

soldiers. It funds the Secretary of Defense's initiative to get the private sector into the military housing market and help relieve some of the tremendous backlog of needs for both new and renovated housing, which averages over 30 years of age throughout the services. We have homes that people are living in that are over 50 years old in many installations throughout the United States.

My colleagues might wonder why this bill is the only subcommittee mark above the level of a fiscal year 1995 freeze. The reason is that the very large amount was needed to fund the base closure and realignment accounts, as the chairman has already indicated, almost \$4 billion, or more than a third of the entire amount recommended in the bill. In spite of this, we met our 602(b) allocation.

Without the need to fund the downsizing of the military through the BRAC process, the bill would be almost \$2 billion below the freeze level. Otherwise, Mr. President, the bill is extremely frugal. Overseas construction has been reduced somewhat, as has NATO funding, which this Member believes should be the beginning of a down path to have the European Community bear a more fair share of their burden in NATO.

I commend the chairman for taking the many requests from Senators to include projects in this bill. This is necessitated, in large part, because the Department of Defense has again, as it has in the past, refused to adequately fund the construction projects for the National Guard and Reserve, requiring the subcommittee to review many worthy projects suggested by Senators and the Guard and Reserves and to come up with a fair and equitable solution to the problem.

I add, Mr. President, in time of crisis, we rely heavily on the Guard and Reserve. During the gulf war crisis, we called upon the Guard and Reserve to bear more than their share of the burden, especially based on how we have funded them in the past. It simply would be unfair to not give them some consideration simply because they have been ignored by the Pentagon.

The administration requested only \$182 million for the Guard and Reserve, compared to \$574 million appropriated in fiscal year 1995. We are well below last year's level, recommending \$452 million, which is a 20-percent reduction. The subcommittee has used strict criteria for evaluating these projects suggested by Members, and a strong effort was made to take all Members' interest into consideration.

While no Senator that I am aware of has been fully satisfied, I think the result is as fair and equitable as possible, given the significant budget constraints that we are working under.

Mr. President, I believe that this is a good product, and I hope that the Senate will support it.

I thank at this time the staff director, Jim Morhard and his assistant,

Warren Johnson, for their work and cooperation with my staff, Dick D'Amato, a member of the Appropriations Committee assigned to me to work on this and other appropriations matters, and B.G. Wright also of the Appropriations Committee, Peter Arapis of my personal staff and a congressional fellow who has been working with me for the past 6 months, Debbie Allen.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I ask unanimous consent to speak as in morning business not to exceed 20 minutes.

Mr. REID. Mr. President, I am wondering if the Senator could end her remarks about 25 till, because we have a Senator offering an amendment and we have limited time.

Mrs. BOXER. Absolutely.

The PRESIDING OFFICER. The Senator is recognized until 9:35.

#### HEARINGS ON ALLEGATIONS OF MISCONDUCT

Mrs. BOXER. Mr. President, because the Senate polices itself, there has been much debate over the years about how the Senate should address allegations of misconduct. This debate has intensified in recent weeks because the Select Committee on Ethics has determined that allegations of wrongdoing made against a sitting Senator are supported by substantial, credible evidence.

With this determination, the case moved into a formal investigative phase. As of today, in what appears to be a break with well-established traditions, no public hearings into this case have been scheduled. I have written the Ethics Committee and informed them that if no public hearings were scheduled by the end of this week, I would seek a vote on the matter by the full Senate. Mr. President, I have the legislation prepared and will seek to offer it next week. It is very straightforward and it will require that the pending case be treated in the same fashion as all other cases. I trust the Republican leadership will allow me a vote on my amendment in this very important matter, because the Senate's reputation is at stake.

I will take some time today to explain why I believe that the Ethics Committee should follow its longstanding practice and schedule public hearings in this case.

When an allegation of misconduct is received by the Select Committee on Ethics, it conducts a preliminary inquiry, the first stage of its procedures. If, at the conclusion of the preliminary inquiry, the committee determines that there is reason to believe improper conduct may have occurred, the committee may conduct a more exhaustive review called an initial review.

To proceed beyond an initial review into the investigative phase, a rigorous

test must be met. The committee must determine that there is "substantial credible evidence which provides substantial cause for the committee to conclude that a violation" within its jurisdiction has occurred. If the committee finds that substantial credible evidence of wrongdoing exists, the case now enters the investigative phase. So, Mr. President, there is a preliminary inquiry, there is the initial review, and then there is the investigative stage.

