

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. Ber-

nard 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. Presi-

dent, 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 com-

mittee? 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 di-

rected 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 representa-

tion 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 cir-

cumstance 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 nonparties 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 from 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 shut-downs, 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 them"—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. In-

stead, 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 non-offers. 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 agree-

ment 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 re-

leases 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. INOUE] 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
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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. INOUE] 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
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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.