too, has rejected invocations of attorney-client privilege on numerous occasions. In 1989, the Subcommittee on Nuclear Regulation rejected the privilege claim with respect to its investigation of restrictive agreements between nuclear employers and employees who might impact safety.

The subcommittee's formal opinion rejecting the claim of privilege asserted:

> We start with the jurisdictional proposition that this Subcommittee possesses the authority to determine the validity of any attorney-client privilege that is asserted before the subcommittee. A committee's or subcommittee's authority to review or compel testimony derives from the constitutional authority of the Congress to conduct investigations and take testimony as necessary to carry out its legislative powers. As an independent branch of government with such constitutional authority, the Congress must necessarily have the independent authority to determine the validity of non-constitutional evidentiary privileges that are asserted before the Congress.

Importantly, as the Congressional Research Service found, ''No court has ever questioned the assertion of that prerogative * * *.'' Indeed, a 1990 Federal court decision, In the Matter of Provident Life & Accident Co., found that whatever a court might hold concerning application of a claim of attorney-client privilege in a court proceeding, ''is not of constitutional dimensions, [and] is certainly not binding on the Congress of the United States.'' Instead, committees, upon assertion of the privilege, have made a determination based on a ''weighing [of] the legislative need against any possible injury.''

This longstanding history, Mr. President, of discretionary congressional acceptance of the attorney-client privilege reflects the basic differences between judicial and legislative spheres. The attorney-client privilege is not constitutionally based. It is a judge-made doctrine based on policy considerations designed to foster a fair and effective adversary legal system. It theoretically promotes the interest of an individual facing an adversary civil or criminal action.

But the U.S. Senate is not a court. We do not have the authority to make final determinations of legal rights, or to adjudicate individuals' liberty or property. In fact, it is probably unconstitutional under the separation of powers doctrine for us to be bound by judicially created common law rules of procedure. Under Article I, section 5 of the Constitution, each House determines its own rules. And the rule of this body in connection with attorney-client privilege claims is longstanding and consistent: We balance the legislative need for the information against any possible injury. And, of course, a committee of this body has made that determination.

Does President Clinton want to rely on a technical, legal defense when the issue is whether his own White House has engaged in wrongdoing? The legislative need is obvious: to determine the truth of allegations of potential wrongdoing at the White House. Enforcing the subpoena furthers that interest. The integrity of the investigatory process is at stake here. The President's only potential interests are the free flow of information that is protected by Executive privilege, and the desire to shield what is potentially damaging information. To me, the balance is very clear: The subpoena must be complied with.

Even if we were to abandon our historic discretionary consideration of attorney-client privilege in favor of adopting judicial rules for its application, we would still reject the objections to the subpoena. Courts would not find the attorney-client privilege to apply on these facts.

Courts do not view the attorney-client privilege as a fundamental judicial

procedural requirement that is vital for fairness. The most prominent expert on the law of privileges and evidence, Dean Wigmore, wrote of the attorney-client privilege the following: ''[i]ts benefits are all indirect and speculative, its obstruction is plain and concrete * * *. It is worth preserving for the sake of a general policy, but it is nonetheless an obstacle to the investigation of truth. It ought to be strictly confined within the narrowest possible limits consistent with the logic of its principle.'' The second, sixth, and seventh circuits have all adhered to that approach. Although the submissions by the White House counsel's office and the Clintons' private attorneys read the privilege very broadly, the courts construed it very narrowly.

Courts universally require the party asserting the existence of the attorney-client privilege to bear the burden of establishing its existence. Blanket assertions of the privilege are rejected. The proponent must demonstrate conclusively that each element of the privilege is satisfied. This means that specific facts establishing an attorney-client privilege must be revealed. Conclusory assertions are not sufficient. And the proponent must also prove that the privilege has not been expressly, or by implication, waived.

In this respect, it must be noted that courts have rejected the linchpin of the President's argument supporting the existence of an attorney-client privilege here. He claims that if the information requested by the subpoena were produced to the special committee, the privilege would be waived as to other conversations in other proceedings. But the U.S. Court of Appeals for the District of Columbia Circuit specifically has held to the contrary. In its 1979 decision Murphy versus Department of the Army, the court ruled that disclosure of allegedly privileged material to a congressional committee would not waive the privilege in any future litigation. As CRS notes, ''There appears to be no case holding otherwise, and several which have followed Murphy.''

The President simply has not proven that the elements exist which are necessary to satisfy the attorney-client privilege. For courts to accept the privilege, the attorney must be acting as an attorney for the client and the communication at issue must be made for the purpose of securing legal services. That is not true here for two major reasons.

First, attendees at the critical November 5 meeting, including individuals who were not acting as attorneys for President Clinton. Bruce Lindsey is a lawyer, but he did not act as the President's lawyer in this meeting. Nowhere in either the White House or Clinton personal lawyer submissions is any claim made that Mr. Lindsey passed communications from either the President or Mrs. Clinton to any other lawyer. Nowhere in his testimony before the special committee did Mr. Lindsey establish that he was present at this meeting as a lawyer for President Clinton or that he discussed confidential communications between himself and the Clintons.

Several of those present were Government lawyers, including Mr. KENNEDY, to whom the subpoena was directed, Mr. Nussbaum and Mr. Lindsey. And a Government lawyer cannot establish a personal representational relationship with the President about a private matter. In prior administrations, when the President had private legal issues, a private attorney was hired because the Government attorney could not raise the attorney-client privilege in the context of a Government investigation. That is the situation we have here. This was particularly true where the facts that were the subject of a Government investigation relate to the President's personal, not official, acts. Here, of course, the acts are not only personal, but predate President Clinton's assumption of the Office of the Presidency.

So the discussion, by the President's own admission, concerned logistics, dividing responsibilities among different groups of lawyers, not providing legal advice. Such communications simply fall outside the scope of the attorney-client privilege. In fact, they are no different than any other communications among Presidential advisers. Their character is not changed by the fact that some of the participants have law degrees. Hence, to the extent that official Government business was discussed at this meeting, the only theory preventing its disclosure would be, again, executive privilege, which the President refused to invoke.

Moreover, the communications at this meeting were made in the presence of persons who were not lawyers for President Clinton. Because the attorney-client privilege inhibits discovering truth, the courts are quick to find that the privilege has been waived. Where attorneys voluntarily disclose confidential client communications with a third party, the privilege is destroyed. The communication is no longer confidential and a justification for the privilege disappears. Confidentiality was lost for these communications because attorneys for the President shared information with others who did not represent the President. Lawyers cannot serve two masters. Those who represent the Government as a client do not represent the President as a client.

For this reason, the President's claim of a joint defense privilege is not applicable. President Clinton raises this argument because he claims that the conversation of November 5 involved two clients: The President in his official capacity, and the President in his personal capacity. But these are not two different clients facing a common adversary. The President in his official capacity is represented by Government lawyers. A Government lawyer's client is the Government, and that client's interest may be to enforce the laws against the President as an individual. That is a different interest than that represented by the President's personal lawyers. Thus, these lawyers were potential adversaries, not lawyers sharing information for multiple clients against a common adversary.

Additionally, courts have adopted the crime-fraud exception to the attorney-client privilege. Courts will not apply the privilege to communications that may facility the commission of improper acts. The notes that are the subject of the subpoena concern a meeting at which discussions may have been held about certain information that may have been improperly passed to private lawyers for purposes of preparing a defense.

The work product privilege has also been raised, Mr. President, but it does not apply to this conversation, either. The attorney work product privilege is not constitutionally based and applies to Congress only on a discretionary basis. Further, it is qualified. It is not absolute. The sufficient showing of need will brush aside the work product privilege. The Clinton briefs quote broad generalities about the privilege, but as the Supreme Court held in Hickman v. Taylor, ''We do not mean to say that all [] materials obtained are prepared * * * with an eye toward litigation are necessarily free from discovery in all cases.'' The materials at issue were not prepared in anticipation of litigation on behalf of President Clinton. Mr. Kennedy was a Government lawyer. His notes could not have been taken in anticipation of preparing litigation strategy for President and Mrs. Clinton. His client was the Government, not the Clintons, therefore, work product privilege is simply inoperative.

Even if this doctrine applied, it is readily overcome when production of material is important to the discovery of needed information. Some courts have even refused to call the doctrine a privilege. In short, Mr. President, President Clinton simply has not met the burden of showing that either of these privileges apply to the notes that are the subject of this subpoena. His legal position is unprecedented and extremely tenuous. Clearly, Congress does not have to honor such a position.

I suggest to my colleagues on the other side of the aisle that we do not want to establish a precedent that says that future Presidents can use White House counsel with regard to personal matters or even matters that occurred before the President was elected and be shielded from congressional inquiry.

With regard to the references to partisanship that we have read and heard so much about, now that the battle lines have seemingly been drawn on this matter, we are told it will pretty much be a partisan vote. I find it somewhat ironic that over the past several years that many of those who wanted to investigate seemingly everything that came down the pike, now have

gotten to be sensitive about congressional overreaching and partisanship.

Unfortunately, it always just seems to depend on whose ox is being gored. You look back over the congressional investigations and you will see that invariably there is some partisanship involved in it because the majority party investigates the President of the other party and the minority party cries ''politics'' and talks about how much money we are wasting and how much money we are spending. I remember those conversations back when some of these other investigations over the years were started. The pattern seems to be the same.

So now we can all assume our natural and customary positions as Republicans and Democrats, or we can actually look to the merits of the case. I suggest that we do that. I think the American people would appreciate it. It would not be unprecedented.

The vote in the Senate to form the Watergate Committee, for example, was a unanimous vote at a time when still most people thought that it was, in fact, a third-rate burglary. When it came time to subpoena President Nixon's White House tapes, the vote on the Watergate Committee was unanimous, including that of the distinguished Senator from Hawaii, Senator INOUYE. When it came time to sue the President to enforce that subpoena, I signed the pleadings as counsel to the committee. All this was not because the proceedings were totally free of partisanship. It was because we believed the privilege was not being properly asserted by the President. I respectfully suggest that the same is true here.

I still have hope that the President will reconsider his position—not over the question of a handful of notes—over the general proposition of whether at this particular time in our history we want to see another President claim a privilege to keep information from the American people.

We are not writing on a blank slate here, Mr. President. Our country has a history with regard to such matters and it has had an effect on us as a people. This day in time when a President who withholds information from the public has a higher duty and a higher burden than ever before. The people want the facts. They want the truth. The President, any President, should have a very good reason for denying it. The President in this case simply does not have one. I yield the floor.

The PRESIDING OFFICER. Under the unanimous consent agreement the Senator from Ohio is to be recognized.

The Chair, in my capacity as a Senator from the State of New York, asks unanimous consent that, thereafter, Senator MURKOWSKI from Alaska be recognized.

Without objection, it is so ordered.

CONCERN FOR CONGRESS

Mr. GLENN. Mr. President, I rise to speak very briefly about the remarks that Senator BYRD made on the floor. Mr. President, the subject that Senator BYRD brought up today is something that has been bothering me in an increasing way all during this year. Perhaps it is because some of the tensions are particularly high with regard to the directions that the Government, the Congress, is trying to take us this year. These concerns have bothered me as much as they have Senator BYRD and not just in the examples he mentioned earlier today but some others, also.

I think it is time to reflect briefly on that and I will not take the Senate's time for very long, but I want to make a few remarks in support of his earlier statement.

Our Government is formed with the respect of the view of all parties. We look back and our Constitution did not establish a benevolent monarchy where one person makes the decisions for all of our country and moves us ahead or behind on the decisions of one person. We have split powers in Government. We have a legislative, executive and a judicial branch of Government. We have seen our system of constitutional Government evolve into 435 House Members and 100 Members of the U.S. Senate. Mr. President, 535 people were sent here not to be of one mind or one kind of person or one view, but sent here expecting to bring our varied views from all over the country and work out the best solution to what the future of this country may be.

Try as they may, no one person or one small group has all the wisdom so that they can confidently say we are right and you are wrong. That is not the way we are set up. And when it comes down to where we stoop to just name calling, which has happened on the floor, it tells more to me about the speaker than it does about the object the speaker happens to be belittling at the moment.

I think we maybe should remember something that too often is forgotten on the floor. That is, you cannot build yourself up by tearing someone else down. When someone uses belittling or semi-insulting language to the President of the United States, does that demean the President? No, it does not. It demeans the speaker. And it brands the speaker as someone who is, perhaps, covering up an inability to deal with the matters at hand by attacking the other side in a belittling way. The resort to invective and character assassination is not constructive legislative discourse, as the voters expected. We have seen examples here on the floor in the last few months of signs being put up, ''Where is Bill? Where is Bill? Hey, where is Bill?'' Arms waving, ''Where is Bill?'' Playing to the cameras and referring to the President as ''that guy,'' repeatedly.

We had, one evening here, over by the exit door over there on the east side of the floor, a number of House Members who had come over here and were on the floor that day. Senator BYRD was making a short statement, and they were milling around and actually laughing at Senator BYRD, laughing out loud at Senator BYRD on the Senate floor, sneering at him. When we called attention to them there, they kept right up, one person in particular.

What has happened? I do not think we would have seen that some years ago. It is insulting, No. 1; insulting, not just to the President or not insulting just to Senator BYRD; it is insulting to the Senate of the United States of America. To me that is a new low. Is it any wonder, when we see our own Members behaving like that, any wonder why people have their doubts about the Congress of the United States?

''Politics,'' a great word, it stems from an old Greek word meaning ''business of all the people.'' I cannot think of anything in a democracy, anything in this United States of America, that deserves more respect and deserves more effort, nothing is more important than that business of all the people.

We bemoan the lack of respect for Congress, while we need the greatest faith between the people of this country and their elected officials. We need the greatest faith, underline that, faith between each other here, if we are to accomplish what we are all about. We want to know that everyone here is working for the best long-term interests of the United States of America and not just trying to salve their own egos at the moment by making belittling remarks about others here or about the President.

If we had a scale here and faith was on one end, doubt would be over here on the other. How do we move that scale toward faith? How do we restore faith? Not by casting insulting remarks at other officials. You have faith, you have confidence in our institutions, in our legislative, executive and judicial branches—we must have faith in Congress. We must do the things that will engender faith and confidence in Congress. We must do the things that will engender faith and confidence in the Presidency, whether Democrat or Republican, the office of the Presidency of the United States, the chief executive officer of our Nation. We must have faith and confidence in the Senate. We must have faith and confidence in Senators. We must have faith and confidence in each other if we are to accomplish our job.

As Senator BYRD said, to use deprecating language toward each other or toward the President moves toward doubt; it moves toward doubt and dissension, and not toward that kind of faith that we need if we are to do our job. That just makes our problems even more intractable.

We are all proud of our mothers, of course. I am proud of my mother. She has long since departed this world, but she used to have a lot of little homilies and a lot of little sayings. I still remember some of them today.

When we, as kids, were being too critical of someone I remember my

mother saying this one, ''There is so much bad in the best of us, and so much good in the worst of us, it ill-behooves any of us to speak badly about the rest of us.''

Maybe here on the Senate floor, when we get a little carried away sometimes back and forth, it gets very personal—as it has gotten too personal recently. Maybe we need to remember that. Here, where the business of all the people, the melding of ideas is supposed to take place, where the business of all the people is taking place on this floor, our conduct has to contribute to that, not detract from it.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). Under the previous order, the Senator from Alaska is recognized.

DIRECTING THE SENATE LEGAL COUNSEL TO BRING A CIVIL ACTION

The Senate continued with the consideration of the resolution.

Mr. MURKOWSKI. Mr. President, this is a difficult issue for all Members of this body relative to the business at hand and the necessity of proceeding with the subpoena. I suggest that probably not since the days of the Watergate constitutional confrontation has this body considered an action that is as serious as the one that we are considering here today.

It is the feeling of this Senator from Alaska that this day did not have to come, but it is here. The subpoena was not something that was inevitable. But we are here today for one reason and only one reason, and that is because we have a situation where our President refuses to cooperate with this Senate investigation and turn over the notes that could be very crucial to the public's understanding of the Whitewater scandal.

The President and the administration seem to be hiding behind the shield of attorney-client privilege. At the same time, one can see through the raising of the specter of executive privilege. You cannot have it both ways. It is one or the other.

The White House claims that it will turn over these notes on one hand, and then lays down conditions, conditions that are so totally unreasonable that what the President is really saying is that he will not turn over the notes in the sense of full disclosure.

It is interesting, because from the day these hearings began, in July of 1994, my colleague from New York, Senator D'AMATO, and I made several appeals on this floor concerning various issues, the statute of limitations and others, relative to questions that had been raised to which were not forthcoming responsible answers. So, back in July of 1994, the White House, at that time, professed the President's desire to cooperate, cooperate with the formation of the special committee of which I am a member. The President said that he, too, was interested in getting the facts—all the facts out on Whitewater.

At nearly every turn of the committee's deliberations the White House has tried to make these deliberations more difficult, more prolonged, refuses to answer more questions, and seems to have a shorter memory. What this committee is charged with doing, under the able leadership of Senator D'AMATO, is to hold the President to his promise to cooperate with this committee. One has to ask if the administration has an ulterior motive, or other reason, for not cooperating? At all times it seems what the President professes is not necessarily what the President ultimately means. I do not have to go into the issue of balancing the budget with OMB's figures or CBO figures—that's an argument for another time. But I think the American public is now aware that what the President professes is not necessarily what the President means.

We see this pattern repeated again and again and again. That is part of the problem here today, Mr. President. The American public has seen this pattern over and over, and the concern now is that the President's tactics have almost conditioned the public for a norm. The public has come to expect this from the administration as a consequence because of this repeated inconsistency, and has become used to it. That is very dangerous. At times it seems that, because of the President's track record, the public's expectations and standards for the President are lower.

I think we agree that we have an obligation to hold the President accountable. The President must be held to his promises. Today, we must hold the President accountable by preventing him and his administration from withholding information from the American public, information that the public is entitled to know. We have to put an end to the stalling and to the delay tactics that have become so familiar to the Special Whitewater Committee. Even the media is beginning to pick up on it. You can hardly find a newspaper article today where the term ''stonewalling'' and ''the President'' do not appear in tandem.

These delay tactics that this committee has endured, which I know many of my colleagues have elaborated at great length on today, can only lead to one conclusion: The administration has led a deliberate and systematic effort to cover up. And cover up what? What is there to hide? Why is the administration fighting us and being so reluctant to turn this information over?

I want to bottom line the seriousness of the vote that we are going to be taking at some point in time. Chairman D'AMATO outlined what our investigation is all about. The investigation of Madison Guaranty and Whitewater have led to felony convictions and resignations. Think about that. That is pretty serious, Mr. President. The investigation so far has led to felony convictions and resignations, and there are those that just pooh-pooh this matter and simply say, well, we have not really learned anything. We have some convictions. We have some resignations.

The McDougals, the owners of Madison Guaranty, were involved in numerous improper loans and land deals which led to the loss of tens of millions of taxpayer dollars. Witnesses testified before the committee that the Whitewater Corp., which is half owned by the Clintons and half owned by the McDougals, had improperly ''kited'' funds.

That is serious, Mr. President. That is very serious. I spent 25 years in the banking business as the chief executive officer of a statewide organization. I know what cease and desist orders mean relative to mandates by the controller of currency, the Federal Deposit Insurance Corporation.

What was going on in Madison Guaranty was clearly illegal. There is a story that has yet to be told relative to the obligations of the various agencies that examined that financial institution. I am convinced that those examiners were doing a conscientious job relative to the reporting of the true condition of that organization, and they were reporting up to their level. And for reasons that have yet to be made clear to the committee and made public, no action was taken by the administrators associated with the insurance of the depositors with Madison Guaranty.

So, clearly, there were pressures brought to bear on the top regulators by political influences that surrounded Madison Guaranty not to take action relative to the illegal activities that were associated with Madison Guaranty, whether it be the kiting of the checks or the manner in which clearly Madison Guaranty, under the McDougals, was being operated almost for the benefit of a few selected individuals who were receiving favorable loans at favorable interest rates. The loans were rewritten to bring the due dates current. The interest was simply added to the principal to bring those loans current.

These are all flagrant violations that suggest, if you will, not just inappropriate or improper handling, but an illegal activity of a very, very serious nature subject to formal charges by the banking authorities and the regulators. But we did not see that, Mr. President. That did not occur as the true condition of Madison Guaranty become known to the regulators.

I think that there is a story yet to be told. I hope that we find those that are willing to come forth and explain to the committee why appropriate action was not taken when indeed Madison Guaranty was running amuck, running almost as a personal extension of the McDougals and some of their friends.

We have been attempting to get information in the committee. The committee has been hindered from obtaining information because of numerous delays, stonewalling tactics. One of the things that is very, very hard for this Senator to accept is the convenient loss of memory.

Susan Thomases, the First Lady's friend and adviser, responded, ''I do not remember'' over 70 times to even the most basic questions asked by this committee. These were not everyday events; these were significant events from very, very bright people who were associated with a responsibility to perform. And to suggest that they cannot remember, over 70 times in testimony, significant events is pretty hard to accept by the committee.

Maggie Williams, the First Lady's chief of staff, a very, very bright, articulate person, told the committee over 140 times that she did not recall. Once in a while, OK. I cannot recall every specific event that happened last year, but in regard to important matters, I can tell you what happened last year. And I can tell that certain events stand out in one's memory, Mr. President. For example, I have been deposed by attorneys relative to business activities of the organizations that I have run, and those proceedings, those types of proceedings, do stand out in your memory. It may be very convenient to say I do not recall, but to do it 140 times to the committee in response to some very, very basic questions about some dramatic events, events that some of the witnesses themselves documented, is simply pretty hard to accept.

During the week of the committee's investigation we learned now of the possibility of more cover up in the White House, and we have discovered that files are missing.

Mrs. Clinton's law firm represented Madison Guaranty against the State and Federal investigations that were occurring. Mrs. Clinton professed that she did ''very minimal work'' on the Madison Guaranty case. On Monday, the committee learned that the First Lady's statement may need to be questioned.

The personal notes of the close friend and adviser to the First Lady, Susan Thomases, were disclosed in the committee and revealed the following:

One, that Mrs. Clinton actually had numerous conferences, which have been documented, with the Madison Guaranty officials.

Two, that Mrs. Clinton made several efforts to keep the failing thrift afloat. Obviously, that was her job as counsel representing the Rose law firm. There is nothing wrong with that. But the fact is, we are not able to get the documentation to just how far those efforts went.

And lastly, that Mrs. Clinton was solely responsible for all the law firm's bills for the Madison case. The accuracy of that should be able to be ascertained relatively easily by documentation, but we do not have the documentation.

Earlier this month, Webster Hubbell, former Assistant Attorney General and former Rose law firm partner, who is now serving 21 months in Federal prison, also testified that Mrs. Clinton did little work on the Madison Guaranty case. However, the committee was able to produce billing records showing that Mrs. Clinton billed the Madison account for more than $6,000.

Again, I would remind my colleagues that the suggestion that this matter is not really very important, that nothing has been proven, Webster Hubbell would contend otherwise. He is serving 21 months in Federal prison relative to his role. And again, he was former Attorney General and former Rose law firm partner.

What is all this concern about? Why should the committee or the Senate or especially the American people be concerned about Madison Guaranty and Whitewater? Because, Mr. President, when Madison Guaranty ultimately failed, the American taxpayer picked up the cost, which was somewhere between $47 million and $60 million. The scam that went on at Madison was underwritten by the U.S. taxpayers.

We know that Mrs. Clinton had involvement to some extent through the Rose law firm in some of the activities of Madison. And I am not suggesting that those were inappropriate. Why can we not find out? Why do they not tell us? What are they hiding? As I said earlier, Mrs. Clinton billed over $6,000 to the Madison Guaranty account. According to the Rose law firm's accounting records, Mrs. Clinton did perhaps more work on Madison than anyone at her firm except one junior associate. Now everything that the committee learned may be just the tip of the iceberg because the Rose law firm claims that its billing files that recorded Madison activity from 1983 to 1986 are missing.

Let me repeat that, Mr. President. The Rose law firm now claims that its billing files that recorded Madison activity from 1983 to 1986 are missing. Well, it sounds more like ''I don't remember'' 70 times or ''I don't recall'' 140 times. And here is a sophisticated law firm with a long, long tenure, a respected law firm. There are a number of lawyers in this body, and I think they are all familiar with the meticulous process of billing. We always joke about the lawyer: Start talking to the lawyer and the clock starts. If you have ever received a billing from a lawyer, you have some idea how meticulous they are. They do not forget very much. They are trained to do that. The young attorneys bill out so much an hour, and they are expected to bill out so much a day. I have a daughter who occasionally reminds me of that as a young lawyer. But nevertheless to suggest that these are now missing from 1983 to 1986 is incredible.

I am reminded here of a reference that was made in the New York Post today. And this may or may not be pertinent, but it is certainly suggestive. It says, ''A Rose law firm clerk said he was told to shred documents in February of 1994 shortly after a Whitewater special prosecutor was appointed.''

As a consequence, Mr. President, the files contain information of just how involved perhaps the First Lady might be in the Madison Guaranty issue. The files could provide the committee with details of who contacted whom and what was discussed about Madison. It is rather curious to me that we do not have information from the RTC, Resolution Trust Corporation, which took over from the organization when it eventually failed. Upon such a takeover, there is inevitably a series of events that must occur. Madison was taken over by an organization, and then that organization failed and the RTC must have ultimately taken control over all the Madison records.

Now, those records should contain billing statements that were sent from the Rose law firm to Madison Guaranty. They might not be as specific as the Rose law firm's own records that would document specific topics and the details of the legal representation, however, the RTC records might be able to shed some light on the amount that the firm billed, the amount of time spent on the case, and may reference certain specific subject matters. I suggest that this might be an avenue that the committee investigates. It would seem to me it would be appropriate to make a determination whether or not the RTC has those records from Madison Guaranty and, if not, then attempt to determine what happened to the records. I think this could shed some light on determining how much the Rose law firm was reimbursed for its representation of Madison Guaranty.

Now, Susan Thomases' own notes appear to contradict the sworn testimony of Mrs. Clinton in an affidavit of 1994 in which she said that she had little or no involvement in Madison.

Let us find out. Come on up with the evidence. Come up with the records. Yet, when we attempt to get the evidence, the Rose law firm says their records are missing from 1983 to 1986. Were those shredded? The Rose law firm, I think, owes the committee an explanation. Thomases' notes show that Mrs. Clinton had numerous conversations with Mr. McDougal, the Madison Guaranty's President, about a preferred stock plan and brokerage deals that the thrift was proposing to State regulators to keep Madison in business.

The only way to find out the extent that Mrs. Clinton was involved is to review the law firm's records. But as I have said before, these files seem to have mysteriously vanished. Apparently the files were removed—perhaps by Webster Hubbell. We believe that the files may have been stored in his garage for a period of time. No one

seems to have any accurate knowledge of where the files are now. So to suggest that there is nothing here that bears examination, that there is nothing here that should not be brought before the public, I think, is an injustice to the committee members and those who have worked so hard to bring the facts forward.

I am personally, as a member of the committee, tired of the withholding tactics. I am tired of the stonewalling, tired of the excuses, ''I don't recall,'' ''I can't remember.'' I think we are at a crucial point now, a point in which this body can and should make the White House accountable. The committee's request for William Kennedy's notes is not unreasonable, Mr. President. The meeting that occurred between the President's private attorneys and the Government attorneys goes to the very heart of our investigation, an investigation to determine whether the White House misused official information. So I regret that the events have come to this extent today, to the vote that we are going to be taking at some time. However, it is the White House that forces the hand of this body to act. And I would again encourage the President to reconsider and come forthwith the information that has been asked by the committee and keep his promise to fully disclose information. I believe that the American public has a right to know. And it is certainly responsible for this committee to make such a request and initiate such action if that material is not forthcoming.

Mr. President, I ask for only one other item to be included in the RECORD, and that is a recap of the fees from Madison Guaranty Savings & Loan. And it is January, 1985. It identifies specific billings. It does not have a total on it for services rendered, but that can be ascertained by anyone looking at it.

I ask unanimous consent that that be printed in the RECORD.

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

RECAP OF FEES FROM MADISON GUARANTY SAVING & LOAN—FINAL RECAP

1983: None		
1984: None		
1985: January—None		
Feb./Mar./April/1985: None		
May 1985:		
Baledge	Madison Guaranty	$82.50
Massey	do	695.50
S. Grimes	do	260.00
Clinton	do	840.00
June 1985:		
Clinton	Madison Guaranty	60.00
Massey	Madison Guaranty/stock offering.	186.00
Massey	do	819.00
July 1985:		
D. Thomas	Madison Guaranty/Stock	90.00
July 1985:		
Giroir	do	55.00
Massey	do	1,391.00
Law Clerks	do	210.00
Clinton	do	144.00
Aug/Sept/Oct. 1985: None		
Nov. 1985:		
Thrash	Madison Guaranty/IDC	550.00
Thrash	do	283.50

RECAP OF FEES FROM MADISON GUARANTY SAVING & LOAN—FINAL RECAP—Continued

Thrash	do	355.50
Speed	do	32.50
Massey	do	552.50
Dec. 1985:		
Gary Garrett	Madison Guaranty/Stock Offering.	85.00
Giroir	do	100.00
Giroir	do	225.00
Massey	do	555.00
Massey	do	437.00
Massey	do	234.00
Clinton	do	88.00
Clinton	Madison Guaranty	232.50
Donovan	Madison Guaranty/Stock Offering.	90.00
1986: January 1986:		
Donovan	Madison Guaranty/Stock Offering.	468.75
Dave Thomas	do	262.50
Massey	do	952.50
Massey	Madison Guaranty/Limited Partnership.	165.00
S. Grimes	Madison Guaranty/Stock Offering.	60.00
Clinton	Madison Guaranty/Stock Offering and IDC.	2,731.25
Clinton	Madison Guaranty/Limited Partnership.	62.50
Clinton	Madison Guaranty/Stock Offering.	802.50
March 1986:		
Donovan	Madison Guaranty/IDC Stock offering.	825.00
B. Arnold	Madison Guaranty/Stock Offering.	80.00
April 1986:		
B.Arnold	Madison Guaranty/Stock Offering.	236.00
Donovan	do	318.75
Clinton	do	12.50
Clinton	do	262.50
May 1986:		
Clinton	Madison Guaranty	82.88
Clinton	Madison Guaranty/Babcock	1,050.00
Clinton	Madison Guaranty/IDC	70.00
Clinton	Madison Guaranty/General	197.12
Massey	do	112.50
B.Arnold	Madison Guaranty/IDC	48.00
July 1986:		
Clinton	Madison Guaranty/General	56.00
Clinton	Madison Guaranty/Babcock	308.00
October 1986: Clinton	Madison Guaranty/Babcock Loan.	84.00
1987: September 1987: Clinton.	Madison Guaranty/General	500.00

Mr. MURKOWSKI. I thank the Chair and I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank the Chair. I also commend our distinguished chairman of the Banking Committee, of the special Whitewater committee, for the good work that he has done.

