

Senator KERRY, at that point, suggested—again, his words—I challenge you to go in a back room and set standards for each class.

What he pointed out, accurately, is that our amendment does not set a standard. He wants to set a standard.

My answer to that is, to do so would be to adopt in law six arbitrary standards instead of one—one arbitrary standard for each class.

I do not think we should legislate that way. I think what we ought to do is, at least for a brief period of time—have the people who are designated by law as experts look at all the criteria which are relevant to the setting of fuel economy standards, including safety, impact on jobs, cost, short-term versus long-term benefits, and the other criteria that I mentioned. Then if they do not act within 15 months, we have an expedited process to guarantee that alternatives can be considered by the Congress by under expedited procedures. If they do adopt a regulation that we do not like, under existing law, there is a process called legislative review, under which we can veto that regulation. We have that option after a rational process is pursued.

We can either arbitrarily select a standard now, based on 1 of those 13 criteria—and even that is partial—or we could do something which, it seems to me, is a lot more rational, which is to tell that regulatory agency, which has that responsibility under law: These are our policies. We want you to consider all of these criteria to adopt a rule. If we do not like it, we are going to veto it. If you do not do it, we are going to have an expedited process to consider it.

Madam President, I do not know if there is anybody else who seeks recognition. I see none.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. LEVIN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

#### MORNING BUSINESS

Mr. LEVIN. Madam President, I ask unanimous consent there now be a period of morning business, with Senators permitted to speak for up to 5 minutes each.

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

#### ENERGY DERIVATIVES TRAINING

Mr. ENZI. Madam President, I rise to address the issue of derivatives. The name itself would almost put people to sleep; the details of it are very complicated. It is a process that is done by major corporations, which is what brings it to our attention at the mo-

ment. Unfortunately, the proposition that is before us is an answer looking for a problem. It is not a solution to what has happened.

Enron has raised many concerns regarding the state of our energy markets. However, as investigations into the collapse of the company are showing, the failure of Enron was likely due to unethical and possibly illegal accounting techniques used by executives at the company. We need to make one thing clear: The trading of energy derivatives had nothing to do with the collapse of Enron. In fact, Enron's trading platform was one of the most lucrative parts of the company.

Enron is not an accounting problem; it is not a business problem. It is probably a fraud problem.

During debate on the Commodities Futures and Modernization Act, we examined extensively the oversight and regulation of energy derivatives. It was done the right way. It was done with hearings, with committee markup, with floor debate. This has been brought directly to the floor. It has bypassed the other processes.

What we concluded using the correct process was the proper amount of oversight for a new and emerging business. We did the debate on the Commodities Futures and Modernization Act, and we examined extensively the oversight and regulation of the energy derivatives—the way it is supposed to be done. What we concluded was the proper amount of oversight for a new and emerging business had been put into law.

If we start to regulate an industry that is in its infancy, we run the risk of stifling competition and reducing the possibility of it reaching its full potential.

Federal Reserve Chairman Alan Greenspan testified last week before the Senate Banking Committee. I want to echo a few of his comments regarding the regulation of energy derivatives.

Chairman Greenspan said it was crucially important that we allow those types of markets to evolve amongst professionals who are most capable of protecting themselves far better than either we, the Fed, CFTC, or the OCC could conceivably do. The important issue is that there is a significant downside if we regulate where we do not have to in this area. Because one of the major—and indeed the primary—areas for regulation and protection of the system is counter-party surveillance—that the individual private parties, looking at the economic events of the status of the people with whom they are doing business. . . . We've got to allow that system to work, because if we step in as government regulators, we will remove a considerable amount of the caution that is necessary to allow those markets to evolve. And while it may appear sensible to go in and regulate, all of our experience is that there is a significant downside when you do not allow counter-party

surveillance to function in an appropriate manner.

I think we are glazing the eyes over here, but essentially Mr. Greenspan said it is too early to do anything based on the act that we already did.

Selling derivatives is a way for companies that can't afford risk to pass it on to companies that are willing. We have done that for a long time in the insurance business. This is another form of corporate insurance.

