

at fault, in my opinion. This was an unjustified disposition of this case, in light of the circumstances involved.

I cannot imagine that anybody can ultimately defend the disposition of this case. They may say, well, the judge just followed the prosecutor's recommendation. The judge did follow the prosecutor's recommendation, but he was not required to do so. In that plea bargain, as I noted, it said the judge is not required to follow this plea bargain. If he, Mr. Huang, rejects it, we will withdraw the plea and we will go back to square one and start all over. The judge is not required to accept it. The judge wasn't required to accept the plea, and he should not have accepted this plea.

These are the exact words from the plea agreement:

This agreement is not binding on the court. The United States and you—

Meaning Mr. Huang, in the contract between the prosecutor and Mr. Huang—

understand that the court retains complete discretion to accept or reject the agreed upon disposition provided for in this agreement. If the court does not accept this agreement, it will be void, and you will be free to withdraw your plea of guilty. If you do withdraw your plea of guilty, this agreement made in connection with it and the discussions leading up to it shall not be admissible against you in any court.

That is standard language. I have used it many times myself. The judge was obligated to follow the law of the United States. He was obligated to make sure justice occurred, if there was equal justice under the law.

I don't know how judges who send kids to jail for 20 years without parole can sleep at night when they are talking about letting this guy off the hook for this offense.

Mrs. BOXER. Mr. President, will the Senator yield?

Mr. SESSIONS. Yes.

Mrs. BOXER. I know my friend doesn't want us to vote on Judge Paez.

Mr. SESSIONS. Let me just say to the Senator that I have asked for an additional hearing to find out if I might be wrong about this and hear both sides of it. But I am not going to support a filibuster on this nomination. If we do that, we will just vote on it, as far as I am concerned.

Mrs. BOXER. I thank my friend very much.

I want to ask him if he read what Senator SPECTER said regarding the two cases we raised, the Maria Hsia case and the Huang case. I ask the Senator to react to this because I think it is important.

When asked if this vote ought to be put off, he said:

These matters are now ripe for decision by the Senate. There has been some suggestion of a further investigation on this matter, but when Judge Paez's nomination has been pending since 1996, and all of the factors on the record demonstrate it was the Govern-

ment's failure, the failure of the Department of Justice to bring these matters to the attention of Judge Paez and on the record, he has qualifications to be confirmed.

In other words, what Senator SPECTER is saying is that Judge Paez was following the recommendation of the prosecutor.

I ask my friend: When the prosecutors say this is what we think is the best for the case, is it really that unusual for a judge to say let the prosecution stand? If we want to accuse Judge Paez of something, it ought to be that he was soft on the case, No. 1. I say to my friend: It was randomly selected; he got these two cases; he didn't ask for these cases. No. 2, he followed the prosecution's request, and he is being condemned for it.

My last point is—I know my friend will comment on all of this—my friend was interested in the sentencing issue surrounding Judge Paez. We have the facts on that, and he does as well.

I think it is important to note that if you look at U.S. district court as a whole—

Mr. SESSIONS. I have the floor.

Mrs. BOXER. I will come back to it.

Mr. SESSIONS. I will finish, and the Senator can respond.

Mrs. BOXER. I appreciate my friend yielding. I will wait.

Mr. SESSIONS. I am sorry. I will be happy to enter into a dialogue and come back to it later.

Senator SPECTER was, in fact, a State prosecutor. He is familiar in that boiler room of Philadelphia when judges are sitting up there and prosecutors come forward on burglary cases. The judge is a victim. He has to take the recommendation of the prosecutor and does so routinely. Federal judges try to do that, but it is always recognized that they have ultimate responsibility, as this plea agreement says.

In a case of national importance, which in itself just on the face of it does not pass the smell test, in my view, he should not have accepted it.

Another thing Senator SPECTER has never done is handle the sentencing guidelines. They were not a part of the State courts of Philadelphia or Pennsylvania, but they were a part of the Federal court where Judge Paez was sitting. I don't think Senator SPECTER has ever considered the fact that the evidence is what the judge had, and he did not have all that he should have had. But what he did have indicates that he did not properly apply the guidelines. That is the only thing he can be responsible for, in my view. If evidence was withheld from him, I understand that. But what I have been quoting here is what he did have.