Mr. President, we are here today because the Senate special Whitewater committee has finally reached the point where we have to say enough is enough. In our efforts over the past year to take testimony, gather documents, collect phone records, review handwritten notes, we found that, rather than cooperation and responsiveness, we have been met with a pattern of delay, obstruction and obfuscation.

After spending months trying to get access to various documents and phone records the old-fashioned way—we requested them—we discovered that a wide variety of records were being withheld. So we were forced to threaten to issue subpoenas.

This started a trickle of information. Usually the information arrived either late the evening before or the morning of the hearing.

But then we realized we were not receiving the documents to which the committee was entitled, so the chairman moved to actually issue subpoenas for anything and everything. In fact, after subpoenas were issued, surprise, surprise, documents and phone records began coming in, records that previously could not be found or could not be accessed.

On top of the resistance to releasing documents and the long delays in releasing phone records, we have also had some amazing instances of not only lapse of memory, but in one instance a witness, April Breslaw, said she was not able to identify her own voice on tape. To anybody who has not done so, if you want to witness a truly amazing discussion, you should read the transcript where Chairman D'AMATO asked Ms. Breslaw if she was the one that was actually on the tape. Ms. Breslaw said that the quality of the tape was not great, she was not sure that she was the one on the tape, and she did not know what to think.

Mr. President, we have seen some truly remarkable things. Months ago we had a witness who claimed that he lied to his diary, another witness who cannot remember his own notes.

But the strategy, I think, of obfuscation and obstruction has been taken to an art form in the testimony of Susan Thomases, the First Lady's close friend and associate. Over and over we heard Mrs. Thomases tell the committee that she ''did not recall,'' had ''no specific recollection,'' she had ''no personal knowledge'' of various events and phone calls surrounding the search of Vince Foster's office, the removal of documents from his office, the transfer of documents to a closet in the White House residence, and the discovery of the so-called suicide note.

Yet, after much digging and digging and a dribble and drabble, and a bit here and a bit there, phone records, we found that in fact she was omnipresent on the telephone lines of the White House during the critical times in question and she was calling the people who were directly involved. But obviously a minor matter like that a potential major investigation of the suicide of a White House aide, she could not remember what actually went on.

I believe today's Washington Post noted—or yesterday's Washington Post noted—that ''Thomases failed to recall virtually all the events Republicans question her about, and for the first time since this round of hearings began in August, Democrats dropped their defense of an administration witness. . .''

Mr. President, that is what we have been facing throughout this investigation—fact by fact, record by record, note by note, and document by document, we have been dragging the truth out of the administration and its associates, little by little.

If anybody had any question as to whether there may be something to hide, if you simply look at the pattern of delay, and refusal and dragging of

feet, it should become obvious that there is a concerted effort by the White House not to give all the information they have. Everyone should understand this has been the underlying current of Whitewater since the beginning.

The initial stories of this administration at nearly every step of the way have proven to be incomplete, inaccurate, or just plain untrue. It is only after pressure from Congress and the media that the truth, slowly, slowly, slowly trickles out. And we do not have it all yet.

We come to the infamous Kennedy notes. This time they cannot claim that they do not remember or cannot recall. They cannot say the records cannot be found by the phone company. They cannot claim they are not sure if it is their voice on the tape. They cannot claim they cannot find the files or the billing records are missing.

So what is left? They now claim that the notes made by a White House counsel, an official of the Government, of a meeting to discuss the Whitewater, Madison financial and legal activities, where there is significant allegations of wrongdoing which involve violations of Governmental laws and which involve the exposure of the Federal insurance trust funds, taxpayer trust funds, to private claims, they say meetings between a Government official, a White House counsel and a private attorney should not be released because they would violate the attorney-client privilege.

The President has said he is standing on principle to defend his rights as a private citizen to have meetings with his lawyers. Well, there is no question the President has a right to have a private meeting with his private counsel. But if you read the Op-Ed article in today's Wall Street Journal by Joseph diGenova, he goes through instance after instance of congressional investigation where the various privileges were held by the other party when they were in power and in charge of the investigation not to be applicable to congressional investigations.

Let us take a moment to talk about the principle which the President is defending. We have to remember that during 1993, the investigative wheels were in motion in three different Federal agencies, all pointing a finger at some activities that involved the top political elite, the political infrastructure of Arkansas.

The RTC, the agency investigating the S&L failures, was looking into the activities of Madison Guaranty, specifically in the misappropriation of a $260,000 loan by now-Arkansas Governor Jim Guy Tucker, the embezzlement and conspiracy by bank owner Jim McDougal, and a loan illegally diverted to the Clinton 1984 reelection campaign. The Small Business Administration was working putting together a criminal case against David Hale and Capital Management Services.

In this case we find Mr. Hale accusing the President of pressuring him to make an illegal loan to Jim McDougal, which eventually leads to Mr. Hale's conviction and the indictment of the current Governor of Arkansas. The Little Rock U.S. attorneys' office was in possession of an earlier criminal referral on Madison Guaranty in which massive check kiting was alleged.

Mr. President, while all the investigative work was going on, political appointees of the President at the Department of the Treasury were briefed in late September 1993 about the contents of the RTC's criminal referrals I just briefly described.

Unfortunately, instead of holding this information close, handling it as responsible governmental officials should handle the very sensitive, nonpublic information relating to a potential criminal investigation and/or action to be pursued by the Federal Government, the political appointees, Jean Hanson and Roger Altman, made the decision to tell the White House about the investigations. Then on September 29, 1993, Jean Hanson briefed then-White House counsel Bernie Nussbaum.

One of the key facts which we discovered during our earlier hearings was that while Mrs. Hanson clearly had the details of the referrals and discussed them with the White House, she had been told by the RTC, specifically Mr. Roelle, that while the Clintons were not targets of the investigation, ''* * * the language of that referral could lead to the conclusion that if additional work were done [that is, further investigative work] the President and Mrs. Clinton might possibly be more than just witnesses.''

That, Mr. President, is from the deposition of Jean Hanson, given to the inspector general of the RTC.

And, of course, in October 1993, the possibility of further investigative work being done by the U.S. Attorney for the FBI was not a closed question. As we now know, the U.S. attorney in Little Rock, Paula Casey, is a Clinton appointee and while she declined to do any further investigative work on the first referral, had just received the second and had not at that time recused herself.

Which brings us to the November 5, 1993 meeting between the Clintons' attorneys. Again, as we now know—and it has taken us a long time to get all of these details, even to find out about the November 5 meeting—when several Federal agencies were investigating the activities of Jim McDougal, Jim Guy Tucker and David Hale, the investigators have indicated that if more investigation was done, it is possible that the Clintons would become more than just witnesses.

Mr. President, we ought to add here, also from what we have now learned, it is or should be an open question as to whether there is any complicity of the lawyers who were representing the participants in the shady transactions which resulted in losses to Federal insurance funds. As a general proposition, an attorney friend of mine who has worked on a number of these cases says that where there is wrongdoing of a consistent pattern by a federally insured institution, usually the law firm knows about it or may possibly be involved in it. There is a real question as to what involvement a law firm representing an illegal scam-ridden operation has in the criminal activity.

In this instance, obviously, Jim McDougal used Madison Guaranty, the savings and loan, as his piggy bank and did many things with it. At the time he was doing that, the Rose law firm was representing Madison Guaranty, and the partner in charge was Mrs. Clinton.

My colleague from Alaska has raised the question about what happened to the files. Mr. President, that is a very important matter to consider, because I have worked in law firms, and you cannot walk in and take the files out of a law firm. You cannot go in and clean out the files. How did the original files from the Rose law firm wind up in the hands of political allies of the Clintons here in Washington? It would seem to me that when the RTC took over Madison Guaranty, they became the client and had the right to the files at the law firm representing the taken-over institution. Did they give their approval to removing those files? That is a question that bears further investigation.

But let us go back to the specific instance of November 5. According to David Kendall's memo which he sent to the committee, he said that we can assume, just for the purposes of this discussion, that every bit of information possessed by the participants was discussed at the meeting. He said, ''Go ahead and assume it, as you make this decision.'' He did not say it conclusively. We don't have the notes. But that means for the purposes of this question of whether we ought to compel the production of the notes, we can assume that not only was the Clintons' private lawyer told about the details of the case by Mr. Nussbaum and Mr. Eggleston, he could also have been told that ''if further investigative work'' were done his client's status could possibly shift from witness to something else, to something more serious.

This is a question that has bothered me throughout the investigation of what went on at Whitewater.

Mr. President, I had a not-too-pleasant discussion with Mr. Nussbaum the first time he came before the committee because I did not feel he was representing the people of the United States as White House counsel should. I asked him if he had taken the time to advise and instruct the other people in the White House who had come in possession of this vital nonpublic information that could be used, if it were to get into the hands of those who were potential targets of the investigation, to prepare their defense, perhaps even to change or get rid of evidence to prepare themselves to prevent prosecution or active pursuit by the Government of its rights.

Mr. Nussbaum told me that it was totally, totally unrealistic. He said: These people—I don't have to tell them that you shouldn't misuse inside information or nonpublic information you're getting—these people knew their responsibilities, knew their roles. I didn't have to go around telling these people not to do that and, indeed, Senator, with all respect—I realize you feel strongly about this, too—with all respect, Senator, there is not a single shred of evidence that anybody misused this information in any way. Not a single shred of evidence that documents were destroyed, people tipped off.

Mr. President, obviously, when he said there is not a shred of evidence, I pointed out to him that was precisely what we were concerned about. We were concerned about the reports of the former nonlawyer, nonlegal intern, runner or clerk in the Rose law firm who talked about shredding documents. That is why we are concerned about the broader picture.

But let me return to the President's statement that he was withholding the notes of the meeting on principle. Is he saying he believes it is his right for Government attorneys, who by virtue of their position, come into possession of confidential information, in this case information about an investigation into the Clintons' business partner in Whitewater development, an investigation about Mrs. Clinton's client, the law firm, the Rose law firm, about his Arkansas political allies and about his own 1984 campaign, to have this information transferred to his own attorney when it may directly involve himself, his wife, their legal liabilities and the legal liabilities of their political allies?

Is he saying, as a President he has the right to know of these investigations into his associates and political allies, as well as his own campaign. Is he saying he has the right to know that if further work was done, he might become more than just a witness?

Does the President seriously want to defend the principles that he should not only receive tipoffs, but he should also have the right to get the information to his private attorneys in order to prepare his and his wife's defense if needed?

What other individual in America could get this special treatment? Who else would dare claim that meetings in which tipoffs of confidential information about an investigation into a business partner, political ally, to his own campaign, to his wife's law practice should be protected from investigation? I hope that he was not serious if this is the principle he wishes to defend.

I think there are principles the President should be standing up for. No. 1, breach of the public trust is as serious an offense as committing a crime. No. 2, in exchange for the powers and responsibilities given the Government, the people expect fairness, evenhanded justice, impartiality, and they hold the basic belief that those in power can be trusted to be good stewards of their power. No. 3, They do not expect those in power to give themselves special treatment, tipoffs or the ability to hide documents.

Congress must also believe that those in high positions of responsibility are telling us the truth. When we ask questions or make inquiries, we trust the administration will tell the truth, will be honest, and when we get an answer, it is a full and complete one.

Unfortunately, throughout this Whitewater investigation, beginning with questions we asked in the Banking Committee in February of 1994, it appears that a guiding principle for some has been that the ends justify the means. The ends, as outlined in the memo from my good friend James Hamilton to the President, was you should not provide anything; make sure you do not give them too much information; keep your head down; do not let anything out.

I am afraid that this tone is apparently set from the top; that somehow that the public's best interest is served if the private interests of the President and First Lady are served, whether that be their political interest, the interest of the Presidency or even their commercial activities prior to the time they became the President and First Lady.

As I have said many times before, this ethical blurry, coupled with a set of standards that seem to imply if you are not indicted, you are fit to serve, has caused several administration officials to resign and continues to hound this administration still today.

To my colleagues in the Senate, I urge that we move forward with the subpoena. We need to get the full details of what was given to the private attorneys by the Government attorneys and what I think may have been a gross violation of public trust, if not more.

I commend the chairman for his dogged pursuit, his evenhanded manner in affording all sides an opportunity to be heard, and I urge my colleagues to support the committee on this request.

I yield the floor.

Mr. BAUCUS. Mr. President, earlier this year, I joined an almost unanimous Senate in voting to support a broad resolution creating a special committee to investigate the Whitewater matter. I believe this investigation must be both vigorous and fair.

First and foremost, it is our responsibility to find the facts and the truth. That is what people want. But, as we look for the truth, we must do everything possible to be fair and to respect the rights of everyone involved.

So I believe there are two fundamental questions that must be answered in deciding whether to seek this subpoena:

First, is the subject matter of this subpoena necessary to find the truth in the Whitewater matter?

And, second, is this subpoena being sought with respect for the fundamental rights of those involved? Or is it being sought in order to carry on a political fishing expedition?

The material sought by the special committee are the notes of Mr. William Kennedy from a meeting of the President's personal and official lawyers at a private law office on November 5, 1993. It is important to note that Mr. Kennedy, although an Associate White House Counsel at the time this meeting took place, had represented President Clinton before he was elected to the White House.

The special committee has determined that Mr. Kennedy's notes of this meeting are a necessary part of their investigation; they are necessary to help get at the truth. I respect that. I believe Mr. Kennedy's notes should be made available to the special committee and to Mr. Kenneth Starr, the Independent Counsel investigating Whitewater. And I am pleased that the President has consented to the release of these notes.

That should be the end of the story. This issue should be resolved. Mr. Kennedy's notes should be released without anybody having to go to court. That seems to be enough to satisfy the Independent Counsel, Mr. Starr, a Republican. That is enough to satisfy the distinguished chairman of the committee, Senator D'AMATO, also a Republican. But it does not seem to be enough to satisfy Speaker GINGRICH and the Republicans in the House of Representatives.

They appear to want more than Mr. Kennedy's notes. They also appear to want the President to surrender one of his fundamental rights, the right of attorney-client privilege. Whether a Republican or a Democrat occupies the White House, that President should enjoy the same rights as any other American. And that includes the right to communicate in confidence with his attorney, doctor, or minister.

This is not, as some have said today, a question of hiding the facts. Instead, it is a question of protecting a fundamental right—the fundamental right to talk candidly with your lawyer, your doctor, or your minister without having your words used against you. I do not care if we are talking about the President of the United States or the most average of Americans, that is one of the things—one of the values, one of the liberties—that make this country special.

To me, it is that simple. If the President is willing to authorize the release of Mr. Kennedy's notes—as he is—there is no reason to go to court. There is no reason to challenge the President's right to maintain the confidentiality of his communication with his legal counsel.

For these reasons, I will oppose the resolution before us today.

Mr. President, it is with great pride that I note an act of kindness and selflessness by Ashley Silvernell from Forsyth, MT.

Ashley was walking down the street a few days ago when she spotted a $100 bill in front of Eagle Hardware store. Now, $100 means a lot to anybody, but to someone in middle school it's a pot of gold. Without hesitation, however, Ashley turned the $100 in to the store manager, Ken Allison. Ashley asked for no reward.

It turns out that just a few days earlier, a family from Wyoming was shopping in the store that day and accidentally dropped the money. They didn't have credit cards. The family later called Mr. Allison from Wyoming, but never dreamed that the money would be found. When Ashley turned the $100 bill in, as you can imagine the family was thrilled.

Ashley's act should recall for this U.S. Senate what the holidays are all about. As we are knotted here in gridlock, 5 days before Christmas, we must remember that honesty and good judgment are qualities to strive for everyday of our lives. Ashley's good will is an inspiration to us all and must not go unnoticed.

And on behalf of myself and the thousands of Montanans who certainly will be inspired by her story, I would like to thank Ashley Silvernell for making a difference.

Thank you. And I yield the floor.

Mr. ABRAHAM. Mr. President, I rise in support of Senate Resolution 199. I would like to focus on this from a slightly different perspective from those that have been suggested so far. In particular, I would like this body to consider the following question: Has President Clinton, in withholding material Congress is seeking for an obviously legitimate purpose, acted consistently with the standard of conduct set by every President who has served since President Nixon?

Regrettably, Mr. President, I conclude that he has not. Accordingly, I believe it is incumbent on the Senate to adopt the pending resolution.

President Nixon's assertion of executive privilege precipitated a constitutional crisis that ultimately played a major role in forcing his resignation. Since that time, Presidents have been extremely cautious in using privilege as a basis for withholding materials from legitimate Congressional inquiries. They have been especially cautious when this withholding of information might suggest to a reasonable person that privilege might be being asserted to cloak Presidential or other high level wrongdoing.

The reason for this caution is clear: relations between the branches and the people's confidence in their Government suffer greatly when the President gives the appearance of withholding information in order to protect himself or others close to him from public scrutiny of potential wrongdoing.

This practice was codified in a directive from President Reagan issued on November 4, 1982. Addressed to all general counsels, the directive describes how President Reagan wanted the assertion of executive privilege handled.

Mr. President, I ask unanimous consent that the text of the memorandum be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ABRAHAM. Mr. President, let me quote from the memorandum:

> The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch.
>
> While this Administration, like its predecessors, has an obligation to protect the confidentiality of some communications, executive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary.
>
> Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches.* * *

To this end President Reagan set up prudential limitations regarding the assertion of privilege even where a claim might be legitimate:

> Congressional requests for information shall be complied with as promptly and as fully as possible, unless it is determined that compliance raises a substantial question of executive privilege.
>
> A substantial question of executive privilege exists if disclosure of the information requested might significantly impair the national security (including the conduct of foreign relations), the deliberative processes of the Executive Branch or other aspects of the performance of the Executive Branch's constitutional duties.
>
> Every effort shall be made to comply with the Congressional request in a manner consistent with the legitimate needs of the Executive Branch.
>
> The Department Head, the Attorney General and the Counsel to the President may, in the exercise of their discretion in the circumstances, determine that executive privilege shall not be invoked and release the requested information.

Similarly, those advising Presidents since President Nixon have universally recommended great caution before assertions of privilege are made. One particular aspect of this advice is well worth quoting:

> An additional limitation on the assertion of executive privilege is that privilege should not be invoked to conceal evidence of wrongdoing or criminality on the part of executive officers.
>
> The documents must therefore be reviewed for any evidence of misconduct which would render the assertion of privilege inappropriate.
>
> It should always be remembered that even the most carefully administered department or agency may have made a mistake or failed to discover a wrongdoing committed inside or outside the Government. Study, Congressional Inquiries Concerning the Decisionmaking Process and Documents of the Executive Branch: 1953–1960.
>
> The greatest danger attending any assertion of Executive Privilege has always arisen from the difficulty, perhaps impossibility, of establishing with absolute certainty that no mistake or wrongdoing will subsequently come to light which lends credence to congressional assertions that the privilege has been improperly invoked.''

This passage comes from a 1984 opinion written by Robert B. Shanks, Deputy Assistant Attorney General for the Office of Legal Counsel.

Mr. Shanks was responding to the Deputy Attorney General's request for an opinion regarding Congressional subpoenas of Department of Justice Investigate Files. His opinion can be found at 8 Op. OLC 252. It well summarizes, I think, the dangers that any assertion of privilege may present even where the assertion is undertaken for legitimate reasons, but where its bona fide is bound to be suspect.

Now I recognize, Mr. President, that the principal label President Clinton is placing on this privilege claim is attorney-client—although he has not disavowed a claim of executive privilege.

But even apart from the fact that it is unclear whether the President has a separate attorney-client privilege in communications with government lawyers apart from his executive privilege, it does not seem to me that the label should matter. In either case the need to protect the President's authority to assert privilege where he really needs to, and to prevent gratuitous undermining of the public's faith in its government present the same overwhelming arguments for caution.

Now it is clear to me that no matter what the basis of the President's assertion of privilege here, it does not meet the standards that previous Presidents have followed in these matters.

The meeting at issue was apparently about a matter so far from the core interests of the Presidency that it required the involvement of private lawyers to defend the President's interests. It has nothing to do with national security. And it is impossible to believe that furnishing these notes will in any way impair the President in the performance of his constitutional functions.

Moreover, given that the President's associates have managed to force the appointment of an independent counsel by withholding and removing files relevant to the Department of Justice's investigation into Vincent Foster's death, it seems to me that the President should take his obligation of candor even more seriously than is ordinarily the case.

Thus, even if President Clinton has a valid claim of privilege—a point on which I am profoundly skeptical—I believe he ought not assert it here.

He has given no reasons weighty enough to justify its assertion.

And indeed, what he has said about this matter shows a surprising lack of perspective regarding the circumstances in which such assertions should be made.

President Clinton is quoted in the press as saying that he ''doesn't think he should be the first President in history'' not to protect communications arguably protected by the attorney-client privilege. I don't know if this statement was accurately reported, but if it

was, frankly it is as peculiar as some of the other claims that the President has been making in the last few weeks.

Without going back very far in history at all, we can all come up with examples where Presidents have waived possible attorney-client privilege claims in the face of congressional requests for information.

Indeed, if Congress is really and legitimately interested in something, such waivers are the norm, not the exception.

Let us look at the select committee's 1987 investigation of the Iran-Contra matter. The hearings, reports, and depositions are replete with references to notes, interviews, and testimony from government lawyers obviously covering potentially privileged materials. These include notes of then White House Counsel Peter Wallison, testimony from Attorney General Meese and Assistant Attorney General for the Office of Legal Counsel Charles Cooper, and National Security Council counsel Paul Thompson.

Similarly, when Congress became concerned about issues arising out of the United States relations with Iraq, President Bush provided numerous materials to various committees investigating these matters. And these materials could have been the subject of claims of attorney-client privilege at least as strong as the one President Clinton is making here.

Indeed, President Bush even provided notes and other materials relating to meetings among lawyers including the White House counsel and the counsel to the National Security Council regarding how to respond to congressional document requests. President Bush also interposed no bar to these lawyers' testifying before Congress and responding to questions.

Indeed, Mr. President, as recently as 2 days ago President Clinton's own White House counsel voluntarily provided to members of the Judiciary Committee an opinion of the Assistant Attorney General for the Office of Legal Counsel regarding his interpretation of an antinepotism statute as not limiting the President's appointment power.

This opinion undoubtedly would be subject to as strong an attorney-client privilege claim as one can imagine the President making. But the White House counsel provided it, knowing that it would waive any privilege claim, because he believed it was in the interest of the President for the Judiciary Committee to have it.

I ask unanimous consent that the letter transmitting this opinion be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, December 18, 1995.

Hon. ORRIN HATCH,
Hon. JOE BIDEN,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN HATCH AND SENATOR BIDEN: At my request, Walter Dellinger has reexamined the question of the application of the anti-nepotism statute, 28 U.S.C. §458 to the President's nomination of William Fletcher to the Ninth Circuit Court of Appeals. I am forwarding to you Mr. Dellinger's memorandum which concludes that the section does not apply to the presidential appointment of federal judges.

His analysis of the text and its history confirms that the position of judge on a federal court is not an office or duty ''in any court'' within the meaning of section 458; that it was not considered to be so by the Congresses that enacted either the original or the current version of the section; and that it has never been treated as such by any subsequent President or Senate. The evident purpose of this statute was to prevent judges (and, as revised in 1911, person working for judges) from appointing their relatives to such positions as clerks, bailiffs, and the like. On the other hand, the novel view that section 458 applies to the nomination by the President of Article III judges would commit one to the conclusion that a number of distinguished judges had served their country illegally, including Augustus and Learned Hand.

Mr. Dellinger has also concluded that the statute does not apply to presidential appointment of judges because of the well-established ''clear statement'' rule that statutes will not be read to intrude on the President's responsibilities in matters assigned to him by the Constitution, including the appointments power, unless they expressly state that Congress intends to limit the President's authority. The Supreme Court has applied this principle often, even to statutes the text of which would otherwise clearly appear to cover the President.

Any assumption that section 458 limits the President's authority to appoint Article III judges—and that such a limitation would not raise any serious constitutional question—would establish a precedent that would profoundly alter the constitutional separation of powers in ways that sweep well beyond the statute at issue here. Any assumption that general statutory language should be read to limit the authority of the President of the United States to carry out his constitutional responsibilities would overturn important executive branch legal determinations by a succession of Assistant Attorneys General including William H. Rehnquist, Theodore B. Olsen, Charles J. Cooper and William Barr and by Deputy Attorney General Lawrence Silberman, in addition to clearly applicable Supreme Court decisions.

In light of its text, its statutory history, and the constitutional principle embodied in the clear statement rule, it is beyond doubt that any court would find section 458 to be inapplicable to the presidential appointment of federal judges. I hope that the Senate will not base its important decision regarding the nomination of Mr. Fletcher on the view that section 458 applies to it.

Many thanks for your consideration.

Sincerely,

JACK QUINN,
Counsel to the President.

Mr. ABRAHAM. In short, there is nothing extraordinary or unprecedented in the Select Committee's interest in these notes and the committee's desire to get them is far from extraordinary or unprecedented in the history of Congressional-Presidential relations.

Rather, what is extraordinary and inconsistent with the way Presidents since President Nixon have handled such questions is President Clinton's assertion of privilege.

This is particularly striking given the circumstances surrounding these materials; circumstances suggesting to many reasonable observers, including the editorialists quoted on the floor today, that there is a issue of potential high level wrongdoing at issue here.

Mr. President, I would like to make one final point. Some have said that if we vote to enforce the subpoena, all efforts to reach a negotiated settlement of this matter will cease.

Mr. President, that would greatly surprise me. The courts have stated time and time again that both branches have an obligation to accommodate each other's interests in these matters. Thus, if either branch were to cease all efforts at accommodation, it would do great damage to its legal case. Moreover, it is in both branches' interest, and indeed it is both branches' constitutional duty, to try to resolve this matter without going to court.

Therefore I do not think any Member of this body should view a vote to enforce this resolution as a vote to end our efforts at resolving this matter without going to court.

Rather, even if we adopt this resolution and Senate Legal Counsel begins work on legal papers, I am sure the committee will at the same time continue its efforts to obtain these notes with the President's consent. And it is my hope that, resolution or no resolution, the President will provide them promptly.

That is his duty, as it is our duty to defend the committee's ability to investigate potential wrongdoing.

I yield the floor.

EXHIBIT 1

THE WHITE HOUSE
Washington, November 4, 1982.

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Procedures Governing Responses to Congressional Requests for Information

The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch. While this Administration, like its predecessors, has an obligation to protect the confidentiality of some communications, executive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary. Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches. To ensure that every reasonable accommodation is made to the needs of Congress, executive privilege shall not be invoked without specific Presidential authorization.

The Supreme Court has held that the Executive Branch may occasionally find it necessary and proper to preserve the confidentiality of national security secrets, deliberative communications that form a part of the decision-making process, or other information important to the discharge of the Executive Branch's constitutional responsibilities. Legitimate and appropriate claims of

privilege should not thoughtlessly be waived. However, to ensure that this Administration acts responsibly and consistently in the exercise of its duties, with due regard for the responsibilities and prerogatives of Congress, the following procedures shall be followed whenever Congressional requests for information raise concerns regarding the confidentiality of the information sought:

1. Congressional requests for information shall be complied with as promptly and as fully as possible, unless it is determined that compliance raises a substantial question of executive privilege. A ''substantial question of executive privilege'' exists if disclosure of the information requested might significantly impair the national security (including the conduct of foreign relations), the deliberative processes of the Executive Branch or other aspects of the performance of the Executive Branch's constitutional duties.

2. If the head of an executive department or agency (''Department Head'') believes, after consultation with department counsel, that compliance with a Congressional request for information raises a substantial question of executive privilege, he shall promptly notify and consult with the Attorney General through the Assistant Attorney General for the Office of Legal Counsel, and shall also promptly notify and consult with the Counsel to the President. If the information requested of a department or agency derives in whole or in part from information received from another department or agency, the latter entity shall also be consulted as to whether disclosure of the information raises a substantial question of executive privilege.

3. Every effort shall be made to comply with the Congressional request in a manner consistent with the legitimate needs of the Executive Branch. The Department Head, the Attorney General and the Counsel to the President may, in the exercise of their discretion in the circumstances, determine that executive privilege shall not be invoked and release the requested information.

4. If the Department Head, the Attorney General or the Counsel to the President believes, after consultation, that the circumstances justify invocation of executive privilege, the issue shall be presented to the President by the Counsel to the President, who will advise the Department Head and the Attorney General of the President's decision.

5. Pending a final Presidential decision on the matter, the Department Head shall request the Congressional body to hold its request for the information in abeyance. The Department Head shall expressly indicate that the purpose of this request is to protect the privilege pending a Presidential decision, and that the request itself does not constitute a claim of privilege.

6. If the President decides to invoke executive privilege, the Department Head shall advise the requesting Congressional body that the claim of executive privilege is being made with the specific approval of the President.

Any questions concerning these procedures or related matters should be addressed to the Attorney General, through the Assistant Attorney General for the Office of Legal Counsel, and to the Counsel to the President.

RONALD REAGAN.

Mr. BYRD. Mr. President, on a day when some 260,000 federal employees remain idle because the Congress has not completed work on the annual appropriations bills—its most fundamental constitutional task—this body has before it a measure dealing with Whitewater that is unwise, and, quite frankly, wholly unnecessary. Instead of acting on the remaining appropriations bills, instead of completing our most basic task, we are being asked to divert our attention and adopt a resolution which is, I believe, nothing more than a vehicle to promote the political fortunes of some.

The special committee, which the Senate created to investigate the Whitewater matter, has held more than a month of hearings. They have heard testimony from more than 150 witnesses. The White House, in conjunction with these hearings, has produced more than 15,000 pages of material, while the law firm of Williams and Connolly, which represents the President and Mrs. Clinton, have produced an additional 28,000 pages. And through it all, the American taxpayer has been billed more than $27 million dollars.

Yet, despite this, the American people are being led to believe that, unless the Senate adopts this resolution, which would require the Senate Legal Counsel to go into federal court in an attempt to enforce a Senate subpoena, some facet of the investigation will go uncovered. Mr. President, nothing could be further from the truth.

The fact is that the White House has already stated its willingness to supply the material the Senate has asked for. The President has said he will make available the documents in question; notes taken by a former White House attorney during a November 1993 meeting. He has, as I think these actions show, acted in a reasonable, good faith manner. But at the same time the President has been willing to produce the subpoenaed material, he has also asked that he not lose the fundamental privilege of attorney-client confidentiality.

Mr. President, every American has the right to talk to a lawyer fully and frankly without fear that the government will compel the disclosure of these personal communications. The President of the United States, be he Democrat or be he Republican, is no different. He is, like every other American citizen, entitled to the benefits of the attorney-client privilege.

In view of the President's offer of cooperation, the Committee's attempt, to invade the relationship between the President and his private counsel smacks of an effort to force a claim of privilege by the President, who must assert that right to avoid risking the loss, in all forums, of his confidential relationship with his lawyer. This effort, at this time, and in light of the President's willingness to comply with the Senate's subpoena, simply smacks of political partisanship.

Why else, if not simply to score political points, would the majority reject the President's offer? Why not accept the material, which the majority says it needs, and get on with the investigation? Why go to court, an action that will only prolong the investigation, if there is no intent to simply win headlines and seek political advantage?

Mr. President, I hope my colleagues who may be inclined to support this resolution will reconsider their position. I hope they will reexamine the road down which we may be traveling, and vote against the subpoena resolution.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. D'AMATO. Mr. President, if I might seek recognition, first, for the purposes of propounding a unanimous-consent agreement.

Mr. SPECTER. I will consent with the understanding that I do not lose my right to the floor after the unanimous-consent agreement is propounded.

Mr. SARBANES. We imagine it will include the Senator within it.

UNANIMOUS-CONSENT AGREEMENT

Mr. D'AMATO. Absolutely. First of all, I thank the ranking member, Senator SARBANES, as well as Senator PRYOR, for giving Senator SPECTER an opportunity to proceed. He is going to use about 10 minutes. Thereafter, I ask unanimous consent that Senator PRYOR be recognized following Senator SPECTER.

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

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I support the pending resolution, but I express at the outset my concern about some of the legal arguments which have been raised that the attorney-client privilege does not apply to Congress, to congressional investigations. It is not necessary for me to reach that issue in my own conclusion or judgment here, that the attorney-client privilege does not apply, but I do express that concern.

There has been an argument raised that the attorney-client privilege is different from the privilege against self-incrimination because the privilege against self-incrimination has a constitutional base. In my view, however, there is a constitutional nexus to the attorney-client privilege which arises from the constitutional right to counsel. Since the citations of authority limiting the attorney-client privilege in the context of congressional investigations—since those cases were handed down, there has been a considerable expansion in constitutional law on the right to counsel—Gideon versus Wainright, in 1963, asserting that anybody was entitled to counsel if they were haled into court on a felony charge, whereas, the practice in the prior period had been that the right to counsel did not apply, and the expansion of warnings and waivers under Miranda versus Arizona. So I think the breadth of the conclusion that the attorney-client privilege is not constitutional is certainly entitled to some skepticism at the present time.

It is my view, however, that the attorney-client privilege does not apply here to preclude enforcement of this subpoena because the attorney-client privilege simply, on the facts, does not

apply. Upjohn versus United States contains the basic proposition that the attorney-client privilege is the oldest of the privileges for confidential communications known to the law, with the citation to Wigmore. The Supreme Court in the Upjohn case says that the purpose of the attorney-client privilege is to encourage full and frank communications between attorneys and their clients and thereby promote the broader public interest in the observance of law and the administration of justice. The privilege recognizes that sound legal advice and advocacy serve public ends, but such advice or advocacy depends upon lawyers being fully informed by their clients.

In the Westinghouse versus Republic of the Philippines case, the Third Circuit articulated this view: ''Full and frank communication is not an end in itself, but merely a means to achieve the ultimate purpose of privilege, promoting broader public interest in the observance of law and the administration of justice.''

The Third Circuit, in the Westinghouse case, goes on to point out, ''because the attorney-client privilege obstructs the truth-finding process, it is narrowly construed.''

The essential ingredients for the attorney-client privilege were set forth in United States versus United Shoe Machinery Corp., a landmark decision by Judge Wyzanski, pointing out that one of the essentials for the privilege is that the communication has to have a connection with the functioning of the lawyer in the lawyer-client relationship. Professor Wigmore articulates the same basic requirement.

As I take a look at the facts present here and a number of the individuals present, there was not the attorney-client relationship. There were present at the meeting in issue David Kendall, a partner at the Washington, DC, law firm of Williams & Connolly, recently retained as private counsel to the President and Mrs. Clinton. That status would certainly invoke the attorney-client privilege. Steven Engstrom, a partner of the Little Rock law firm that had provided private personal counseling in the past. That certainly would support the attorney-client privilege. James Lyons, a lawyer in private practice in Colorado, who had provided advice to the President when he was Governor, and to Mrs. Clinton at the same time. But then, also present, were Bruce Lindsey, then director of White House personnel, who had testified that he had not provided advice to the President regarding Whitewater matters. Once parties are present who were not in an attorney relationship, the attorney-client privilege does not continue to exist in that context, where they are privy to the information. There was Mr. Kennedy, himself, associate counsel to the President—William Kennedy, who said he was ''not at the meeting representing anyone.'' Then you had the presence of then counsel to the President, Mr. Bernard Nussbaum, and also associate counsel to the President, Mr. Neal Eggleston, who were present, not really functioning in a capacity as counsel to the President or Mrs. Clinton.

So, as a legal matter, when those individuals are present, the information which is transmitted is not protected by the attorney-client privilege. And then you have, further, the disclosure which was made by White House spokesman, Mark Fabiani, to the news media characterizing what happened at the November 5 meeting, and discussing the subject matter of the meeting, which would constitute as a legal matter, in my judgment, a waiver of the privilege.

So that recognizing the importance of the attorney-client privilege, I would be reluctant to see this matter decided on the basis that Congress has such broad investigating powers that the attorney-client privilege would not be respected. As I say, we do not have to reach that issue. On the facts here, people were present who were not attorneys for the President or Mrs. Clinton. Therefore, what is said there is not protected by the attorney-client privilege. The later disclosure by the White House spokesman, I think, would also constitute a waiver. For these reasons, and on somewhat narrower grounds, it is my view that the resolution ought to be adopted and the subpoena ought to be enforced.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Arkansas is recognized.

ACCOLADES TO SENATOR BYRD

Mr. PRYOR. Mr. President, I thank the Chair for recognizing me.

Mr. President, first, I want to add my accolades, if I might, for just a moment, to the very distinguished senior Senator from West Virginia, ROBERT BYRD, who earlier this afternoon, I think probably gave one of the more classic speeches that has been given on this floor for many a year.

I hope the result of that will be that this Senate makes a video tape of this particular speech available—and certainly the CONGRESSIONAL RECORD—and that it would be widely disbursed, and that, hopefully, each incoming Senate class in years to come in this great institution would have the privilege, during the orientation period, of listening to the wise and truthful and very strong words of Senator ROBERT C. BYRD——about the institution that he loves and that we love and respect. I applaud him for his statement. I think it was timely. I think it was on the point. I think all of us owe him a deep debt of gratitude for that statement which was given from Senator BYRD's heart.

DIRECTING THE SENATE LEGAL COUNSEL TO BRING A CIVIL ACTION

The Senate continued consideration of the resolution.

The PRESIDING OFFICER (Mr. Faircloth). The Senator from Arkansas.

Mr. PRYOR. Mr. President, here we are, almost the night before Christmas, in the U.S. Senate, the House of Representatives, and we find ourselves still in session. We do not find ourselves, tonight, ironically, talking about what to do about the budget impasse. We do not find ourselves on the floor of the U.S. Senate this evening talking among each other and colleagues as we should about how to reopen the Government.

No, Mr. President, we find ourselves this evening talking about a more arcane and mundane situation, something called Whitewater. Whitewater has become the fixation of one of our political parties. There is no secret about that.

Today, the Republicans control the Congress. They set the agenda for what committees meet, when they meet, what issues come before those committees, what issues are brought before the floor of the U.S. Senate. I think it very timely, Mr. President, for us to examine the priorities of this session of Congress.

I think it very interesting to note that tonight, a few hours before Christmas, when we had hoped to be back in our home States or wherever we might have been, when all of the employees of the Federal Government who are furloughed would prefer to be working and serving the public, as they do so well, we find ourselves once again engaged in what I call the Whitewater fixation.

Here are the priorities that are established not by this Senator, not by this side of the aisle, but by our colleagues who might be well meaning on the other side of the aisle. I think it bears listening to for a few moments, Mr. President, to see that in this year we have had some 34 hearings relating to Whitewater. That would be the red bar going up the chart. Thirty-four hearings in 34 days of the U.S. Senate that have been designated for Whitewater—the Whitewater fixation.

How many days have been set aside for Medicaid funding? Mr. President, six hearings, Mr. President—six compared to 34 for the Whitewater fixation.

How many hearings have we held in the U.S. Senate in the calendar year 1995, in this session of Congress, that relate to education funding, Mr. President? Four hearings—four hearings compared to 34 hearings of Whitewater.

And how many hearings, Mr. President, have we had on the Medicare plan, as proposed by the majority party? How many days of hearings have we heard about Medicare? One day, one hearing. There it is, the small green bar on the bottom of the chart.

That tells the story, Mr. President, I think of priorities for 1995 and this session of Congress, where the priorities

lie with the leadership of this Congress and what we really are faced with in determining what to do about this very critical vote this evening on what I call the Whitewater fixation.

Mr. President, that is not the end of the story about the so-called Whitewater fixation and the Whitewater priority, because I think that sometimes we fail to recognize, as we go through 1 week, 1 month, one Congress at a time, continually appropriating money to chase the Whitewater fixation and to further study the Whitewater matter. I think from time to time it might be good to recapitulate how much it is actually costing the American taxpayers to engage the U.S. Senate, the resources of the special counsel, the resources of our Senate committees, in dealing with the Whitewater concern.

For example, the first special counsel that was named to look into the Whitewater matter, who, I might add, was a Republican and in very, very good standing, Mr. Fiske, Mr. Fiske, as special counsel, spent $5.9 million—$5.9 million, Mr. President, in his investigation of the Whitewater matter. Mr. Fiske, evidently, did not find enough. He did not find a smoking gun. He did not nail any scalps to the wall, so Mr. Fiske was relieved of his responsibility. He was relieved. He was fired.

Then came on to the scene Mr. Kenneth Starr, who has spent, from August 5, 1994 to March 31 of 1995, $8.7 million in the investigation of this illusory situation known as Whitewater. Mr. Starr could not finish his work, Mr. President. He had to come before the Congress and he had to have more money as a special counsel. So he comes back to the Congress this April. From April to November of 1995, independent counsel Kenneth Starr spent another $8 million.

So we are adding up the figures. No, we could not quite spend enough money to satisfy Mr. Starr. In two appropriations, we could not spend enough to satisfy Mr. Fiske. He got no indictments of any consequence. He did not nail any scalps to the wall.

So what happens next? We hire, by the RTC, the Pillsbury law firm, basically a firm with very strong Republican connections. I might add, a very splendid law firm, according to all reports. The U.S. taxpayer writes a check for $3.6 million to the Pillsbury law firm in California, to come forward with a report that basically says this: The Clintons are clean, the RTC should not pursue any criminal action whatever against the Clintons, nor this administration.

Mr. President, that is still not enough: $3.6 million, $5.9 million, $8.7 million, $8 million. So now we have to go back and see what our own committee spent: in 1994, $400,000; in 1995, $950,000—a total, Mr. President, of $27.6 million that we have spent that we can account in this illusory situation, this illusory item known as Whitewater.

This is the Whitewater fixation. This is the Whitewater fixation, Mr. President, that I think really is the Whitewater witch hunt. It is the witch hunt of the 1990's. It has become a waste of the taxpayers' dollars.

What we are doing today is simply, in my opinion, showing where the priorities of this session of Congress are: with 34 hearings dedicated to Whitewater, 6 hearings dedicated to Medicaid, four hearings dedicated to education, and 1 hearing dedicated to Medicare. That is the priorities of this particular Congress thus far, in 1995.

We have had brilliant arguments this afternoon and, I think, some brilliant arguments in the Banking Committee, perhaps, on each side of the aisle, relative to the question of the privilege created between attorney and client. I am not going to argue this. I am not a constitutional lawyer. I am not one who specialized in this particular area of the law. But I would just say this. I think it is very, very necessary for the American public at this time to have the knowledge that this administration in no way is trying to keep the U.S. Senate, the Banking Committee charged with this particular concern, keeping the notes of November 5, taken by Bill Kennedy, away from this committee.

The White House has repeatedly said: We want you to have these notes. We think you should have these notes. We will give you these notes, taken by Mr. Kennedy and/or Mr. Lindsey. I forget which. But, what we want to make sure is that we are not waiving the very important, crucial matter of the attorney-client privilege.

If we can, basically, in a political arena, invade or take away this privilege in any form, shape or fashion, if we erode that particular privilege, if we come before the U.S. Senate and say that privilege does not exist, then what is the next step? Are we going to come to the U.S. Senate and say we do not think we need to have a doctor-patient privilege? We want to do something about eroding that? So we start pecking away at that.

I do not think that should be the business of the Senate at this particular time, to start eroding and emasculating the particular right that we revere in the common law and have for so many years, and that is the right of privilege created between lawyer and client.

The White House wants to know how far this action extends. Should they make these notes available, they are seeking clarification. That is basically what this is about and I am very, very concerned that some people are making a very, very overrated political issue about the Whitewater matter.

The Senate has spent a total of $1.35 million in 1994 and 1995 on the Whitewater matter. I would like to ask this question. What is the charge? What is the accusation against the White House? What is the accusation against any of the people who have been brought before the committee in the last 12 months, before the Senate committee? What are they being charged with?

I would like to also know if anyone is taking cognizance of the fact that, even though some may be enjoying this event and may be making a little political hay out of it from time to time, I wonder if anyone has taken cognizance of how much the legal fees and the expenses of these witnesses are, some of whom certainly cannot afford the very, very high cost of counsel.

The $27 million that the taxpayers have spent on the Whitewater investigation is almost three times what it would have been to have closed down Madison Savings & Loan institution in Little Rock, AR. The White House has provided, I think, according to the information that we have, over 15,000 pages of documents to the Senate committee. The President's personal attorney has produced more than 28,000 documents for the Senate committee. The Senate committee has deposed some 152 individuals. The Senate committee has heard testimony from 78 people during the hearing, in the hearing examination process.

All of this activity has been done with the total cooperation of the White House. And still there is no smoking gun. The so-called smoking gun that some say would be found in the notes taken by Mr. KENNEDY and/or Mr. Lindsey, those particular notes, in my opinion, even though I have not been privy to seeing them, probably, in all likelihood, contain no more of a smoking gun than has been found in the past several months during this investigation and during the tenure of two special counsels, Mr. Fiske and now Mr. Starr.

I think we are going to have to face, Mr. President—I do not know when this comes up, perhaps in February—we are going to be faced with a decision. OK, we spent some $27 million on this, and I am not sure that includes the cost of all of the army of FBI, of the RTC, of the FDIC, all of the Federal employees, all of the Federal negotiators, all of the resources of the Federal Government, all the copying, the printing, the committee reports and all this—I am not certain that this cost even covers that particular amount. But we are going to be faced in the Senate, in February, I believe, if I am correct, with another question. Are we going to appropriate another $5, $6, $8 million for the committee to continue down this same path of dragging these people before the committee, of interrogating them, of asking them to pay for their own lawyers' fees and basically bringing them in and putting them in the lockbox, so to speak, as they wait their turn to testify before the committee? Is this the best that we can do in all of these months and all of these years of investigating this thing called Whitewater? During this period of the Whitewater witch-hunt? During this period of Whitewater fixation?

I think we are better than that. I think this Senate is better than that.

Mr. D'AMATO. Mr. President, could I ask just for a moment, so we might be able to hotline a resolution of this matter and I will yield the floor right back to my colleague?

Mr. PRYOR. I will be glad to yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. D'AMATO. Mr. President, I ask unanimous consent, after having consulted with my friend and colleague, Senator SARBANES, that the time between now and 7:15 be equally divided, excluding the Senator's time. After the Senator concludes his remarks, the time after the Senator concludes his remarks be equally divided in the usual form for debate on Senator SARBANES' substitute amendment; that no other amendments or motions to recommit be in order, that it be in order for the amendment to amend both the preamble and resolving clause, and that at 7:15 the Senate vote on the Sarbanes amendment and upon the disposition of the amendment the Senate vote on passage of Senate Resolution 199, as amended, if amended, and that the preceding all occur without any intervening action or debate.

AMENDMENTS—NOS. 3101, 3102, AND 3103—EN BLOC

Mr. D'AMATO. Mr. President, also, I will send three amendments to the desk which have been cleared by the other side, my friend in the minority. I ask they be considered en bloc, agreed to en bloc, and I will move to reconsider.

Mr. SARBANES. Are these the amendments directed toward a possible deficiency in the issuing of the subpoenas?

Mr. D'AMATO. That is correct. They are the technical amendments that deal with the issuance of the subpoena.

The PRESIDING OFFICER. Is there objection to the request as regards the amendments? If not, it is so ordered.

The amendments—Nos. 3101, 3102 and 3103—were considered and agreed to en bloc, as follows:

AMENDMENT NO. 3101

(Purpose: To amend the resolution to reflect the serving of the second subpoena)

The first section of the resolution is amended by striking ''subpoena and order'' and inserting ''subpoenas and orders''.

AMENDMENT NO. 3102

(Purpose: To amend the resolution to reflect the serving of the second subpoena)

After the sixth Whereas clause in the preamble insert the following:

''Whereas on December 15, 1995, the Special Committee authorized the issuance of a second subpoena duces tecum to William H. Kennedy, III, directing him to produce the identical documents to the Special Committee by 12:00 p.m. on December 18, 1995;

''Whereas on December 18, 1995, counsel for Mr. Kennedy notified the Special Committee that, based upon the instructions of the White House Counsel's Office and personal counsel for President and Mrs. Clinton, Mr. Kennedy would not comply with the second subpoena;

''Whereas, on December 18, 1995, the chairman of the Special Committee announced that he was overruling the legal objections to the second subpoena for the same reasons as for the first subpoena, and ordered and directed that Mr. Kennedy comply with the second subpoena by 3:00 p.m. on December 18, 1995;

''Whereas Mr. Kennedy has refused to comply with the Special Committee's second subpoena as ordered and directed by the chairman''.

AMENDMENT NO. 3103

(Purpose: To amend the resolution to reflect the serving of the second subpoena)

Amend the title so as to read: ''Resolution directing the Senate Legal Counsel to bring a civil action to enforce subpoenas and orders of the Special Committee to Investigate Whitewater Development Corporation and Related Matters to William H. Kennedy, III.''

Mr. D'AMATO. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Is there any objection to the request for a vote on the Sarbanes amendment at 7:15 and a vote on the resolution after the 7:15 vote?

Mr. SARBANES. The consent request was broader than that. I do not think there is any objection to the unanimous-consent request which was read by the chairman.

The PRESIDING OFFICER. Is their objection to the request of the Senator from New York?

If not, it is so ordered.

Mr. D'AMATO. I thank my friend and colleague for extending us this time.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I thank the Chair.

Mr. President, I am going to conclude once again by saying that personally I think holding 34 hearings on Whitewater this year is enough. I think spending $27.6 million is enough. I think that expending these amounts of resources that we have expended, for the FBI and all of the other investigation teams, whatever, looking into Whitewater that have been utilized by the Federal Government I think frankly is more than enough.

I hope—and I urge my colleagues on each side of the aisle—if there is something wrong that someone has done, let us name the cause, let us bring them to justice, and let us do what is necessary. But, Mr. President, to keep this issue out, to keep it dangling as it is today, to keep it as an issue that I fear is becoming politicized to a very great extent, and to not recognize the simple unfairness that we have created in not bringing charges when we might or might not have charges to bring but to just to keep that issue out there over and over and over and day after day, month after month, millions after millions of dollars, I think is unfair. I think this institution is better than that.

I hope that we will reach down and find in our souls somewhere a way to finally conclude the Whitewater witch hunt and our fixation on the Whitewater matter.

Mr. President, I thank the Chair. I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the time from now until 7:15 is equally divided.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the three amendments just adopted en bloc be in order at this time.

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

Who yields time?

Mr. SARBANES. Have the three amendments been agreed to?

The PRESIDING OFFICER. Yes.

AMENDMENT NO. 3104

(Purpose: To direct the Special Committee to exhaust all available avenues of negotiation, cooperation, or other joint activity in order to obtain the notes of former White House Associate Counsel William H. Kennedy, III.)

Mr. SARBANES. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland (Mr. SARBANES) proposes an amendment numbered 3104.

Mr. SARBANES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after the resolving clause and insert the following: ''That the Special Committee should, in response to the offer of the White House, exhaust all available avenues of negotiation, cooperation, or other joint activity in order to obtain the notes of former White House Associate Counsel William H. Kennedy, III, taken at the meeting of November 5, 1993. The Special Committee shall make every possible effort to work cooperatively with the White House and other parties to secure the commitment of the Independent Counsel and the House of Representatives not to argue in any forum that the production of the Kennedy notes to the Special Committee constitutes a waiver of attorney-client privilege.''.

The preamble is amended to read as follows:

''Whereas the White House has offered to provide the Special Committee to Investigate Whitewater Development Corporation and Related Matters ('the Special Committee') the notes taken by former Associate White House Counsel William H. Kennedy, III, while attending a November 5, 1993 meeting at the law offices of Williams and Connolly, provided there is not a waiver of the attorney-client privilege;

''Whereas the White House has made a well-founded assertion, supported by respected legal authorities, that the November 5, 1993 meeting is protected by the attorney-client privilege;

''Whereas the attorney-client privilege is a fundamental tenet of our legal system which the Congress has historically respected;

''Whereas whenever the Congress and the President fail to resolve a dispute between them and instead submit their disagreement to the courts for resolution, an enormous power is vested in the judicial branch to write rules that will govern the relationship between the elected branches;

''Whereas an adverse precedent could be established for the Congress that would make it more difficult for all congressional committees to conduct important oversight and other investigatory functions;

''Whereas when a dispute occurs between the Congress and the President, it is the obligation of each to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch;

''Whereas the White House has made such an effort through forthcoming offers to the Special Committee to resolve this dispute; and

''Whereas the Special Committee will obtain the requested notes much more promptly through a negotiated resolution of this dispute than a court suit:''.

Mr. SARBANES. Mr. President, I note that the preamble is also amended. But under the unanimous consent request, it is in order to amend both the preamble and the resolve clause. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. SARBANES. And no other amendments or motions to recommit are in order.

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. The vote will occur at 7:15 and the time between now and then to be equally divided.

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. How much time is then available to each side?

The PRESIDING OFFICER. Approximately 27 minutes to each side.

Mr. SARBANES. I thank the Chair.

Mr. President, I yield myself 8 minutes and ask that the Chair notify me upon the expiration of the 8 minutes.

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

Mr. SARBANES. I thank the Chair.

Mr. President, this amendment, very simply put, takes the position that rather than going to court at this point, the special committee should exhaust all available avenues of negotiation and cooperation, or other joint activity, in order to obtain the notes and to work cooperatively with the White House and other parties to secure the commitment of the independent counsel and the House of Representatives not to argue that the furnishing of the notes, the production of the notes, constitutes the waiver of attorney-client privilege.

We have been lead to understand that the independent counsel is amenable to such an arrangement in his discussions with the White House, although that has not been confirmed with us. But that is my understanding. This committee has agreed to this proposition.

As the chairman indicated, two of the conditions the White House put forward when it offered the notes is that we will make the notes available, but we want to guard against the total waiver of the attorney-client privileges. One of those conditions was that the committee would not take the position in any forum that the production of the notes constituted a general waiver of the attorney-client privilege. In effect, that was recognized by the committee as a reasonable proposition and agreed to.

The question now is, if the House committees would agree to the same proposition, the notes are forthcoming, if you eliminate then the risk of the waiver of the attorney-client privilege? I have heard discussion on the floor today—I did not challenge it on every occasion—that there is no reasonable claim here to a lawyer-client privilege. That is not what the experts tell us. Professor Hazard, who is one of the leading men in the country on this, has been rather clear in thinking there is an attorney-client privilege.

In addition, once you waive it, you then have the risk of waiving your confidential relationship with your lawyer with respect to all meetings—not just with respect to this meeting. In any event, I think it serves our purposes to try to work this matter out.

As I understand it, the discussions took place in the House today with the chairmen of the relevant House committees, and it seems to me that those discussions ought to continue and that we ought to get a posture hopefully on the part of the House committees comparable to the position this committee has taken and comparable to what the independent counsel has taken.

It behooves us to try to avoid a confrontation, and it serves the Senate's purposes not to go to court if the matter can be resolved in a way that has been suggested. What is before us is a process whereby we can obtain the notes and yet not have any trespass or intrusion into the attorney-client privilege.

This is a very important issue. One of my colleagues said earlier there is no case about the Congress dealing with the attorney-client privilege. The Congress has not trespassed the attorney-client privilege. One of my colleagues cited a quote of the President who said he would provide any information available. That was a year and a half ago, I guess. My reaction to that is obviously when he said it, he never envisioned that we would face the prospect of an unreasonable intrusion into the attorney-client privilege. I never thought that would happen, and when confronted with it here, the question is, how can we work through it? We can get these notes, not waive the attorney-client privilege, and proceed with our inquiry. Of course, that would make the notes available immediately. That is the path that I think the Senate should follow.

So I think it would serve the Senate well to make a further effort at working with the White House and the other parties to get the kind of understanding from all of the relevant investigatory bodies—and we are now talking about the House committees—in view of the decision of the independent counsel; that furnishing of the notes is not a general waiver of the privilege. We recognize that is reasonable. The independent counsel apparently recognizes that it is reasonable. If we can just close the loop with respect to the House committees, this matter can be settled. The notes will be furnished.

There is a letter from the White House counsel saying, ''We have succeeded in reaching an understanding with the independent counsel that he will not argue that turning over the Kennedy notes waive the attorney-client privilege claim by the President.''

With this agreement in hand, the only thing standing in the way of giving these notes to your committee is the unwillingness of Republican House chairmen similarly to agree.

I understand they entered into discussion this afternoon with the House chairmen in respect to this very issue. Of course, the House chairmen, as I see it, have nothing to lose by the agreement. The notes become available. The agreement does not preclude them from any action that is currently available to them. It would not eliminate any course of conduct that they wished to follow that is currently available to them.

The White House has indicated that as soon as they secured such an agreement from the House, they would provide the notes to the committee. So it seems to me that we ought not to provoke a constitutional confrontation. We ought not go to the courts in order to resolve this issue. I suggest to my colleagues, although many have asserted that there is a weak attorney-client privilege, I think just the contrary. In any event, the court may well decide that there is a strong attorney-client privilege which, of course, would have an impact on the investigatory authority of the Congress. It would be a prudent course of action to resolve the matter without going to the courts. There is every indication that that may well be possible.

That is the situation in which we now find ourselves. This committee has recognized it as reasonable. The independent counsel has recognized it as reasonable. And if we can get the House committees to follow the same path, the notes can be furnished, there is no trespass on attorney-client, the committee can continue its work and continue to do it now. If we go to court, we have a long time ahead of us.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. D'AMATO. Mr. President, first, let me say that I am forced to oppose the amendment for a number of reasons. I certainly do not question the sincerity of my colleague, Senator SARBANES, in an attempt to bring about a successful mediation, successful in that it would result in the notes being turned over. I absolutely had no doubt from the beginning he has pursued this and worked to achieve this end. I am forced to oppose this, though, because there are a number of problems that I could see taking place.

No. 1. I believe that this amendment could result, if passed—if adopted, this approach could result in prolonging what has really been a very long, now unnecessary, delay. This issue of these records and other records really goes

back to August 25 and reaches a high point, begins to reach a high point in November, starting November 2 and culminates in December when we actually issue subpoenas.

One actually has to understand that we did, in fairness again to the committee, issue these subpoenas on a bipartisan basis. We attempted to avoid it, attempted to mediate this before we finally came to the conclusion that we had to issue the subpoenas. And it was only then, when the White House raised the issue of privilege, the attorney-client privilege, that we kind of parted ways.

When I say we parted ways, there was a recognition by the majority that this privilege, on our part we felt, did not apply, and there was a concern on the part of the minority that the White House was within its realm. But, notwithstanding the differences of opinion, I must say that my colleagues on the Democratic side urged an attempt to work this out. The fact is, though, we have been working toward this, I think, for several weeks very intensively. When I say ''we,'' I am talking about counsel—majority counsel, minority counsel—working to attempt to resolve this. We had offered basically to say we will not intrude into Mr. Kendall, we will not ask or seek a waiver. We say that this sets no precedent, so therefore you will not be bound in other areas. We will agree to those things. And that is basically now the position that the White House counsel finally came around to. But understand, it only came around to that after we indicated we would go forward and push this issue on the subpoenas. Very, very grudgingly did they come to this position, and they came to this position very late in the game. Notwithstanding that, we indicated that we would accept.

Now, the problem we have is when we get into this language and we say that this committee will exhaust all available avenues of negotiation, cooperation, or other joint activity with the White House, the committee would have to attend more meetings, have endless negotiations—it could possibly take us, we do not know how long—ignores what we have done, good faith work and negotiation starting in August and culminating finally when we have said basically enough is enough. If we cannot resolve the matter—reasonable people disagree; you contend it is privileged material; we do not believe that to be the case—we are going forward. And that is how we come here. If we were to adopt the amendment that is now being considered, we would put off the time when the committee could enforce the subpoena for Lord knows how long.

I believe that my colleague really wants good faith negotiations and wants those notes. I do not know when the House may or may not agree to this. We have been told that the independent counsel has agreed. I have no doubt that, if that is the representation that has come from the White House, that is the case. But this amendment could literally require the committee to negotiate on behalf of the House, and this would be unprecedented and would require the committee to delay even more.

Now, let me go to the merits of this. This amendment, if we read lines 1 through 19, says, ''Where the White House has made a well-founded assertion, supported by respected legal authorities, that the November 5, 1993, meeting is protected by the attorney-client privilege.''

Let me say, No. 1, no President has ever raised the attorney-client privilege. He just has not done it. It is unprecedented. No. 2, we would have to be conceding that this is well-founded. And notwithstanding that there may be a legal scholar or some who would give testimony to this who might believe this to be the case, I have to tell you that I do not believe that this is a well-founded assertion, as Senator THOMPSON, I believe, so scholarly and so powerfully argued; that the attorney-client privilege certainly did not apply to this meeting even given the limited circumstances that we understand as to how this meeting came about, even conceding—and I think if we were to go further, we would find out there would be ample testimony and proof that there is no way that that privilege should attach to this meeting.

Notwithstanding, we offered to say there would be no deem, no waiver, of any attorney-client privilege. We did that. That was not the White House that came forth. They rejected that. It was only when we said we were going to issue a subpoena that they then said, well, here we are coming forth. Again, I think we have to discern the legitimate attempts at compromising, which absolutely comes from my colleagues on the Democratic side on the Banking Committee but was not supported by the actions and activities of the White House. That we have to distinguish.

I am very much concerned that we would be prevented from pursuing other avenues of investigation in regard to White House contacts with the President's personal lawyers and we would not be able to see if there were other Whitewater joint defense meetings, and that is a very critical point.

Now, Mr. President, let me go to something that I do not take lightly, but I have mentioned it and I will mention it again. There are political overtones. Make no mistake about it, there absolutely are.

But you see, Mr. President, when the President of the United States says, as he has on a number of occasions, on March 8, in a press conference in connection with the appointment of Mr. Cutler, during that press conference the President was asked about the possibility of asserting privilege, and he gave the following response. He said, ''It is hard for me to imagine a circumstance in which that would be an appropriate thing for me to do.''