There is no indication that trading of energy derivatives contributed in any way to the collapse of Enron. However, if, in fact, Members think we need to look at legislation in this area, we should examine it in a reasonable process—not by offering on the floor amendments to a newly enacted piece of legislation. I certainly appreciate and respect Members' attention to examining the energy markets, but we should take that through the committee process so Members have a chance to hear testimony and pose questions to experts in this area.

It is a difficult area; it is a complicated area. Supporters of this amendment claim that Enron has such a large market share of this business that they were able to provide undue influence over the energy trading.

To the contrary, during and after the collapse of Enron, there were no interruptions of trading. Other market participants stepped in and assumed volume. There were no price swings or collapses of the energy market. This is a perfect example of market forces working the way they were intended.

The CFMA provided legal certainty for commercial parties not executed on futures exchanges—legal certainty, taking away some of the risk, selling some of the risk. This amendment could be interpreted to cover all transactions between commercial parties conducted either by e-mail or over the phone. The effect of this amendment would likely be decreased market liquidity because of increased legal and transactional uncertainties. Additionally, energy companies may be discouraged from using derivatives to hedge price risks. This could result in more price volatility in energy markets, which will hurt the very consumers the legislation seeks to help.

This amendment would also require electronic trading exchanges to set aside capital, even if they do not participate in trading. For instance, the Intercontinental Exchange allows buyers and sellers of energy derivatives to exchange offers through an electronic program. This exchange is already regulated by the CFTC and gives the CFTC access to its trading screens. This amendment would require the Intercontinental Exchange to set aside capital, even though it only facilitates transactions and does not trade. This requirement could force ICE to cease operations—forcing buyers and sellers of energy derivatives into the over-the-counter market. This is why CFTC Chairman Newsome has said the CFTC does not require this new authority.

Because of my concern for this issue, I recently wrote to the Chairman of the Securities and Exchange Commission to get his views regarding this amendment. Mr. Pitt responded:

The Securities and Exchange Commission believes this legislative change is premature at this time.

I ask unanimous consent that this entire letter be printed in the RECORD.

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

UNITED STATES SECURITY  
AND EXCHANGE COMMISSION,  
Washington, DC, March 11, 2002.

Hon. MICHAEL B. ENZI,  
U.S. Senate, Senate Russell Office Building,  
Washington, DC.

DEAR SENATOR ENZI: Thank you for your letter concerning proposed amendment #2989 (Congressional Record, March 7, 2002, p. S1685), introduced by Senator Dianne Feinstein and others, to S. 517, the pending Senate energy legislation. This amendment would repeal key provisions enacted as part of the Commodity Futures Modernization Act (P.L. 106-534) applicable to over-the-counter derivatives contracts in certain energy products.

The Securities and Exchange Commission believes this legislative change is premature at this time—barely more than a year after the CFMA's enactment. Because of on-going federal investigations, the lack of rigorous analysis about the CFMA's effect on the derivatives markets as a whole, and the absence of a determination about what role (if any) over-the-counter derivatives played in the collapse of Enron or the California energy crisis of last summer, we do not believe that any action should be taken until all of the facts are available for evaluation.

Thank you for giving the Commission an opportunity to comment on this legislative proposal.

Yours truly,

HARVEY L. PITT,  
Chairman.

Mr. ENZI. I ask that Members step back and, if there is a problem, let's address it in a responsible manner through the normal process. Let's begin to hold hearings on energy trading, and after we have had time to evaluate what we have learned, we can look forward to a reasonable solution. This is too early and takes away the opportunity to sell off risk by some other companies. I ask for you to defeat the amendment.

I yield the floor.

#### IRAQ

Mr. MURKOWSKI. Madam President, I refer my colleagues to an incident that has perhaps occurred without the knowledge of those who are lamenting that our dependence on imported oil has been relieved somewhat because prices are down.

I call to the attention of my colleagues the fact that oil is now at a 6-month high. It is over \$24.50 a barrel and going up. It is the highest in 6 months. This is caused by the cartel called OPEC and its commitment to maintain a price level somewhere between \$22 and \$28. They do that by addressing the supply of oil on the world market.

