Mr. REID. Mr. President, I ask unanimous consent that the Senator's morning business time be extended.

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

Mr. REID. I say to my friend, I also have great pleasure to know Jackie Clegg. I met Jackie when she was a staff person for Senator Garn on the Appropriations Committee. She would come and be at his side and was his voice and ears on that committee—an important committee on which he did so well for the State of Utah. I got to know her better when she went to the Eximbank. We think of the Bank—I always did—as being something that was done in places other than in the United States. She was such in kind and professional enough to do a meeting in Las Vegas for me of the Eximbank. There was tremendous interest of Las Vegas businesspeople in what that Bank could do and could not do. People were brought to a meeting in Las Vegas, and I can say it was one of the most successful of that type of meeting I have ever held.

She will be missed. Of course, being chairman of the Banking Committee and having worked in the area a long time, you certainly understand, having worked so closely with her, more than most of us how important that Bank is. I appreciate Senator mentioning Jackie very much. However, I am very confident that her new role, as important as her old role was, will be even more important. I know she is looking forward to it. She will be a great mother, and I look forward to seeing her with her new baby in just a few months.

Mr. SARBANES. I thank the Senator for his comments.

Mr. REID. Mr. President, I am going to hold a hearing next week on the Environment and Works Committee. I am now the subcommittee chair on the committee with jurisdiction over this country's infrastructure. The first hearing I am going to do is going to be involved with the mayors of major cities in the United States, to have them start telling us what some of our major urban cities need. We are tremendously deficient in what we have not done to help cities and, of course, other parts of our country.

This is not developed today. We have been ignoring this for far too long. The Senator is absolutely right. We now are looking at budgetary constraints that make it very difficult for us to address some of the most grievous things facing this country as relates to infrastructure. That is one of the reasons I am holding this hearing. We can no longer hide our head, bury our heads in the sand, and say they don't exist. These problems exist. The Senator and the Public Works Committee is going to start addressing this next week.

Mr. SARBANES. I commend the Senator for that initiative. I think it is extremely important. I think we have to get across the understanding that these public investments in infrastructure are worthwhile to carry out its business. I think we need to perceive it in those terms because people come out and say you are just talking about making a public expenditure, but this is a public expenditure with wide-ranging consequences and implications for the effective working of the private sector of the economy.

Mr. REID. I will finally say to my friend, you are so right. Some of the people who want to spend less money than anyone else are the so-called marketeers and free market people. In his book, "Wealth of Nations," in 1776, said that governments had certain responsibilities, and one of those responsibilities is things about which we are speaking, things we cannot do for ourselves. We can do roads, highways, bridges, dams, sewers, water systems. So we go right back to the basic book of the free enterprise system, and that is what we are talking about.

Mr. SARBANES. That is right.

ENERGY, OPEC, AND ANTITRUST LAW

Mr. SPECTER. Mr. President, I have sought recognition to discuss briefly this afternoon, in the absence of any activity on the pending legislation, and in the absence of any other Senator seeking recognition, to discuss a subject which was talked about at the energy town meeting which Vice President Cheney had in Pittsburgh on Monday of this week, July 16.

At that time, I had an opportunity to address very briefly a number of energy issues. I talked about the possibility of action under the U.S. antitrust laws against OPEC which could have the effect of bringing down the price of petroleum and, in turn, the high prices of gasoline which American consumers are paying at the present time.

I have had a number of comments about people's interest in that presentation. I only had a little more then 3 minutes to discuss this OPEC issue and some others. I thought it would be worthwhile to comment on this subject in this Senate Chamber today so that others might be aware of the possibility of a lawsuit against OPEC under the antitrust laws.

I had written to President Clinton on April 11 of the year 2000 and had written a similar letter to President George Bush on April 25 of this year, 2001, outlining the subject matter as to the potential for a lawsuit against
OPEC. The essential considerations involved whether there is sovereign immunity from a lawsuit where an act of state doctrine and decisions in the field make a delineation between what is commercial activity contrasted with governmental activity. Commercial activity, such as the sale of oil, is not something which is covered by the act of state doctrine, and therefore is not an activity which enjoys sovereign immunity.