I believe Senator THOMPSON answered quite compellingly, and argued that, what does he do, he goes and raises a privilege that has never been raised because he did not want to be in an embarrassing position when he said ''executive privilege,'' when he spoke quite clearly on this on a number of occasions.

By the way, March 8, 1994, is a very important date. Let me tell you why. Because that was 4 months after this meeting. He knew about that meeting. Understand what he said. ''It is hard for me to imagine circumstances in which that would be an appropriate thing for me to do.'' This was not an event that transpired after March 8. This took place 4 months before.

This is not the first time that the President made that assertion. Indeed, on April 5, 1994, I believe in North Carolina, again in response to a question, the President said, ''I look for no procedural ways to get around this. And I tell you, you want to know, I'll give you the information. I have done nothing, and I will be open and above board. I have claimed no executive privilege.'' Indeed, he did not claim that, and obviously the interpretation is, ''nor will he.''

Remember, this was 5 months to the day after this meeting. So this is not a circumstance that occurs after something that will be extraordinary, not anticipated.

So, Mr. President, I have to say that we have gone that extra step. We have gone that extra mile. We have gone to the point that we may have even—and I believe we have, because if you look at the points that we have conceded in that letter, which I do not have here, a letter where the five points initially were submitted to us, that we have indicated that we are not going to say this is a waiver of privilege, although we do not believe there is a privilege, nor will we raise and look to examine Mr. Kendall.

I believe if you look at all the constitutional authorities where privilege has been waived by the actions of the parties, that is, by those who are nonlawyers or those who are nonparticipants or outside of the scope of the legal arguments, you waive that privilege. Where people who attended that meeting speak about that meeting, a waiver of that privilege is, notwithstanding that we agreed on points 2 and 3, that we suggested that the committee would limit its testimony and inquiry about this meeting to the White House officials who attended it, that we would not seek to examine Mr. Kendall.

I believe that constitutionally we have a right to actually examine Mr. Kendall, absolutely. If that meeting was not privileged, we have a right to examine him. But we said, ''Look, we want the notes. We don't want to create a situation where you have this argument.'' That is why we came up with

this offer. Understand, this is not the White House's offer. It was our offer. Now, they have accepted, and they attempted to put additional conditions.

Indeed, if my House colleagues go along with this, fine. We will go forward. But I would only suggest if the effort was made, and the effort has been made and has been made by both the minority and the majority on this committee for months now, and as it relates to these specific notes for 3 weeks, hard bargaining, working at it, giving suggestions, that that which we put forth in good faith could have been and should have been accepted. That is unfortunately the kind of situation that we have encountered as we attempt to gather the facts and the information.

So I put it to you that I would hope that we would get these notes, that we would get them without the necessity of having to go to court. I hope that the White House will make them available. If our brethren in the House agree, then that resolves it, then so be it. But I do not believe, in good conscience, I could recommend to my colleagues that we delay the implementation mechanism with the caveat that the door will be open.

It is open, even after we pass this, if we do pass this resolution, to go forward and seek enforcement of it. I made the commitment that I would move to withdraw that enforcement action upon the proffer of the notes of Mr. KENNEDY. I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. Mr. President, how much time do we have on each side?

The PRESIDING OFFICER. The Senator's side has about 12 minutes, and there is 17½ for the other side.

Mr. BUMPERS. Mr. President, how much time does this side have remaining? Parliamentary inquiry, how much time is left on our side?

The PRESIDING OFFICER. There is approximately 17½ minutes.

Mr. SARBANES. I yield 3 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator form Arkansas.

Mr. BUMPERS. Thank you, Mr. President.

Mr. President, just as a country lawyer who tried a few criminal cases over a period of 20 years—I never had a case involving attorney-client privilege, so I do not profess to be an expert on it—I would say based on listening to some of the scholars on some of the talk shows and what I have read, and I have a couple bright youngsters on my staff that I have discussed it with, I would say it is probably a 50–50 proposition if it went to court. But I am not here really to debate that.

The thing that is mildly perplexing to me is, I was watching the news this afternoon, CNBC and CNN, and they kept saying the Senate Whitewater committee is seeking a subpoena to force the President to hand over the notes of young William Kennedy taken at this infamous meeting and in the President's attorney's office.

As I understand it, that is not really the issue here. The issue here is whether or not we will agree to allow the President to hand over the notes, which he has agreed to do and to the chairman and the members of his party's side of the committee agreed to. The committee agreed to it. I thought it was a fine resolution of the matter. But I also think that the President was entirely within his rights to say, ''I will be happy to hand these notes over to you, but I do not want to waive the attorney-client privilege forever from now on on any other meeting.''

Is that a fair statement? Let me ask the Senator from Maryland, is that a fair statement?

Mr. SARBANES. What the President said is, ''I need the same assurance that the committee was going to give, because they saw it as being reasonable from other investigatory bodies, like the independent counsel and the House committees.'' The independent counsel has agreed to do it. If you could get it from the House committees, then the President could turn over the notes, he would not waive the attorney-client privilege, you would not have intruded into the privilege, and yet the notes would have been made available to the Senate committee.

It is a perfectly reasonable position.

Mr. BUMPERS. It, to me, is like the best of all worlds, I say to the Senator. I would have hoped that instead of getting into this all-day debate in the Senate, that the chairman and ranking member of the Senate committee, their counterparts in the House, the independent counsel—I do not know that there is any great sense of urgency about these notes—and the three of them, that group sit down and agree to this.

One additional minute.

Mr. SARBANES. I yield one additional minute.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. SARBANES. I yield an additional minute.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. So all I am saying, Mr. President, is it seems it is not a constitutional crisis. This does not reach the level of some of those infamous battles of the Watergate hearings or even Iran-contra. But it just seems to me that in the interest of comity, in the interest of taking advantage of an offer by the President to say here they are, take them, but you know, let us let the House and the independent counsel both say, as well as the Senate, that we are not waiving, that the White House is not waiving.

The President is personally not waiving the attorney-client privilege. I daresay there is not a Member of the U.S. Senate that would have made a more generous offer under the same conditions than the President of the United States has made in this case.

So I yield back such time as I have to the Senator from Maryland.

Mr. SARBANES. Mr. President, I yield myself 1 minute.

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

Mr. SARBANES. I say to the Senator from Arkansas that it has been suggested to us by the courts, which have said, ''Each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular facts situation.''

In other words, if we can work out an accommodation, that is what we ought to do, not provoke a confrontation. And, Attorney General William French Smith noted, ''The accommodation required is not simply an exchange of concessions, or a test of political strength, it is an obligation of each branch to make a principled effort to acknowledge and, if possible, to meet the legitimate needs of the other branch.''

As I say, I think, in this instance, if we work at it, we can get the notes and not trespass on the attorney-client privilege. That ought to be the objective.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. I yield to the minority leader whatever time he may use.

Mr. DASCHLE. Mr. President, I thank the ranking member of the committee. I appreciate having the opportunity to express myself on this important matter. Today, Mr. President, is December 20. The holiday season is upon us, and the Senate is in session. A casual observer of the events of the past few weeks —the Government shutdowns, the rancorous budget negotiations—might expect to find the Senate debating such critical issues as how we provide for our children's future and our parents' retirement, or how we protect our precious natural resources while still balancing the Federal budget. One might expect.

Sadly, we are not debating such important subjects. No, we are here on the Senate floor debating an issue in which the American people have said repeatedly they have very little interest—Whitewater—or, more specifically, the Senate inquiry into Whitewater.

How did we end up here? How did the Senate come to find itself considering a resolution that pushes this body toward an inevitable and, in my view, wholly unnecessary confrontation with the White House?

The answer, Mr. President, is that the Senate finds itself here by design.

The majority in the Senate, faced with the prospect that the exhaustive investigation into the Whitewater matter will produce little in the way of substantive results, has crafted a legal and constitutional confrontation. This confrontation, the majority hopes, will

finally accomplish what all the Whitewater Committee hearings, depositions, and subpoenas have failed to accomplish: political damage to the President. That is why the Senate is on the floor, on December 20, debating a Whitewater resolution.

Mr. President, other Members on both sides of the aisle have laid out the legal arguments surrounding this resolution. And make no mistake about it, there are some difficult legal questions at issue here. We all recognize and accept there are good-faith differences of opinion on those issues.

But let us be honest. If this debate were solely about the legal merits of the White House's assertion of the attorney-client privilege, and general waivers of that privilege, then I doubt we would even be having this debate at all.

That, Mr. President, is precisely what is so troubling about this whole matter. It is not a dispute about conflicting interpretations of law. It is not a dispute about the arcania of the attorney-client privilege, or attorney-work product privileges, or any legal privileges at all. This is about an old-fashioned, hardball political confrontation, pure and simple.

I am not an attorney, but let me briefly state my perspective. The attorney-client privilege is a basic, fundamental tenet of our legal system. The privilege reflects the long-held belief of the courts that confidential communications between attorneys and their clients should remain confidential. Every American has the right to talk frankly to his or her lawyer. Indeed, the courts, in creating this privilege, believed that the protection of the privilege would lead to a surer rendering of justice in our legal system. The President of the United States, like every other American, is entitled to the protection of the law.

So this resolution represents a dangerous encroachment on a basic protection in our legal system. It is also unnecessary.

The proponents of this resolution conveniently omit a very crucial fact, and that fact is that the White House has repeatedly offered to provide the notes in question—the notes taken by associate White House counsel William KENNEDY, the notes that are the target of the special committee's subpoena.

Let me repeat that. The White House is willing to provide—it has been said many, many times—the documents that the committee seeks. There is no question about that. All the White House asks is that the special committee assist in efforts to secure the agreement of the independent counsel and the House that the White House has not waived its attorney-client privilege.

In fact, Mr. President, the White House apparently has already secured the concurrence of the independent counsel that no waiver will occur when the notes are provided to the Senate committee. So the only remaining issue is the position of the House of Representatives.

So let us, very briefly, review the facts. The attorney-client privilege is a fundamental tenet of our legal system.

President Clinton has legitimately asserted the privilege in this case.

The White House has offered to provide the notes to the committee, provided the attorney-client privilege is respected.

The Special Committee will receive the notes from the White House immediately if it will only agree to this limited, reasonable condition.

Those are the facts. That is all there is to it. It is not complicated.

The proponents of this resolution seem determined to seek conflict, when conciliation is within easy reach. Before we vote on this resolution, I think everyone should ask ourselves why that is. Why, when there is a solution at hand, should we pursue a deliberate strategy of conflict?

Every Member of the Senate knows that a President's private legal interests may, from time to time, legitimately affect the official operations of the office of the Presidency. In fact, I can imagine no group that might be more sensitive to how private and public interests can sometimes converge than the Members of the U.S. Senate.

Let there be no misimpression: The precedent set in this case may involve the President of the United States, but it will affect Members of the U.S. Senate. We will be bound—directly—by what we decide tonight.

The pending resolution is an unnecessary, headline-seeking ploy, designed for one reason and one reason only: to damage the President politically. I hope that my colleagues on the other side of the aisle will reconsider the course they have chosen.

I encourage my Republican colleagues to resist the temptation to score political points.

We have serious work to do. Let us stop wasting our time on a cynical political exercise and get on with that work. I hope that all Senators will vote for the SARBANES amendment.

I yield the floor.

Mr. D'AMATO. Mr. President, I yield 6 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico.

Mr. DOMENICI. Thank you, Mr. President. First, I want to compliment the distinguished Senator from New York, Senator D'AMATO, chairman of this committee, because I do believe that this has been a very delicate set of hearings. They have lasted a long time. They have involved an awful lot of discovery work, trying to get to the truth. I truly believe he has conducted this committee in a very, very proper and propitious manner.

We are here tonight in one of the rare episodes and events in this committee on Whitewater's history, where we have not been able to agree. On most matters of importance, under the leadership of Senator D'AMATO, with the excellent cooperation of the distinguished Senator from Maryland, Senator SARBANES, most serious confrontational matters have been resolved amicably and, if not directly in the manner sought by the majority party, at least to the satisfaction of the majority and the chairman and with the cooperation of the minority. But somehow or another we find ourselves tonight in a position that is different than any of the others.

I want to say as a practicing attorney I never had an opportunity to involve myself in the privilege that attorneys have with reference to their work product for their clients. I understand that it is a serious, serious thing but I also understand that this attorney-client privilege, to keep confidential conversations between lawyers and their clients, does not really exist just because the client says so or because an attorney claims it is so. It has to meet certain tests.

Let me talk a little bit about the tests and why I think the President should have given this subject matter over to the committee in August of this year. For those who say we can resolve it here tonight, and that the President wants to cooperate, let me tell you that this committee started trying to get this information in August of this year and we are almost at Christmas. In fact, I believe it started August 25. On Christmas day—it will be the months of September, October, November, December, that is 4 months. So it has not been with genuine accommodation that the President's lawyers have seen fit to help with this truth-requiring set of facts.

Let me say that 20-some years ago Chief Justice Burger noted that when privileges are called upon ''it is not lightly created nor expansively construed for they''—that is the privileges—''are in the derogation of the search of truth.''

In other words, if you are looking for truth, you have to construe this kind of privilege narrowly because it is in derogation of finding the truth. It keeps the truth hidden, because there is a real reason for hiding it. So it is to be construed narrowly.

Let me move on and tell you what I found from my reading from the staff work that lawyers have put into this. Let me read you my definition of the attorney-client privilege, and I believe this is rather well settled. When I read through these factors—think of the facts in this case. My good friend, Senator BUMPERS, says this is a 50–50 case. I believe this is a 90–10 case, maybe a 95–5 case.

First of all, these are the elements: First, where legal advice of any kind is sought from a professional legal advisor; second, acting as such; third, the communications relating to that purpose; fourth, made in confidence by the client; fifth, are at the client's insistence; sixth, permanently protected

from disclosure by himself or the legal advisor; and seventh, unless waived.

Now, Mr. President, and fellow Senators, while I have not been an integral part of the Whitewater hearings, I am on the committee. At least I am of late, and I believe it is my responsibility before I vote tonight, to at least discuss briefly how those qualifications and qualities are not met in this case.

First of all, the meeting was held to discuss President Clinton's private financial legal matters—but not all of the attorneys present at the meeting were private Clinton attorneys. Instead, three of the lawyers from the White House Counsel's office, and Bruce Lindsey, who was White House policy advisor responsible for dealing with media inquiries into Whitewater, were present at the meeting with Clinton's private lawyer. Therefore, because they were public employees with no responsibility for the management of the President's pre-Whitewater affairs, their presence precludes the claim of personal attorney-client privilege by the President. Their mere presence waives it. It is no longer a privileged subject matter.

One of the stated purposes of that meeting was to discuss pending inquiries into Whitewater.

Mr. D'AMATO. How much time remains?

The PRESIDING OFFICER. The Senator has 5 minutes and 40 seconds.

Mr. D'AMATO. I yield 3 minutes and 40 seconds to the Senator from New Mexico.

Mr. DOMENICI. Let me proceed as quickly as I can because I want to give Senator D'AMATO as much time as he can to wrap this up.

The President's claim of attorney-client privilege, as I see it, rests on very shaky legal ground, and there are other reasons that it does not fit these qualities that I have just described, and I will have those printed in the RECORD.

I believe this committee has a responsibility to the people of the United States. It is not wonderful or marvelous or something we all think is good, that we have to have these hearings. But we have some responsibilities. When facts of the type that are before us here present themselves, we have a responsibility and the Senate confirmed that responsibility by the adoption of a resolution. It said ''Go find out the truth,'' as I understand it. The chairman has been seeking the truth with reference to these various incidents and episodes. This one is a sad one because it centers around the office of a man who committed suicide, who had worked there, and I am not bringing up the suicide to rehash it. It is difficult. What happened there is not easy for us to go after, but it does mean that we should search for the truth.

Clearly, the President owes us some explanations here, of those who work for him. He owe us some explanations, some facts. It is high time we get these facts, because essentially, they were made in a setting that was not part of the attorney-client relationship as the common law in the United States defines it, and should be made available to the committee.

I have more observations. Mr. President, today we will hear a lot about the attorney-client privilege. As an attorney, I understand the need to keep confidential certain conversations between lawyers and their clients. I also understand the need for a President to consult with his private attorneys on matters which occurred in his private life prior to his coming to the White House.

However, in this case I believe that the President has gone too far, and in fact has purposefully sought to impede the special committee's search for the truth by hiding behind a tenuous claim that the attorney-client privilege protects the notes of a meeting between the President's private lawyers and his political advisors in the White House counsel's office.

Over 20 years ago, the Supreme Court examined another President's claim of privilege with respect to documents sought by congressional investigators. In rejecting President Nixon's claim of executive privilege, Chief Justice Burger noted that privileges, which prohibit the discovery of relevant evidence, ''are not lightly created nor expansively construed, for they are in derogation of the search for truth.''

By raising what is, at best, a tenuous claim of attorney-client privilege, it is clear that the President seeks at every opportunity to frustrate the Whitewater Committee's search for the truth. I hope that with this vote, my colleagues will agree that we should get on with the investigation and put an end to the White House's needless stall tactics. This investigation must begin before it can end, and this vote finally will put an end to the delay and allow the dispute over the attorney-client privilege to be decided in a court of law.

Everyone recognizes that the President has a legitimate right to assert the attorney-client privilege under the proper circumstances. However, the facts of this case clearly indicate that the President is not entitled to assert the privilege.

The elements of the attorney-client privilege are well-settled: Where legal advice of any kind is sought from a professional legal advisor acting as such; the communications relating to that purpose made in confidence by the client; are at the client's insistence permanently protected from disclosure by himself or the legal advisor unless the protection is waived.

The notes of the November 1993 meeting at the office of President Clinton's private attorneys are not protected by the privilege for at least three reasons:

First, the meeting was held to discuss President Clinton's private financial and legal matters, but not all of the attorneys present at the meeting were private Clinton attorneys. Instead, three lawyers from the White House Counsel's office and Bruce Lindsey, who was White House Policy Advisor responsible for dealing with media inquiries into Whitewater, were present at the meeting with Clinton's private lawyers.

Because they were public employees with no responsibility for the management of the President's pre-White House affairs, their presence precludes any claim of the personal attorney-client privilege by the President.

Second, one of the stated purposes of the November meeting was to discuss the pending press inquiries into Whitewater. At the time of the meeting, the media began to question the White House about allegations of improper handling of SBA loan funds by the President and Jim McDougal and about the pending RTC criminal referral on Madison Guaranty. Clinton's private attorneys convened with White House advisors to discuss how to respond to these media inquiries.

In order to gain the protection of the attorney-client privilege, confidential communications must relate to legal advice. The privilege governs performance of duties by the attorney as legal counselor, and if chooses to undertake other duties on behalf of his client that cannot be characterized as legal, then the communications related to those additional duties are not protected. In this case, his attorneys met to discuss media and political strategy. These activities clearly are not legal in nature, and thus the notes should not be protected.

Third, President Clinton waived the attorney-client privilege by allowing Bruce Lindsey, who was neither his private attorney nor a member of the White House Counsel's office, to attend the meeting. At the time of the meeting, Bruce Lindsey was White House Policy Advisor and a spokesman for the Administration. He advised the President on media and public relations matters, and was specifically tasked to handle Whitewater press inquiries.

The law implies a waiver of the attorney-client privilege whenever the holder of the privilege voluntarily allows to be disclosed any significant part of a confidential communication to one with whom the holder does not have a privileged relationship. Since Bruce Lindsey was neither a White House attorney nor a private attorney, he enjoyed no attorney-client privilege with the President. The fact that the President allowed him to attend the meeting waives the attorney-client privilege with respect to matters discussed at the meeting.

The President's claim of attorney-client privilege rests on very shaky legal ground. With that in mind, I think that if my colleagues examine the White House's behavior concerning these notes, coupled with that of Mr. Kennedy and his private attorney, they should conclude that the only reason that the White House has raised this

issue is because the President seeks to delay for as long as possible the legitimate fact-finding responsibility of the committee. Up until this point, the committee's work largely has been bipartisan, but the White House's stonewalling has caused our work to become highly politicized. This is unfortunate.

The special committee has sought Mr. Kennedy's notes through reasonable means for quite some time, and only recently has the President chosen to assert the attorney-client privilege to frustrate our efforts to obtain them. I understand that the counsel for the special committee asked the White House for these notes several months ago, and that the request went unanswered until only recently, when the White House refused to make them available.

Because we were unable to obtain the notes from the White House, the committee then was forced to call Mr. Kennedy to testify about the meeting. While before the committee, he asserted that he would refuse to produce the documents because his client, the President, had asserted certain privileges, including the attorney-client privilege.

Upon Mr. Kennedy's assertion of privilege, the chairman of the committee, Senator D'AMATO, agreed to allow the parties to submit legal briefs on the issue. After rejecting the arguments of counsel on attorney-client privilege and the work product doctrine, the committee voted to compel, Mr. Kennedy to produce the documents. It then served a subpoena on Mr. Kennedy's attorney, who had accompanied him to his appearance before the Committee when the issue of the attorney-client privilege arose.

Upon being served, Mr. Kennedy's attorney informed the committee that he ''was not authorized'' to receive the subpoena. This despite the fact that he sat with Mr. Kennedy during his testimony and previously had received correspondence from the committee on Mr. Kennedy's behalf. Because of this additional unnecessary delay, the committee was forced to reconvene and reissue the subpoena to Mr. Kennedy personally.

One they realized that the committee did not intend to abandon its request for Mr. Kennedy's notes, the White House tried another delay tactic: they sent up an ''offer'' to the committee to release the notes, subject to certain conditions. In fact, the White House offered five conditions before they would turn over the notes. Two of these conditions were agreed to previously by the Republican counsel for the special committee.

The other three were essentially nonoffers. The conditions were so vague and imprudent that the White House must have known that we would not agree to them. One condition required the committee to obtain from the independent counsel and other congressional investigatory bodies an agreement to abide by the terms of the White House's offer to the special committee. Imagine that: the White House asked the Senate Whitewater Committee to interfere with the independent counsel's investigation of this matter. Is this not precisely what the White House said we should not do when the independent counsel originally undertook his investigation? Clearly all of this was done just for the purpose of delay.

Throughout this entire matter, however, the White House has claimed to the press that the notes contain nothing to implicate the White House in any wrongdoing and that the special committee is engaged in a wild goose chase. Other White House aides have claimed to the media that they have nothing to hide and that Chairman D'AMATO and the Special Committee are undertaking a political fishing expedition.

They claim to have nothing to hide, yet they fight the committee at every turn. This policy of stonewalling while claiming that the investigation is politically motivated sounds an awful lot like the tactics employed by the President 20 years ago in response to another congressional investigation. In fact, here is what Charles Colson, one of President Nixon's advisors said about the way the Clinton White House is handling this investigation: ''I can't believe my eyes and ear. These people are repeating our mistakes.''

Not only are former advisors to President Nixon amazed by the way the White House has handled this investigation—the New York Times editorial page yesterday also questioned the President's tactics. In its editorial, the Times noted that the White House's invocation of the attorney-client and executive privilege was ''a distortion of the doctrine's history to raise it to block a legitimate congressional inquiry into the Clinton's Arkansas financial dealings and the official conduct of senior administration aides.'' The Times goes on to acknowledge that absent a ''decent resolution, the Senate has no choice but to go to court to enforce the Committee's subpoena.

Mr. President, I too, think that we have no choice at this point but to go to court. It is unfortunate that President Clinton and his advisors have chosen to delay and ridicule the committee's efforts in the press. The time has come to get on with the business of the Whitewater Committee, and to do so again in a less political manner. Allowing a court to decide this issue is the only way to achieve those goals.

Mr. SARBANES. I yield 3 minutes to the Senator from Nevada.

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senator from Nevada.

Mr. BRYAN. I thank the distinguished Senator from Maryland.

Mr. President and colleagues, I intend to offer a more lengthy statement, but I was tied up on other matters. I want to offer a dimension on the attorney-client privilege that I think is helpful for our colleagues to be aware.

The question of attorney-client privilege has arisen on a number of occasions recently and I just share an experience of how it was handled in a bipartisan, and I think a most responsible fashion.

My colleagues are much aware in the recently concluded Packwood matter there was the issue of a diary. Aside from that, during the course of our investigation, a number of times arose in which a question of attorney-client privilege was asserted. First let me say, on a bipartisan basis with every member of the Ethics Committee in concurrence, we agreed with respect to those assertions of privilege, that we ought to subject those to an independent outside nonpartisan review.

In that context, by coincidence, in light of the role that this was later to play, I engaged the services of Ken Starr, and he independently reviewed and the committee accepted his recommendations in each and every case. Not only were there questions of conversation but there were also questions of documents.

In a similar vein to the concern that the President of the United States has legitimately voiced today, Senator Packwood's counsel was understandably concerned that if any particular document was released, that that may be deemed a waiver with respect to other documents that were covered under the attorney-client privilege.

Let me say in that context, once again, the committee agreed in bipartisan fashion not to assert that the privilege has been waived with respect to any subsequent conversation or any subsequent document which might come to the attention of the Ethics Committee that would be arguably a predicate for arguing that a prior submission of a document constituted a waiver.

That is the bipartisan way of doing it. The President faces a Hobson's choice. In one instance he has come forward and indicated he wants to make the contents of those notes available—no ifs, ands or buts. The problem that he faces in doing so without getting the signoff by others who would have jurisdictional basis to proceed, is that the waiver doctrine might be asserted against him.

I think what my colleague, Senator SARBANES, has done by way of the amendment that he has offered here today provides a responsible way for us to achieve what we ought to be interested in: That is, the contents of the document. Yet we respect and recognize the attorney-client relationship.

Madam President, as a member of the Banking Committee I oppose this resolution, and I am very disappointed that the Republican members of the committee are taking this step. I believe it is premature and counterproductive and totally partisan.

The heart of this issue revolves around notes taken by Associate White

House Counsel William Kennedy at a meeting held on November 5, 1993. Notes that have already been offered to the Banking Committee.

This meeting raises several legitimate and serious attorney-client privilege issues that must be resolved before the Senate charges ahead into these unchartered waters. We may be setting precedents here today that have far reaching implications.

For those truly interested in knowing the content of Mr. Kennedy's notes, and in a timely manner, this resolution will only retard any efforts to secure those notes which have already been offered to the committee. Only through good faith negotiations will we be able to accomplish the goal of securing the notes and protecting legitimate privilege issues at the same time.

The Supreme Court has stated that the Attorney-client privilege ''is the oldest of the privileges for confidential communications known to the common law.''

The purposes of the privilege are to encourage full and frank communication between attorneys and their clients and to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice.

The privilege applies with equal force among a client's attorneys, whether or not the client is present during the conversation. It is well-settled that the attorney-client privilege extends to written material reflecting the substance of an attorney-client communication.

Every person at the November 5, 1993 meeting was an attorney who represented the Clintons in either their personal or their official capacities. As an attorney myself and a former attorney general, I strongly believe this meeting was fully covered by the attorney-client privilege.

I dare say any citizen of this country who was told he could not have a confidential communication with his attorney would be outraged.

This is a crucial point: This all could be avoided if the Senate would take the same position that Special Prosecutor Kenneth Starr took just yesterday when he agreed that the release of the document did not constitute a waiver of the President's privileges.

How foolish the Senate looks today—wasting our time and resources—when this could be so easily resolved.

Any independent observer must be drawn to the conclusion that the reason we are forcing this issue is an attempt to embarrass the President. Why else would we not take the same approach that the independent prosecutor has taken?

If the President were to turn over these documents without an agreement on the privileges, what would be the consequences?

Clearly what we have here is an attempt by the majority to put the President in a catch-22 situation. If he releases the document without first securing an agreement, he could be waiving his attorney-client privileges with his attorney David Kendall on all Whitewater related matters. If he exercises his legitimate privileges, he is accused of a coverup.

The courts will prove the President is taking the legally appropriate step in exercising his attorney-client privilege on this meeting. But we all know he will suffer from a public perception that he is hiding something. That is why the majority is forcing this issue today.

It is clear how this issue should be handled if scoring political points were not the main goal here.

The Senate's most recent experience with the attorney-client privilege claim arose during the Ethics Committee proceedings against Senator Bob Packwood.

Apart from the diary dispute, the Ethics Committee had an assertion by Senator Packwood that certain other documents were covered by the attorney-client or work-product privileges. To resolve that claim, as Chairman of the Ethics Committee, I asked Kenneth Starr to make recommendations to the committee and both parties agreed in advance to accept his recommendations.

With respect to the diaries, the committee agreed ''to protect Senator Packwood's privacy concerns by allowing him to mask information dealing with attorney-client and physician-patient privileged matters, and information dealing with personal, private, and family matters.

Kenneth Starr reviewed Senator Packwood's assertions of attorney-client privilege. The committee abided by all of Mr. Starr's determinations and did not call upon the court to adjudicate any of the attorney-client privilege claims.

In addition, the Ethics Committee on other occasions agreed with Senator Packwood's attorney upfront that to provide documents did not waive the attorney-client privilege. Let me read from one of the documents we released. This is a conversation between Mr. Muse, one of the Senator's attorneys, and Victor Baird, chief counsel for the Ethics Committee.

Mr. MUSE. Victor, what I don't want to do is get on a slippery slope with regard to waiver of any of the issues you and I have talked about, and with reference to your letter of January 31 on the other hand, there is a date that can be fixed based on the memorandum which attaches diary entries, and I'm prepared to give you that, and identify and show it to Mr. Sacks as a representative of Arnold and Porter, provided it is understood there is no waiver. It would simply reorient them to something they already know that they received, if that's acceptable to you.

Mr. BAIRD. Right. And we understand that by your sharing the memo with them, and their being able to provide us with the dating information that we want if you will, that it is not going to waive the privilege so that we are entitled to look at the memo or anything like that.

Mr. MUSE. All right.

This is clearly a better precedent for us to follow if we want to act in a bipartisan, professional manner. If all we are doing is scoring political points, we should proceed on the path we are heading toward today.

The administration has asked the committee to agree that turning over the notes does not waive attorney-client privilege. The independent prosecutor has already agreed and can now proceed with his investigation, getting the material we are seeking without a lengthy and costly court fight.

Why cannot this committee and this Senate accept Judge Starr's judgment and follow the same course. That is what the Ethics Committee did and in a bipartisan unanimous manner.

Which brings up another question. If there is a respected former judge who has been given an almost unlimited budget and staff of highly trained attorneys and investigators, doing a thorough investigation of this issue, what is the purpose of this Senate Whitewater investigation?

The Senate will spend millions on this. We do not have the capability or resources as does Judge Starr. It is taking countless hours of Senate time when we have a government shutdown, and important legislation like welfare reform, that is more properly our focus.

The administration has asked the Banking Committee to agree that to give us the Kennedy notes does not waive the attorney-client privilege. The independent prosecutor has already agreed and can now proceed with his investigation.

The Senate should do the same. Put this resolution aside today. And let the Senate operate in a more professional, noncombative, and bipartisan approach. This debate is an extraordinary waste of time.