Another very significant event occurred yesterday. This event was the response of Saddam Hussein to a request from the United Nations that inspectors again be allowed into Iraq. Saddam Hussein in effect told us to take a hike. He refused to allow inspectors into his country. We have not had inspectors in there in over 2 years.

What does this mean? It is in the eyes of the beholder, but clearly he has made his call. The next call has to be made by our President and the U.N. Are we going to force our inspectors to go into Iraq? What are the circumstances surrounding this issue?

One can conjecture that if we look at bin Laden, at the al-Qaida, we will wish we would have taken action prior to what occurred in association with the terrorist attacks on New York at the Twin Towers, the Pentagon, and the situation we are in of fighting terrorism. Could we have initiated an action sooner?

We could have, but we didn't. In the case of Iraq, the recognition that we all are very much aware that Saddam Hussein is proceeding with weapons of mass destruction, many of my colleagues perhaps saw the CNN hour program the night before last on Iraq, the fact that he is using poison gas on some of his own people; that he has developed mass destruction weapons with warheads that obviously have biological as well as perhaps nuclear capability, clearly a delivery system that would take them from Iraq to Israel, one has to wonder just when we are going to address this reality and how we are going to do it.

I won't belabor my point other than to try and draw some attention to the fact that, indeed, it is a time for alarm. This is a time when the United States is importing from Iraq nearly 800,000 barrels of oil a day. As we reflect on how to relieve that increasing dependence, how do Members reflect upon just how serious a threat Saddam Hussein is to peace in the western world? How do we address our concern over the reality that he has weapons of mass destruction? How are we going to reflect on just how we are going to reduce our dependence on oil from the Mideast when we look to the Saddam Husseins of this world to provide us with our needed oil as opposed to developing oil reserves here at home, either in the Gulf of Mexico or in the State of Alaska?

This is a factor we will have to face because at some point in time, clearly, we will have to address the threat of Iraq and Saddam Hussein. It is my hope that we can somehow prevail on getting inspectors in there and relieving this threat. Saddam Hussein has clearly told us otherwise. He told us yesterday to go take a hike.

I know the beliefs of the Chair with regard to the national security interests of our Nation as we continue to depend on unstable sources for our energy. I wish that more Members would concern themselves with this threat.

#### IN MEMORY OF TECHNICAL SERGEANT JOHN A. CHAPMAN

Mr. SANTORUM. Madam President, I rise today to recognize the heroic life of Technical Sergeant John A. Chapman, whose family is from Windber, PA. Sergeant Chapman, who was buried today, was killed on Monday, March 4th, during a fierce firefight after his helicopter was shot down by al-Qaida fighters in Afghanistan.

Sgt. Chapman, who was only 36 years old, is survived by Valerie, his wife of 10 years, and by their 2 young daughters, Madison age 5, and Brianna age 3. While I know that this loss is devastating to the entire Chapman family, I can confidently say to Sgt. Chapman's two young daughters that their daddy died for a great cause and that this cause was to protect the world and this Nation against evil people. These people seek to destroy the very foundation of our country which allows all of us to be free and safe and prosperous.

As a Nation, we have been very fortunate in recent years; we have not had to face many casualties while defending our freedom. The death of Sgt. Chapman and the seven other servicemen killed last week really hit home. These losses are painful, but this war has a real purpose, and a real national security implication. In my mind, the sacrifice made by these men is as important as any made during the great wars that we have fought in the past. We never like to lose even a single life. Each casualty we read about in the newspapers means the world to someone who has lost a father, a brother, or a friend. I grieve with the Chapman family and all of the families that have made this ultimate sacrifice, but it is important to remember that they did not die in vain. Our thoughts and prayers are with the Chapmans as they go through this difficult time. Sgt. Chapman died to protect the core values which define our country, and we will always remember him as a hero.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred November 21, 1999 in Maple Grove, MN. Two men shoved a lesbian woman, verbally assaulted her, and then attacked her. The assailants, two 21-year-old men, were charged with a hate crime in connection with the incident.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation,