SENATE—*Wednesday, September 14, 1994*

(Legislative day of Monday, September 12, 1994)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. BYRD).

The PRESIDENT pro tempore. This morning, as we bring our petitions to the God of our fathers, the Senate will be led in prayer by the Senate Chaplain, the Reverend Dr. Richard C. Halverson.

Dr. Halverson, please.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

In a moment of silence, let us thank God for the memory of former Senator Jack R. Miller, of Iowa, who served two terms in the Senate, as his family mourns his death which occurred August 29. And let us remember them in prayer.

And then let us pray silently for the rapid, total recovery of Gerald Hackett, Jr., from a serious illness.

If my people, which are called by my name, shall humble themselves, and pray, and seek my face, and turn from their wicked ways; then will I hear from heaven, and will forgive their sin, and will heal their land.—II Chronicles 7:14.

Baruch Hashem. Blessed be the name of the Lord.

God of Abraham, Isaac, and Israel, this evening at sunset begins Yom Kippur, the Day of Atonement, the most solemn of Jewish holy days devoted to prayer, fasting, and repentance. We thank Thee for its reminder that forgiveness and cleansing from sin require the shedding of blood and the repentance of the people of God. We who are followers of Yeshua, grateful for the Jewishness of our faith, praise God for this High Holy Day. May Thy blessing rest upon Your people, Israel, and may we who follow Yeshua, with them take seriously blood atonement and repentance.

Give us ears to hear and hearts to respond to the glorious promise of God in II Chronicles 7:14: *If my people, which are called by my name, shall humble themselves, and pray, and seek my face, and turn from their wicked ways; then will I hear from heaven, and will forgive their sin, and will heal their land.*

To the glory of God we pray. Amen.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. The Senate will be in order. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

The PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and proceed to the nomination of Adm. Henry H. Mauz, Jr., which nomination the clerk will report.

NOMINATION OF ADM. HENRY H. MAUZ, JR., TO BE PLACED ON THE RETIRED LIST IN THE GRADE OF ADMIRAL

The assistant legislative clerk read the nomination of Adm. Henry H. Mauz, Jr., to be placed on the retired list in the grade of admiral.

The PRESIDENT pro tempore. The Senator from Washington.

Mrs. MURRAY. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I rise to speak against the invasion of Haiti and to make an observation.

The PRESIDENT pro tempore. If the Senator will pardon the interruption, the Senate is in executive session.

Mr. PRESSLER. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

The PRESIDENT pro tempore. Is there objection to the request that the Senator be permitted to speak for 5 minutes as in legislative session, and as in morning business, for the conduct thereof? Hearing no objection, the Senator is recognized for not to exceed 5 minutes.

THE UNITED STATES INVASION OF HAITI

Mr. PRESSLER. Mr. President, I rise in opposition to the United States invasion of Haiti. It is my observation that it would be unwise for us to send troops to invade and to occupy that country.

Let me make another observation. If you take the exact criteria that are being used to justify the invasion of Haiti, you could use those same criteria to say we should invade the District of Columbia, our Nation's Capital. That may sound a little preposterous upon first hearing it, but the fact of the matter is that an average of over one American is being killed per day on the streets of the District of Columbia by criminals and gangs. Schools in the District of Columbia had to be closed for a week because of disorder and problems just recently. Public housing in the District of Columbia has been taken over by the Federal judiciary because of corruption and ineptitude.

Public safety of the citizens of the District of Columbia is at stake. Human rights are being violated, certainly, when over a person a day is being killed and as many as five or six are being seriously wounded. These are American citizens.

The Mayor of the District of Columbia has, at one point, called for stationing troops in the District of Columbia to restore order.

This may sound far-fetched, but if you use the exact same criteria that are being used to justify the invasion of Haiti, you could justify the invasion and the stationing of troops in the District of Columbia, where we would be saving American lives, providing safety for American citizens, and helping with poverty in our own country.

Mr. President, I think it is very strange that this invasion is being approached the way it is. It is planned, it is public, but the Congress is not voting. In the case of Grenada it was a surprise exercise.

In the case of the Middle East, it was not a surprise exercise; therefore, a vote was sought in this body, by President Bush, and we had a debate and I spoke here from this desk on that issue. I think we should have a vote in the Congress precisely because the planned invasion of Haiti is not a surprise.

I think it is very strange that this invasion will occur in October. I believe that it is being planned in part for political reasons to help a President restore his party at the polls. That may sound cynical. But why has it been delayed so long?

I would finally make the observation, and I make this as a former second lieutenant and first lieutenant, who served in Vietnam, in the United States Army: I believe the second lieutenants and the first lieutenants and other soldiers serving in the Army are being used for political purposes in Haiti if we send them there.

The American taxpayer will have an enormous bill to pay. It will be glorious the first day because our troops will go in, and face really no opposition. But then problems will start to

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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occur, just as in Somalia. Our taxpayers will have to pay for bridges that our trucks drive over. We will be building infrastructure in Haiti that we should be building in the District of Columbia or on the Indian reservations of South Dakota, where immense poverty and a high rate of prenatal deaths due to alcoholism are abundant, in addition to all sorts of other problems.

We have problems in our own country that will not be solved as a result of the money we spend in Haiti, which, in the long run, largely will be lost.

Then, after we are in Haiti for a few months, disturbances against our troops will begin. Some of our troops will be killed. They will have to return fire. There will be lawsuits against the United States.

If we really believe Aristide is going to restore democracy, we are fooling ourselves. It is true he was freely elected, but Hitler was freely elected in one of the fairest and freest elections in German history, and he did not rule like a democrat. If we look at Aristide's record, he did not rule like a democrat when he was in power. He urged judges to give his political opponents the death sentence. He urged necklacing; that is, putting a tire around the necks of his political opponents and pouring gasoline into it and lighting it as a punishment for people who disagree with him politically.

Young Army lieutenants—second lieutenants and first lieutenants—and sergeants and noncommissioned officers are going to be used to restore this person to power who has no intention of implementing, and no concept of building democracy once he is back in power.

This is a sad day for the United States. I hope that the President of the United States will come to this Senate for a vote. It differs greatly from Grenada, which was a surprise operation. In this case we have a situation with plenty of time. The Senate is not doing much else. We could have a debate and vote on it. But the majority party will not allow us to have that vote. We should make that point to the American people. It is sad that in this election season, we find ourselves in this state of affairs.

Mr. President, I yield the floor.

Mr. DURENBERGER addressed the Chair.

The PRESIDENT pro tempore. The Senator from Minnesota [Mr. DURENBERGER].

NOMINATION OF ADM. HENRY H. MAUZ, JR., TO BE PLACED ON THE RETIRED LIST IN THE GRADE OF ADMIRAL

The Senate continued with the consideration of the nomination.

Mr. DURENBERGER. Mr. President, I rise today during this debate over the retirement of Admiral Mauz to suggest to my colleagues that they support the majority and support the Armed Services Committee recommendation with regard to Admiral Mauz and also to take just a few minutes to discuss the larger issue of sexual harassment in the U.S. Navy.

I need tell none of my colleagues that we faced this precise issue of allegations earlier this year when Admiral Kelso's retirement was before the Senate. I voted then to give Admiral Kelso retirement at the four-star grade because I felt it was improper and unfair to have a trial of Admiral Kelso's conduct on the floor of the U.S. Senate. It seemed to me that we had a lot of allegations, but we had no certainty, we had no conviction, no process by which Admiral Kelso could defend himself from the allegations or where his accusers could have their side vindicated. It struck me at the time that the floor of the U.S. Senate is a very poor place to try to come to judgment on contentious factual issues, and I said so at the time.

Mr. President, I have become something of an expert, if there is such a thing, on the subject of sexual harassment in the Navy over the last year, largely due to the experiences of one of my constituents, Lt. (jg.) Rebecca Hansen. It has now been reported all over the country that I ended the career of a great admiral, Adm. Stanley Arthur, when I held up his nomination for the commander of the U.S. Forces in the Pacific because of a role he did not ask for but accepted in the Hansen case.

Mr. President, that is not true. The Navy did it to him, with, I suspect, the unwitting help of the Senate Armed Services Committee. But, there again, the problem is not me or even Admiral Arthur, but the absence of a sensible process in the Navy and in the congressional oversight process to handle allegations of sexual harassment.

In the Hansen case, I asked the Navy, starting on April 7, 1993, in much the same way that I have asked hundreds of Federal agencies over 16 years in the U.S. Senate, to explain how it made decisions and arrived at conclusions in a specific matter involving my constituent, Lt. (jg.) Rebecca Hansen.

What I experienced from April 1993 until June 1994 was, with more than 1 year of correspondence and meetings, some of which I was personally involved in, was a system that avoided responsibility, answered direct questions with indirect answers, and otherwise resisted any attempt to find out why they treated a constituent of mine the way they did.

And I must say, without exaggeration—I do not need to do that anymore, since I am leaving this place, Mr. President—in 16 years, I have never seen anything like the way the Navy tried to avoid answering simple, direct questions in the case of Rebecca Hansen.

Finally, in total frustration, on April 28, 1994, more than a year after this effort on my part began, I took what was an extraordinary step for me of putting a hold on Admiral Arthur's nomination. I am not one of the people in this place that does that sort of thing. I say it was an extraordinary step because with regard to constituent service matters, I have never been put in the position before where I had to resort to this particular tactic simply to get straight answers out of a Federal Government office. But I felt at the time that the Navy would not evade my questions—I hoped they would not—if I did this, and that the Navy would not want to put Admiral Arthur at risk.

Mr. President, I was dead wrong. Rather than talk to me, the Navy called the chairman of the Armed Services Committee, or someone, and asked how long the nomination could be held up. And for reasons I will never understand, the Navy decided to withdraw the nomination rather than hold anyone accountable in the Hansen case. Perhaps someone else knows the reason why Admiral Arthur's nomination was withdrawn. But it is remarkable to me, in the context of today's debate, that the Navy would go to such lengths as withdrawing the nomination of Admiral Arthur in order to avoid dealing with the reaction of Navy personnel to the acknowledged sexual harassment in the Hansen case. It is not at all surprising, based on my experience, that they would lay off on me the responsibility for their decision.

I want to thank especially my colleague from Virginia, Senator WARNER, who has been a longtime member of the Armed Services Committee and former Secretary of the Navy, for his particular efforts and for those of the leadership of the committee in helping us get the real story of the Hansen case out after the fact.

It is remarkable to me that the U.S. Navy, after having gone through the identical experience with Admiral Kelso, would now present Admiral Mauz' retirement without any greater efforts to get to the bottom of the allegations against him. I read carefully the remarks Monday of my colleague from Georgia, the chairman of the Armed Services Committee, in which he acknowledged, and I would acknowledge, the terrific efforts the committee went to to find out the truths of the allegations against Admiral Mauz.

But with all due respect, getting the Navy's version of disputed facts, based on the findings of a Navy inspector general, is not a fair or reasonable process. It is instructive to me that a civilian court of law in the Paula Coughlin case recently ruled inadmissible the Navy inspector general's report on the grounds it was unreliable.

I would note that in the Hansen case there was also an inspector general's report, but I was told, Mr. President,

personally, by both the Navy and the staff of the Armed Services Committee I was not permitted to see that report. Hence, I was left to my own devices to get information. And to this day I have no idea if the Hansen inspector general's report is worth the paper it is written on.

Mr. President, as I said in the beginning, I intend to vote to give Admiral Mauz his retirement at the four-star rank. And I will do so, albeit reluctantly, because I think it is unfair to give credence to mere allegations in a forum where he has no voice, the floor of the U.S. Senate.

I agree with my colleague from Georgia, Senator NUNN, who said on Monday, and I will quote:

> An allegation is not a fact. An allegation is not proof.

And continuing to quote my colleague:

> We need to keep that in mind. There are too many of these cases now coming before the Senate where allegations are being taken as tantamount to fact. That is simply not the way that any deliberative body adjudicates important matters.

I end the quote from my colleague by endorsing his analysis of the situation, and I agree with him.

All I can say is that blind reliance on the Navy to investigate itself and report on its findings is not much better. And that is 16 years of experience.

So I have written a letter to my colleagues who have the responsibility of oversight, which is a near impossible situation given how fast things change in this place, suggesting to them what I will now suggest to all of my colleagues and to the Navy, that it is kind of a sad spectacle to see repeated again and again and again allegations coming up at a time when a person is ending an otherwise most honorable career in the Navy.

It is my view that victims of harassment must have confidence that they have a forum to bring their complaints, a forum where they can get a fair hearing, where they will not be subverted by what is often called the old boys network, and where they will not be victimized further with retribution or retaliation carried out by cronies of their harassers.

At the same time, those accused of sexual harassment must have a forum where they can defend themselves from unfair allegations, a place where they can clear their names and vindicate their decisions and their behavior, and a forum in which a traditionally and historically male-dominated service, in which officers retiring today are no more nor less sensitive than males of the same generation in other walks of life, can have their behavior put in perspective, so outstanding careers are not jeopardized by the acknowledged need to eliminate gender bias. This is not the place to do that.

Finally, I say we in the Senate need a process where we are confident that whatever we decide in any given case, we are deciding it on the merits, on the true facts, after a full and fair hearing and deliberation.

Mr. President, Stanley Arthur will retire from the Navy someday. He does not deserve to retire with any kind of a cloud over his head. He deserved to command the Pacific forces, but the Navy decided otherwise. The Navy, not I, made that decision. The Navy, not I, will cause this predicament to be repeated if they and the oversight committees cannot agree on how to deal fairly with constituent concerns and naval history.

No one will be satisfied with the decision we make today, whichever way it goes, because there is no factual record upon which to deliberate, no conclusion, no conviction that we are operating with full knowledge of the facts.

So I leave here and I leave it to future Congresses and the Navy to decide how that is to be done. My staff has been briefed by the Navy on their efforts to establish just such a procedure, and it appears to me that the Navy is making a good start. But along with that procedure we need to see the determination of the Navy, from the Secretary on down, to implement the procedure with fairness and with certainty.

The case of Admiral Mauz does not give evidence of that determination. I think he deserves what he has asked of us today, and I support the leadership in their efforts to see that he does get it, and I will support that effort here today as well. I hope the next case that comes up will demonstrate we have chosen and are on a different and a better course.

Mr. President, I yield the floor.

Mr. NUNN. Mr. President, will the Senator answer one question he raised before he leaves the floor?

We all have a lot of thinking to do about how these nominations are handled. I think the Navy and the military services are going to have increasing cases of complaints, some of which are going to be valid. Inevitably, according to human nature, some of them are not going to be invalid. Some people are going to deserve punishment for the sexual harassment, and some people are going to be innocent victims of allegations of individuals who have not somehow made the kind of progress in the military they expected to make and therefore are looking for reasons for that and looking for ways to place blame.

So this is a difficult area. The military has gone through difficult transitions before. This is going to be a difficult transition that is going to be with us some time, and I think our committee has urged and will continue to urge the Department of Defense to come up with expeditious, fair, and objective ways of judging these cases. And they are working on that.

But I think we all have to understand that this is a challenge for the military. We are making positions available for women in the military which are overdue and which they can perform very well. But there are significant changes taking place here, and it is going to require judgment on the part of all.

One point the Senator from Minnesota made that I think needs correction is he mentioned that this was strictly a Navy investigation. That is the normal course of events. If the DOD IG is required to review and supervise every service investigation of one-on-one misconduct, whether it is sexual or otherwise, there would be hundreds of thousands of cases of such in the military.

I do not think we in this body sometimes put in perspective the number of people out there in the military and the number of incidents that take place, some of them sexual harassment-type cases, some of them other type cases. For instance, Admiral Mauz had under his command 175,000 people.

Now, Admiral Mauz right now is out there on duty in the Navy, and he is one of the key players in preparing for whatever may take place in Haiti, perhaps within the next few days or weeks. If somebody this morning has a one-on-one offense, whether sexual harassment or not and the captain of a ship under his command—he has over 200 of them—takes action, I personally do not want Admiral Mauz involved in that now. He has things he has to do. He has to supervise the security of the country and the Navy, the Navy's role. So I do not want the four-star commander out there to have to be involved and be responsible, and not for us to start creating the climate on the floor of the Senate that they are responsible to supervise and make sure that every detail of every administrative or even court martial proceeding against an individual is handled properly.

There is a whole chain of command. They are ultimately responsible. The four-star admirals are responsible for supervising and for creating a climate, and all of that, and they should be held accountable for that. But if a captain of a ship makes a misjudgment in how they handle an administrative matter or a doctor basically—and in this case, according to the Navy, all the information we have, the doctor who recommended psychiatric confinement and examination for this particular complainant did not know that she had ever lodged a sexual harassment complaint. We have that on the word of the Secretary of the Navy. They looked into it.

So, if there was a misjudgment about the doctor here, it had nothing to do, according to the Navy, with the sexual harassment complaint that this individual had filed. He did not know about it.

I do not think this body wants to hold a four-star admiral responsible for that kind of detail unless we want to say to them that we no longer want them to worry about Haiti, Bosnia, Somalia, or the safety of the fleet. They have responsibility for over 200 ships and over 175,000 people. If we start creating the climate—I know it would be inadvertent and not intentional—that our top military officials are responsible to personally supervise and intervene in virtually every kind of conflict out there, we are asking the impossible. We are about to set a kind of expectation that can cause the military services and our overall national security some severe jolts.

The individuals involved in these cases need to be treated properly. The chain of command needs to set the tone, and needs to set the climate. They need to make sure that their people are carrying out the overall policy, and they need to take prompt action when it comes to their attention that something has gone wrong. They need to discipline people who do not adhere to the policy of the Navy.

But to hold them responsible—I know the Senator is not in this case, and I recognize his remarks. I know he is supporting the committee position on this. But I hope we do not create a climate that is so unrealistic that it does damage to the top commanders' ability to do their No. 1 job which is, after all, to protect the security of this Nation. That is the number one job.

In this case, although I do not think it happens in all cases, there are not enough people in the DOD IG. We would have to have tens of thousands of them if we are going to have the DOD IG supervise everything that happens in the Navy, Army, Air Force, and Marine level. But in this case, because of the significance of it, and because in this case the victim really was sexually harassed—there is no doubt about that; there is no dispute it; she was; and the persons who did that deserve punishment and received punishment —but in this case the DOD IG did review the Navy IG report in both of these matters, both the Taylor matter and Simmons matter.

The Senator mentioned no one outside the Navy, but the DOD IG reviewed both of these cases and concurred with the Navy IG finding. I wanted to make that clear to the Senator. I submit that to him.

Mr. DURENBERGER. Mr. President, I intend to be brief.

I acknowledge the contribution that my colleague from Georgia has made to this particular discussion that I raised this morning. Maybe I will just make three points as he has talked.

First, he believes he is correct. I do not know that there is any priority that Haiti all of a sudden takes priority over gender bias or anything else. I think the responsibility—whether it is the Commander in Chief or a particular admiral in a particular area of responsibility—the responsibility is to make sure that the goals and the objectives that are set and the strategy are implemented by appropriate tactics.

To that extent, I agree with what my colleague said about there needs to be a system in place. There needs to be a climate that is encouraged. There needs to be an environment in which people understand the standards of the U.S. Navy, whether the issue is gender bias or whether it is any other kind of an issue that involves the people, the professionals in that institution. That is a responsibility that creates a climate in order to have a system that everyone understands, and then to enforce that.

Clearly, an admiral who is responsible for a large command cannot be responsible for something that is going on directly who said what to whom on a particular ship at a particular time. But it strikes me that admiral, he or she, is responsible in the sense that in a particular case rules are violated, there is a general lack of respect within a particular command, and that is ignored after someone complains about it. Of course, the person at the top is responsible whether they were there or they were not there. I hope that is clear.

Second, I think it is important for people to understand that the response indicated it was not just the Navy that looked at it. It was the Department of Defense.

I hope that my colleague from Georgia and the other members of the Armed Services Committee understand that we are all in this together. The process of transition from an all-male, basically or a male-dominated institution to something else is a very difficult transition. It is more difficult in the Navy than in any other service I would suggest, although I as an old Army man I have a certain bias with regard to the subject. But it is more difficult in the services where people normally carve out a career, and as a tradition—which is hundreds of years old—it is more difficult there than IBM, or the company I came from, or this place. It is incredibly difficult.

But I would hope that the Navy, the DOD, and my colleagues on the Armed Services Committee will acknowledge that because of the nature of the office that each of us holds, whether we are on the committee or not, we are all in this together in helping the Navy, or the armed services in general through this transition period. And in my particular case, the Lt. (jg.) Rebecca Hansen case, I am not approached as a member of the Armed Services Committee. I am approached in the traditional fashion which is as her Senator.

So I have my own experience with how the Navy is in transition. It was not a very pleasant experience. But I do not want to go into the details of that particular case because I do not want to try that on the floor of the U.S. Senate, any more than I think we should try the Admiral Mauz case on the floor of the U.S. Senate.

But I want my colleagues on the committee to understand. I say this particularly as I leave. There are always going to be 100 people, the Senators from Washington, Georgia, South Carolina, Minnesota, wherever it may be, involved at least in this body in this transition. And the way in which the Navy handled the Hansen case demonstrated clearly to me that I am not part of this transition—just the way in which they answered the questions, the way in which they dealt with it, the way in which they dealt with Stanley Arthur, laying off on me the fact that a great admiral, according to them, cannot get a command. They lay off on me because I am doing constituent service. There is no evidence that I would keep a hold on him forever, or over anything. They just made a decision to jerk him knowing that, as it turns out, half the people that have any experience at the Navy thinks it is my fault because I am a difficult politician and that is the way the politicians operate; and the other half think it was the Navy's fault, which happens to be right in this particular case.

But I feel badly for Admiral Arthur as I do for Admiral Mauz or anyone else, particularly if Admiral Mauz is right in the middle of an invasion, which most of us are going to object to. That is a pretty tough line. It is hard to get down to the line when you have all of that sort of stuff stacked against you.

So I want my colleague from Georgia, for whom everyone in this body and outside of body has such incredible respect, to understand that my reason for bringing up my particular experience at this time in this context and suggesting to my colleagues that no matter what he or they may think of the Mauz case, that I think the committee deserves to be supported in their judgment in this case. But the committee also needs to understand that there will always be 100 of us involved at any given time in this process of transition, and the Navy has to understand that, and the oversight process needs to reinforce that so we are not back here with the next admiral or the next whatever going through this trial by politician on the floor of the U.S.Senate.

Mr. NUNN. I thank the Senator from Minnesota. I do understand that. I understand that our committee is basically the agent of this larger body and that we report—in effect, to all 100 Senators—and all 100 Senators are the only ones who can make the decisions. The committees make decisions. But they are all subject to the floor and all confirmations are subject to the floor.

Every Senator has the right to raise these questions. And we do our very best to respond to every question that is raised by any Member of Senate in the correspondence of any nomination. We have done that over and over again. We will continue to.

What we are going to discuss in just a few minutes—I do not want in any way to preempt the remarks of my friend and colleague from Washington—whether the committee should have a formal hearing on this nomination. I hope that the Senate will agree with the committee that we do not need a formal hearing.

But we simply cannot do our job and have formal hearings on each contested nomination or on each nomination where there is an allegation or even a serious allegation. If we feel that the Navy or the investigating body has not done the job properly, or if we feel that we cannot get the information without having hearings, if we feel anyone is misleading the committee, or there is not good faith, I think hearings are in order. We have had them frequently, and we will again. But I hope the Senate will keep in mind our committee jurisdiction. We have 73 civilians that are appointed to go through our confirmation process in the Department of Defense. Unfortunately, those rotate. So 73 is not a one 4-year deal; it is many more than 73 when you consider all of the people that drop out. We now have six nominations out here that have been pending, civilians, top DOD civilians, that have been pending for 6 weeks, top people in the Department of Defense, that one person or another has some problem with. In most cases, we do not even know what the problem is, and they are being held up. I do not know what the problem is, and I am chairman of the committee. We cannot get those passed. These are top people that are supposed to be in place running the Department of Defense.

In this Congress, we have had 61,112 military people come through our confirmation process—61,112. Out of that many, we have had 1,085 general or flag officers—1,085. If we are going to have a hearing on, let us say, even 10 percent, 1 out of 10 of those we may get some complaint about, then we will do nothing but have hearings on general and flag officers. We probably will never get to the civilians.

The scope and magnitude of what we are dealing with here is what I hope our colleagues will put into some context. That does not excuse anybody from looking into each serious allegation. I emphasize that. But the procedure by which we do that has to be thought through. We cannot have a formal hearing on all of those.

While I have had six civilians out here that have been held up for some 6 weeks now, we have a hearing again this afternoon on two more top civilians that have not yet had a hearing. We hope to have a hearing and get them confirmed. But the committee gets a little discouraged—I do as chairman, and I know the ranking member does—when we are having a hearing on two more people. And what am I to tell them? Well, the last six are still pending from 6 weeks ago. They were on the floor. When the committee recommended them, there were no problems that we knew of. They are still pending. You are going to take a job in the Department of Defense—and one individual is coming out of the private sector. I have known him a long time. He is a very top individual. I do not know how much he is sacrificing, but I think it is several hundred thousand dollars a year. It is probably closer to a million, my staff tells me, having looked at the financial records. He is sacrificing millions of dollars, and he has already, in all likelihood, disassociated himself from many of the commercial activities he has. When he comes before the committee today, I am supposed to say to him—and I say to my friend from Washington, it has nothing to do with this; I am talking about civilians now, but I am giving the scope of the committee activity. I am supposed to say to him or her, well, on the last group that came through, we do not know what the problem is. Six of them are on the floor and they have been held up for 6 weeks. We cannot get them through. And we are not going to be in but 4 more weeks, so we will be back next January or February, and I hope you have a good time in the next 3 or 4 months waiting for confirmation.

This process is getting out of hand. Individual holds are getting out of hand on the floor. People are having holds on nominations for purposes that have nothing to do with the nominee. That is not the case here. This case is based on the nominee, and my comments are on my larger frustration and have nothing to do with the Mauz nomination. People are holding up nominations time after time for some larger strategic purpose or, in some cases, for leverage purposes, in terms of something they want the Department of Defense to do—sometimes legitimate and sometimes questionable.

I think the process is getting out of hand. It is getting out of hand. My frustration is not with the Mauz nomination per se. Senator MURRAY from Washington, and others who raise questions on this nomination, as well as the Senator from Minnesota on the Arthur nomination, those were related to the nominee. Those matters dealt with the merits of the case on the nominee, whether we agree or disagree.

Where the real abuse is occurring is when the hold on the nomination has nothing whatsoever to do with the nominee. And if we continue to do this in this body, then what we are going to do is we are going to end up lowering the quality of people willing to serve the country, not just in defense jobs, but other jobs. It may already be happening. But we have an awesome responsibility under the Constitution of the United States in confirming people. Our committee takes that very seriously and will continue to. But this whole body is going to have to take it seriously, too, collectively and individually.

Somehow the leadership of this body, and all of us involved in it, are going to have to address this question. Again, I am not speaking on nominees, where there is a problem with the nomination itself, but particularly, the frustration is with other cases that we have going on right now, which have nothing to do with the nominees but simply larger purposes. The larger picture of what kind of people are going to be willing to serve this country, I think, is increasingly coming into play.

Mr. DURENBERGER. Mr. President, I appreciate that. For the benefit of the Chair and for the benefit of my colleagues, my response to my colleague's remarks will be brief.

First, I acknowledge that this part of the process does get out of hand. I think the whole business of holds is way out of hand in this place. I acknowledge that. It is not just in this case, it is in every other case. I acknowledge that there are ideologues putting holds on people because they disagree on ideology. We also know that leverage has become an important part; leveraging something out of somebody for something has become another way, as my colleague has pointed out. I deplore both of those.

I cannot leave the floor and leave the subject that brought me to the floor without restating the fact that in this particular case—and I talk not about the Mauz case but about how I come to the floor on the Mauz case because of the situation with regard to Admiral Arthur and Lt. (jg.) Rebecca Hansen. All this Senator wanted out of the Navy was a response, not a specific action, not to reinstate her. And I did not want to be put in the place of Solomon, to cut the woman in half, or the Navy in half, or Admiral Arthur in half; I just wanted an answer. That is my point. I cannot get a direct answer because the Navy is on the defensive because of Tailhook and sexual harassment and some changes in command. But that is all this Senator wanted.

That is the only reason I have ever put a hold. I rarely do it. That is the only reason I have ever done that in this process, to the best of my understanding.

I met with the new Chief of Naval Operations at one point, and we went through this issue. He said, "You should talk to the inspector general." I said, "Fine," and within 2 hours the Navy inspector general was there and I talked to him. He said, "Well, obviously, Senator, you have not read the

IG report." I said, "You are absolutely right, Admiral, I have not. Where is it?" He said, "I cannot give it to you, but they have it in the committee." I called the committee and they said, "Yes, we got it," and I never got to see it. I do not think I should be the judge in a particular case, but at some point each of us has to bring some judgment to bear in each of these constituent cases. It was not, in my case, my constituent, right or wrong, because I have a responsibility to my country, to the oath I took, to the Navy, and to my constituents. But I could not get that job done in that particular context.

Mr. NUNN. Will the Senator yield on that point?

Mr. DURENBERGER. Yes, I am happy to.

Mr. NUNN. I am informed by staff and have been for some time—and the Senator from Minnesota and I have not had a chance to talk on this; he raises a very legitimate question—that our practice in the committee is not to have staff read the IG report but to require Senators to read the IG report.

The Senator should check with his staff. But my staff advises me that the Senator's staff was informed, that the Senator could read the report, but not his staff. I believe that was right before recess. The Senator was able to get on a plane to go out of town. I think the staff was not permitted to read the report, but the Senator is always entitled to read the report.

I want to make sure to clarify that if we have any miscommunication between our staffs, that needs to be clarified also.

Mr. DURENBERGER. Mr. President, I acknowledge what my colleague said. I do not know if that is the case or is not the case.

I merely want to say that I did not have the opportunity to read the report. But whether I did or I did not, and if I had read the report and if the Navy had responded, if the Navy had given me the answers to four questions as quickly as they gave the committee 2 feet of information within 48 hours when this issue became public, if they had done that, that would not be any reason to have a hold on this nomination.

My point here is simple. Whether he has to go through a hearing process or not, Admiral Mauz will get his four stars. Stanley Arthur is not going to get his opportunity.

I just want to make the point that it is not my fault, it is not Rebecca Hansen's fault, that he did not get it. It is the fault of the U.S. Navy. They made the decision to jerk him from the appointment to command the Pacific. For whatever reason they did that, that is their decision.

But right, wrong; appropriate, inappropriate, it simply says, and I will leave the floor by repeating this, that the Senator from Washington, the Senator from Minnesota, whoever that will be next year, as well as the members of the Armed Services Committee, are all in this process together.

I want my colleagues also to know, particularly my colleague from Washington, and others, that the chairman is right about the effort that the committee puts in on hearings. In fact, the unfortunate thing in the Rebecca Hansen case is, the hearing took place after the fact but, in fact, the committee and its staff devoted endless hours to trying to find out what it was that went wrong in the Hansen case.

That is why I particularly complimented my colleague from Virginia, who read an entire letter, I think, to the full committee that I had written, and put in a lot of time looking at this matter after the fact. After the fact is not going to help anybody.

Ahead of the fact, the Senator from Georgia has stated the problem: How many hours in the day, how many days in the week, how many weeks in the year do you have to discharge your responsibility as a member of the Armed Services Committee in its many facets? And, is it the most appropriate function of the committee to be dealing with sexual harassment charges, or anything else? Is there any other—or better—forum in which these matters should be dealt with? I happen to think there should be a different forum or a different process that is separate and apart from this.

With that, Mr. President, I thank my colleagues for their patience, and I particularly thank my colleague from Georgia for his responsiveness as well.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Washington [Mrs. MURRAY], is recognized.

Mrs. MURRAY. I thank the President.

Before the Senator from Minnesota leaves the floor—I do have a motion I am going to make in just a minute—I did want to comment that I agree with him. I do not want to be Solomon in the case of Admiral Mauz. I do not believe anyone here on this floor does.

I believe there ought to be a fair and open process by which the nominations are brought to us. And I agree with the Senator from Minnesota that if we could rely on the Navy's responses we would not be requesting these kinds of hearings. But until all of us have the confidence of that—I share with the Senator his nonconfidence in that system at this point—we are going to have to rely on ourselves as a Senate in our process here in order to make these determinations.

We need a fair, open process and a fair hearing for all sides, and that is why I am about to make the motion that I am going to make. And in response to several other comments that were made in the last half hour or 45 minutes I just feel it is imperative that we do look at the process. If there is a problem with the process, we should change it. But we are here today because there is no other process, and it is the process that we are required as Senators to vote on this nomination.