There have also been some limitations on matters involving international law, as to whether there is a consensus in international law that price fixing by cartels violates international norms. In recent years, there has been a growing consensus that such cartels do violate international norms, so that now there is a basis for a law-suit under U.S. antitrust laws, and that the United States could procede with a law-suit against OPEC, as well as other countries involved.

The court found that OPEC had conspired to implement extensive production cuts, that they had established quotas in order to achieve a specific price range of $22 to $28 a barrel, and that the cost to U.S. consumers on a daily basis was in the range of $80 to $120 million for petroleum products. That is worth repeating. The cost to U.S. consumers was $80 to $120 million daily.

The court further found that OPEC was not a foreign state. The court also found that the member states of OPEC, although not parties to the action, were co-conspirators with OPEC, and that the agreement entered into by the member states of OPEC was a commercial activity, and the states, therefore, did not have sovereign immunity for their actions.

The court further found that the act of state doctrine did not apply to the member states and that OPEC’s actions were illegal “per se” under the Sherman and Clayton Acts.

The court then issued an injunction, which is legalese for saying OPEC could no longer act in concert to control the volume of the production and export of crude oil.

The court found that the class of plaintiffs was not entitled to monetary damages because they were what is called “indirect purchasers.” That is a legal concept which is rather involved which I need not discuss at this time. But the court found, and the findings of fact and conclusions of law were established by the Federal court that indeed there was a cartel, there was a conspiracy in restraint of trade, U.S. laws were violated, U.S. consumers were being prejudiced, and an injunction was issued.

Then, a unique thing occurred. After the court entered its default judgment and injunction, OPEC entered a special appearance in the case, and asked the court to dismiss the case. Three nations, who were not parties to the case—Saudi Arabia, Kuwait, and Mexico—then sought leave of the court to file “amicus” briefs in support of OPEC’s motion to dismiss, which doing as had been act forth in the let-assist OPEC in defending the matter. I think it is highly significant that those nations, which are characteristically and customarily oblivious and indifferent and seek to simply ignore U.S. judicial action, had a change of heart and decided to come in.

They must have concluded that an injunction by Federal court was something to be concerned about. I think, in fact, it is something to be concerned about.

In an era where we are struggling with an extraordinarily difficult time of high energy costs, with real concerns laid on the floor of the Senate about where additional drilling ought to be undertaken, about the problems with fossil fuels, about our activities to try to find clean coal technology to comply with the Clean Air Act, at a time when we are looking for renewable energy sources such as air and wind and hydroelectric power, there is no longer a fingertip to point at the OPEC nations which are conspiring to drive up prices in violation not only of U.S. law but in violation of international law.

This is a subject which ought to be known to people generally. It ought to be the subject of debate, and it ought to be, in my opinion, beyond a class action brought into the Federal court by private plaintiffs, which is something that the Government of the United States of America ought to consider doing. I have filed a letter which I sent to President Clinton last year and to President Bush this year.

It is especially telling when we have Kuwait gouging American consumers, after the United States went to war in the Persian Gulf to save Kuwait. It is equally if not more telling that Saudi Arabia engages in these conspiratorial tactics at a time when we have over 5,000 American men and women in the Persian Gulf, which have never visited there. But it is not even a nice place to visit, let alone a nice place to live, in a country where Christians can’t have Christmas trees in the windows and Jewish soldiers don’t wear the Star of David for fear of being the victims of religious persecution; and Mexico, a partner in our laws, practices, notwithstanding our efforts to be helpful to the Government of Mexico.

But fair is fair. Conspiracies ought not to be engaged in. Price fixing ought not to be engaged in. If there is a way within our laws, practices, we ought to do it. There is a conspiracy in restraint of trade, and I believe there is, that is something which ought to be considered.