I also note in Roll Call, in the Republican Representative Jay Kim probation case, they said Judge Paez's sentence of Representative Kim was a mere slap on the wrist and makes us think that the Senate Judiciary Com-

mittee ought to question whether or not Paez is too soft on criminals to be a Federal judge.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. I thank the Chair.

I hate to ask this to be delayed. But he is a sitting Federal judge. It is not messing up his Federal practice in a couple or three weeks to get to the bottom of this and how the case was assigned, because it didn't come out of an indictment by a grand jury, it came out of the handling by the prosecutor. In my experience, those cases are not randomly assigned. Quite often, they are taken directly by the prosecutor to the judge.

I would like to have somebody under oath explain to me how the Hsia case and the Huang case went to Judge Paez. Out of 34 judges, they went to Judge Paez. That doesn't strike well with me. I would like to know that before we go forward with the vote. If he has a good answer, I am willing to accept it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I ask unanimous consent to be allowed to proceed in morning business for up to 10 minutes and that my remarks be followed by the Senator from California, Mrs. BOXER.

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

Mr. GRAMS. Thank you very much.

#### THE INCOME TAX ANNIVERSARY

Mr. GRAMS. Mr. President, 87 years ago today, the Federal Government began collecting income tax. I rise not to celebrate the anniversary, but to condemn the occasion. What began as a simple flat tax on the revenue of a few has turned into a Pandora's box that devastates many. And so I take this opportunity today to strongly urge Congress to begin repealing the process of the constitutional amendment granting the Federal Government the power to tax, abolish the income tax, and replace it with a tax that is fairer, simpler, and friendlier to the taxpayers.

The reasons for abolishing the Federal income tax are compelling. To begin with, the income tax has clearly violated the fundamental principles upon which this great Nation was founded.

Mr. President, our country was born out of a tax revolt—a tax revolt built upon freedom and liberty. To preserve liberty, our Founding Fathers crafted an article in the Constitution unequivocally rejecting all direct income taxes that were not apportioned to each state by its population.

During the following 100 years, this provision brought enormous economic opportunities and prosperity for America. Although Congress attempted to

enact income taxes in the late 19th century, the Supreme Court repeatedly declared the income tax unconstitutional. As a result, between 1870 and 1913, before the income tax was levied, the U.S. economy expanded by over 435 percent in real terms. This was an average growth rate of more than 10 percent per year, without inflation.

Congress has passed many ill-advised laws, but nothing has been more disastrous than the passing of the 16th amendment in 1909, which allowed the Federal Government to begin levying and collecting income tax as of March 8, 1913.

This shift in policy represented the efforts of those liberal elements who believes and promoted the ideology that society has a claim on one's capital and labor. They suggested that the redistribution of private income would increase equality among people. Their strategy was simple: they claimed this income tax was to "soak the rich" and was not supposed to provide a mechanism for Washington to reach into most Americans' pockets—the argument we still hear again and again on the Senate floor.

Initially, less than 1 percent of all Americans paid income tax. Only 5 percent of Americans paid any income tax as late as 1939. But today, nearly every American is subject to the income tax. The Federal tax burden is at an historic high. A median-income family can expect to give up nearly 40 percent of its income in Federal, State, and local taxes—more than it spends on food, clothing, transportation, and housing combined.

More Americans are working harder and are earning more today. But a large share of the higher incomes of hard-working Americans aren't being spent on family priorities, but are instead being siphoned off by Washington.

They are working harder, but they are taking home less money because the Government is taking a bigger bite out of their paychecks. Then there is "bracket creep." I think everybody knows what that is. It means a large share of revenues goes to taxes as inflation pushes you into another income level, or another tax bracket, so Washington can get a bigger bite out of your paycheck.

Mr. President, is this what our Founding Fathers fought for? Even the sponsor of the 16th amendment, Congressman Sereno E. Payne of New York, later realized his mistake and denounced direct taxation as "a tax upon the income of honest men and an exemption, to a greater or lesser extent, of the income of rascals."

