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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.

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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 non-existent?

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.