Mr. D'AMATO. Madam President, I inquire how much time remains?

The PRESIDING OFFICER. The Senator has 3 minutes and 19 seconds.

Mr. D'AMATO. I have 3 minutes and 19 seconds?

Madam President, why are we here? December 20, getting close, maybe a day or two, during this holiday time? Great events, budget pressures, Government technically shut down in some areas? It has been suggested—politics, injure the President.

Madam President, if one were to examine the facts, the facts will put that contention to rest. It is unfair. That is unfair.

On August 25, 4 months ago, we requested this information. Let me tell you when we got what I considered to be the first really bona fide reply to our offer to say, ''You do not waive the lawyer-client relationship.'' That was us. We did that, the committee. We did not have to. We said, ''You do not have to waive it.'' We did not get a reply—and then here is the reply, and it was a conditioned acceptance with all kinds of conditions: No. 1, that we had to

concede that the meeting was privileged. We do not. The White House could not even accept our proposal, the one that they are now attempting to get the House to accept, until 6 days ago.

So why are we here now? Because, without us pushing forward, we would not have even had a conditional acceptance of our proposal. We would not have even had it. Six days ago was the first time. When did they finally accept our proposal that they are now trying to push through? Two days ago. So, when someone says, ''Why are you here December 20,'' it is because the White House has stonewalled us—stonewalled. The American people have a right to know. President Clinton made promises. He said, ''I will not raise privilege, I will not hide behind that.'' And he has broken those promises.

The Senate has a right to know and we have a right to be dealt with in good faith. I do not lay this over to my colleagues on the other side. They have attempted to work together to get this information. But it is the White House.

Madam President, those notes simply are not privileged. The people who took those notes were Government employees. Mr. Lindsey was not working in the White House counsel's office. Yet, notwithstanding that, we are still willing to say, fine, we will not say that any privilege that you might have would be waived. Give us the notes.

I make an offer here, and I repeat it again. Mr. President, give us the notes. We will continue—even after we vote, I am willing to drop this matter, regardless of what the House does. We do not have to go and test this out. But keep your commitment to the people of this country. Keep your commitment. We should not be here. You, Mr. President, have created this problem that necessitates us going forth.

Mr. SARBANES. Is there time remaining?

The PRESIDING OFFICER. The Senator from Maryland has 1 minute, 45 seconds.

Mr. SARBANES. Madam President, the White House has tried very hard, I think, to provide information to the committee. This particular issue arose in November. The White House made several offers. The first was turned down. Then the White House said, look, we will give you the notes. We will provide these notes, but we want to be protected against the assertion that there has been a general waiver of the lawyer-client relationship—an eminently reasonable position.

This committee recognized it as being reasonable because we agreed that the providing of the notes would not constitute a general waiver. The independent counsel has agreed to that.

All that is left are the House committees, and I, for the life of me, cannot understand why they would not agree to it as well. So there is no need to press this matter to a constitutional confrontation between the Congress and the Executive. A procedure has been worked out. The committee, this committee, has recognized it. The independent counsel has recognized it. The House committees now need to recognize it, and then the notes can be produced.

The White House has said as much in a letter to Chairman D'AMATO today, that they would produce the notes immediately, once that was achieved.

It is my own view that we should be working to achieve it. I am frank to say I think we should be part of a constructive effort to bring that solution about, and that is what this amendment would commit us to do.

I urge its support.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment, No. 3041, offered by the Senator from Maryland.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Delaware [Mr. ROTH] are necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUYE] is necessarily absent.

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

The result was announced, yeas 45, nays 51, as follows:

[Rollcall Vote No. 609 Leg.]

YEAS—45

Akaka	Feingold	Levin
Baucus	Feinstein	Lieberman
Biden	Ford	Mikulski
Bingaman	Glenn	Moseley-Braun
Boxer	Graham	Moynihan
Bradley	Harkin	Murray
Breaux	Heflin	Nunn
Bryan	Hollings	Pell
Bumpers	Johnston	Pryor
Byrd	Kennedy	Reid
Conrad	Kerrey	Robb
Daschle	Kerry	Rockefeller
Dodd	Kohl	Sarbanes
Dorgan	Lautenberg	Simon
Exon	Leahy	Wellstone

NAYS—51

Abraham	Faircloth	Mack
Ashcroft	Frist	McCain
Bennett	Gorton	McConnell
Bond	Grams	Murkowski
Brown	Grassley	Nickles
Burns	Gregg	Pressler
Campbell	Hatch	Santorum
Chafee	Hatfield	Shelby
Coats	Helms	Simpson
Cochran	Hutchison	Smith
Cohen	Inhofe	Snowe
Coverdell	Jeffords	Specter
Craig	Kassebaum	Stevens
D'Amato	Kempthorne	Thomas
DeWine	Kyl	Thompson
Dole	Lott	Thurmond
Domenici	Lugar	Warner

NOT VOTING—3

Gramm	Inouye	Roth

So, the amendment (No. 3041) was rejected.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the resolution, S. Res. 199, as amended. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Delaware [Mr. ROTH] are necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUYE] is necessarily absent.

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

The result was announced—yeas 51, nays 45, as follows:

[Rollcall Vote No. 610 Leg.]

YEAS—51

Abraham	Faircloth	Mack
Ashcroft	Frist	McCain
Bennett	Gorton	McConnell
Bond	Grams	Murkowski
Brown	Grassley	Nickles
Burns	Gregg	Pressler
Campbell	Hatch	Santorum
Chafee	Hatfield	Shelby
Coats	Helms	Simpson
Cochran	Hutchison	Smith
Cohen	Inhofe	Snowe
Coverdell	Jeffords	Specter
Craig	Kassebaum	Stevens
D'Amato	Kempthorne	Thomas
DeWine	Kyl	Thompson
Dole	Lott	Thurmond
Domenici	Lugar	Warner

NAYS—45

Akaka	Feingold	Levin
Baucus	Feinstein	Lieberman
Biden	Ford	Mikulski
Bingaman	Glenn	Moseley-Braun
Boxer	Graham	Moynihan
Bradley	Harkin	Murray
Breaux	Heflin	Nunn
Bryan	Hollings	Pell
Bumpers	Johnston	Pryor
Byrd	Kennedy	Reid
Conrad	Kerrey	Robb
Daschle	Kerry	Rockefeller
Dodd	Kohl	Sarbanes
Dorgan	Lautenberg	Simon
Exon	Leahy	Wellstone

NOT VOTING—3

Gramm	Inouye	Roth

So the resolution (S. 199), as amended, was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

[The resolution was not available for printing. It will appear in a future issue of the RECORD.]

Mr. D'AMATO. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. SANTORUM. Madam 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. GRAMS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRAMS. Madam President, I request that I be able to speak as in morning business——

Mr. DOLE. If the Senator will withhold, let me indicate that there will be no more votes this evening. We do hope we can get an agreement on House Joint Resolution 132.

UNANIMOUS CONSENT AGREEMENT—HOUSE JOINT RESOLUTION 132

Mr. DOLE. Madam President, I ask unanimous consent that the majority leader, after consultation with the minority leader, may turn to the consideration of calendar No. 293, House Joint Resolution 132, regarding use of CBO assumptions and that it be considered under the following limitation:

One hour of time for debate, to be equally divided in the usual form, with one amendment in order relative to the original continuing resolution budget agreement language; that following the conclusion or yielding back of time, the Senate proceed to adopt the amendment and proceed to third reading and final passage of House Joint Resolution 132, all without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LIVESTOCK CONCENTRATION REPORT ACT

Mr. DOLE. Madam President, I now ask unanimous consent that the Senate now proceed to the immediate consideration of calendar No. 261, S. 1340; further, that the Hatch amendment No. 3105, which is at the desk be considered agreed to, the committee amendment be agreed to, the bill be deemed read the third time, and passed, as amended, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed in the RECORD.

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

So the amendment (No. 3105) was agreed to, as follows:

Sec. 4 Duties of Commission: delete lines 9 and 10 (page 9) and add: (2) to request the Attorney General to report on the application of the antitrust laws and operation of other Federal laws applicable, with respect to concentration and vertical integration in the procurement and pricing of slaughter cattle and of slaughter hogs by meat packers;

Sec. 4(b) Solicitation of Information.

line 7 page 10 insert: ''industry employees'.

So the committee amendment was agreed to.

So the bill (S. 1340), as amended, was deemed read the third time, and passed, as follows:

S. 1340

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 ''Livestock Concentration Report Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) ANTITRUST LAWS.—The term ''antitrust laws'' has the meaning provided in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that the term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent the section applies to unfair methods of competition.

(2) COMMISSION.—The term ''Commission'' means the Commission on Concentration in the Livestock Industry established under section 3.

(3) STUDY OF CONCENTRATION IN THE RED MEAT PACKING INDUSTRY.—The term ''study of concentration in the red meat packing industry'' means the study of concentration in the red meat packing industry proposed by the Department of Agriculture in the Federal Register on January 9, 1992 (57 Fed. Reg. 875), and for which funds were appropriated by Public Law 102–142 (105 Stat. 878).

SEC. 3. ESTABLISHMENT OF COMMISSION.

(a) IN GENERAL.—A Commission on Concentration in the Livestock Industry shall be established that shall be composed of—

(1) the Secretary of Agriculture, who shall be the chairperson of the Commission; and

(2) 2 members who represent each of the following categories:

(A) Cattle producers.

(B) Hog producers.

(C) Lamb producers.

(D) Meat packers.

(E) Experts in antitrust laws.

(F) Economists.

(G) Corporate chief financial officers.

(H) Corporate procurement experts.

(b) APPOINTMENT.—The members of the Commission appointed under subsection (a)(2) shall be appointed as follows:

(1) The President shall appoint 4 members.

(2) The Majority Leader of the Senate shall appoint 4 members.

(3) The Minority Leader of the Senate shall appoint 2 members.

(4) The Speaker of the House of Representatives shall appoint 4 members.

(5) The Minority Leader of the House of Representatives shall appoint 2 members.

SEC. 4. DUTIES OF COMMISSION.

(a) IN GENERAL.—The Commission shall—

(1) determine whether the study of concentration in the red meat packing industry adequately—

(A) examined and identified procurement markets for slaughter cattle in the continental United States;

(B) analyzed the effects that slaughter cattle procurement practices, and concentration in the procurement of slaughter cattle, have on the purchasing and pricing of slaughter cattle by beef packers;

(C) examined the use of captive cattle supply arrangements by beef packers and the effects of the arrangements on slaughter cattle markets;

(D) examined the economics of vertical integration and of coordination arrangements in the hog slaughtering and processing industry;

(E) examined the pricing and procurement by hog slaughtering plants operating in the Eastern corn belt;

(F) reviewed the pertinent research literature on issues relating to the structure and operation of the meat packing industry; and

(G) represents, with respect to the matters described in subparagraphs (A) through (F), the current situation in the livestock industry compared to the situation of the industry reflected in the data on which the study is based;

(2) to request the Attorney General to report on the application of the antitrust laws and operation of other Federal laws applicable, with respect to concentration and vertical integration in the procurement and pricing of slaughter cattle and of slaughter hogs by meat packers;

(3) review laws and regulations relating to the operation of the meat packing industry regarding the concentration, vertical integration, and vertical coordination in the industry;

(4) review the farm-to-retail price spread for livestock during the period beginning on January 1, 1993, and ending on the date the report is submitted under section 5(a);

(5) review the adequacy of price data obtained by the Department of Agriculture under section 203 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622);

(6) make recommendations regarding the adequacy of price discovery in the livestock industry for animals held for market; and

(7) review the lamb industry study completed by the Department of Justice during 1993.

(b) SOLICITATION OF INFORMATION.—For purposes of complying with paragraphs (2), (3), and (4) of subsection (a), the Commission shall solicit information from all parts of the livestock industry, including livestock producers, livestock marketers, industry employees, meat packers, meat processors, and retailers.

SEC. 5. REPORT AND TERMINATION.

(a) REPORT.—Not later than 90 days after the study of concentration in the red meat packing industry is submitted to Congress, the Commission shall submit to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate a report summarizing the results of the duties carried out under section 4.

(b) TERMINATION.—Not later than 30 days after submission of the report, the Commission shall terminate.

The title was amended so as to read: ''A bill to establish a Commission on Concentration in the Livestock Industry, and for other purposes.''

Mr. PRESSLER. Madam President, I am pleased that an agreement has been reached to enable S. 1340 to pass the Senate. I have worked closely with Majority Leader DOLE and Minority Leader DASCHLE on this issue that is vitally important to livestock producers in South Dakota and the Nation.

This issue has been a troubling one for producers in South Dakota for more than a year now. Frankly, I still say that the U.S. Department of Agriculture can take immediate action today and not have to wait for this legislation to become law.

Yesterday, I called Secretary Glickman to discuss this with him. He told me he was watching Senate action on this issue and would appoint a Commission.

Madam President, now is the time to act. Twice before I have urged the Secretary to take this action. I ask unanimous consent that two letters on this subject be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. PRESSLER. This past August I chaired a field hearing of the Senate Commerce, Science and Transportation Committee in my home state of South Dakota. It was the first time that a Commerce Committee hearing had been held in South Dakota and the turnout was tremendous.

Hundreds of people attended the hearing and witness after witness clearly demonstrated the importance of this issue and the need for action is needed because extremely low prices for fed cattle and calves deeply hurt South Dakota ranchers. Further, the impact of this will be felt beyond our ranches. It affects our rural communities, as well as larger towns and cities. With ranchers having fewer dollars to spend, small businesses in our small towns could be put in jeopardy.

What is of great concern to producers is the fact that while cattle prices are nearing, or at record lows, retail prices have not shown any significant drop.

This represents a combination punch to South Dakota ranchers —as producers, they are getting fewer dollars for their livestock; yet, as consumers, ranchers—armed with fewer dollars—are forced to pay more to put their own product on the dinner table.

To say this is a concern of my fellow South Dakotans is a gross understatement. Thousands of South Dakotans have written, called, or visited with me on this. They rightly are concerned about the impact of the current situation on their ability to run their farms and businesses and provide for their families.

I would like to commend the South Dakota Secretary of Agriculture, Dean Anderson, for being a national leader on this issue. Dean was responsible for bringing this matter before the National Association of State Departments of Agriculture who have called for an investigation that we are asking for in this bill. I am proud of Secretary Anderson's leadership on this matter.

In summary, I am pleased the Senate is taking action in support of South Dakota ranchers. However, this action could get delayed in the other body. Therefore, I ask once again that Secretary Glickman immediately appoint a Commission on this subject. Either way, I will not rest until this Government finally addresses this disturbing problem facing our livestock producers.

EXHIBIT NO. 1

U.S. SENATE,
Washington, DC, October 17, 1995.

Hon. DAN GLICKMAN,
Secretary, Department of Agriculture, Washington, DC.

DEAR MR. SECRETARY: I am writing you to ask you to appoint a commission to make recommendations on action needed to assure competitive markets in the livestock industry.

As you well know Mr. Secretary, for some time now there has been great concern among livestock producers about packer concentration in the marketing of livestock. In 1992, Congress appropriated $500,000 for the U.S. Department of Agriculture to issue a report on this very subject. That report is due shortly. However, that report only contains data through 1993. Since 1993, retail price spreads and the prices that producers have received for their livestock do not even compare with the 1992 or 1993 numbers.

The Congress continues to be concerned on this subject. In August, the Senate Commerce, Science and Transportation Committee held a field hearing in Huron, South Dakota, on this matter. The high attendance and strong concern by South Dakota ranchers was overwhelming and universal. Previously, I requested that you appoint an independent counsel to recommend an action plan to remedy problems livestock producers are experiencing due to captive supplies by livestock packers. Legislation is expected to be introduced shortly to establish a Presidential Commission on this matter.

Mr. Secretary, you have the authority to establish a commission immediately and begin to find solutions to this problem. You do not need to wait for legislation. An independent review would ensure a completely unbiased report for an appropriate action plan.

I urge your prompt attention to this request and look forward to working with you to resolve this problem.

Sincerely,

LARRY PRESSLER,
United States Senator.

U.S. SENATE,
Washington, DC, September 22, 1995.

Hon. DAN GLICKMAN,
Swecretary, Department of Agriculture, Washington, DC.

DEAR MR. SECRETARY: I ask that you appoint an independent counsel to recommend an action plan to remedy problems livestock producers are experiencing due to captive supplies by livestock packers. I also ask that the counsel's report be made simultaneously with USDA's report on captive supplies that is expected in December.

As you know, I recently held a U.S. Senate Commerce, Science and Transportation Committee field hearing on captive supplies, controlled markets and impacts on consumers and producers. There was a large turnout for this hearing. Collectively, the witnesses clearly articulated the need for federal action on this issue. With livestock prices near record lows, consumers are not seeing the price of meat go down at the grocery store as the market should dictate. Something must be done soon.

Several things were learned at the hearing. The hearing record will show widespread concern that something needs to be done to ensure fair and competitive pricing in the livestock industry. One troubling fact was discovered at the hearing. It was learned that the data in the captive supply report USDA is expected to release in December only covers the years 1992 and 1993. As you know, the current cattle prices are near record lows, while in 1992 cattle prices were near record highs.

I believe an independent counsel could review existing data, including the report you expect to release this December. As you know, federal officials have been studying this issue since 1992, while concentration in the packing industry has grown during this time. An independent counsel would be able to review studies and documents of USDA, Justice and the Federal Trade Commission and quickly review current market conditions. An independent review would ensure a completely unbiased report on an appropriate action plan. We do not need to wait for months after USDA issues its report to determine the best course of action. An independent counsel could take care of that and help resolve this issue. Now is the time to act. We don't need any more reports.

Mr. Secretary, many cattlemen in South Dakota may not make it this year unless the pricing problem is corrected. The current retail price spread cannot be explained or justified with ranchers receiving such low prices for their cattle. I share the cattlemens' concerns over possible market manipulation.

I urge your prompt attention to this request, and look forward to working with you to resolve this problem.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

Mr. BURNS. Thank you, Madam President. I rise today in support of S. 1340, a bill to provide for a commission to study the concentration of packers in the United States. I am very pleased to be a cosponsor of this legislation. It is my hope that the Senate will pass this bill without prolonged debate, so that the livestock producers of this country will have a few answers to the questions they have about the packers.

This bill will provide the hard-working men and women who work on the land raising livestock to have an insight into what is occurring in the market today. The producers in this country have, recently, seen extremely low prices for their livestock. This is related to several different trends in the market. Among these trends is the low number of packing houses left in the country. This concentration of packing houses places a burden on the producer to sell his or her livestock to a select location close to their operation. In my State of Montana, this is a very real burden, since we no longer have a packing house in our State.

Another of the concerns that the producers have center around the number of live cattle that the packers own at this time. The terms of contracts let on these cattle are not widely known and those that are known are extremely confusing to all involved. These contracts have placed many of the smaller producers in the peril. The small operation in the country that may run less than a hundred head of cattle feel the pinch the packers have put on them through the major operations in the Midwest.

The most easily measured and common aspect of the concentration of packing houses, relates to the consumer cost of meat. Recently I was in a local grocery store, and noticed the cost of a pound of hamburger and was astounded. My astonishment came from the fact that I had just returned from Montana, where I had witnessed the price being paid for live cattle at the sale ring. The difference in the price per pound for live cattle compared to the price we must pay for the final product is way beyond the lines of reason. And $20 cows do not draw the price of $5-a-pound steak. Where is the responsibility to the producers of the livestock in this country?

Madam President, it is my hope that this measure will pass today and that the President will quickly sign and nominate the members of the study

commission. The time has come that we need to find out the discrepancies in the pricing system for our meat, today. Thank you and I yield the floor.

Mr. DOLE. I thank my colleague from Minnesota. There will be no more votes this evening.

Mr. GRAMS. Madam President, I request that I be allowed to speak as in morning business.

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

(The remarks of Mr. GRAMS pertaining to the introduction of S. 1441 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

RONALD REAGAN BUILDING AND INTERNATIONAL TRADE CENTER

Mr. DOLE. Mr. President, this has been cleared on each side. I ask unanimous consent that the Committee on Environment and Public Works be immediately discharged from further consideration of H.R. 2481, and that the Senate proceed to its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2481) to designate the Federal Triangle Project under construction at 14th Street and Pennsylvania Avenue, Northwest, in the District of Columbia, as the Ronald Reagan Building and International Trade Center.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. I ask unanimous consent that the bill be deemed read a third time, passed, and the motion to reconsider be laid upon the table, and any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So the bill (H.R. 2481) was deemed read the third time and passed.

Mrs. BOXER. I would like to have about 20 minutes in morning business.

Mr. DOLE. Could we do wrap-up first?

Mrs. BOXER. Absolutely.

Mr. SANTORUM. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SANTORUM. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. SANTORUM. Madam President, I ask unanimous consent that there be a period for the transaction of routine morning business.

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

MISSILE SALES TO TURKEY

Mr. PRESSLER. Madam President, on Monday, December 18, my good friend from New York, Senator D'AMATO and I, sent a letter to Secretary of State Warren Christopher, urging the Clinton Administration to reconsider its decision to sell 120 Army tactical missile systems [ATACMs] to the government of Turkey.

I was troubled to learn last night that the Clinton Administration intends to proceed with the sale. This transfer is ill-advised, to say the least. I strongly urge the Administration to reconsider its decision or at the very least, place clear, indisputable restrictions on deployment and use of these weapons.

This transfer does not make sense. Generally, it is disturbing because the Turkish government has used U.S. and NATO military equipment repeatedly in the past to advance policy and military objectives that are clearly not in our best interests.

As all of us are well aware, the Turkish government in 1974 used NATO military equipment when it invaded the island of Cyprus. More than two decades later, Cyprus remains divided, with one side subjected to an occupation force of 35,000 Turkish troops. I have held a great interest in resolving the Cyprus dispute. This is a matter of strong, bipartisan interest. The Clinton Administration has stated that it intends to make a serious effort to reunite Cyprus. Frankly, I cannot see how the proposed missile sale helps our nation achieve this goal. I believe the opposite is true, and that is very unfortunate.

I also am concerned about American made military equipment being used to prolong the conflict between Armenia and Azerbaijan. It has been documented that Turkey has transferred U.S. and NATO military hardware to the Azeris, who have made use of this equipment against civilian populations in the besieged Nagorno-Karabagh region. It is my understanding that it is contrary to U.S. policy for a buyer of U.S.-made military equipment to transfer such equipment to a third party. What assurances do we have from Turkey that it intends to abide by this policy?

Finally, I am concerned that this missile sale could serve to prolong continued violence between the Turkish Army and the Kurds. For more than a decade the Turkish government has waged a brutal war against the Kurdish people. Human rights watch [HRW] estimated that the conflict has resulted in the death of 19,000 Kurds, including 2,000 civilians, and the destruction of 2,000 villages. More than 2 million Kurds have been forced from their homes.

HRW also reported that in 29 incidents from 1992 and 1995, the Turkish Army used U.S.-supplied fighter-bombers and helicopters to attack civilian villages and other targets. Further, U.S. and NATO-supplied small arms and armored personnel carriers have been used in a counter-insurgency campaign against thousands of Kurdish villages.

Clearly, these instances stretching over a period of more than two decades are contrary to our nation's interests as well as our own moral sensibility. In the face of this evidence, the President now wishes to supply the Turkish Army with 120 ATACMs. What exactly are ATACMs? Basically, the U.S. Army handbook describes the ATACM as a conventional surface-to-surface ballistic missile launched from a M270 launcher. Each missile has a warhead that carries a combined payload of 950 small cluster bomblets, which can spray shrapnel over a large area.

The practical use of an ATACM does not leave much to the imagination. This kind of missile can be used to disable numerous human and material targets at once and very quickly. Kurdish villages and organized teams of Kurdish dissidents easily could be targets for ballistic missile attack. This would be a terrible tragedy.

The Administration has argued that these missiles are a necessary deterrent against two potential aggressors along Turkey's borders—Iran and Iraq. I believe these missiles are far from necessary. Consider the following: Turkey is an ally of the United States. It is a member of NATO. The Turkish military's Incrylik air base is a launching point for our enforcement of the no-fly zone over Northern Iraq. And Turkey will participate in the enforcement of the Dayton peace accord in Bosnia. I would think that the strategic importance of Turkey to the United States and Europe is enough to deter any foolish military action by either Iran or Iraq. If our nation can mobilize the world to expel Iraq from the tiny nation of Kuwait, imagine our response if Iraq or Iran even made a hostile gesture toward Turkey. Clearly, the Administration's ''deterrent'' argument to justify the missile sale is hollow at best.

Indeed, I can find no credible political, economic or strategic cause that is furthered by the sale of the ATACMs to Turkey.

Madam President, just last month, Congress took a strong stand against Turkish aggression in the region by voting to cap US economic support funds for Turkey. This is an important step. My friend from New York, Senator D'AMATO, and I are sponsors of legislation that would take even tougher action. It is my hope that we in Congress can all agree that there must be an added price for US economic and military assistance to our allies, particularly our NATO allies, and that price is morally responsible use of U.S. assistance. I do not see how the Administration's missile sale fits even that basic standard.

We have seen a number of different initiatives designed to bring peace to troubled regions, such as Bosnia-Herzegovina, Northern Ireland, Cyprus, and the Middle East. However, the Administration needs to demonstrate our nation's strong interest in bringing the violence in Kurdistan and Nagorno-Karabagh to an end. The sale of 120 ATACMs moves our nation in the wrong direction and could further fuel the war and destruction in both regions.

Though the Administration has announced it intends to pursue the sale, I make one last plea to urge it to reconsider its decision. If the Administration intends to complete the sale, I would urge at the very least that it impose a few basic conditions. In short, if these missiles are for national self-defense, the sale should be conditioned solely for that purpose. More to the point, the missiles should not be placed so as to pose a threat to the people of Greece and Cyprus. Further, the Turkish government should promise that none of the missiles be transferred to Azerbaijan. And finally, the missiles should not be used to prolong the violence in Kurdistan. The Clinton Administration at the very least should insist on these conditions at the very least. The Clinton Administration also should make clear that failure to abide by these conditions could undermine future economic and military assistance.

Again I believe this sale to be bad policy. It is a mistake. However, if the Administration intends to pursue this sale, it should at the very least make clear that this nation insists on this equipment being strictly limited to self-defense. If we are going to be forced swallow this very bitter bill, the Administration should try to make it less bitter.

I ask unanimous consent that the text of the letter to Secretary Christopher be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, December 18, 1995.

Hon. WARREN M. CHRISTOPHER,
Secretary of State,
Washington, DC.

DEAR MR. SECRETARY: We are writing to express our strong opposition to the Clinton Administration's proposed sale of 120 army tactical surface-to-surface missiles (ATACMS) to Turkey.

As you well know, for more than a decade the Turkish government has waged a brutal war against the Kurdish people. According to recent data from Human Rights Watch (HRW), the conflict has resulted in 19,000 military and civilian dead, 2,000 villages destroyed and more than 2 million being forced from their homes.

What concerns us deeply is the use of American-made military equipment to commit these atrocities and to prolong the war against the Kurdish people. Specifically, it has been reported that in 29 incidents from 1992 and 1995, the Turkish Army has used U.S.-supplied fighter-bombers and helicopters to attack and fire against civilian villages and targets. Further, U.S. and NATO-supplied small arms and armored personnel carriers have been used in a counter-insurgency campaign against thousands of Kurdish villages.

The Kurds are not the only ones to have been subjected to attack with U.S. or NATO equipment from Turkey. Indeed, the record of the last twenty years is disturbing. Most notably, the Turkish military used NATO military hardware when it invaded and occupied the now-divided island of Cyprus. Further, Turkey has transferred US and NATO weapons to Azerbaijan, where they have been used against civilian Armenians residing in Nagorno-Karabagh.

In the face of this history, the President now wishes to supply the Turkish Army with 120 ATACMS, each of which is capable of carrying a warhead payload of 950 small cluster bombs. With these weapons, the Turkish Army has the capability to launch a horrendous ballistic missile attack on the Kurdish people. The results would be equally disturbing if any of these missiles ended up in the hands of the Azeris, or were deployed within range of either Cyprus or Greece.

Mr. Secretary, the Clinton Administration has taken a great interest in achieving peace in troubled regions, such as Bosnia-Herzegovina, Northern Ireland, Cyprus, and the Middle East. However, the Administration needs to demonstrate our nation's strong interest in bringing the violence in Kurdistan and Nagorno-Karabagh to an end. By arming Turkey with 120 ATACMS, we would send the opposite message and further fuel destruction in both regions.

The time has come for the United States to take a stand for peace throughout the entire Middle East. For that reason, we urge the Clinton Administration to reconsider its proposed sale of tactical surface-to-surface missiles to Turkey.

Thank you for your attention to this important issue.

Sincerely,

LARRY PRESSLER.
ALFONSE M. D'AMATO.

THE BAD DEBT BOXSCORE

Mr. HELMS. Madam President, almost 4 years ago I commenced these daily reports to the Senate to make a matter of record the exact Federal debt as of close of business the previous day.

In that report—February 27, 1992—the Federal debt stood at $3,825,891,293,066.80, as of close of business the previous day. The point is, the Federal debt has increased by $1,163,199,095,296.10 since February 26, 1992.

As of the close of business Tuesday, December 19, the Federal debt stood at exactly $4,989,090,388,362.90. On a per capita basis, every man, woman, and child in America owes $18,938.67 as his or her share of the Federal debt.

THE RETIREMENT OF COL. FRANK K. HURD, JR.

Mr. THURMOND, Madam President, I rise today to recognize the retirement of Col. Frank K. Hurd, Jr., from the U.S. Army. Colonel Hurd has served his country for over 26 years. He was an outstanding soldier and a dedicated Chief of the Army Liaison Office to the U.S. Senate, a position he has held for the past 3 years.

Colonel Hurd was commissioned as a second lieutenant of Armor through the Army Reserve Officer Training Corps upon graduation from Mercer University in his home State of Georgia. During his distinguished career, he served in a number of leadership assignments that took him to Korea; Bad Kissingen, Germany, where he commanded cavalry troops; Athens, Georgia, where he was an assistant professor of military science; and to Bamberg, Germany, where he commanded the 2d Squadron, 2d Armored Cavalry Regiment.

Colonel Hurd has succeeded admirably in his role of representing the Army's interests on Capitol Hill and acting as a liaison between the Department of the Army and the Senate. He has always been prompt, responsive, and sensitive to the needs of members and staff for up-to-date, complete, and accurate information.

As Chairman of the Senate Armed Services Committee, I am pleased to offer him my congratulations on a distinguished career, and I wish him and his family good health and happiness in the years ahead.