T. Coleman Andrews, a former commissioner of the Internal Revenue Service said:

Congress [in implementing the 16th Amendment] went beyond merely enacting an income tax law and repealed Article IV of

the Bill of Rights, by empowering the tax collector to do the very things from which that article says we were to be secure. It opened up our homes, our papers and our effects to the prying eyes of government agents and set the stage for searches of our books and vaults and for inquiries into our private affairs whenever the tax men might decide, even though there might not be any justification beyond mere cynical suspicion.

To my colleagues who would brush off that statement as an exaggeration, I remind them of the horror stories we heard from many of our constituents 2 years ago, when the Senate Finance Committee held hearings into abuses carried out by the IRS. Those poor taxpayers whose lives were shattered thanks to the unwarranted excesses of an overeager tax collector were not exaggerating.

The income tax must be abolished because it has become so complicated and inefficient. The Federal Tax Code today stretches on for more than 7 million words, and is made up of 4 huge volumes, another 20 volumes of regulations, and thousands of pages of instructions. Not even tax accountants or lawyers fully understand it. What chance does the average taxpayer have of getting it right?

The government publishes 480 separate tax forms and mails out 8 billion pages of forms and instruction each year. The IRS employs over 10,000 agents to collect taxes, more agents than the FBI and the CIA combined.

The income tax must be abolished because it keeps enlarging the government. In Washington, taxing and spending always go hand in hand. As the income tax rate goes up, government spending explodes. Between 1913 and 1999, inflation-adjusted federal government spending increased by more than 16,000 percent.

The income tax must be abolished because even in an era of budget surplus, it allows the government to continue overcharging Americans as we see today with our surpluses. According to the Congressional Budget Office, working Americans' tax overpayments will be as high as \$1.9 trillion in the next 10 years. After the biggest tax increase in history, President Clinton has repeatedly denied working Americans a tax refund and refuses to return tax overpayments to the American people. His last budget again increases taxes instead of cutting them. In a time of surplus, this President is out with a proposal to again increase your taxes.

How is this possible? We would all agree that if a customer is overcharged for a service he receives, the right thing for the merchant to do is to return the extra money—not keep it because the merchant has other things he'd like to spend it on. The same principle holds true for tax overpayments. I strongly believe we should return tax overpayments to their rightful owners—the taxpayers—rather than spend them on new government programs.

Not only does this money belong to them, but the American people will spend it far more intelligently than Washington politicians ever could.

Mr. President, on this somber income tax anniversary, I argue that we have no choice but to repeal the income tax and abolish the IRS. I urge my colleagues to join me in a pledge that we will dedicate ourselves to replacing the Tax Code with a better system early next Congress, as we continue to do everything we can to reduce the existing tax burden on the overtaxed American people.

The PRESIDING OFFICER. The Senator from California.

#### NOMINATIONS

Mrs. BOXER. Mr. President, as one of the two California Senators, this is a very big day for two Californians who have been nominated for the Ninth Circuit Court: In the case of Richard Paez, more than 4 years ago, the longest time anyone has had to wait for a vote in a 100-year history; and Marsha Berzon, nominated a couple of years ago.

I am grateful we have gotten to this day. I am very hopeful. In fairness, our colleagues from both sides of the aisle will make a statement on this cloture vote, if we have to have a cloture vote, that they do deserve an up-or-down vote.

I will attempt in the next few minutes to put a face on the nominations. I had about 5 minutes to speak yesterday and will take a little bit longer today.

I will introduce Marsha Berzon, who is a stellar attorney. She is shown with her husband and her two children. This is a wonderful woman. The whole family has been so excited about her nomination, but every time we think we will have a vote, we don't seem to get there.

I say to Marsha and her family: We will have a vote and I am optimistic you are going to be seated on this bench.

Marsha Berzon is exquisitely qualified, as is Richard Paez. She is a native of Ohio. She was raised in New York. She now lives in California, is married to Stephen Berzon, shown here. She practices law with her husband and is a mom of two youngsters.

She was first nominated to the U.S. Court of Appeals for the Ninth Circuit in January of 1998, and she testified before the Senate Judiciary Committee in July of 1998. There was no action on her nomination in the 105th Congress, so her nomination was sent back and she testified on June 16, 1999. Then she was favorably reported out of the committee.

We are very hopeful since the committee considered her to be very well qualified that the Senate will agree.

Let me give a few of her qualifications. She is a nationally known and