I believe strongly, and I will again and again, we should not trample on the rights of an individual in the name of expediency. I believe that today and I will continue to believe it throughout my career.

To say that Haiti is one of the reasons that we should have expediency, I have to say I think that not only is a red herring, but if we start creating a climate that young men and women within the service cannot count on their chain of command, then how can we count on them to do their job to protect the security of this Nation?

MOTION TO RECOMMIT

Mrs. MURRAY. Mr. President, I move that the nomination of Adm. Henry J. Mauz, Jr., to retire in grade be recommitted to the Committee on Armed Services with instructions to hold a public hearing on the nomination and not report the nomination back to the Senate until the committee has held the hearing.

I send that to the desk.

The PRESIDENT pro tempore. The question is on the motion to recommit.

Does the Senator from Washington seek recognition?

Who seeks recognition?

The Senator from Georgia.

Mr. NUNN. Mr. President, I have a very brief response to the Senator from Washington. Maybe I did not make my point here on Haiti.

I did not say that Haiti was going to supersede this nomination or any of the issues. What I said was—and I thought I made it clear—that the four-star admirals in charge of the fleet cannot get involved in the initial outset of one-on-one type transgressions in the Navy. It cannot work that way. There are 172,000 people in the Navy.

I would venture in our own offices, usually, when there is a problem between staff personnel, and usually our office staffs are 40, 50, or 60 people total, depending on the size of the State, sometimes it is weeks before we know about those personnel problems. It depends on one's office. Even in our own office we have our administrative assistants basically to carry that out.

My point was not, as the Senator from Washington just referenced, that Haiti superseded individual rights. That was not my point. If that was anyone's understanding of what I said, then I hope it will be clarified.

My point is the top people in the military who are responsible for making plans for all sorts of contingencies that involve our national security, cannot—and I do not think we want them to—be involved in the beginning stages of conflicts between individuals and even court-martial offenses. There are

thousands and thousands and thousands of courts-martial in the military every year, and the top people have to set the climate and the procedures and eventually review in the chain of command, what is done. And when actions are taken that are unfair to individuals, they have a command responsibility to correct those.

I know that is the understanding of the Senator, but they do have other responsibilities. That was my point.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from Washington [Mrs. MURRAY], is recognized.

Mrs. MURRAY. Thank you, Mr. President.

I will speak now to my motion to recommit this. I want to be very clear about why I am making this motion. In no way do I seek to pass judgment on any of the allegations that have been made regarding the nomination of Admiral Mauz. I think that sentence bears repeating: In no way do I seek to pass judgment on any of the allegations that have been made regarding the nomination of Admiral Mauz.

I am making this motion because in my review of the allegations surrounding this nomination, more questions have been raised than answered. And I believe that the allegations raised against Admiral Mauz are sufficiently troubling to merit an open and full public hearing.

Since this nomination was reported out of committee, I have devoted a great deal of time to reviewing this situation. After meeting with the Navy and the committee and reviewing what information is available to the public, I have concluded that the only way to resolve the conflicting issues is to hold an open public hearing. I know several other Senators agree with me, including Senators MIKULSKI, MOSELEY-BRAUN, BOXER, and FEINSTEIN, and I appreciate their support in this process.

I would hope and I do continue to want to believe, that after such a hearing, the Senate could vote 100 to 0 to confirm Admiral Mauz in grade, because there would be no lingering doubts and because the hearing would provide a place where the record could be clarified once and for all.

But before I address the specific situation with regard to Admiral Mauz, let me make an important point for the record with regard to how the Senate deals with these matters generally. I would rather not be here today, involved in consideration of this issue. I know this vote is not convenient, and it is certainly not comfortable for any of us to be doing this. But I strongly believe we cannot step on individuals' rights for the sake of expediency, as I said before.

The rules we work by today say that the Senate must vote to confirm the retirement in grade of any three or four star flag officers. Typically, the Senate votes on these issues by voice, without debate. To me, the process of approving this high honor is not something we should do by rote, and it is not simply a formality. If we want to change the rules so that the Senate does not have to vote on these nominations, fine, let us do so. But for now, each Senator must answer to his or her vote. And there is another issue I need to clarify for the record. I have never put a hold on this nomination or sought delay. I have simply sought answers.

As my colleagues know, the committee reported out the nomination on August 12. Shortly thereafter, I inquired as to how thorough the review had been of the allegations, and the extent to which members of the committee had formally deliberated on this nomination through a hearing process. I was unsatisfied that all questions had been answered.

In good conscience, I informed the committee, I could not allow the nomination to be voted on by voice, and I requested a rollcall vote. At that point, the Navy came to me with information in an attempt to answer my questions. Unfortunately, as I shall clarify later in my remarks, some of the information provided to me by the Navy was conflicting and simply inaccurate.

Other members looking at this had growing concerns. Five of us wrote to ask the committee to hold a hearing before asking the Senate to consider this nomination last week. The committee continues to believe a hearing is unnecessary, and that is why we are here today. But if the Navy had provided straight answers from the beginning, there is a very good chance we would not be debating this issue this morning, and I have made the following point in the past, and I shall make it here again today: The American people deserve to know that when the U.S. Senate votes to confer high honor on our Nation's military leadership, we do so with clear justification and solid grounding in the facts of an individual's career.

It is my firmly held belief that those whom we honor in the U.S. Senate should serve to a higher standard. They should serve our Nation beyond reproach. Each Senator should be able to say to the thousands of young men and women coming behind that he who is honored is in fact a role model for their own lives as they shape their military careers.

We must be able to tell the American people that those who are honored by this body have passed the highest test—they are the figures to whom we as parents can point to with pride and say we want our children to grow up just like them. With regard to the nomination before us today, we simply do not have enough information, in my view, to determine if Admiral Mauz meets this test or not.

As you know, Admiral Mauz is currently serving as the commander in chief of the U.S. Atlantic Fleet. On May 10, 1994, he was nominated by President Clinton to retire in grade as a four-star admiral.

Navy Lt. Darlene Simmons alleges inappropriate action by Admiral Mauz with respect to the investigation and disposition of her sexual harassment case. In addition, Senior Chief George Taylor alleges that Admiral Mauz inappropriately used Government assets and retaliated against him because he was a whistleblower. Both Lieutenant Simmons and Senior Chief Taylor have written to the Senate Armed Services Committee, expressing the view that Admiral Mauz should not be retired at four stars.

Some may ask why a hearing is necessary when the Navy has already conducted their own investigations into the allegations, and in both cases, found them to be without merit?

Unfortunately, my answer to that is that at this point in time, the investigative capabilities of the Navy simply do not have the confidence of the public. The Senate Armed Services Committee has rightly assigned a special advisory board to review the investigative capabilities of the Defense Department generally, so that recommendations can be made for all the services—and especially the Navy—to improve their internal investigative processes. This special advisory board will be issuing its findings later this year. I believe the report of the advisory board will provide very useful guidance on this problem and establish a roadmap whereby Congress and the American people can regain confidence in investigations performed by the U.S. military.

In the meantime, we are left with an imperfect process in which to evaluate the cases that are ultimately brought to the Senate for confirmation. Thus, if there is a case like the one before us, where serious and troubling concerns have been raised, it seems to me quite appropriate that a public hearing should be held, so that the views of all involved—all involved—can be aired.

I want to briefly review the two cases that are relevant to Admiral Mauz' nomination, because it is important to understand the scope of the concerns raised. I think it is undisputed by the Navy and by the committee that in both the Taylor case and the Simmons case, the individuals involved were greatly wronged.

First, let me review the case of Lt. Darlene Simmons.

The Navy supports and has substantiated the charge by Lt. Darlene Simmons that she was sexually harassed while stationed abroad the U.S.S. *Canopus*. Lt. Simmons served as the legal officer of that ship. During her service as a lawyer there, she received repeated requests for dates and comments about her physical appearance from another officer who was her supervisor and with whom she worked

closely. She filed a complaint to the ship's executive officer on June 1, 1992.

On June 5, 1992, according to the Navy:

The (offending) officer was counseled and administrative action was taken. He requested retirement from the Navy as was his prerogative. Unfortunately—and unacceptably—an atmosphere of harassment and hostility persisted, particularly as the retirement of the officer involved was not effective until April 1993, and he remained on duty on the ship. On October 9, 1992, an anonymous DOD IG hot line call and a call by Lt. Simmons to [a member of Congress] and to the then Assistant Secretary of the Navy, Barbara Pope, raised the visibility of this case.