This three-tiered process for evaluating allegations of impropriety was established by this Senate in 1977. Since then, every case reaching the investigative phase has included public hearings. Let me repeat that, Mr. President. Since 1977, every single case reaching the investigative phase has included public hearings.

Mr. President, even before the formal procedures were established in 1977, when the Ethics Committee was created, the Senate followed the practice of holding public hearings in cases of alleged misconduct of its Members. For example, in 1954, extensive hearings were held by a special committee investigating misconduct by Joseph McCarthy. And as long as 65 years ago, in 1929, a special subcommittee of the Judiciary Committee held hearings to investigate alleged misconduct by Senator Hiram Bingham, and the committee made the complete records public.

In other words—and I think this is important for Senators to understand—even before the three-tiered procedure was established, investigations into alleged impropriety included extensive hearings and full public disclosure.

In 1978, shortly after the Ethics Committee was established, there was alleged financial misconduct by a Member of the Senate. After completing a preliminary inquiry, the committee voted to conduct an initial review, and then a full investigation. During that stage—the first in the history of the Senate—public hearings were held from April 30 to July 12.

Following these hearings, the committee recommended that the Senator be censured because his conduct tended to "bring the Senate into dishonor and disrepute." In one day of debate on October 11, 1979, the Senate accepted the committee's recommendation.

The following year, the committee faced its most serious allegation of misconduct. In 1980, a Senator was indicted on nine criminal charges ranging from bribery to fraud, stemming from the Abscam sting operation. The Ethics Committee deferred its investigation until the criminal case was concluded. After the Senator was convicted, the committee authorized a formal investigation.

As has been its practice, the committee held public hearings into the charges once it reached the investigative phase. The committee, then chaired by Senator Malcolm Wallop, found the Senator's conduct "ethically repugnant" and recommended that the

Senator be expelled. Rather than face expulsion, the Senator resigned.

In 1989, a Senator was accused of financial misconduct related to a book deal and his ownership and use of a condominium and was investigated by the Ethics Committee. The committee followed the same procedure—a preliminary inquiry, initial review, and finally, a formal investigation.

In the investigative phase of that case, the Committee held public hearings on the allegations. One month after the hearings, the Ethics Committee submitted to the Senate a resolution recommending censure for "reprehensible" conduct "in violation of statutes, rules, and Senate standards." And the Senate upheld that decision.

I think it is important to note that after that investigation, some Senators were critical of the length of time it took to fully investigate ethics complaints—nearly 2 years in that case. Several Senators suggested streamlining the operations of the committee by reducing the number of investigative stages. But the chairman of the committee, Senator HOWELL HEFLIN, and the vice chairman, Senator Warren Rudman, noted that the three-tiered procedure is designed for the protection of the accused, because its first two stages are conducted in private, while the last stage is conducted in public. The Senate historian has summarized the arguments of the chairman and vice chairman as follows, and I think this is important for Senators to hear:

The multistage process was actually designed to protect the individual being investigated. Under the committee's rules, the two early portions of an inquiry were carried out in closed session, and only the third stage—the formal investigation and hearing—was conducted in public. In fact, on a number of occasions . . . the confidentiality of the procedure had protected Senators against whom unjust charges had been brought.

So here we have the historian of the Senate making the case that in the third stage of the investigation, it must and should go public.

It is clear that the Ethics Committee procedures were intended to include a public airing and disclosure of the cases, once the committee has determined that the allegations were supported by substantial credible evidence.

The most recent Ethics Committee complaint to reach the investigative stage involves a Senator accused of improper conduct related to the S&L industry. In conducting its preliminary inquiry, the committee conducted extensive public hearings over a two-month period. That Senator was disciplined by a new form of reprimand, where the full Senate did not adopt a resolution of censure, but it was required to assemble on the Senate floor to hear a strongly worded committee reprimand.

Mr. President, this is a simple matter of fact: Since the Ethics Committee adopted its current procedures in 1977,

every case to reach the investigative stage has included public hearings.

And furthermore, it is an indisputable matter of historical fact that in investigating allegations of improper conduct, the Senate has a well-established practice and record of conducting hearings. This practice dates back to a time before the Ethics Committee was formed.

Now, why are public hearings important? Because they demonstrate to the people—out in the sunlight—that we take seriously our constitutionally mandated responsibility to discipline our own, to discipline our own for unethical conduct. Each time an allegation of misconduct surfaces, the bonds of trust between the Congress and the people are strained. But by facing these allegations head-on, by holding public hearings and supporting appropriate disciplinary actions, we begin to repair those bonds of trust. Covering up our problems and attempting to hide them from the people only makes matters worse. And that is not the way we should function as a democracy.

Mr. President, I have taken the Senate's time today to discuss this issue because it now appears that the Ethics Committee is on the verge of abandoning its well-established procedure of conducting public hearings, in a case currently before it—a case that has reached the investigative stage. In my view, such a significant departure from established practice demands the attention of the full Senate and of the American people.

For more than 2½ years, the Ethics Committee has been considering very serious allegations against the junior Senator from Oregon. On May 17 of this year, the committee completed its inquiry of the case and voted unanimously to proceed to the final investigative stage. In adopting its resolution for investigation, the committee found "substantial credible evidence" to support numerous allegations of sexual and official misconduct.

It is my view that the Ethics Committee should follow the normal practice of the Senate and hold public hearings on these allegations promptly. There is nothing about this case that warrants making an exception. I am very disappointed that a number of Senators have advocated the opposite, and have indicated their desire to keep this investigation behind closed doors.

Mr. President, opponents of public hearings in this case have raised three objections.

First, they say public hearings on this matter would bring the Senate into disrepute. I argue that the opposite is true. As former Chief Justice Brandeis said, "Sunlight is said to be the best of disinfectants." By acknowledging problems and demonstrating a willingness to discipline our own, we strengthen the Senate and the bonds with the people. We win confidence from the people by discharging our responsibilities frankly and openly—no matter how controversial the issue.

But we irrevocably lose the people's respect by sweeping our problems under the committee room rug. The Senate is not a private club; it is the people's Senate. We do not go in the back room, light up a cigar, and decide these cases.

Second, opponents of public hearings in this case say that the allegations are so explosive that hearings would degrade into a circus-like atmosphere. I understand these concerns. However, I have confidence that the committee can discharge its responsibilities with dignity. What is the message here? Is it that the more embarrassing the charges, the more a Senator will be protected behind closed doors? That would be a terrible message to send to the American people.

I ask another question: If all the other issues were dealt with in public, is it a signal that if the issue were sexual misconduct you get the safe haven of a private club? That would be a terrible message.

Third, some opponents of hearings in the open argue that these hearings would be unfair to those who make the complaints because they could be subjected to uncomfortable questions and difficult cross-examination. I am confident that the committee will treat all witnesses fairly. In fact, several of the complainants in this case traveled to Washington to ask the Senate to hold public hearings.

Moreover, the Ethics Committee can decide under current Senate rules to close any portion of a hearing if it decides it is necessary to protect a witness. That is an important point. Under the rules of the Senate, the Ethics Committee may close any part of a hearing to protect a witness.

If it is true that hearings in this case would be painful—and it probably is—I must ask, is it the responsibility of a Senator merely to avoid painful issues? The Anita Hill hearings were painful, and what came of it? A national debate about sexual harassment that led to increased public awareness and better laws. Embarrassing? So were the Watergate hearings. Painful? So were the Waco hearings, where this week a young girl went before a committee and millions of viewers and described in detail the most despicable sexual abuse. The description was so graphic, in fact, that the committee felt compelled to warn television viewers in advance.

Hurtful? Think of Vince Foster's widow, who 2 years later has to turn on the television and see that story before her again. Mr. President, personal discomfort is, unfortunately, part of our job.

I hope I have explained why holding public hearings in this case is also part of our job. There is no reason to make an exception in this case and break with well-established procedures. That is what this issue is about.

I also feel obligated to discuss what this issue is not about. It is not about any other Senator. It is not about partisan politics. It is not about personalities. Perhaps the most shocking thing

to me in this process has been the private and public threats to a Senator who simply wants to continue the tradition of public hearings. I will not be deterred. I believe most Senators will support public hearings.

Mr. President, I urge the Ethics Committee again today, on this Senate floor, to call a meeting of their committee, which last week they canceled, which this week they have not scheduled, to open this particular case to the public. It is, without doubt, the right thing to do.

However, if the committee refuses to do this, I will have no alternative, as I have said before, but to bring this issue to the Senate floor directly. My legislation is ready. It is straightforward. I will offer it at the earliest opportunity next week if we have no action.

In my view, a major procedural change overturning decades of well-established precedent must be debated by the full Senate. I think this is very, very serious. The charges are serious against the Senator, but equally important, is that the precedents of this U.S. Senate not be cast aside.

I yield the floor.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### MILITARY CONSTRUCTION APPROPRIATIONS, 1996

The Senate continued with the consideration of the bill.

Mr. BURNS. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc to H.R. 1817, provided that no point of order shall be considered as having been waived by reason of this agreement, and that the bill as thus amended be considered as original text for the purpose of further amendment.

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

So the committee amendments were agreed to.

Mr. BURNS. Mr. President, I also ask unanimous consent that Senator BINGAMAN be recognized for the purpose of offering an amendment, and that a time agreement has been reached, an hour equally divided on both sides, with Senator BINGAMAN in charge, and the managers in charge of the opposite side.

Mr. REID. Mr. President, I ask unanimous consent that the unanimous-consent request be amended to reflect that there be no second-degree amend-

ment in order, except a perfecting amendment that the Senator has to offer, and the hour time agreement would apply to all—to the amendment and the perfecting amendment.

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

Mr. REID. Mr. President, would the Senator agree, if a vote is ordered, to have a vote at the same time as the votes relating to the rescissions bill?

Mr. BINGAMAN. Mr. President, I advised the Republican manager earlier that I am glad to do that, except that I think I would like to reserve the right of each of the sponsors, Senators MCCAIN and Senator KERREY, to speak for a few moments about the bill.

If they have not had a chance to do that, I want to have that opportunity.

Mr. REID. That would be under the time that the Senator controls.

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

#### AMENDMENT NO. 1834

(Purpose: To reduce by \$300,000,000 the amount appropriated by the bill)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself, Mr. MCCAIN, and Mr. KERREY, proposes an amendment numbered 1834.

The amendment is as follows:

On page 22, between lines 2 and 3, insert the following:

SEC. 127. Notwithstanding any other provision of this Act, the total amount appropriated by this Act for military construction and family housing is hereby reduced by \$300,000,000.

Mr. BINGAMAN. Mr. President, I asked that the amendment be read because I think it is very straightforward. Members should not have any difficulty understanding what the amendment is. It is an amendment offered by myself, Senator MCCAIN, and Senator KERREY from Nebraska.

What it does is it proposes to strike \$300 million from this bill and to bring the level of spending in this bill back to the level that the President requested. That request from the President, from the administration, was not an insubstantial request. It was almost \$2 billion above last year's level. The budget request was for \$10.698 billion for military construction and family housing, which was an increase of \$1.963 billion over the 1995 appropriation.

The budget request included a major initiative on family housing, an increase of \$605 million above the 1995 level. It also included \$1.2 billion in additional funding to carry out the base closure and realignment that has been ordered by current and past base closure commissions.

So we are, in this amendment, not trying to interfere with a substantial increase in military construction funding over last year's level. The Presi-

dent felt that was appropriate. The administration felt it was appropriate. We are not, in this amendment, trying to attack that. What we are saying, though, is that we need to have some limit on the extent of the add-ons that we, in Congress, engage in, if, in fact, we do have a concern about deficit reduction—and we clearly need to have that concern.

The committee was able to find about \$400 million to reduce in what the President requested; another \$57 million in rescissions from prior-year appropriations. If the committee had stayed within the President's request, that would have given them an amount of \$474 million to earmark for various items that are called to the attention of committee members of this body on both sides of the aisle.

Mr. President, \$474 million did not appear to be enough for Member items. The committee added an additional \$300 million to cover those items, and I believe this is a luxury that we cannot defend to the American people at a time when deficit reduction is paramount in the Nation's political agenda, and deserves to be paramount in the agenda of the Nation when our debt is ballooning to almost \$5 trillion.

The committee will argue that the projects that they have added, the \$747 million in all that they have added, meet the criteria which the Senator from Arizona, my cosponsor on this amendment, has been in the forefront of establishing. That is, all of these projects are in the Pentagon's 5-year plan and they have merely moved up the execution of the projects for this next fiscal year. They will argue that the National Guard has come to rely on these add-ons because the Pentagon always leaves out things which are necessary for the National Guard.

These arguments do have some merit, and I think they can be used to justify the most important \$474 million of add-ons. But in my view, the arguments cannot justify the marginal \$300 million that has been added to that. Unlike the cuts which we will make in future appropriations bills which come before the Senate in areas such as education and research and health, the projects which are ultimately cut if our amendment is approved will be in future defense requests, some next year, some as late as the year 2001. Essentially, these are projects which the administration said are meritorious, but we cannot afford them this year. What I am saying by this amendment, and what my cosponsors are saying, is we agree with that. We cannot afford the additional \$300 million this year.

I say to my Democratic colleagues who will bemoan cuts in various domestic discretionary programs—and I will agree with them that some of those cuts are inappropriate—but how can we in the Congress justify adding funds for marginal projects in this bill while we are making those cuts in domestic discretionary programs? And I