THE YORKTOWN AND MONROE COUNTY HIGH SCHOOLS CULTURAL EXCHANGE PROGRAM: UNDERSTANDING AND APPRECIATING CULTURAL DIVERSITY BY BRIDGING THE MILES

Mr. HEFLIN. Madam President, over 3 years ago, in September 1992, teacher Susan Ross of Yorktown High School in Yorktown Heights, NY, contacted my office to inform me of a wonderful new project which she had recently developed for her ninth grade students. She had just organized a cultural exchange program between her students and the students of Monroe County High School in Monroeville, AL. As part of the program, she wanted to get my recollections of what is was like growing up in Alabama and in the South.

Yorktown Heights is located about a half-hour's drive from New York City in a rural area surrounded by farming towns. Monroeville is the hometown of writer Harper Lee and was the model for the fictional town of Macomb in her Pulitzer Prize winning novel ''To Kill a Mockingbird.'' The courthouse in Monroeville actually served as part of the set for the Academy Award-winning film version.

This classic novel, which Ms. Ross has taught her classes off and on for 26 years, proved to be the catalyst for her program. One year, while reviewing the books that she would use in her class for the upcoming school term, she realized, in her words: ''I was teaching a book about a culture I knew nothing about, and I was possibly doing a disservice to it. To understand the issue from the character's point of view, you need to go to the source, so I did.''

Going to the source meant first approaching her counterparts in Monroeville. First, she contacted Monroe County High School Principal Pat

Patterson, who put her in touch with Paralee Broughton, a 9th and 10th grade teacher at the high school. Ms. Broughton told Susan that since ''To Kill a Mockingbird'' would serve as the central link between the two schools, she should get in touch with Mrs. Sarah Dyess, whose eighth-grade students were reading the book.

With the help of Ms. Broughton, Mrs. Dyess, and other teachers, educators, and administrators in Monroeville, Ms. Ross established a truly unique and stimulating cultural exchange program which she hoped would teach respect for each other's cultural differences and individuality and give students an understanding of basic universal human rights that are vital to democratic society. The project came to be known as Understanding and Appreciating Cultural Diversity, and was to help create cultural awareness and understanding through letters, tapes, pictures, and interviews. As part of the program, Ms. Ross' students would create all these materials and exchange them with students from the other school. The program is special because it was the first time that a project of this nature and scope had been done between any schools from the North and South.

Ms. Ross had high hopes for her program, the key to which was overcoming stereotypes. It was not to be simply a pen-pal correspondence exercise. Instead, each class was to communicate with the other class as a group, each serving as a microcosm of its community. To get the exchange underway, the students at Yorktown compiled a written and visual profile of their community, including its history and information gathered through interviews with local officials. They provided an analysis of the town's transportation, entertainment, and shopping facilities.

The Alabama students, under the guidance of their teacher Mrs. Dyess, compiled a videotape of their community which they sent to their friends in New York. Monroeville sent Yorktown an autographed copy of ''To Kill a Mockingbird,'' while Yorktown in turn sent Monroeville books set in the Hudson Valley, including Washington Irving's ''The Legend of Sleepy Hollow.''

Their teacher watched as the students' misconceptions began to crumble. She saw lackadaisical youngsters grow interested in reading when they began believing that the South was a real and multidimensional place. They learned that there are many different Souths, just as there are Norths, and both groups learned that it is dangerous to generalize about any region.

While learning of each others' differences, the exchange also made obvious the similarities between Yorktown Heights and Monroeville. Both are a mix of suburban and small town. Both have many working farms in the community. The two schools are about the same size, 900 or so students. In both places, the school is a vital link in the community and there are strong family values present.

The program has had its lighthearted movements along the way. Yorktown students were surprised to discover upon receiving a copy of Monroe County's yearbook that the students did not wear overalls. On the other side of the connection, one Yorktown student, Guy Gentile, was surprised to be asked by one of his Monroeville counterparts ''If I walk out the street—in Yorktown—will I be shot?''

Soon, other schools learned of Ms. Ross' innovative program and expressed an interest in becoming involved. Her students eventually began an exchange with a school in Louisiana to gain a better understanding and awareness of the influence of French culture on the United States. On November 14 of this year, Ms. Ross called to let me know that two of her current students were visiting Monroeville as part of the Bridging the Miles program, as it is now called.

Overall, the program has served as a bridge for students who would otherwise depend on often inaccurate and shallow media stereotypes. Ms. Ross said that a typical Yorktown student's opinions of Southerners were formed by movies such as ''My Cousin Vinny'' and television shows like ''The Beverly Hillbillies.'' The students were surprised to learn of the extent to which the racial climate in the South has changed since the 1930's, when ''To Kill a Mockingbird'' was set. They had not expected students who were so open about race and who participated in school activities together regardless of race.

In Monroeville, the students realized we have a tendency to cluster everyone in one stereotypical unit and mark them as being nondescript people. The sharing of poetry and letters has given the students a whole new perspective on the relationship between North and South.

The program begun by Ms. Ross has gained a great amount of attention all over the country, having been spotlighted by The New York Times, Atlanta Journal-Constitution, and the CBS television network. So far, most of its funding has come directly from Ms. Ross; this is how strongly she believes in what she is doing. Hopefully, the program will continue to expand and promote further understanding among the many diverse areas of the United States.

Just as programs such as the one between Yorktown and Monroeville demonstrate that it is wrong to generalize and stereotype about regions of the country, the energy, drive, and example of Susan Ross prove that it is also harmful to generalize about the health of our public schools and the commitment of public school teachers. I congratulate her for her broad-mindedness and innovativeness in educating young people.

It is my hope that others interested in ways of improving American education will see the great benefits that can be realized through projects such as this. One thing that makes us unique as Americans is our diverse cultural heritages that bind us together even as we maintain our regionally distinct traditions and customs. We tend to think of exchange programs only in terms of those between citizens of different nations, and these are indeed important and valuable tools for learning about our world. But as Ms. Ross and students of Yorktown High School and their counterparts at Monroe County High School have demonstrated, we have so much to draw from different regions within the United States itself that it is not necessary to go out of our own country to experience a cultural exchange. I commend her and wish her every continued success for her programs.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a withdrawal and sundry nominations which were referred to the appropriate committees.

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

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 12:10 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 395. An act to designate the United States courthouse and Federal building to be constructed at the southeastern corner of Liberty and South Virginia Streets in Reno, Nevada, as the ''Bruce R. Thompson United States Courthouse and Federal Building.''

S. 369. An act to designate the Federal Courthouse in Decatur, Alabama, as the ''Seybourn H. Lynne Federal Courthouse,'' and for other purposes.

S. 965. An act to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the ''Albert V. Bryan United States Courthouse.''

S. 1465. An act to extend au pair programs.

The enrolled bills were signed subsequently by the President pro tempore [Mr. THURMOND].

MEASURES PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

H.J. Res. 132. Joint resolution affirming that budget negotiations shall be based on the most recent technical and economic assumptions of the Congressional Budget Office and shall achieve a balanced budget by fiscal year 2002 based on those assumptions.

The following measure was ordered placed on the calendar:

H.R. 394. An act to amend title 4 of the United States Code to limit State taxation of certain pension income.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on December 20, 1995 he had presented to the President of the United States, the following enrolled bills:

S. 369. An act to designate the Federal Courthouse in Decatur, Alabama, as the ''Seybourn H. Lynne Federal Courthouse,'' and for other purposes.

S. 965. An act to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the ''Albert V. Bryan United States Courthouse.''

S. 1465. An act to extend au pair programs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1742. A communication from the Secretary of Labor, transmitting, pursuant to law, the report on the trade and employment effects of the Caribbean Basin Economic Recovery Act (CBERA); to the Committee on Finance.

EC–1743. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of a Presidential Determination relative to the Assistance Program for New Independent States of the Former Soviet Union; to the Committee on Foreign Relations.

EC–1744. A communication from the Assistant Attorney General (Legislative Affairs), transmitting, a draft of proposed legislation to extend the life of the U.S. Parole Commission to deal with a still-substantial workload of federal prisoners and parolees who committed their crimes prior to the effective date of the Sentencing Guidelines; to the Committee on the Judiciary.

EC–1745. A communication from the Secretary of the Interior, transmitting, a draft of proposed legislation to establish an Equipment Capitalization Fund within the Bureau of Indian Affairs; to the Select Committee on Indian Affairs.

EC–1746. A communication from the Chairman and General Counsel of the National Labor Relations Board, transmitting, pursuant to law, the annual report ending fiscal year 1994; to the Committee on Labor and Human Resources.

EC–1747. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report relative to the Prescription Drug User Fee Act (PDUFA) during fiscal year 1995; to the Committee on Labor and Human Resources.

EC–1748. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, reports regarding the receipts and use of federal funds by candidates who accepted public financing for the 1992 Presidential Primary and General Elections; to the Committee on Rules and Administration.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 1164. A bill to amend the Stevenson-Wydler Technology Innovation Act of 1980 with respect to inventions made under cooperative research and development agreements, and for other purposes (Rept. No. 104–194).

By Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs, with an amendment in the nature of a substitute:

S. 1260. A bill to reform and consolidate the public and assisted housing programs of the United States, and to redirect primary responsibility for these programs from the Federal Government to States and localities, and for other purposes (Rept. No. 104–195).

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. LAUTENBERG (for himself, Mr. ROBB, Mr. SARBANES, and Ms. MIKULSKI):

S. 1486. A bill to direct the Office of Personnel Management to establish placement programs for Federal employees affected by reduction in force actions, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MCCAIN (for Mr. GRAMM (for himself, Mr. INOUYE, Mr. MCCAIN, Mrs. HUTCHISON, and Mr. INHOFE)):

S. 1487. A bill to establish a demonstration project to provide that the Department of Defense may receive medicare reimbursement for health care services provided to certain medicare-eligible covered military beneficiaries; to the Committee on Finance.

By Mr. SARBANES:

S. 1488. A bill to convert certain excepted service positions in the United States Fire Administration to competitive service positions, and for other purposes; to the Committee on Governmental Affairs.

By Mrs. MURRAY:

S. 1489. A bill to amend the Wild and Scenic Rivers Act to designate a portion of the Columbia River as a recreational river, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SIMON (for himself, Mr. JEFFORDS, Mr. LEAHY, and Mrs. BOXER):

S. 1490. A bill to amend title I of the Employee Retirement Income Security Act of 1974 to improve enforcement of such title and benefit security for participants by adding certain provisions with respect to the auditing of employee benefit plans, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. GRAMS (for himself, Mr. HEFLIN, Mr. PRYOR, Mr. MCCONNELL, Mr. CONRAD, Mr. COVERDELL, and Mr. SANTORUM):

S. 1491. A bill to reform antimicrobial pesticide registration, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate will stand adjourned until 9:30, Thursday, December 21, 1995.

Thereupon, the Senate, at 8:54 p.m., adjourned until Thursday, December 21, 1995, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate December 20, 1995:

FEDERAL DEPOSIT INSURANCE CORPORATION

GASTON L. GIANNI, JR., OF VIRGINIA, TO BE INSPECTOR GENERAL, FEDERAL DEPOSIT INSURANCE CORPORATION. (NEW POSITION)

DEPARTMENT OF STATE

RITA DERRICK HAYES, OF MARYLAND, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS CHIEF TEXTILE NEGOTIATOR.

IN THE NAVY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST OF THE U.S. NAVY IN THE GRADE INDICATED UNDER SECTION 1370 OF TITLE 10, UNITED STATES CODE:

To be vice admiral

VICE ADM. ROBERT J. SPANE, 000–00–0000.

WITHDRAWAL

Executive message transmitted by the President to the Senate on December 20, 1995, withdrawing from further Senate consideration the following nomination:

FEDERAL DEPOSIT INSURANCE CORPORATION

NORWOOD J. JACKSON, JR., OF VIRGINIA, TO BE INSPECTOR GENERAL, FEDERAL DEPOSIT INSURANCE CORPORATION (NEW POSITION), WHICH WAS SENT TO THE SENATE ON JANUARY 5, 1995.

EXTENSIONS OF REMARKS

TRANSFORMATION: HELPING THE NEEDY BECOME NON-POOR

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. GINGRICH. On this floor, I've often discussed the book ''The Tragedy of American Compassion,'' where author Marvin Olasky examined over 300 years of what has worked in American social policy. His main point: You do not want to maintain the poor, you want to transform them. The goal of helping is to get them to be non-poor. You help an addict by getting them to give up their addiction. You help an alcoholic by getting them to be a recovering alcoholic. You work to transform people, because if you only maintain them, you will ruin their lives.

One of our colleagues, the gentleman from Maryland, Mr. MFUME, knows more than a little bit about this kind of transformation. His life is a testimony to it. He recently announced his decision to leave this body to assume the Executive Directorship of the National Association for the Advancement of Colored People. His very personal journey is detailed poignantly in Courtland Milloy's excellent column from the Sunday, December 17 Washington Post. As the gentleman embarks on a very different mission of transformation, we wish him well. I submit the Post column into the CONGRESSIONAL RECORD. Certain lessons should transcend either party or ideological lines:

[From the Washington Post, December 17, 1995.]

TRANSFORMED, MFUME LEADS BY EXAMPLE

(By Courtland Milloy)

In explaining his transformation from street dude to political leader, Kweisi Mfume talks of having had a ''spiritual experience.'' This is not to be mistaken for a religious occasion, such as going to church. It's more akin to a spiritual emergency, or crisis, in which Mfume tried for years to change his ways but found willpower alone to be insufficient.

Mfume recalls the days when his name was Frizzell Gray, and how he and his buddies used to stand outside a liquor store in Baltimore, drinking alcohol and telling lies. On one particular night while in his early twenties, he was overpowered by a feeling of ruination, of being a man on a road to nowhere. It was in that moment of truth, he says, that he received the courage and strength, some would say grace, to start a new life.

Now that Mfume has been selected to serve as president of the National Association for the Advancement of Colored People much is being made of the man he became after that night on the street corner. He went on to become a radio disc jockey, a Baltimore city councilman and a member of the U.S. House of Representatives.

But Mfume's true value has little to do with his job descriptions. It is the process of his personal change that holds the key to the transformation of the NAACP; it is the spiritual emergency of Frizzell Gray that points the way to real advancement for African Americans.

''People thought I was crazy,'' Mfume told Peter J. Boyer of the New Yorker magazine last year. ''But that night I left that corner and prayed and asked for God's forgiveness and asked my mother to please forgive me this one time for letting her down. I had let her down—that was not the way I was raised.

''I said that if I had just one more chance, I would never, every again go back to that, and I would try to find a way to atone for it. And I cried on the floor that night on my knees. I made a very real promise to myself, to my mother and to God that night—that if I could just get to that point and get one more chance I would do everything I could do to make a difference.''

Mfume had to fight to get off that corner. His former drinking buddies would not let him just walk away. He says they regularly beat him up until they decided that he was a ''lost cause'' and finally left him alone.

Mfume learned a most important lesson from those struggles: Sometimes you may have to take a fall to take a stand.

Among the most difficult tasks facing Mfume now is redefining the struggle for civil rights; no one seems to know for sure where to go from here. But Mfume has a pretty good idea. His story suggests that we don't have to go anywhere, that we need only stand where we are and begin to treat those around us with courtesy, kindness, justice and love.

''You are not a man because you killed somebody Mfume said last year during a Father's Day service at St. Edwards Catholic Church in West Baltimore. ''You're a man when you know how to heal somebody.'' As Boyer described the scene, ''it was no greeting card homage to dear Dad, but, rather, call to arms in a war for cultural survival.''

Some would say that Mfume won that war when he went back to school and earned a high school equivalency degree in 1968. But it was when he began taking responsibility for the children he had fathered out of wedlock that he became a real winner.

Some would say that he won when, as a disc jockey, he stopped playing jock rap music in favor of political dialogue and jazz. But more important was Mfume's newfound attitude of gratitude that had allowed him to work at the radio station as a low-paid gofer until he had learned some skills.

Mfume, now 47, has been elected to Congress five times since 1986. He has served on the powerful House Banking Committee and, in 1992, became chairman of the Congressional Black Caucus.

But he sacrificed a secure job to help resurrect the NAACP, an organization that, for all intents and purposes, is dead. It died the day black Americans forgot where we came from and began to act as if the modicum of success that some of us enjoy had somehow been won through personal charm and good looks instead of the struggles and sacrifice of others.

This misguided sense of self-reliance, brought on in part by a profound ignorance of history, is probably the single most important reason black America has been brought to its knees.

To make his change, Mfume had to admit that he was spiritually bankrupt and that he needed help from a power greater than himself. That honesty paid off with a new consciousness, and his willingness to be of service to his fellow man has resulted in a new energy, insight and intuition worthy of his new name, which means ''conquering son of kings.''

The NAACP, like much of black America, is in the same boat that Frizzell Gray had been in. But with Mfume at the helm, there is hope that what happened to him can happen to others as well.

TRIBUTE TO SGT. MAJ. JAMES JUSTIN HEINZLER

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. SKELTON. Mr. Speaker, today I wish to recognize Cmd. Sgt. Maj. (Ret.) James Justin Heinzler for serving over 42 years in the Missouri Army National Guard. He served from April 22, 1952, to September 11, 1994.

Command Sergeant Major (Ret.) Heinzler's most recent service with the Missouri Army National Guard was with the 1st Battalion, 128th Field Artillery. He served in this position for his last 16 years of service. Throughout his career, he has strongly committed himself to all that is required. He has gone beyond to provide guidance and support for his fellow officers.

He has received numerous military awards throughout his career. The awards are the Army Service Ribbon, the National Defense Service Medal, the Army Reserve Components Achievement Medal with silver oak leaf cluster, the Armed Forces Reserve Medal with three 10 year devices, and the Army Commemoration Medal. He is submitted for the Meritorious Service Medal.

Command Sergeant Major (Ret.) Heinzler has not only provided faithful and dedicated service to the Missouri National Guard, but to his country as well. I urge my colleagues to join me in congratulating him on his service.

THE CLINTON DEFENSE POSTURE WILL RATTLE OUR MILITARY FOR YEARS TO COME

HON. RANDY ''DUKE'' CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. CUNNINGHAM. Mr. Speaker, newspapers being delivered across the country are hitting the doorsteps of military families hard enough to rattle their households. The papers, radio, and the television are carrying President Clinton's message that it is no longer worth the trouble to serve your country in the armed services.

Mr. Speaker, this Congress has made the difficult choices that will take this Government to a balanced budget by 2002, while at the same time re-establishing the security of our

Nation. Just this week, we sent the President H.R. 1530, a Defense Authorization bill that restores a reasonable quality of life for our military, sustains basic military readiness, reinvigorates the Pentagon's efforts to modernize weapons, and makes a downpayment on our effort to make the Pentagon run more like a business.

The bill gets the Pentagon back into the business of defending our country, without a skyrocketing Defense budget.

Despite the fact that this bill includes a long overdue 2.4-percent pay raise, a 5.2-percent increase in housing allowance for our troops and their families, and $35 million to educate children of military personnel, the newspapers now tell us that President Clinton will veto that bill.

Any sergeant, colonel, admiral, or general will tell you that their most important asset is a well-trained and dedicated man or woman. Unfortunately, because of a declining quality of military life and number of broken Government promises, the rank and file soldier and sailor is becoming an increasingly rare asset.

We have American soldiers and sailors trying to feed their families with food stamps. Some of the kids that the President is sending into harm's way in Bosnia are leaving their families behind in housing that is substandard. Clinton's historic 1993 tax hike not only forced more taxes on hard-working middle-income American families—despite a promise to actually cut taxes—it also delayed COLA's for military retirees by three-quarters of a year—breaking a promise that was made to many of those men and women while they served this country overseas and at war. The Defense Authorization bill fixes the Clinton COLA grab.

The veterans, retirees, and active military families that I talk to every day tell me that they don't trust the government anymore. Fully half of this country's new military enlistees come from military families, and those families are beginning to tell their kids that it just isn't worth it. As a 20-year veteran of the U.S. Navy, I dedicated my life and service to this country in exchange for a few promises of pay and benefits. If the Government, led by President Clinton, continues to break those promises and deny a reasonable quality of life, our military families will find it even more difficult to dedicate themselves to military service.

Mr. Speaker, what the President is doing is wrong. I challenge him to change his ways and demonstrate a commitment to our men and women in uniform. At a time when he plans to send over 32,000 troops into war-torn Bosnia, enactment of the Defense Authorization bill is a good place to start.

PERSONAL EXPLANATION

HON. CASS BALLENGER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. BALLENGER. Mr. Speaker, on December 13, 1995, I was unavoidably detained and missed rollcall vote No. 851, the adoption of House Resolution 297, a rule to permit the House to adopt, by a simple majority, rules for certain legislation on the same day that they are reported by the Rules Committee. Had I been present for vote No. 851, I would have voted ''aye.''

PERSONAL EXPLANATION

HON. TOM A. COBURN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. COBURN. Mr. Speaker, unfortunately, due to weather delays in my return from Oklahoma, I was unable to cast my vote on House Joint Resolution 132, the resolution supporting a balanced budget in 7 years. I have made clear since January that balancing the budget is our highest priority if we are to secure a bright future for our children and grandchildren. Therefore, had I been here, I would have voted ''aye'' on House Joint Resolution 132.

HONORING THE LUDLOW BOY'S SOCCER TEAM'S STATE CHAMPIONSHIP VICTORY

HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 19, 1995

Mr. NEAL of Massachusetts. Mr. Speaker, today I would like to pay tribute to Coach Tony Goncalves and his Ludlow High School Lions boy's soccer team for their outstanding 4 to 1 victory over Somerville High School to win the Massachusetts Boys Division I State Soccer Championship. The impressive performance by the Lions in the championship capped off a tremendous 17–2–3 campaign for Coach Goncalves and his team and earned them a spot in the top 25 of the Umbro Boys High School Soccer Poll. Over the years Ludlow High School has enjoyed a rich tradition of soccer excellence and this team will certainly be remembered as one of the best in Ludlow High School history.

I would also like to recognize Coach Goncalves' assistants Jack Vilaca, Greg Kolodziey, and Jon Cavallo for their outstanding efforts throughout this championship season. It is the unsung efforts of people like these that often make championships possible, and Ludlow was quite fortunate to be assisted by such able individuals.

Finally, I would like to recognize the players who delivered this spectacular victory: Seniors, Bob Nascimento, Eddie Pires, Rich Huff, John Summerlin, Aaron Majka, Carlos Gomes, Adriano Dos Santos, Wesley Manuel, Chris Goncalves, Mark Eusebio, Jeff Leandro, Juniors, Robe Gomes, Matthew Goncalves, Adriano Genovevo, Danny Elias, Jason Alves, Ryan Lemek, Sophomores, Alex Carvalho, Dave Garcia, Jon Haluch, and Justin Larame.

The achievements of these young men are a tremendous source of pride for not only the town of Ludlow but for the entire Second Congressional District. I am honored to represent such outstanding individuals and I join with the citizens of the Second Congressional District in offering a most heartfelt congratulations. I would also like to wish the returning players the best of luck as they embark on their title defense next season.

HONORING A McCREARY COUNTY LEADER

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. ROGERS. Mr. Speaker, I rise to honor my good friend Napoleon ''Nip'' Perkins who recently passed away just shy of his 90th birthday. My family and thousands of others throughout McCreary County and southern Kentucky are deeply saddened by this tragic loss.

Our area has lost a topnotch businessman, an inspiring civic and community volunteer, a political leader, and a good friend. He helped everyone he could and always was willing to sacrifice his time for others.

Nip Perkins was a retired land agent and an engineer for Stearns Coal and Lumber Co., where his high energy, friendly style is what always stood out most.

Politics was where Nip was most influential. Serving as a field representative for my two predecessors in Congress, Congressmen Eugene Siler and Tim Lee Carter, he has been a recognized leader for more than seven decades.

Nip was also a great confidant for me, always keeping his ear close to the ground and my best interests at heart. He was wise, informed, and always positive.

Nip served six terms as the McCreary County Republican chairman and was the first inductee of the Fifth Congressional District Lincoln Club Hall of Fame for his honorable and dedicated service.

I could not think of a better person to be our first Hall of Fame inductee.

In addition to his political service, Nip was a former McCreary County master commissioner and served on the County Selective Service Board. He was a 65-year member of the Orie S. Ware Lodge in Stearns and the 32d degree Mason in the Valley of Covington.

My heart goes out to Nip's wife of 62 years, Evelyn Anderson Perkins, and his wonderful family. He was a great friend and a good man, and he will be sorely missed.

TRIBUTE TO THE HONORABLE JOHN DINGELL ON HIS 40TH ANNIVERSARY IN THE HOUSE OF REPRESENTATIVES

SPEECH OF

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 19, 1995

Mr. KILDEE. Mr. Speaker, it gives me great pleasure to pay tribute to a man who has provided 40 years of dedicated service to the people of Michigan's 16th Congressional District and the United States of America, my good friend and dean of this esteemed body, JOHN D. DINGELL. The fact that Mr. DINGELL is still recognized by many of his colleagues from both sides of the aisle as ''Mr. Chairman'' is one example of the high level of respect and appreciation we have for his service.

Like his father before him, JOHN DINGELL has worked diligently to serve his constituents in the State of Michigan. His tireless efforts to

spearhead economic development, solve local problems and meet community needs have led to an improved quality of life for his constituents.

Mr. Speaker, in serving this country, we can look to JOHN DINGELL as an example of an effective legislator who puts people before politics. He authored the original Clean Water Act, which markedly improved the quality of our Nation's rivers and lakes, including the State of Michigan's Great Lakes. As chairman of the House Committee on Energy and Commerce, he was the integral component in removing asbestos from our children's schools and passing the first ever Americans with Disabilities Act. As chairman of the Subcommittee on Oversight and Investigations, Congressman DINGELL vigorously investigated and exposed waste, fraud, and abuse resulting in saving billions of taxpayer dollars. Congressman DINGELL's father, John Dingell, Sr., authored this Nation's first comprehensive health reform legislation when he served in this body for 22 years. Following in his father's spirit, JOHN DINGELL, JR., has introduced similar legislation every year he has been in office that would provide health insurance for all Americans.

Let me say as cochairman of the Congressional Auto Caucus, there is no greater advocate for the auto industry in the history of the Congress then JOHN DINGELL.

Forty years after he was first sworn into the House of Representatives, Congressman DINGELL continues to fight for policies and values that will most benefit this country. It is because of his great wisdom and experience that I have often sought his counsel. The debt of gratitude this body owes JOHN DINGELL can never be repaid, but can and must be recognized. Mr. Speaker, it is truly an honor for me to have worked for so many years with my colleague and good friend, Chairman JOHN D. DINGELL.

Mr. Speaker, when I debate against term limits, I mention the service of Hubert Humphrey, Everett Dirksen, and JOHN DINGELL. I then rest my case.

ADDRESS BY CAPT. MARTY SMITH

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. SKELTON. Mr. Speaker, On October 14, 1995, Capt. Marty Smith, commander of the U.S.S. *Jefferson City* addressed the annual Mid-Missouri Navy League Navy Birthday Ball in Jefferson City, MO. This speech is set forth herein:

SPEECH GIVEN AT THE 1995 MID-MISSOURI NAVY LEAGUE NAVY BIRTHDAY BALL HELD ON OCTOBER 14, 1995 IN JEFFERSON CITY, MO

Congressman and Mrs. Skelton, President Green, members of the mid-Missouri Navy League, and citizens of Jefferson City, it's a great honor and privilege for me to speak to you all tonight in the ship's namesake city. I, along with my eleven shipmates, have had a wonderful time since we arrived here Friday. Crew members who have been here before have told us of the friendliness and hospitality of the great state of ''Missoura'', and we are finding it all true. Everyone has been wonderful, starting with Herman Smith and Petty Officer Wall who picked us up in St. Louis early Friday morning, to the host families who have gone out of their way to make us feel like adopted sons.

Well, we missed you all last year, because as most of you know, last October, the ship was in the middle of a Western Pacific deployment, having all sorts of adventures in the Sea of Japan with the Kitty Hawk Battle Group. And yes, next year you'll have toast us in absentia because we'll once again be deployed, this time with the Karl Vinson Battle Group in the Arabian Gulf. Perhaps you'll be able to delay the festivities for awhile until we return in mid-November!

I don't get paid to make speeches, but if there's one thing about public speaking I do know, it's that the hardest audience in the world is a bunch of submariners and submariner supporters sitting around waiting for the speech to end so they can resume the party. So let me just fill you in briefly on what we've been up to in the past year, and what our future schedule holds.

We got back from our maiden deployment last year a couple of days before Christmas, and what a deployment it was * * * So unique, with so many challenges, for such a relatively inexperienced crew. I can't possibly convey to you how proud I was of the crew as they put in 110 percent every single day for six months away from their friends and loved ones. They did such a good job, as a matter of fact, that as Congressman Skelton can tell you, I was asked to give a debrief of the deployment to the top admiral of the Navy, the Chief of Naval Operations, Admiral Boorda. This kind of recognition, by the way, only happens to a very few ships every year. In addition, the crew was awarded a total of 4 Navy Commendation Medals, 25 Navy Achievement Medals, and over 50 Flag Officer Letters of Commendation. I can't give you the details of our deployment, obviously, for security reasons, but JFC, as we're known in message traffic shorthand, accomplished many unique firsts, achieved innovative and significant tactical breakthroughs across the spectrum of submarine operations, including anti-diesel ASW, tomahawk strike warfare, and very shallow water operations. We visited Japan, South Korea, Singapore, Hong Kong for Thanksgiving, and Pearl Harbor on the way home. The crew was underway, underwater, for over 78 percent of the six months, enjoyed great liberty visits, and even found time for a humanitarian project at an orphanage in Singapore. The ship steamed more than 40,000 miles on nuclear power with no major equipment problems, which was especially notable since we had only a single ten-day maintenance period over the entire six months. The contributions Jefferson City made to the Kitty Hawk battle group were real and played a major role in helping Admiral Blair, the Battle Group Commander, to complete his assigned mission—to provide a stabilizing and influential presence in the Western Pacific after the dictator of North Korea, Kim il Sung, died in early July 1994, with no apparent successor. As you may remember, there was more than a little concern because of the leadership void and the vast military forces which North Korea has poised just north of the 39th parallel. So Jefferson City and the rest of the Battle Group remained tethered to the South Korean peninsula, instead of going to the beautiful Arabian gulf, and we followed the traditions of several famous WWII submarines, such as CDR Mush Morton and Electrician's Mate Herman Smith seated in the back there, in seeing just how yellow the yellow sea can be. In recognition of our efforts, Jefferson City received the first of many unit commendations she will undoubtedly receive during her 30-year career, a Meritorious Unit Commendation, which is represented by a ribbon you see on our chests tonight and a pennant which we fly proudly from our sail inport.

Anyway, I or any of the crew here tonight will be glad to answer your questions about the ship or the deployment. We also brought the ship's photo album here, which you're welcome to take a look at. It's too bad that the old COB, Master Chief Harden, isn't here to explain a couple of those pictures!