Shortly thereafter, the offending officer was removed from the ship. The Navy maintains that once Admiral Mauz knew of the problem in October, he took swift and appropriate action.

Lt. Darlene Simmons maintains, however, that Admiral Mauz knew her claim of sexual harassment had been substantiated by a Navy investigation, knew she was still being forced to work in a junior position to her harasser, and did nothing until the case went public to correct the situation. During the process, she was repeatedly retaliated against, and no one was ever held accountable. She repeatedly asked for a report to be issued on her case, but none ever was.

Lieutenant Simmons testified last spring before the House Armed Services Committee on the general issue of sexual harassment in the military. Lieutenant Simmons states:

I was sexually harassed on the *Canopus* from December 1991 until May 1992. The Navy's zero tolerance policy of sexual harassment was in place in May 1992 when I made my complaint. Action directed by those guidelines was not taken and procedures implemented were not followed. I have attempted to work within the system for over 2 years and the system has failed to address the issues or to hold anyone accountable for the failure.

Despite repeated reports to my chain of command and the Department of Defense Inspector General's Office there has never been an independent investigation conducted into the facts surrounding my complaint of sexual harassment.

During the course of Darlene Simmons' 2-year ordeal to bring an end to the sexual harassment and to hold the system accountable, she was retaliated against in a variety of ways. Her harasser was not removed from his position of authority over her for many months after she filed her complaint. Ultimately, Lieutenant Simmons was ordered to undergo a psychiatric evaluation, where she was placed in a locked psychiatric unit. She was found fit by a Navy doctor after a 24 hour observation period, but she was nonetheless forced to remain locked up in the psychiatric unit for 4 days. And then, according to Lieutenant Simmons' testimony confidential information regarding her psychiatric evaluation was wrongfully disseminated in retaliation for her reporting of sexual harassment.

Following these many humiliations, she asked her command to both stop the malicious gossip, and hold accountable those who were responsible for the wrongful disclosure. No disciplinary action was taken.

In December 1992, Lieutenant Simmons was transferred from her ship. On the occasion of her transfer, she received what she viewed to be an adverse fitness report. Since there was nothing in her record to substantiate the adverse report, she concluded it was given in retaliation for her reporting of sexual harassment.

By this time, she had taken her case to the office of Admiral Mauz. According to her testimony, an aide to Admiral Mauz said that the admiral was personally involved in her case, and that the "matter would be handled."

Shortly thereafter, she received another unsatisfactory fitness report. According to her testimony, "Admiral Mauz' office said they could do nothing to assist me."

From this ordeal Darlene Simmons concludes,

I relied on my chain of command to protect me from reprisal and to take swift and tough action when there was reprisal. My good faith reliance was not justified; instead my chain of command used the opportunity to cover up another act of reprisal.

Eventually, Lieutenant Simmons filed charges against Admiral Mauz for dereliction of duty.

The Naval inspector general looked into the case and determined the allegations by Lieutenant Simmons' against Admiral Mauz to be without merit. According to the Navy, Admiral Mauz responded to the complaints of Lieutenant Simmons in an appropriate manner and took corrective action on her behalf.

I now want to speak to the case of Senior Chief George Taylor.

Senior Chief George Taylor is currently stationed at U.S. Naval Construction Battalion Center, Port Hueneme, CA, and considers himself a whistleblower.

Senior Chief Taylor maintains that he was retaliated against by Admiral Mauz because he "blew the whistle on waste, fraud, and abuse concerning mismanagement at the U.S. Naval Air Station in Bermuda." Taylor maintains that in November 1992, Admiral Mauz abused his power and authority by traveling to Bermuda along with 12 other military and civilian personnel for a 5-day vacation. At the time, Taylor was serving as Chief of Military Police at Naval Air Station Bermuda.

Taylor asserts:

Admiral Mauz was flown to Bermuda at government expense along with other personnel. During his time on the island his entire "official" visit consisted of playing golf, dining in the best restaurants, and shopping * * *.

In the months following his public whistleblowing, Taylor was charged with over 48 offenses of violating the Uniform Code of Military Justice, which the Navy said were "unrelated to Bermuda." Ultimately, all charges were dismissed, but Taylor maintains they were related to his whistleblowing against Admiral Mauz, and that Admiral Mauz was a "key player" in bringing up the charges.

Chief Officer Taylor maintains that Mauz tried to influence and pressure the investigation, and to intimidate Taylor's military defense counsel.

According to the Navy,

Admiral Mauz was not involved in Senior Chief Taylor's case in California. He played no role in the charges themselves or in the disposition of the charges * * * Regarding Bermuda * * * the Naval inspector general conducted a complete and thorough investigation. The investigation did not disclose any misuse of government facilities. The IG determined * * * that the scheduling of the trip created the perception of impropriety and * * * Admiral Mauz received informal written counseling.

So what to make of these two serious cases, where clearly two members of our Nation's armed forces were greatly wronged? Both have asked that we in the U.S. Senate hold their chain of command accountable—in this case, Admiral Mauz.

I would like to make it clear that as I have attempted to sort out the information on these cases, the staff of the Armed Services Committee has been extremely helpful in attempting to get answers to my questions, and I commend and thank the committee for their efforts.

In my meetings and exchanges with the Navy, however, I have been left with more questions than answers. At times the information provided to me by the Navy has been conflicting and downright inaccurate. Other times, it has been helpful and clear. But I would not be here today, requesting this hearing if the responses from the Navy had consistently been reliable and accurate, and that is truly unfortunate and deeply troubling.

Thus, without a public hearing on these issues, and without full confidence in the Navy's investigative capabilities, I can not in good conscience bestow honor on the leadership, while brushing aside the concerns of a junior officer and one of our Nation's enlisted personnel.

Again I find myself down here on this floor talking about leadership and the chain of command. I respect the chain of command. Frankly, my colleagues, we are part of that chain of command. The people who elect us are at the top. They expect us to exert leadership when we see problems.

Imagine if Darlene Simmons were your daughter. She goes to law school; she enters the Navy. She finds herself in a situation where her superior is constantly propositioning her. Her work environment becomes unbearable so she complains to her chain of command. She gets locked up in a psychiatric unit. Material evidence on her

case is mysteriously lost. Her medical information is leaked to her colleagues so that her working environment becomes, once again, unbearable. The Navy issues what she feels are adverse fitness reports and she is further discredited.

If she were my daughter—or my son—I would be confused and angry. If she were yours, so would you.

And we would ask questions and demand answers.

And so I am doing so today, before I case my vote on this nomination.

I urge my colleagues to join me in this motion to instruct, so that a full public hearing can be held.

As I have said in the beginning of my statement, I am not offering this motion based on the allegations of these two individuals. I am simply standing up for the rights of our military personnel to be heard—and to be taken seriously.

Let us have a hearing. We can clear the air. And then maybe we can vote 100 to 0 to confirm this nomination.

In the meantime, let this debate serve as yet another plea to the Navy in particular, and the Defense Department more generally, to do whatever is required to restore confidence and integrity into the military's investigative capabilities.

Mr. President, I request the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. NUNN. Mr. President, I spoke at length on the nomination of Admiral Mauz to retire in grade on Monday. That nomination was submitted on May 10. It has been pending now for over 4 months. It has been thoroughly reviewed by the Committee on Armed Services. It was reported favorably to the Senate on August 12, 1994, with the Senate voting 22 to 0 in favor of the nomination. The nomination has been pending in the Senate since August 12, 1994.

I would start by saying the Senator from Washington has asked some legitimate questions. As she observed, we have done everything we can to facilitate the answer to those questions. I believe as late as last night we were communicating with her staff about the Navy answers to those questions. I hope she has gotten the answers, at least to all the questions that were posed to us. She is certainly entitled to that information. It is the committee's duty to do everything it can to facilitate that information. We hope we have performed that duty. I certainly think these are questions that needed to be answered by the Navy. I think the Senator was certainly within her rights and duties and responsibilities to pose those questions. I hope the answer to them has helped clarify this overall matter for the Senate.

Admiral Mauz has had a long and distinguished career, which I detailed Monday. Highlights include direct combat experience in patrolling the rivers of Vietnam, command of the forces which conducted successful strikes against terrorist related targets in Libya, establishment of the maritime embargo against Iraq after Iraq invaded Kuwait, and development of the plans for naval involvement in the Persian Gulf war. He presently is serving as the commander in chief, U.S. Atlantic Command, one of the most senior and responsible positions in the Armed Forces of the United States.