I am not unmindful of the tender diplomatic concerns where every time an issue is raised, we worry about what one of the foreign governments is going to do, what Saudi Arabia is going to do—that we should handle them with “silk gloves” only. But when American consumers are being gouged up to $100 million a day on petroleum products, this is something we ought to consider and, in my judgment, we ought to act on.

We have seen beyond the issue of antitrust enforcement a new era of international law, with the War Crimes Tribunals, with the Hague, prosecute war criminals from Yugoslavia, and now former President Milosevic is in custody. We also have the War Crimes Tribunals at Rwanda. A new era has dawned where we are finding that international law is coming into common parlance. That long arm of the law, I do believe, extends to OPEC, and there could be some very unique remedies for U.S. consumers.

I ask unanimous consent to print my letter to President Bush, dated April 25, 2001, in the RECORD. There being no objection, the letter was ordered to be printed in the RECORD, as follows:


President GEORGE WALKER BUSH.

The White House, Washington, DC.

Dear Mr. President: In light of the energy crisis and the high prices of OPEC oil, we know you will share our view that we must explore every possible alternative to stop OPEC and other oil-producing states from entering into agreements to restrict oil production in order to drive up the price of oil.

This conduct is nothing more than an old-fashioned conspiracy in restraint of trade which has long been condemned under U.S. law, and which should be condemned under international law.

After some research, we suggest that serious consideration be given to two potential lawsuits against OPEC and the nations conspiring with it:

(1) A suit in Federal district court under U.S. antitrust law.

(2) A suit in the International Court of Justice at the Hague based upon “the general principles of law recognized by civilized nations.”

I am not unmindful of the tender diplomatic concerns where every time an issue is raised, we worry about what one of the foreign governments is going to do, what Saudi Arabia is going to do—that we should handle them with “silk gloves” only. But when American consumers are being gouged up to $100 million a day on petroleum products, this is something we ought to consider and, in my judgment, we ought to act on.

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Act (15 U.S.C. Sec. 1). The Administration has the power to sue under 15 U.S.C. Sec. 4 for injunctive relief to prevent such collusion.

In addition, the Administration has the power to sue OPEC for treble damages under the Clayton Act (15 U.S.C. Sec. 15) since OPEC’s behavior has caused an “injury” to U.S. “property.” After all, the U.S. government is a consumer of petroleum products and must now pay higher prices for these products. In Reiter v. Sonotone Corp, 442 U.S. 330 (1979), the Supreme Court held that the company’s action in hearing that alleged that collusion among manufacturers had led to an increase in prices had standing to sue those manufacturers under the Clayton Act since “a consumer deprived of money by reason of allegedly anticompetitive conduct is injured in “property” within the meaning of the Clayton Act.”

One issue that would be raised by such a suit is whether the Foreign Sovereign Immunities Act (“FSIA”) provides OPEC, a group of sovereign foreign nations, with immunity from suit. To date, the Federal Court, the District Court for the Central District of California, has reviewed this issue. In International Association of Machinists v. OPEC, 477 F. Supp. 553 (1979), the Court held that the nations which comprise OPEC were immune from suit in the United States under the FSIA. We believe that this opinion was wrong in engaging in “governmental activity,” then the FSIA shields them from suit in U.S. courts. If, however, these nations are engaging in “commercial activity,” then they are subject to suit in the U.S. California District Court held that OPEC activity is “governmental activity.” We disagree. It is certainly a governmental function to regulate the extraction of petroleum from its territory by ensuring compliance with zoning, environmental and other regulatory regimes. It is clearly a commercial activity, however, for these nations to sit together and collude to limit their oil production for the sole purpose of increasing prices.

The 9th Circuit affirmed the District Court’s ruling in Int. Assoc. of Machinists in 1981 (649 F.2d 1354), but on the basis of an entirely different legal principle. The 9th Circuit held that the Court could not hear this case because of the “act of state” doctrine, which holds that a U.S. court will not adjudicate a politically sensitive dispute which would require the court to judge the legality of the sovereign act of a foreign state.