Since the deployment, Jefferson City has been tasked with several local operations in the Southern California area with other ships and submarines, some torpedo testing in the Pacific Northwest on a couple of trips, a major tactical inspection which we did very well on, and had the distinct pleasure of hosting some of you for a VIP cruise last June. In August we started a 3-month shipyard modernization period in San Diego. Right now the boat is in drydock, getting many improvements, which will make us quieter, faster, and deadlier to our potential adversaries. When Jefferson City returns to sea in late-November, we will head up to Alaska for sound trials and then return to port just before Christmas following a big engineering inspection. In February and March we conduct training exercises with our new boss, the Karl Vinson Battle Group, and then start our second six month deployment in mid-May. And for those of you waiting to visit the ship until we move to Pearl Harbor, Hawaii, that date has been firmed up and is now November of 1997.

You may have also heard about another VIP cruise we hosted, this one for Mr. George Will, the national political columnist who writes in Newsweek and over 250 news papers nationwide. After his cruise he wrote a very impressive essay for Newsweek magazine which resulted in several nice accolades for the ship. I'd like to quote the beginning paragraph from Mr. Will's essay for those of you who didn't get a chance to read it. The back cover page of the Sept 3 issue of Newsweek begins thusly: ''Aboard the USS Jefferson City (SSN 759) underway off San Diego—Submariners say there are just two kinds of ships: submarines and targets. Feel free to disagree, but smile when you do, because the 140-man crew of this fast attack nuclear submarine is armed. It carries torpedoes, Harpoon anti-ship missiles for distances torpedoes cannot travel—far over the horizon—and Tomahawk land-attack cruise missiles. (Two submarines of this class, one in the Red Sea and one in the Mediterranean, launched a total of 12 tomahawks during the gulf War). The Jefferson City can cruise quietly at above 25 kts submerged and its acoustic detection systems can find quiet adversaries. The psalmist didn't know the half of it when he wrote that they who go down to the sea in ships see ''wonders in the deep.'' This ship is a wonder of tightly packed technology. End quote. Mr. Will then goes on with an insightful and accurate discussion of the contribution of the nuclear submarine to modern warfare and why the United States needs to keep on the leading edge of undersea warfare, in front of the Russian submarine force and other countries with modern submarines.

What Mr. Will doesn't discuss is the sailor or officer, the Petty Officer Campbell's and the LT Smiths, standing watch, day and night, 6 hrs on and a quick 12 hrs off, for weeks on end away from his friends and loved ones, deep under the ocean's surface. These men and women are something that no country can buy from a Russian army-navy surplus store, and is, and will always be, the difference between the United States Navy and all other navies. These people are why we are here, celebrating the 220th birthday of the greatest navy in the world. Our top boss of the Pacific Fleet, Admiral Zlatoper, who toured our ship last summer in Japan, sent out the following message this past week: quote ''The Navy's 220th birthday finds the

Pacific Fleet emerging from it's restructuring as a lean formidable, combat ready force with a strong commitment of quality of life for our people. America needs its navy more than ever as we contend with regional conflicts, proliferation of weapons, and political uncertainties around the globe. Today the Navy-Marine Corps team is forward-deployed, first on the scene, and flexible enough to respond to almost every contingency from the sea. With fewer U.S. bases overseas and uncertain access to bases of the nations, the Navy will be the primary guarantor of American interests in the Pacific for decades. End quote.''

And the Navy needs your continued support as Navy League members, educating the public on the need to maintain a strong maritime armed service and helping to recruit quality people like the officers and crew you see here tonight. I was on a Trident ballistic missile submarine on alert patrol in the Northern Pacific when the Soviet Union dissolved, ending the Cold War. Yet there was no celebration or overt glee—just the feeling that our mission had changed in ways we didn't quite know yet. And today, one gulf war later, the world is not a safer, more stable place for you and your children, but more unstable than ever before. And the United States is the only country which will make the right things happen, when we choose, because our Navy, first on the scene, has the ''right stuff.'' As George Will concludes his Jefferson City essay, ''And the history of this century teaches a grim truth: When at peace the nation should always assume that it may be living in what subsequent historians will call ''interwar years.''

But now I'd like to conclude my remarks so that we can all enjoy these interwar years. (Pause) And I'd like to especially thank Melody Green for her dedicated work as President of the Navy League in maintaining what is undoubtedly one of the strongest and closest ties between a ship and her namesake city. I know that this visit is one of the highlights of my naval career, and I think it is for my crew here tonight as well. Knowing how much you support us, and your warmth and friendship, makes us work a little bit harder every day and puts a proud gleam in our eyes when we say we are on the USS JEFFERSON CITY. On behalf of my crew, I would like to express our heartfelt appreciation for your wonderful hospitality, and your work as members of the Navy League in keeping the United States Navy such that generations to come can continue to enjoy such birthday celebrations as we enjoy tonight. Thank you all very much.

POTABLE DRINKING WATER FOR PARTS OF MONTANA

HON. PAT WILLIAMS

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. WILLIAMS. Mr. Speaker, today there are folks who are forced several times each week to travel miles to fill tanks and barrels with pure water to drink. The situation I refer to is not somewhere in a Third World country, but—remarkably—in Valley County, Montana. Because groundwater supplies in this part of Montana are not potable, the residents of these communities drive in their trucks for hours each week, both summer and winter, to deliver this water to hundreds of people.

The irony of this situation is that these folks live adjacent to one of the largest bodies of water ever developed by the Federal Government in the West, the Fort Peck Reservoir, which stores over 18 million acre feet. The bill I am introducing today will authorize the development of a rural municipal water system for the residents of the Fort Peck Rural Water District. This much needed project will tap into Fort Peck Reservoir to construct a safe and reliable drinking system for both municipal and agricultural purposes. When this project is completed, it will also enable this area of Montana to attract economic development, which up to now has been stifled due to the unavailability of water.

Mr. Speaker, the Bureau of Reclamation has completed a needs assessment and feasibility study on this project, and I am proposing its construction through a partnership arrangement where State and local interests will contribute 20 percent of the cost toward its completion. The feasibility study estimates that the total Federal expenditure will be less than $6 million. If we can afford to spend much more than this to help undeveloped nations all around the world to develop safe supplies of drinking water, we can certainly afford to do this for folks living in Montana.

A TRIBUTE TO CARL L. ''PAT'' PATRICK

HON. MAC COLLINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. COLLINS of Georgia. Mr. Speaker, I rise today to pay tribute to a real gentleman of Georgia. Carl L. ''Pat'' Patrick of Columbus is a man who is known and admired greatly by industrial, civic and community leaders throughout our State. He is the founder and chairman of Carmike Cinemas Inc. which operates movie theaters throughout Georgia and the South.

And while he is known best for his work in the cinema industry, it is his generosity and selfless charitable acts for which I commend this man. Pat and his wife, Frances, have long been supporters of and contributors to Columbus community causes such as Columbus Technical Institute, the Columbus Museum and the John B. Amos Community Cancer Center at the Medical Center.

Pat's most recent contribution, however, is one of his greatest. He donated $1 million to St. Francis Hospital of Columbus—the hospital where his son was born during the facility's first year of operation in 1950. St. Francis now specializes in cardiac medicine and the Patricks want to ensure the hospital is able to purchase the necessary equipment to keep pace with the strides being made in this field.

On a more personal note, when Julie and I received our Christmas card from Pat and Frances this year, we had a most pleasant and touching surprise awaiting us. In addition to the wonderful holiday message, the card informed us that a contribution had been made by the Patricks in our name to the Will Rogers Memorial Fund.

Again, I commend Carl L. ''Pat'' Patrick. He has touched the lives of so many people in so many ways with his warmth and generosity. Thank you Pat and Frances.

SINGLE-ASSET BANKRUPTCY

HON. JOE KNOLLENBERG

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. KNOLLENBERG. Mr. Speaker, I rise today to introduce a bill to address an injustice that exists within title 11 of the United States Code regarding single asset bankruptcies.

This injustice stems back to the 103d Congress when an 11th hour decision placed on arbitrary $4 million ceiling on the single asset provisions of the bankruptcy reform bill. The affect has been to render investors helpless in forclosures on single assets valued over $4 million.

To rectify this problem, my bill eliminates the $4 million ceiling, thereby allowing creditors the ability to recover their losses. Under the current law, chapter 11 of the Bankruptcy Code becomes a legal shield for the debtor. Upon the investor's filing to foreclose, the debtor preemptively files for chapter 11 protection which postpones foreclosure indefinitely.

While in chapter 11, the debtor continues to collect the rents on the commercial asset. However, the commercial property typically is left to deterioriate and the property taxes go unpaid. When the investor finally recovers the property through the delayed foreclosure, they owe an enormous amount in back taxes, they receive a commercial property left in deterioration which has a lower rent value and resale value, and meanwhile, the rent for all the months or years they were trying to retain the property went to an uncollectible debtor.

My bill does not leave the debtor without protection. First, it is only as a last resort when the investor brings a foreclosure against a debtor. This usually is after all other efforts to reconcile delinquent mortgage payments are unsuccessful. Second, the debtor retains up to 90 days to reorganize under chapter 11. It should be noted, however, that single asset reorganizations are typically a false hope since the owner of a single asset does not have other properties from which he can recapitalize his business.

Finally, Mr. Speaker, my bill helps all American families by making their investments more secure and more valuable. The hard-working American families who depend on their life insurance policies and who have paid for years into their pensions will save millions in reduced costs. My bill protects the ''little guy'' from being plagued with years of litigation while the commercial property owner continues to collect the rent to line his own pockets.

WHAT'S WRONG ON THE RIGHT

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. GINGRICH. Mr. Speaker, I would like to bring to my colleagues' attention the following article from the ''Outlook'' section of the December 17 Washington Post. The author, noted Boston University economics professor Glenn Loury, has a valuable lesson for both conservatives and liberals alike. Though condemning the paternalism of the left, which has

helped exacerbate the awful conditions of our inner cities, he observes that "a conservatism worthy of majority support would not view with cool indifference a circumstance in which so many Americans suffer such unspeakable degradation." I enter the full article into the CONGRESSIONAL RECORD and urge all my colleagues to read it.

[From the Washington Post, Dec. 17, 1995]

WHAT'S WRONG ON THE RIGHT: SECOND THOUGHTS OF A BLACK CONSERVATIVE

(By Glenn C. Loury)

The recently deceased British writer Kingsley Amis, celebrated by conservatives on both sides of the Atlantic, was never comfortable with political movements nor those who champion them. In the poem, ''After Goliath,'' Amis wryly noted that'' * * * even the straightest of issues looks pretty oblique when a movement turns into a clique.'' As a black American who nevertheless came to call himself a conservative, I have recently watched with growing dismay how this ''movement'' has dealt with racial issues, and have thereby gained new appreciation for the wisdom of Kingsley Amis.

Looking back, three factors seem to have been paramount in my move toward conservatism. The first attraction was that is was not liberalism. By the end of the 1970s I had become disgusted with the patronizing relativism that white liberals seemed inevitably to bring to questions of race. Wearing their guilt on their sleeves, they were all too ready to ''understand'' the shortcomings and inadequacies of blacks. Obsessed with the wrongs inflicted by society on the supposedly hapless victims of discrimination, they were blinded to the desperate need of these ''victims'' to take responsibility for their own lives. They therefore supported and reinforced what I saw as the debilitating tendency among many blacks to avoid facing squarely the real challenges of the post-civil rights era.

There was hypocrisy in this liberal stance. Though advocating racial equality, liberals did not treat blacks and whites as moral equals: Historic oppression precluded blacks from being held accountable for their actions; whites, suffering no such disability, warranted criticism by liberals because they could choose to stop being racists, or to become more generous and compassionate. In effect, the liberals were saying that whites were powerful moral agents, and blacks were pitiable subjects shaped by forces outside themselves. This smacked of racism, and I hated it.

The second attraction of conservatism was that, on the range of policy issues with which I was most concerned, it made intellectual sense to me. As a professional economist, I have always been sensitive to the deep incentive problems that plague the liberal social vision. High taxes, heavy-handed regulation, bureaucratic service provision and expansive social benefits tend to reduce economic growth and foster dependence. Some social programs would always be necessary, of course, but liberals seemed too little concerned about the costs of their ambitions. Moreover, again in the late 1970s, I watched workers in the auto and steel industries price themselves out of their burgeoning international markets while liberals cheered them on. Public employee unions often seemed to be feathering their own nests, with little apparent concern for the public interest, and with the broad support of the Democratic Party.

Finally, the cultural assumptions of social conservatism seemed like an appealing alternative to those of liberal secularism. In no small part, my move to the political right has been a move away from the people on the left who seemed unremittingly hostile to any evocation of spiritual commitments in the public square. With the family disintegrating before our very eyes, liberals could only heap ridicule on ''traditional values'' advocates who expressed alarm. In the face of over 1 million abortions per year, liberals could find no place in their political lexicon for a discourse on the morality of this course of action in our society.

For all of these reasons, I was drawn to embrace conservatism. Yet now, some years later, these same beliefs are provoking my growing discomfort with the conservative ascendancy, particularly on the issue of race.

It is certainly true that liberals adopted a condescending posture on racial questions. Their methods—such as strong affirmative action leading to racial double standards, or an excessive concern to avoid ''blaming the victim'' that precluded acknowledgment of social patholoy—were definitely flawed. But there was never much doubt that liberals sought to heal the rift in our body politic engendered by the institution of chattel slavery. The liberal goal of securing racial justice in America was, and is, a noble one. I cannot say with confidence that conservatism as a movement is much concerned to pursue that goal.

This is not the old canard that conservatives are inherently racists because believers in states' rights opposed the civil rights revolution. Rather, my concern is that too many conservatives seem blind to the need to constructively engage the problem of racial division. Yet the success of any governing coalition, whether it is the conservative ''revolution'' or something else, will ultimately depend largely on how well it deals with a problem that cannot be wished away.

It is now fashionable for conservatives to attribute the catastrophe unfolding in the urban ghettos to some combination of mistaken liberal policies and the deficiencies of inner-city residents themselves. Yet a conservatism worthy of majority support in this country would not view with cool indifference a circumstance in which so many Americans suffer such unspeakable degradation, from lack of shelter, health care, education, nutrition or any hope for a better life. The efforts of various conservative writers to attribute this deep-seated, complex problem to the disincentives of federal assistance programs, the so-called pathologies of black culture, or the cognitive disabilities of certain group of Americans, seem designed mainly to rationalize their disengagement from it.

Where is their passion? Where is their moral outrage? In light of the scale of the tragedy unfolding in cities across the land, the narrowly academic and highly ideological posture of conservative intellectuals—who are in effect saying, ''Too bad about what's happening, but we told you liberals so''—is simply breathtaking. Is it paranoia for a black to wonder whether this posture toward urban problems would be embraced with such confidence among conservatives if those inner-city hell holes were populated by whites?

Conservatives should view with skepticism the notion that economic or biological factors ultimately underlie behavioral problems like those involving sexuality and parenting. After all, behaviors of this sort reflect people's basic understandings of what gives meaning to their lives. The idea that the mysteries of human motivation within the family are susceptible to calculated intervention by the state would have been rejected out of hand by a classical conservative like Edmund Burke, to whom the phrase ''conservative revolution'' would have seemed an oxymoron. Yet, today's conservative revolutionaries would have us believe that only by dismantling the federal establishment can the deepest social problems of American society be solved.

I doubt that the most clever of economists (and I know some smart ones) could design an incentive scheme to insure responsible parenting that would work as effectively as the broad acceptance among parents of the idea that they are God's stewards in the lives of their children. The best pregnancy deterrent may be to inculcate in the heart of each adolescent the belief that, as Paul wrote to the Corinthians, ''Your body is the temple of the Holy Spirit . . . Therefore, honor God with your body.

There is also wisdom in the New Testament for those conservatives who see in America's black communities another country, separate from and unrelated to the one in which they live, inhabited by a different kind of man. In Acts 10:34–35 one finds Simon Peter saying, ''Of a truth I perceive that God is no respecter of persons, but in every nation he that feareth him, and worketh righteousness, is accepted with him.'' The point here is that the problems observed in the darkest corners of our society are human problems, not racial ones. The fault-line between civilization and barbarism runs down the middle of every human heart, and the grace of God remains available to provide a way out for all who would seek it. While we reject moral relativism, and so stand ready to judge between better and worse ways of living, we should strive to avoid self-righteousness. We certainly should eschew completely any notions of collective, racial condemnation or virtue.

Unfortunately, some conservatives now write about ''the problem of black crime,'' about ''the crisis of black illegitimacy,'' about ''the threat of black social pathology.'' But what has race to do with these problems, per se? I am, of course, keenly aware that the rates of crime and illegitimacy among blacks are substantially higher than among whites. I am merely observing that neither the causes nor the cures of such maladies depend on one's skin color. Which group of Americans are innocent and which are the culprits in these affairs? These are problems of sin, not of skin. I would have thought that religious conservatives would be the ones objecting most strenuously and insistently to this lapse of social virtue on the right. Sadly, they have not been.

It is true that, in the recent history of American social policy, it was liberals who ''played the race card'' by arguing that the disadvantages of blacks justified race-based remedies. Some liberals even claimed that the self-esteem of black youngsters could not be secured without rewriting history so as to provide minorities with equal time. But, while these liberal efforts are largely discredited, we now find conservatives, with the political initiative in hand, acting to maintain and reinforce this inordinate focus on race.

Thus, when conservatives talk of the ''culture of poverty'' in reference to urban black communities they miss the deeper truth—that America's real problem is its reluctance to affirm those common moral standards that could guide the behavior of blacks and whites alike. Similarly, one conservative critic now declares victory over Afrocentrists by noting that the latter's search for a black Shakespeare has ended in failure. But surely the larger point is that such a search was unnecessary all along, because Shakespeare belongs every bit as much to the ghetto-dwelling black youngster as he does to the offspring of middle-class whites. Why are conservatives, who make so much of the importance of being ''color-blind'' in public policy, not the first to stress this point?

There is hypocrisy in this conservative stance. Though advocating race neutrality,

conservatives do not treat blacks and whites as moral equals. Critics of affirmative action often invoke Dr. Martin Luther King Jr., who in 1963 said famously, ''I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.'' It is a corollary of this principle that, when gazing upon Americans who are welfare mothers, juvenile felons or the cognitively deficient, we should see human beings with problems, not races of people plagued by pathology. Yet, as I have argued, conservatives do not always do so.

Perhaps more significantly, this selective remembrance of Dr. King's moral leadership diminishes the challenge which his life, and death, should pose for all Americans. Two years before his most famous speech, in a commencement address at Lincoln University, Dr. King made a less well known reference to his dream for our nation:

''One of the first things we notice in this dream is an amazing universalism. It does not say some men [are created equal], but it says all men. It does not say all white men, but it says all men, which includes black men. . . . And there is another thing we see in this dream that ultimately distinguishes democracy and our form of government from all of the totalitarian regimes that emerge in history. It says that each individual has certain basic rights that are neither conferred by nor derived from the state. To discover where they come from, it is necessary to move back behind the dim mist of eternity, for they are God-given. Very seldom, if ever, in the history of the world has a sociopolitical document expressed in such profoundly eloquent and unequivocal language the dignity and the worth of the human personality. The American dream reminds us that every man is heir to the legacy of worthiness.''

This too would be a worthy dream for conservatism: to insure that every American can lay claim to his most precious civic inheritance—a legacy of worthiness. To secure it, conservatives must learn not to look upon poor urban blacks as the Others—aliens apart from and a threat to our civilization. Instead, these Americans should be seen as inseparably interwoven constituents of the larger social fabric.

MESSAGE TO PRESIDENT CLINTON: END IMPASSE, BALANCE THE BUDGET

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday December 20, 1995

Mr. BEREUTER. Mr. Speaker, this Member highly commends to his colleagues this editorial which appeared in the Omaha World-Herald on December 20, 1995:

[From the Omaha World-Herald, Dec. 20, 1995]

MESSAGE TO CLINTON GROWS LOUDER: END IMPASSE, BALANCE THE BUDGET

Wall Street may have accomplished something that the public—which, in opinion surveys, tilted toward President Clinton's position on a balanced budget—had failed to do. Traders and investors sent a strong message to Washington about the urgency of ending the impasse over a balanced budget.

The message came in the form of a decline in the value of stocks and bonds as the street expressed its concern over the collapse of budget negotiations between the White House and GOP congressional leaders. By the end of the day Monday, the White House was setting a new round of talks in motion.

For such indications of urgency have come from the general public. Clinton's approval rating has risen to a two-year high since he began characterizing the GOP budget as an act of cruelty against the poor, the sick and the elderly. Republicans, in effect, have been punished in the polls for trying to keep their 1994 campaign promise to balance the budget.

Not all Democrats, however, were buying the White House line. On the same day that Wall Street roared its disapproval of the impasse, a bipartisan group presented a position paper at a symposium in Minneapolis. The group included former office-holders Paul Tsongas, Richard Lamm, Gary Hart, Tim Penny, Lowell Weicker and John Anderson. All but Weicker and Anderson are Democrats.

Their statement included this ''core principle'': ''We can no longer stay the course, spending more than we earn.'' They said, ''We are maintaining our standard of living by borrowing from our children.'' They urged that the nation's leaders commit to a policy of economic stability, which means no inflation and no federal budget deficits ''to soak up an already inadequate national savings pool.''

Sacrifice will be necessary, they said. Among other things, Social Security and Medicare must be reformed to prepare them for the retirement of large numbers of baby boomers after the turn of the century. Clinton has described even the modest adjustments the Republicans have proposed as draconian. He simply must compromise on Medicare and Medicaid, bring himself to take the decisive actions that moderates in his own party are increasingly coming to consider necessary.

Another message was leveled at Washington Tuesday morning. In a ''bipartisan appeal from business leaders,'' published as a newspaper advertisement and carrying the names of more than 90 business executives, Clinton and Congress were urged to remember that the health of the economy rests on the ability of the government to agree on a credible plan.

Among other things, the business leaders said, it's time to accept the economic projections from the Congressional Budget Office—projections that Clinton has opposed because they would allow less spending than the more optimistic White House figures. The bipartisan business leaders also said long-term entitlement spending should be ''on the table'' for reconsideration, as should any proposed tax cuts.

Little by little, Clinton's attempts to exploit the situation for political gain are being called to account by members of his own party. Something has been needed to neutralize his tacky insistence that the struggle has been between an enlightened, compassionate White House and an evil gang of GOP extremists. Some Democrats have helped set the record straight by adding their voices to bipartisan messages.

REVISED BUDGET RESOLUTION REFLECTING THE PRESIDENT'S MOST RECENT PROPOSAL

SPEECH OF

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 19, 1995

Mr. PACKARD. Mr. Speaker, the most important debate in decades is taking place right now. It is a debate about whether this Nation should balance the Federal budget in 7 years.

In October, my Republican colleagues and I did what needed to be done for decades. We made difficult decisions and Congress passed a historic balanced budget—a budget that finally reforms the Nation's welfare system, provides pro-family and pro-jobs tax relief, and saves Medicare from bankruptcy. The President has chosen the veto pen over the balancing pen. Apparently, he and his Democrat colleagues are not interested in a budget agreement if it means actually cutting spending and saving billions of dollars for our children.

This week, parts of the Government are shut down because the President chose to veto three appropriations bills. With the stroke of a pen, he could open the Government. But he would rather posture and make speeches than roll up his sleeves and sit down in good faith to negotiate a balanced budget that we can all agree on.

What the President and Congress do now about balancing the budget, will define the scope and the nature of our Government well into the 21st century. Mr. Speaker, this is a rare chance to step off the deficit treadmill. My Republican colleagues and I have delivered to the American people a budget plan with honest numbers that balance in just 7 years. The President must step up to the plate, live up to his word and do the same.

LEGISLATION DEPLORING HOLOCAUST DENIERS AND COMMENDING THE HOLOCAUST MEMORIAL MUSEUM HOUSE RESOLUTION 316

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. GILMAN. Mr. Speaker, I am today introducing a resolution, House Resolution 316, on behalf of myself and my House colleagues on the Holocaust Memorial Museum Council, Mr. YATES, Mr. LATOURETTE, Mr. REGULA, and Mr. LANTOS, which deplores the persistent, ongoing, and malicious efforts by some persons in this country and abroad to deny the historical reality of the Holocaust, and which commends the vital, ongoing work of the U.S. Holocaust Memorial Museum.

Yesterday, the House adopted legislation that will facilitate the museum's annual Days of Remembrance ceremony in the Rotunda on April 16, 1995. Yet, the work of the Holocaust Memorial Museum is conducted year-round, as evidenced by the larger than expected attendance at the museum, which is steadily increasing.

One of the reasons for the museum's existence is to counter Holocaust deniers. Those who promote the denial of the Holocaust do so either out of profound ignorance or for furthering anti-Semitism and racism. The Holocaust Memorial Museum, through its permanent exhibitions, traveling programs, and educational outreach efforts, both memorialize the victims of the Holocaust, and counters these accusers through its honest and sensitive approach to one of the most ferociously heinous state acts the world has ever known.

Accordingly, Mr. Speaker, I request that the full text of the legislation be printed at this

point in the CONGRESSIONAL RECORD for my colleagues' review, and urge all Members of the House of Representatives to express their support for the work of the Holocaust Memorial Museum by cosponsoring this legislation, House Resolution 316.

H. RES. 316

Deploring individuals who deny the historical reality of the Holocaust and commending the vital, ongoing work of the United States Holocaust Memorial Museum.

Whereas the Holocaust is a basic fact of history, the denial of which is no less absurd than the denial of the occurrence of the Second World War;

Whereas the Holocaust—the systematic, state-sponsored mass murders by Nazi Germany of 6,000,000 Jews, alongside millions of others, in the name of a perverse racial theory—stands as one of the most ferociously heinous state acts the world has ever known; and

Whereas those who promote the denial of the Holocaust do so out of profound ignorance or for the purpose of furthering anti-Semitism and racism: Now, therefore, be it

Resolved, That the House of Representatives—

(1) deplores the persistent, ongoing and malicious efforts by some persons in this country and abroad to deny the historical reality of the Holocaust; and

(2) commends the vital, ongoing work of the United States Holocaust Memorial Museum, which memorializes the victims of the Holocaust and teaches all who are willing to learn profoundly compelling and universally resonant moral lessons.

H.R. 1804, THE JUDGE ISAAC PARKER FEDERAL BUILDING

HON. Y. TIM HUTCHINSON

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. HUTCHINSON. Mr. Speaker, recently the House passed H.R. 1804, which would name the Federal building in Fort Smith, AR, after Judge Issac Parker.

While this legislation was overwhelmingly supported by 373 Members of the House, there were 40 Members who voted against H.R. 1804. It was subsequently reported that a number of Members who voted against the bill did so because they believed Judge Parker was a racist and one was even quoted as saying Parker ''Hung blacks because they were black.''

This past year our country faced the issue of race in ways it never had before. It is a sad and unfortunate fact that racism is alive and well in our society today. It is also a fact that racism knows no color or ethnic boundaries. People of all races are subject to their own prejudices. We must all fight to overcome our own personal prejudices and biases.

That is why I cannot allow the statements about Judge Parker to go unanswered. I think it is important for people to know the real Judge Parker and the man that he was. He was a man who was ahead of his time. He was a man who freely gave of himself to his community. He was a man who had a deep respect for the law and a deep concern for those who came before his court. His reputation is so respected that 100 years after his death the citizens of Fort Smith, AR still want to honor him and his legacy.

I would, therefore, bring to your attention letters which were sent to me from the Department of the Interior the day after the vote on H.R. 1804. One is from the superintendent of the Fort Smith National Historic Site and the other is a letter to the editor by the park historian. I hope this information is helpful to Members' understanding of the real Judge Parker.

U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE,
Fort Smith, AR, December 6, 1995.

Hon. TIM HUTCHINSON,
U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE HUTCHINSON: We have been following your efforts over the last few months to rename the Fort Smith federal building in honor of Judge Isaac C. Parker with great interest and support. I read the news article in this morning's paper and was surprised and disappointed to read the statements calling Judge Parker a racist and the unsubstantiated remarks that he hanged blacks ''just because they were black''. There is no historical record supporting these statements. In fact the record proves just the opposite. Our historian has written the attached letter to the editor to hopefully clarify the issue. She also received a call today from the AP service in Little Rock about this and she provided the same information to them. We are forwarding similar letters to Senators Bumpers and Pryor in the hopes that they will also support your efforts.

I am sorry that we did not offer you more substantial support earlier in the process. I was frankly surprised that there would be much protest. If we can provide you any further details or information please call on us. Thank you.

Sincerely,

WILLIAM N. BLACK,
Superintendent.

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Forth Smith, AR, December 6, 1995.

EDITOR,
Southwest Times Record,
Forth Smith, AR.

TO THE EDITOR: In response to criticism of Isaac C. Parker leveled by lawmakers opposing the House bill to name the federal courthouse in Forth Smith after the judge, I would like to make the following comments. The statement that Parker hanged African Americans ''just because they were black'' is simply not true. Of the 87 men who were executed on the Fort Smith gallows (79 of those while Parker was on the bench), 33 (38%) were white, 36 (41%) were Indian and 18 (21%) were black. Of those 18 African Americans, 17 were convicted of murder and one of rape in jury trials. Federal statute at that time ordered that anyone convicted of rape or murder was to receive the death penalty. Parker had no choice except to sentence these people to death.

Furthermore, Parker provided opportunities for African Americans that otherwise would not have been available. He appointed Bass Reeves the first African American deputy U.S. marshal west of the Mississippi in 1875. Other blacks served prominently on the deputy force throughout Parker's years in Fort Smith, including Grant Johnson, Zeke Miller, Robert Fortune, John Garrett and Bynum Colbert. Parker's personal bailiff while he was in Fort Smith was a former slave named George Winston. Other African Americans served on the staff of the federal jail at Fort Smith.

Nothing in the historical record supports the idea that Parker was a racist. The Ohio native, Union Civil War veteran and Congressman from Missouri used his position as a federal judge to empower African Americans. Yes, there were black men hanged on the gallows, but these were convicted criminals guilty of severe crimes. By the time they reach Parker's courtroom, there was little he could do but provide them a fair trial and then, if necessary, sentence them as the law provided.

Sincerely,

JULIET L. GALONSKA,
Park Historian.

AWARD-WINNING ENVIRONMENTAL CONSCIOUSNESS

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. BARCIA. Mr. Speaker, one of the most important issues for the future of our Nation is the application of responsible environmental policy. Our natural resources are most precious, and cannot be replaced. Our policy decisions must be based upon careful deliberations sounded in credible, objective, and thorough information. I am proud to say that the Bay City Times has been tremendously successful in meeting this test with its award-winning series, ''Cleaning our Troubled Waters''.

Over an 8-day period last year, the Bay City Times carefully examined the facts surrounding the condition of the Saginaw Bay and Saginaw River. The State of Michigan had dedicated this waterway as the most contaminated body of water in the State. The people who live around the Saginaw Bay and River, and who depend upon it as a source of water, recreation, and commerce, deserved and needed accurate information, and they got it.