The Committee on Armed Services has thoroughly reviewed this nomination. We have considered information from the Department of Defense concerning informal counseling he received related to travel to the Naval Air Station at Bermuda. We have considered material submitted by the Government accountability project, a nonprofit private organization, which alleged: First, that Admiral Mauz retaliated against senior chief master-at-arms, George R. Taylor, one of the individuals who has spoken to the news media about travel of senior officers to Naval Air Station Bermuda; and second, that Admiral Mauz was aware of sexual harassment against Lt. Darlene Simmons, a female officer in a subordinate command within the Atlantic Fleet, that he suppressed findings of his own command's inquiry into the matter, and that he failed to order any corrective action on behalf of Lieutenant Simmons.

The committee twice deferred action on the nomination so that the initial allegations from the Government accountability project, and subsequent material submitted by that organization, could be reviewed. The committee obtained detailed, factual, responses from the Department of the Navy on these issues, which demonstrated that Admiral Mauz had not retaliated against Senior Chief Taylor, and that he had taken reasonable actions to address the sexual harassment of Lieutenant Simmons.

The committee considered this information, and voted 22 to 0 to recommend confirmation on the nomination. On August 12, I placed in the RECORD the communications from the Government accountability project and the responses from the Navy so that it would be available to all Senators. On Monday, I included that material in the RECORD, along with material that the Government accountability project submitted after the nomination was reported, and the Navy's responses to that material.

On Monday, I informed Senators that if they had further questions about this matter, I would endeavor to obtain official responses from the Navy. Senator MURRAY provided me with a number of questions on behalf of herself and a number of other Senators.

I would like to note, Mr. President, that the questions raised by Senator Murray identified areas in which further clarification was desirable. Since the nomination was reported, Senator MURRAY and her staff have endeavored to keep the committee informed of her concerns.

The issue of sexual harassment is important, and we have had the opportunity to work closely with Senator MURRAY, Senator MOSELEY-BRAUN, and others in crafting key reforms in this year's Defense authorization bill on the issues of investigations and protections against reprisals. Their initiative, their involvement, and cooperation has been very helpful in developing legislation to deal with this difficult issue.

We received responses from the Navy last evening to the questions we received yesterday, and provided the material to Senator MURRAY and the other Senators who had participated in drafting the questions. We then worked with those Senators last evening to develop followup questions, which were also answered last night. The responses to both sets of questions confirm the committee's view that Admiral Mauz took appropriate action with respect to the issue of sexual harassment against Lieutenant Simmons, and that he had no involvement in the proceedings against Senior Chief Taylor.

I think one thing that has come to the attention of the committee since Monday—I do not know whether our colleagues have focused on this, demonstrates to some degree what we are having to deal with here. After debate concluded on Monday, the committee received a copy of a "Dear Senator" letter from the Government accountability project which apparently was distributed to all Senators. This letter, dated September 9, 1994, concerns a new issue, an entirely new issue—I have not discussed this at all with the Senator from Washington—involving Admiral Mauz. The letter from the Government accountability project encloses excerpts from an investigation into inappropriate racial and ethnic remarks from a naval commander not under Admiral Mauz's direct supervision—under his overall command but not his direct supervision—who was the commanding officer of an air antisubmarine squadron, a subordinate command in the Atlantic Fleet.

The investigation substantiated that the remarks were made. The officer retired. The individual who submitted the complaint had an adverse performance evaluation removed from the file.

The letter from the Government accountability project attempts to tie Admiral Mauz to this matter by asserting,

> Admiral Mauz took no action to discipline Commander Brower. Admiral Mauz allowed

Commander Brower to retire honorably, without any disciplinary action, at full pay and benefits. * * * Admiral Mauz' turning a blind eye toward racial harassment is demonstrative of a larger pattern.

This is from the Government accountability project. That sounds pretty bad. It sounds like Admiral Mauz personally condoned racial harassment. The facts do not support such a conclusion.

I come back to the fact we have to distinguish between allegations and facts, and that is always an important distinction. Navy Secretary Dalton, after we submitted that letter, as we did on others to him, advised the committee that the matter—this matter, on the racial improprieties—was handled entirely through inspector general channels and by a subordinate command. The matter never came to the attention of Admiral Mauz.

There was no requirement in regulation or practice for it to be brought to his attention. The Government accountability project asked us to hold Admiral Mauz accountable for the manner in which a subordinate unit handled a disciplinary matter, a matter which he never knew about, never came to his attention.

I ask unanimous consent that the letter from the Government accountability project and the response to these issues from Secretary Dalton be printed in the RECORD at the conclusion of my remarks.

(See exhibit 1.)

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

Mr. NUNN. Mr. President, the fact this incident did not come to Admiral Mauz' attention should come as no surprise. As Secretary Dalton notes in his letter, there were three levels of command between him and the command where the incident took place. These matters are not handled by the four-star top people, they are handled at a lower level. As the commander in chief of the Atlantic Command, Admiral Mauz has under his command 224 ships, 1,480 aircraft, 27 bases, 12,000 military officers, 125,000 enlisted personnel, 10,000 DOD civilians. How many of us in our office with 50 or 60 people look into every allegation against anybody in our office by another person?

Mr. McCAIN. Will the Senator yield?

Mr. NUNN. I say zero, until it gets to a level we have to review it because it has not been able to be solved at a lower level. We are responsible to set the climate. We are responsible for fairness, equity, and justice in our office. We are responsible in the final review when matters are not settled at a lower level. But if we were responsible for every personnel dispute in an office of 50 or 60 and we sat there and looked at them all day long, which we would do, we would never get to the floor of the Senate, probably never get to a committee meeting.

79-059 O—97 Vol. 140 (Pt. 17) 44

Admiral Mauz had 125,000 enlisted people and 10,000 DOD civilians under his command. He also is doing things that some people in this country might think are significant: Supporting the Haiti embargo, the war on drugs, Cuban migration operations, providing forces for possible Haitian contingency, and providing forces for deployment to the Mediterranean and Central Command areas. I am just saying, Mr. President, and I will yield to my friend from Arizona——

Mr. McCAIN. Just for a question.

Mr. NUNN. We have to put this in perspective. There are thousands of personnel actions taken everyday with respect to members of the Armed Forces. Although our forces are the best trained and best disciplined in history, there are still many disciplinary problems, and there always will be and always have been in the history of the military forces. Military commanders convene over 9,000 courts-martial per year. They administer over 80,000 nonjudicial punishments. The responsibility for disciplinary action is exercised primarily by subordinate commanders, not by fleet commanders-in-chief.

I yield to my friend for a question.

Mr. McCAIN. I would like to ask a question of the Senator from Georgia. I heard and I believe the Senator from Washington said the U.S. Senate is in the chain of command. I do not know if the Senator from Georgia heard that.

Mr. NUNN. I did not hear that. What I interpreted was the Senator was saying overall responsibility. I do not know whether she used the words "chain of command."

Mr. McCAIN. The Senator from Washington obviously does not understand the meaning of "chain of command." The chain of command is clear. I think she should be provided with what the chain of command is: It flows from the Commander in Chief, who is the President of the United States, and the fact is when the Senator from Washington does not even know what chain of command means, it gives some damage to the credibility of her argument.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia has the floor.

Mr. NUNN. I yield to my colleague, the Senator from Washington, for a question or brief observation. I want to retain my right to the floor.

The PRESIDING OFFICER. The Senator yields for a question.

Mrs. MURRAY. First of all, I inform my colleague from Arizona, I am capable of answering a question.

In response to your question, I am talking about responsibility, and I believe strongly we are in the chain of command in terms of responsibility: Responsible to our constituents who we serve and responsibility to the members of the armed services when they have legitimate complaints.

Mr. NUNN. Mr. President, my point is, to hold our commanders in chief in the field responsible for each disciplinary proceeding undertaken by their subordinate commanders would set an impossible standard. It is impossible. Anybody looking at it would know it is impossible.

The latest communication from the Government accountability project is helpful in putting the issues surrounding Admiral Mauz in perspective. Allegations of misconduct are easily made, but before we adopt those allegations as fact, we need to think carefully. We must hold our military officers to a high standard. We must ensure allegations are investigated. Some are substantiated. Many are not.