The 9th Circuit itself acknowledged in its Int. Assoc. of Machinists opinion that “The [act of state] doctrine does not suggest a rigid rule of application,” but rather application of the rule will depend on the circumstances of each case. The Court also noted that there is a “considerable and availability of internationally-accepted legal principles which would render the issues appropriate for judicial disposition.” The Court then quoted Organization for Economic Coopera- tion and Development (OECD) v. Banco Nacional de Cuba v. Sabbatino, 375 U.S. 398 (1964): “It should be apparent that the greater the degree of codification or consensus that has been reached under the international law, the more appropriate it is for the judiciary to render decisions regard-
should not be entered. Defendant OPEC was served by sending a Copy of the Application by means of Federal Express international delivery at its offices in Vienna, Austria, to the attention of the Office of the Secretary General. The proof . . .

RULES GOVERNING PROCEEDURES FOR THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HOLLINGS. Mr. President, the Senate Committee on Commerce, Science, and Transportation has adopted modified rules governing its procedures for the 107th Congress. Pursuant to Rule XXVI, paragraph 2, of the Standing Rules of the Senate, on behalf of myself and Senator MCCAIN, I ask unanimous consent that a copy of the Committee rules be printed in the RECORD.

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

RULES OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

I. MEETINGS OF THE COMMITTEE

1. The regular meeting dates of the Committee shall be the first and third Tuesdays of each month. Additional meetings may be called by the Chairman as he may deem necessary or pursuant to the provisions of paragraph 7 of rule XXVI of the Standing Rules of the Senate.

2. Meetings of the Committee, or any Subcommittee, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the Committee, or any Subcommittee, on the same subject for a period of no more than 14 calendar days may be closed to the public or a motion made and seconded to go into closed session to discuss only whether the matters enumerated in subparagraphs (A) through (F) would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the members of the Committee, or any Subcommittee, to determine if the matter to be discussed or the testimony to be taken at such meeting or meetings—

(A) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) will relate solely to matters of Committee staff personnel or internal staff management or procedure;

(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(D) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(E) will disclose information relating to the trade secrets of, or financial or commercial information pertaining specifically to, a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(F) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

3. Each witness who is to appear before the Committee or Subcommittee shall file with the Committee, at least 24 hours in advance of the hearing, a written statement of his testimony in as many copies as the Chairman of the Committee or Subcommittee prescribes.

4. Field hearings of the full Committee, and any Subcommittee thereof, shall be scheduled only when authorized by the Chairman and ranking minority member of the full Committee.

II. QUORUMS

1. Thirteen members shall constitute a quorum for the transaction of all business that may be considered by the Committee, except for the reporting of a bill, resolution, or nomination. Proxies shall not be counted in making a quorum.

2. Eight members shall constitute a quorum for the transaction of all business that may be considered by the Committee, except for the reporting of a bill, resolution, or nomination. Proxies shall not be counted in making a quorum.

3. For the purpose of taking sworn testimony a quorum of the Committee and each Subcommittee thereof, now or hereafter appointed, shall consist of one Senator.

III. PROXIES

When a record vote is taken in the Committee on any bill, resolution, amendment, or any other question, a majority of the members being present, a member who is unable to attend the meeting may submit his or her vote by proxy, in writing or by telephone, or through personal instructions.

IV. BROADCASTING OF HEARINGS

Public hearings of the full Committee, or any Subcommittee thereof, shall be televised to the fullest extent possible. If the Chairman determines that the matter to be discussed or the testimony to be taken at such meeting or meetings—

(A) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) will relate solely to matters of Committee staff personnel or internal staff management or procedure;

(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(D) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(E) will disclose information relating to the trade secrets of, or financial or commercial information pertaining specifically to, a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(F) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

This year’s Assembly brought together nearly 300 parliamentarians from 52 OSCE participating States, including the first delegation from the Federal Republic of Yugoslavia following Belgrade’s suspension from the OSCE process in 1992. Seven countries, including the Russian Federation and the Federal Republic of Yugoslavia, were represented at the level of Speaker of Parliament or President of the Senate. Following a decision taken earlier in the year, the Assembly withheld recognition of the pro-