Nearly half of the editorial staff of the Times worked on this series over a 10-month period, carefully checking and rechecking information to provide as accurate a view of the situation as possible. Their hard work resulted in four major awards: the 1994 Associated Press Division 2 News Sweepstakes Award; 1st place in the 1994 AP Division 2 Public Service for News; Michigan United Conservation Club's Ben East Award; and 2d place for Local News Reporting from the Michigan Press Association.

Following an exhaustive review of environmental records, numerous site visits, extensive interviews, this series has enlightened many of us who truly care about how we preserve the Saginaw Water Basin, how we keep funding alive for the Saginaw Bay Watershed Initiative, and what each of us can do to be more aware of the impact that we have on our environment.

I want to offer my heartiest congratulations to the dedicated staff who worked on this series: Reporters Eric English, Kelly Adrian Frick, Tom Gilchrist, Greta Guest, Lydia Hodges, John Herbst, Jenni Laidman, and Amy Reyes; photographers Wes Stafford and Dick Van Nostrand; graphic artist Tammie Stimpfel; and editors Elizabeth Gunther, Pam Panchak and David Vizard. These people contributed to the work of a lifetime, and their efforts should have a major impact on public policy designed to safeguard the Saginaw Bay and River. I also want to compliment Bay City Times publisher Kevin Dykema and editor Paul Keep for having the foresight to devote this level of skilled resources to a project that

could be very unpopular, but was, nonetheless, vital for the long-term environmental health of our area.

Mr. Speaker, in this instance a marvelous case was made to justify action to preserve a vital resource. All communities should be so lucky to have such a thorough and professional review of a vital resource. I urge you and all of our colleagues to join me in complimenting the Bay City Times and its award-winning staff for truly trying to help clean our troubled waters.

TRAVEL AND TOURISM PARTNERSHIP ACT

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. ROTH. Mr. Speaker, as chairman of the Congressional Travel and Tourism Caucus, I ask all Members to support H.R. 2579.

Embodied in this bill are some of the boldest new ideas to ever come out of the private sector.

H.R. 2579 will strengthen U.S. tourism promotion efforts in a expanding and highly-competitive international market.

Our bill builds on the strength of the travel and tourism industry, rather putting another item on the Federal Government's tab.

The 1700 delegates to the White House Conference on Travel and Tourism have already endorsed our public-private partnership plan that does just that.

Some in Congress may ask why it is so critical that we focus on tourism, particularly tourism from abroad.

I can tell you in very clear terms—this is a $535 billion business.

But this year, we will have 2 million fewer visitors from abroad than 2 years ago.

What is 2 million visitors here or there?

That drop has cost us 177,000 jobs which should have gone to American workers.

H.R. 2579, the Travel and Tourism Partnership Act would change this.

Through partnering government with the resources and creative talents of the American tourism industry, we can recapture our share of the world market.

For future jobs and economic growth in your district, join me in supporting this ground breaking legislation.

COMMUNITY OF IMLAY CITY

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. KILDEE. Mr. Speaker, I rise to ask my colleagues to join me in paying tribute to the citizens of Imlay City, MI, as they celebrate the official opening of their new city office building.

In 1850 the Township of Imlay first was recognized by an act of the Michigan Legislature. As the area developed, it became apparent to the city officials that they must plan for the future, and therefore on April 14, 1872, Imlay City was incorporated. Since that time the population has grown from less than 500 to approximately 3,000 residents.

The first city office building was finished in 1904, the second was opened in 1975; this third facility is to be dedicated today, December 20, 1995. Planning for this facility has been long in the works with the many and growing needs of the community taken into account in order that this new building will serve for many years to come. As planning began, the city commission and city manager were particularly concerned and committed to making sure that the building would be accessible to all their residents and be in compliance with the Americans with Disabilities Act.

I stand before my colleagues today to compliment all the citizens of Imlay City on the opening of their new city office building that is dedicated to serving the needs of all the residents.

TRIBUTE TO CONGRESSMAN JOHN DINGELL ON THE 40TH ANNIVERSARY OF HIS ELECTION TO CONGRESS

HON. ALAN B. MOLLOHAN

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. MOLLOHAN. Mr. Speaker, I am delighted to join my colleagues in paying tribute to the dean of this House and a very good friend, Congressman JOHN D. DINGELL.

JOHN DINGELL is, without question, one of the most respected Members of this institution. And so it is highly appropriate that we gather to recognize his remarkable 40-year record of service and achievement.

When you look at that record, you have to marvel at Congressman DINGELL's sphere of influence, for it is far reaching.

Most Members of Congress, either through conscious choice or subconscious tendency, choose a level at which to focus their energies. For some, it is on national policies. For others, it is on local issue. It is rare to find a legislator who has the energy, the intellect, and the political savvy to do both.

JOHN DINGELL is just such a legislator, one who shapes national policies and works with great diligence for Michigan's 16th District.

I would invite you to first look at the national policy arena, where JOHN DINGELL has worked to better the lives of the American people through his powerful committee position.

He has been—and remains—an effective advocate of consumers and taxapayes, whose interests he vigilantly defends. He also has worked to help disabled Americans gain access that the rest of us sometimes take for granted. And his service has benefited all who value a healthy environment and the protection of rare lands and species.

Closer to home, well, the citizens of the 16th are hardworking people; people who understand and appreciate the value of a hard-working Representative. That's why, 20 times and by overwhelming margins, they've chosen JOHN DINGELL as their voice here in the Nation's Capital.

And he's a powerful voice for them. Congressman DINGELL works hard here to protect Michigan jobs and create new ones. He fights for working families, for veterans, for seniors, for students. He also has developed important environmental initiatives on local waterways.

Finally, I would like to point out that this House, too, benefits greatly from Mr. DINGELL's service. He is a man of integrity. Of course, he is also a tremendous source of institutional knowledge. And he is a master of House rules and procedures. I am honored to serve with him and count him as a personal friend.

Let me note again, Mr. Speaker, that it is a true pleasure to recognize the gentleman from Michigan and commemorate his four decades of distinguished service.

THANK YOU FOR THE GIFT FROM PETER NICHOLAS TO DUKE UNIVERSITY

HON. DAVID FUNDERBURK

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. FUNDERBURK. Mr. Speaker, my district is proud to be the home of Duke University, one of our Nation's finest institutions of higher education. On December 7, that university happily announced a gift of $20 million from the family of Peter M. Nicholas, a Massachusetts business executive and trustee of the university as well as the founder and president of Boston Scientific, a leading manufacturer of medical devices. His family's gift will support Duke University's School of the Environment, which the university has renamed in honor of the Nicholas family.

The Nicholas School of the Environment is unique among university programs dedicated to environmental research and education, in that it bases its bases its approach to complex environmental problems in an interdisciplinary perspective. As a former academic myself, I know that a broad focus grounded in the insight and understanding of different scientific disciplines provides a powerful way of unraveling the most complicated problems. Other institutions tend to approach problems of the environment from either a scientific or public policy perspective, and advances in understanding our environment have certainly come from this traditional approach. But my constituents at Duke are excited about the potential that is offered by looking at environmental problems from an interdisciplinary perspective including natural sciences, public policy, economics, and management. I too share their optimism, and look forward to hearing of significant advances made at the Nicholas School of the Environment.

At the university's news conference announcing the gift, there were many comments made about the importance of the school's programs of research and education, and about the importance to all life on earth of understanding our environment better. However, when asked the reasons why his family had chosen to make this generous gift to support environmental research and education at Duke, Peter Nicholas stressed an important theme that echoes something many of us in public service have been saying.

''Government * * * can't do everything. What the government is trying to do is come to terms with what its role is with respect to the priorities of the country,'' Mr. Nicholas said.

Mr. Nicholas went on to note his belief that educational institutions have a responsibility to help understand issues, set priorities, ''and then galvanize the resource that exists

throughout society—industrial, academic, government and others—to in fact make a difference.''

''I think we shouldn't misinterpret what our government is saying,'' Mr. Nicholas continued. ''[I]t is clear that the government has a leadership role in terms of being sure that we understand what our priorities are, what the urgencies are, as it relates to the environment,'' he said. ''It is also important that the ground rules and the incentives are in place at the federal level to ensure that behavior by all elements of our society is consistent with what everyone's goals are. But it is not clear that it is a central government role to fund the environment objectives that we have.''

Mr. Nicholas' comments at Duke, and, more important, his family's gift of $20 million for the university's school of the environment, constitute a welcome signal that some leaders of the private sector understand and appreciate the value of the partnership by government, academia, and industry in problem solving. His words, and his family's personal investment in that effort, are thus worthy of note by this body, and I commend them to my colleagues in the House.

TRIBUTE TO DON FAUROT, UNIVERSITY OF MISSOURI TIGERS FOOTBALL COACH

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. SKELTON. Mr. Speaker, today I rise to pay tribute to Don Faurot, a legendary figure in University of Missouri athletics, who died on October 19, 1995. He was 93.

Don Faurot, who coached the Tigers football team from 1935 through 1956, was credited with creating the split-T formation at Missouri in 1941.

He was 101–79–10 in his coaching career.

Coach Faurot's 1939 team won his first Big Six title and the Tigers' first trip to the Orange Bowl. As an 8-year-old boy, I was present in Miami, FL, when his M.U. team played Georgia Tech.

Missouri's football stadium is named for him.

Through the years, he had continued to attend every Missouri home game.

Coach Faurot, who set the cornerstone for the Missouri football program that exists today, was even more respected for the integrity he brought to the game.

''If everybody in collegiate athletics was a Don Faurot,'' Big Ten Commissioner Wayne Duke once said, ''then collegiate athletics would be what it is supposed to be.''

Don Faurot was born in Mountain Grove, MO, on June 23, 1902. Despite losing the first two fingers on his right hand in a boyhood farming accident, he was a 145-pound fullback at Missouri in 1923 and 1924, and played basketball and baseball.

He took over the football program at Missouri in 1935 after coaching 9 years at Kirksville State Teachers College, now Northeast Missouri State University. At Kirksville, his teams went 26–0 from 1923–32, the best small college record in the country.

When he returned to Missouri, he took over a team that had won just two games in 3 years and the athletic program was $500,000 in debt.

Under Faurot's direction, though, the Tigers won three conference titles and went to four bowl games. When he retired as athletic director in 1967, the program was in the black and the stadium's seating capacity had doubled to more than 50,000.

This despite rigorously adhering to recruiting policies and relying primarily on homegrown players.

''If you lose with home-state boys, that's bad,'' he said. ''But if you lose with out-of-state boys, that's terrible. If you win with imported athletes, that's good. If you win with your own, that's great.''

A member of football's National Hall of Fame and the Missouri Sports Hall of Fame, Faurot remained active in his later years as talent procurer and coach for the Blue-Gray game in Montgomery, AL, and as executive secretary of the Missouri Senior Golf Assocation.

In 1972, Coach Faurot received what probably ranked as his greatest personal honor when the Missouri football stadium was officially named Faurot Field.

In 1926, Don Faurot, an agricultural student at Missouri, helped lay sod for the field, then known as Memorial Stadium.

Coach Faurot is survived by his wife, Mary, of Columbia, three daughters, seven grandchildren, and a brother, Fred, of Columbia.

JUSTICE , COMMERCE, STATE APPROPRIATIONS

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Ms. JACKSON-LEE of Texas. Mr. Speaker, I arise today to express my great disappointment that this appropriation bill would replace the COPS programs, which have enjoyed such unequivocal support, with a law enforcement block grant. In my congressional district in Houston, TX, the COPS programs have placed 529 more officers on our streets. The COPS programs have played an integral part in reclaiming our neighborhoods.

Throughout the Nation, in the course of 1 year alone, the COPS programs have been a proven success and have enabled local law enforcement to hire or redeploy 25,933 new community policing officers, who will serve 80 percent of all Americans.

The COPS program has guaranteed more patrol police for our neighborhoods and cities, but the block grant which replaces the COPS program would jeopardize this guarantee and goes against the promise that the U.S. Congress made to the American people under the Violent Crime Control Act of 1994.

Community policing has been successful at meeting public safety needs. Having police officers on foot patrol fosters stronger bonds between community residents and police officers. This partnership is particularly important at a time when there are many heightened tensions between law enforcement officers and residents of inner-city neighborhoods. The National Organization of Black Law Enforcement [NOBLE] has supported community policing as the only hope to regain the trust and respect necessary to providing quality police service to our citizens in many of these neighborhoods.

Local law enforcement groups across the Nation have unequivocally endorsed the COPS programs. The majority of Americans also support community policing. In August 1995, the National Association of Police Organizations survey found that the American public overwhelmingly supports the COPS program over block grants to State and local governments for public safety use by 65 percent to 35 percent.

Community police patrols are an essential line of defense against crime. We need to maintain our national commitment to carry out our promise of safety and increased police manpower.

The public wants us to listen and not play politics with a program that is a proven success story. The COPS program has worked—keep it working to help prevent crime.

Additionally, as a member of the women's caucus I fought for dollars for the program fighting against violence against women. If we pass a clean continuing resolution we will keep that money.

A TRIBUTE TO JOHN BUTLER, T.L.C. MEDICAL SERVICES, INC.

HON. JAMES T. WALSH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 20, 1995

Mr. WALSH. Mr. Speaker, I would ask my colleagues in the House of Representatives today to join me in paying special tribute to an industrious individual with a good heart. A constituent of mine who in addition to dedicating his life to a business which saves people's lives, has shown the ingenuity to rise above the hundreds who provide a similar service by coming up with an idea that helps drunk drivers help themselves back to respectability.

The man's name is David J. Butler of T.L.C. Medical Services, Inc., an ambulance service in Cortland, NY. Mr. Butler recently was honored by his peers in the American Ambulance Association when he won the Public Safety Program Award in a national competition.

Working in conjunction with the Cortland County district attorney and the county sheriff, Mr. Butler developed a program which allowed first-time DWI offenders who were not involved in a serious infraction connected with their offense to benefit from a plea bargain which required them to do community service.

The community service, as you might guess, was to ride with ambulance personnel to drinking-related calls so as to experience, while sober, the devastating effect alcohol can have on drivers and on domestic situations

The program is called Riding for Life. It is to the credit of David J. Butler, who 22 years ago acquired his ambulance company and since then has shown what commitment means. He has increased the number of ambulances and other vehicles, and he still works very hard himself.

Mr. Butler is a civic leader in central New York. I am very proud to call him a neighbor and thank my colleagues for acknowledging his accomplishment.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S18935–S18999

Measures Introduced: Six bills were introduced, as follows: S. 1486–1491. **Page S18999**

Measures Reported: Reports were made as follows:

S. 1164, to amend the Stevenson-Wydler Technology Innovation Act of 1980 with respect to inventions made under cooperative research and development agreements, with amendments. (S. Rept. No. 104–194)

S. 1260, to reform and consolidate the public and assisted housing programs of the United States, and to redirect primary responsibility for these programs from the Federal Government to States and localities, with an amendment in the nature of a substitute. (S. Rept. No. 104–195) **Page S18999**

Measures Passed:

Subpoena Enforcement: By 51 yeas to 45 nays (Vote No. 610), Senate agreed to S. Res. 199, directing the Senate Legal Counsel to bring a civil action to enforce a subpoenas and orders of the Special Committee to Investigate the Whitewater Development Corporation and Related Matters to William H. Kennedy, III, after taking action on amendments proposed thereto, as follows: **Pages S18939–93**

Adopted:

(1) D'Amato Amendment No. 3101, to make a technical correction. **Page S18985**

(2) D'Amato Amendment No. 3102, to make a further technical correction. **Page S18985**

(3) D'Amato Amendment No. 3103, to amend the title by striking ''a subpoena'' and inserting ''subpoenas and orders''. **Page S18985**

Rejected:

By 45 yeas to 51 nays (Vote No. 609), Sarbanes Amendment No. 3104, in the nature of a substitute. **Pages S18985–93**

Commission on Concentration in the Livestock Industry: Senate passed S. 1340, to establish a Commission on Concentration in the Livestock Industry, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto: **Pages S18994–96**

Dole (for Hatch) Amendment No. 3105, to request a report on the application of the antitrust laws. **(See next issue.)**

Ronald Reagan Building/Trade Center: Committee on Environment and Public Works was discharged from further consideration of H.R. 2481, to designate the Federal Triangle Project under construction at 14th Street and Pennsylvania Avenue, Northwest, in the District of Columbia, as the ''Ronald Reagan Building and International Trade Center'', and the bill was then passed, clearing the measure for the President. **Page S18996**

Howard H. Baker U.S. Courthouse: Committee on Environment and Public Works was discharged from further consideration of H.R. 2547, to designate the United States Courthouse located at 800 Market Street in Knoxville, Tennessee, as the ''Howard H. Baker, Jr. United States Courthouse, and the bill was then passed, clearing the measure for the President. **(See next issue.)**

Romano L. Mazzoli Federal Building: Senate passed H.R. 965, to designate the Federal building located at 600 Martin Luther King, Jr. Place in Louisville, Kentucky, as the ''Romano L. Mazzoli Federal Building'', clearing the measure for the President. **(See next issue.)**

Don Edwards National Wildlife Refuge: Senate passed H.R. 1253, to rename the San Francisco Bay National Wildlife Refuge as the Don Edwards San Francisco Bay National Wildlife Refuge, clearing the measure for the President. **(See next issue.)**

Export Sanctions: Senate passed S. 1228, to impose sanctions on foreign persons exporting petroleum products, natural gas, or related technology to Iran, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto: **(See next issue.)**

Santorum (for Kennedy/D'Amato) Amendment No. 3106, to deter investment in the development of Libya's petroleum resources. **(See next issue.)**

Reimbursements for Federally Funded Employees: Committee on Governmental Affairs was discharged from further consideration of S. 1429, to provide clarification in the reimbursement to States

for federally funded employees carrying out Federal programs during the lapse in appropriations between November 14, 1995, through November 19, 1995, and the bill was then passed, after agreeing to the following amendment proposed thereto:

(See next issue.)

Santorum (for Domenici) Amendment No. 3107, in the nature of a substitute. **(See next issue.)**

Printing Authority: Senate agreed to S. Con. Res. 34, to authorize the printing of ''Vice Presidents of the United States, 1789–1993''. **(See next issue.)**

FEC Electronic Filing: Senate passed H.R. 2527, to amend the Federal Election Campaign Act of 1971 to improve the electoral process by permitting electronic filing and preservation of Federal Election Commission reports, clearing the measure for the President. **(See next issue.)**

Citizen Regent: Senate passed H.J. Res. 69, providing for the reappointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution, clearing the measure for the President. **(See next issue.)**

Citizen Regent: Senate passed H.J. Res. 110, providing for the appointment of Howard H. Baker, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution, clearing the measure for the President. **(See next issue.)**

Citizen Regent: Senate passed H.J. Res. 111, providing for the appointment of Anne D'Harnoncourt as a citizen regent of the Board of Regents of the Smithsonian Institution, clearing the measure for the President. **(See next issue.)**

Citizen Regent: Senate passed H.J. Res. 112, providing for the appointment of Louis Gerstner as a citizen regent of the Board of Regents of the Smithsonian Institution, clearing the measure for the President. **(See next issue.)**

Balanced Budget: A unanimous-consent time agreement was reached providing for the consideration of H.J. Res. 132, affirming that budget negotiations shall be based on the most recent technical and economic assumptions of the Congressional Budget Office and shall achieve a balanced budget by fiscal year 2002 based on those assumptions, on Thursday, December 21, 1995, with a vote to occur thereon. **Page S18994**

Labor/HHS/Education Appropriations, 1996: A unanimous-consent agreement was reached providing for the cloture vote on a motion to proceed to the consideration of H.R. 2127, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1996, to occur on Thursday, December 21, 1995. **(See next issue.)**

Victim Restitution Act—Agreement: A unanimous-consent time agreement was reached providing for the consideration of H.R. 665, to control crime by mandatory victim restitution. **(See next issue.)**

Nominations Received: Senate received the following nominations:

Gaston L. Gianni, Jr., of Virginia, to be Inspector General, Federal Deposit Insurance Corporation.

Rita Derrick Hayes, of Maryland, for the rank of Ambassador during her tenure of service as Chief Textile Negotiator.

1 Navy nomination in the rank of admiral.

Page S18999

Nomination Withdrawn: Senate received notification of the withdrawal of the following nomination:

Norwood J. Jackson, Jr., of Virginia, to be Inspector General, Federal Deposit Insurance Corporation, which was sent to the Senate on January 5, 1995. **Page S18999**

Messages From the House: **Page S18998**

Measures Placed on Calendar: **Pages S18998–99**

Communications: **Page S18999**

Statements on Introduced Bills: **(See next issue.)**

Additional Cosponsors: **(See next issue.)**

Amendments Submitted: **(See next issue.)**

Authority for Committees: **(See next issue.)**

Additional Statements: **(See next issue.)**

Record Votes: Two record votes were taken today. (Total–610) **Page S18993**

Adjournment: Senate convened at 10 a.m., and adjourned at 8:54 p.m., until 9:30 a.m., on Thursday, December 21, 1995. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S18999.)

Committee Meetings

(Committees not listed did not meet)

PRESIDIO TRUST

Committee on Energy and Natural Resources: Committee concluded hearings on S. 594 and H.R. 1296, bills to create a trust within the Department of the Interior to manage, lease and finance the historical and cultural inventory of the Presidio of San Francisco, California at minimal cost to the Federal taxpayer, and to review a map associated with the San Francisco Presidio, after receiving testimony from Robert Chandler, General Manager, The Presidio, National

Park Service, Department of the Interior; Paul Johnson, Deputy Assistant Secretary of the Army for Installation and Housing; Curtis Feeny, Stanford Management Company, Menlo Park, California; and Toby Rosenblatt, Glen Ellen Company, San Francisco, California, on behalf of the Golden Gate National Park Association.

PROPERTY RIGHTS

Committee on the Judiciary: Committee resumed markup of S. 605, to establish a uniform and more efficient Federal process for protecting property owners' rights guaranteed by the fifth amendment, but did not complete action thereon, and will meet again tomorrow.

House of Representatives

Chamber Action

Bills Introduced: 9 public bills, H.R. 2813–2821; and 3 resolutions, H.J. Res. 134–135, and H. Res. 316 were introduced. **Page H15237**

Reports Filed: Reports were filed as follows:

Conference report on H.R. 1655, to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System (H. Rept. 104–427);

H. Res. 317, providing for consideration of H.J. Res. 134, making further continuing appropriations for the fiscal year 1996 (H. Rept. 104–428);

H. Res. 318, waiving points of order against the conference report on H.R. 1655, to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System (H. Rept. 104–429); and

Conference report on H.R. 4, to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence (H. Rept. 104–430);

H. Res. 319, waiving points of order against the conference report on H.R. 4, to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence (H. Rept. 104–431); and

H. Res. 320, authorizing the Speaker to declare recesses subject to the call of the Chair from December 23, 1995 through December 27, 1995 (H. Rept. 104–432). **Pages H15224–35, H15237**

Speaker Pro Tempore: Read a letter from the Speaker wherein he designates Representative Wicker to act as Speaker pro tempore for today **Page H15209**

Presidential Veto—Securities Litigation Reform: Read a message from the President wherein he announces his veto of H.R. 1058, to reform Federal securities legislation, and explains his reasons therefor—ordered printed (H. Doc. 104–150). **Pages H15214–15**

Subsequently, by a yea-and-nay vote of 319 yeas to 100 nays, with 1 voting ''present'', Roll No. 870, the House voted to override the President's veto of H.R. 1058, to reform Federal securities litigation (two-thirds of those present voting in favor)—clearing the measure for Senate action. **Pages H15215–24**

Commerce, Justice, State, the Judiciary Appropriations: Agreed to the Rogers motion to refer the Presidential veto message and the bill, H.R. 2076, making appropriations for the Departments of Commerce, Justice, State, the Judiciary, and related agencies for the fiscal year ending September 30, 1996, to the Committee on Appropriations. **(See next issue.)**

Interstate Commerce Commission Termination: House agreed to H. Res. 312, the rule waiving points of order against consideration of the conference report on H.R. 2539, to abolish the Interstate Commerce Commission, and to amend subtitle IV of title 49, United States Code. **(See next issue.)**

Texas Low-Level Radioactive Waste: House agreed to H. Res. 313, providing for the consideration of H.R. 558, to grant the consent of the Congress to the Texas Low-Level Radioactive Waste Disposal Compact. **(See next issue.)**

Further Continuing Resolution: By a yea-and-nay vote of 411 yeas to 1 nay, Roll No. 874, the House passed H.J. Res. 134, making further continuing appropriations for the fiscal year 1996. **(See next issue.)**

Rejected the Obey motion to recommit the joint resolution to the Committee on Appropriations with instructions to report it back forthwith containing a new text that sought to provide ensured payment during fiscal year 1996 of veterans' benefits in event of lack of appropriations for fiscal year 1996 not being available (rejected by a recorded vote of 178 yeas to 234 noes, Roll No. 873). **(See next issue.)**

Points of order were sustained against the following motions:

The Obey motion to recommit the joint resolution to the Committee on Appropriations with instructions to report it back forthwith containing a new text that sought to provide ensured payment during fiscal year 1996 of veterans' benefits in the vent of lack of appropriations for fiscal year 1996; to provide for a pay raise for fiscal year 1996 for the uniformed services; and to eliminate the disparity between effective dates for military and civilian retiree cost-of-living adjustments for fiscal year 1996. Agreed to the Livingston motion to table the Obey motion appealing the ruling of the Chair sustaining the point of order (agreed to by a recorded vote of 236 ayes to 176 noes, Roll No. 872); and

(See next issue.)

The Obey motion to recommit the joint resolution to the Committee on Appropriations with instructions to report it back forthwith containing a new text that sought to ensure payment during fiscal year 1996 of veterans' benefits in event of lack of appropriations for fiscal 1996; and to provide for pay for Federal and District of Columbia employees during lapse in appropriations for fiscal year 1996.

(See next issue.)

H. Res. 317, the rule under which the joint resolution was considered, was agreed to earlier by a voice vote. Agreed to order the previous question on the resolution by a yea-and-nay vote of 238 yeas to 172 nays, Roll No. 871. **(See next issue.)**

Recess: House recessed at 12:05 a.m. on December 21 and reconvened at 12:10 a.m.

Senate Messages: Messages received from the Senate today appear on page H15209.

Amendments Ordered Printed: Amendments ordered printed pursuant to the rule appear on page H15238.

Quorum Calls—Votes: Three yea-and-nay votes and two recorded votes developed during the proceedings of the House today and appear on pages H15223–24 (continued next issue). There were no quorum calls.

Adjournment: Met at 10 a.m. and adjourned at 12:11 a.m. on Thursday, December 21.

Committee Meetings

FURTHER CONTINUING APPROPRIATIONS—TO ENSURE PAYMENT OF VETERANS' BENEFITS

Committee on Rules: Granted, by a recorded vote of 11 to 0, a closed rule providing 1 hour of debate on H.J. Res. 134, making further continuing appropriations for the fiscal year 1996. The rule provides one motion to recommit which may only include instructions if offered by the Minority Leader or his designee. Testimony was heard from Representatives Hutchinson, Kennedy of Massachusetts and Moran.

CONFERENCE REPORT—INTELLIGENCE AUTHORIZATION ACT

Committee on Rules: Granted a rule waiving all points of order against the conference report to accompany H.R. 1655, Intelligence Authorization Act for Fiscal Year 1996, and against its consideration. The rule provides that the conference report shall be considered as read. Testimony was heard from Chairman Combest and Representative Dicks.

PERSONAL RESPONSIBILITY ACT

Committee on Rules: Granted a rule waiving points of order against the conference report on H.R. 4, to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

RECESS AUTHORITY

Committee on Rules: Ordered reported a resolution authorizing the Speaker to declare recesses subject to the call of the Chair from December 23, 1995 through December 27, 1995.

COMMITTEE BUSINESS

Committee on Standards of Official Conduct: Met in executive session to consider pending business.

Joint Meetings

AUTHORIZATION—INTELLIGENCE

Conferees on Tuesday, December 19, agreed to file a conference report on H.R. 1655, to authorize funds for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D1490)*

S. 1060, to provide for the disclosure of lobbying activities to influence the Federal Government. Signed December 19, 1995. (P.L. 104–65)

BILLS VETOED

H.R. 1058, to amend the Federal securities laws to curb certain abusive practices in private securities litigation. Vetoed December 19, 1995.

COMMITTEE MEETINGS FOR THURSDAY, DECEMBER 21, 1995

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Energy and Natural Resources, business meeting, to consider pending calendar business, 9:30 a.m., SD–366.

Committee on the Judiciary, business meeting, to consider pending committee business, 10 a.m., SD–226.

House

Committee on Commerce, to mark up H.R. 2036, Land Disposal Program Flexibility Act of 1995, 10 a.m., 2123 Rayburn.

Committee on Veterans' Affairs, to mark up an authorization for fiscal year 1996 major medical construction projects of the Department of Veterans Affairs, 10 a.m., 334 Cannon.

Next Meeting of the SENATE

9:30 a.m., Thursday, December 21

Senate Chamber

Program for Thursday: Senate will consider H.J. Res. 132, affirming that budget negotiations shall be based on the most recent assumptions of the Congressional Budget Office, with a vote to occur thereon.

Senate may also resume consideration of the motion to proceed to consideration of H.R. 2127, Labor/HHS/Education Appropriations, 1996, with a cloture vote scheduled to occur thereon.

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Thursday, December 21

House Chamber

Program for Thursday: Consideration of the following conference reports:

Conference report on H.R. 1655, Intelligence appropriations authorization (rule waiving points of order);

Conference report on H.R. 4, Welfare reform (subject to a rule being granted); and

Conference report on H.R. 2539, Interstate Commerce Commission elimination (rule waiving points of order).

Extensions of Remarks, as inserted in this issue

HOUSE

(House and Senate proceedings for today will be continued in the next issue of the Record.)

Congressional Record The public proceedings of each House of Congress, as reported by the Official Reporters thereof, are printed pursuant to directions of the Joint Committee on Printing as authorized by appropriate provisions of Title 44, United States Code, and published for each day that one or both Houses are in session, excepting very infrequent instances when two or more unusually small consecutive issues are printed at one time. ¶Public access to the Congressional Record is available online through *GPO Access,* a service of the Government Printing Office, free of charge to the user. The online database is updated each day the Congressional Record is published. The database includes both text and graphics from the beginning of the 103d Congress, 2d session (January 1994) forward. It is available on the Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs, by using local WAIS client software or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access,* contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except for Federal holidays. ¶The Congressional Record paper and 24x microfiche will be furnished by mail to subscribers, free of postage, at the following prices: paper edition, $112.50 for six months, $225 per year, or purchased for $1.50 per issue, payable in advance; microfiche edition, $118 per year, or purchased for $1.50 per issue payable in advance. The semimonthly Congressional Record Index may be purchased for the same per issue prices. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington, D.C. 20402. ¶Following each session of Congress, the daily Congressional Record is revised, printed, permanently bound and sold by the Superintendent of Documents in individual parts or by sets. ¶With the exception of copyrighted articles, there are no restrictions on the republication of material from the Congressional Record.