Reading the latest letter from the Government accountability project, one would think Admiral Mauz was involved in the investigation, the review, and condoning improper racial remarks, but the facts are he was not.

Likewise, there was no evidence—no evidence—that he was involved in a reprisal against Senior Chief Taylor. We have to rely on the Navy to investigate these matters. We cannot become, in our committee, a factual arbiter trying to determine the facts in each case. If we do, we will never be able to perform our duties. That is, basically, an administrative or judicial function. The legislative bodies have investigating subcommittees. I head one and I know. I know something about what it takes to investigate in terms of the facts. You have to put people under oath. You have to swear them in. You have to have depositions, witnesses, you have to know what is happening in each case. You have to look at all the data so you can cross-examine.

This is not a normal function for a committee. Every now and then you get into it. The Judiciary Committee has gotten into it a couple of times when they, I am sure, would have preferred not to. Sometimes it happens. When it does, you better recognize and you better get yourself some investigators and investigative staff. You better put on your judicial outfits because it is a different kind of hearing.

You are trying to decide who is telling the truth in various situations. That is something we cannot do on nominations unless the executive branch has demonstrated they cannot handle it themselves. In those cases, sometimes we have to do it. But if it becomes the rule rather than the rare exception, then we are going to change the fundamental nature of the nomination process.

With respect to Lieutenant Simmons—and that is the focus, I know, of some very legitimate concern here on the floor—the evidence is that when the matter was brought to Admiral Mauz' attention, he took reasonable actions to monitor the investigation

and he took reasonable actions to monitor the actions of subordinate commanders. He did not simply delegate this matter to subordinate command. He gave it his personal attention.

The direct involvement of his personal assistant for women's affairs, Comdr. Cathleen Miller, led to the prompt removal of the offending officer from Lieutenant Simmons' ship. Admiral Mauz personally intervened two times with the Chief of Naval Personnel to ensure Lieutenant Simmons was retained on active duty. She was a Reserve officer. He took that action twice. Through Commander Miller, his aide, he ensured that Lieutenant Simmons had an opportunity to communicate directly with his office throughout the conduct and review of this investigation.

He implemented a series of specific training and policy actions to combat sexual harassment. Some may argue he should have done more. Some may argue that. I do not agree. But it simply cannot be argued with any factual basis that Admiral Mauz turned a blind eye toward sexual harassment. The facts do not support that.

Mr. President, turning briefly to the motion. The motion is, as I understand the motion that has been made that we will vote on, is that the nomination of Henry J. Mauz, Jr., to retire in grade, be recommitted to the Committee on Armed Services with instructions to hold a public hearing on the nomination and not report the nomination back to the Senate until the committee holds the hearing.

The first observation I would make is to ask my colleagues, do we really want to have public hearings on these kind of matters? Do we want Admiral Mauz, who has served 35 years in his career, to come up when the committee by 22 to 0 has already reported that there is not a factual basis because the Navy has found there is not a factual basis—and we have relied on the Navy in the factual matters here—do we want to have a committee have the allegations come up and all be made again against Admiral Mauz and have him come up, pull him out of the Atlantic and say, "Come up and answer these things again. We have gone through this for 2½ months. We have your answers and the Navy's answers, but we want to do this in the public." Do we really want to do that?

I do not think we do. With respect to Lieutenant Simmons—she was a victim in this case, there is no doubt about that. She was a victim. She was mistreated. The people who mistreated her were dealt with. Maybe not as severely, maybe not as promptly as should have been done, but they were dealt with. They were dealt with. Admiral Mauz was not responsible for her victimization. He did what he could when it came to his attention to deal with it. Do we want her to come up? Do we want the doctor to come up who the Navy now tells us—the doctor who confined her—that he did not know about the sexual harassment charges?

Admiral Mauz did not know about the confinement. The doctor who confined her did not know she had brought sexual harassment charges. Do we want to have a public hearing? Do we really want to do that concerning Lieutenant Simmons and her private medical matters?

The committee made no judgment on any of that. We did not think it was necessary to make any judgment on her medical condition because she was an innocent victim. That would come up in terms of a defendant saying that she had some alleged medical problem. That would be a defense argument. She was the innocent victim from our point of view. She does not, in my opinion, deserve to be called up before the Senate. She testified before the House on the general issue of sexual harassment. I do not think her medical record was put into play there.

This is a matter of privacy. If she comes up and if the allegation is that Admiral Mauz was somehow behind the doctor's confinement of her for 3 or 4 days in some type of psychiatric environment, then her medical record has to be put in play and the doctor who made that decision is going to have to be brought up.

We are not talking about a day's hearing. We are talking about weeks. We are talking about weeks. I do not think we could finish this kind of hearing in any kind of responsible way in the next 2 or 3 or 4 weeks. I think the only responsible way to do an investigation the way this resolution envisions it is to take depositions. We have to know what is public and what is private. I do not want to be responsible, as the chairman of the committee, to have a doctor come up and talk about why he confined a patient without knowing in advance of what exactly he is going to say.

This means we have to take depositions. That is the only responsible way to do it. That is the way I run an investigative committee. We do not bring up witnesses without advance preparation. We do not bring people in to make allegations that we are not familiar with. We do not want to become a forum for people to take potshots at anyone else in a free publicity forum so that, without investigating in advance, we bring up a witness who can make any kind of charge. Those things have to be done in advance with affidavits and depositions.

My staff right here, with all the things going on in the world, some of my key people have spent the last 6 days not doing anything but working on nominations—not just this one, but this has been one of the main ones.

Mr. President, there are responsible ways to have hearings. I think the Senate of the United States learned it is difficult to have a factual kind of dispute before the Senate of the United States in a committee. The Judiciary Committee found that out in the Anita Hill case. You have to know when to go into a private hearing. You have to know when matters go into the personal reputation of individuals which, in accordance with the Senate rules, allow closed hearings.

Closed hearings, under the Senate rules, are hearings where the committee has the authority to make a determination—and I think responsibility—"when matters will tend to charge an individual with crime or misconduct or disgrace or injure the professional standing of an individual or otherwise to expose an individual to public contempt or will represent a clearly unwarranted invasion of the privacy of an individual."

Mr. President, if we have hearings on this matter, I can assure you that we are going to have to do it correctly. If we have hearings on the matter, we are not going to go in and just bring up witnesses. You have to have some idea of where you are going in a hearing and what has to be closed and what gets into invasion of privacy. The very people who are basically being addressed here in terms of concern could end up being the very people who have their own rights of privacy violated.

Mr. President, there is a lot more to this than people might think. There are all sorts of other reasons why I differ with this motion. I disagree with the suggestion that the committee did not do everything we were supposed to do and can do in this case. We have spent 3 months on it.

The committee adhered to our well-established procedures to ensure appropriate review of the allegations concerning Admiral Mauz by both the Department of Defense and the committee. The Navy provided detailed responses to the allegations concerning Admiral Mauz. With respect to the allegations concerning Lieutenant Simmons, the Navy concluded: "Admiral Mauz did not suppress the evidence of any inquiry, did not fail to take corrective action on behalf of Liuetenant Simmons, nor did he fail to follow proper procedures in inquiring into allegations." With respect to the allegations concerning Senior Chief Taylor, the Navy concluded: "There is simply no basis whatsoever for any claim that Admiral Mauz took a personal interest in the case involving Senior Chief Taylor." The material provided by the Navy cites detailed, specific facts in support of these conclusions.

The committee in this case relied on the procedures it has used in the past, both with respect to nominations that have been recommended for approval and nominations that have been rejected. There has been no showing that

the circumstances of the Mauz nomination require the use of different procedures.

We have answered or gotten answers to every question that has been asked. To bring Admiral Mauz back in here now and to put him up on the witness stand in front of the committee in public and have him basically again have to go over everything and all these allegations, when we already have gotten answers to each allegation, just does not make any sense.

Mr. President, I will not belabor the point. There are other people who want to speak on this matter. I would just conclude by saying that I think it would be unfair to Admiral Mauz, as well as others, to have such a proceeding. He has served his country faithfully and with distinction for over 35 years, including combat services in Vietnam, as well as in key operational roles in the Mediterranean and the Persian Gulf. He continues to serve as Commander in Chief of the Atlantic Fleet. He has been there when America needed him over the years, and he is right there now when America needs him.

His service has not been perfect or without fault. I doubt if there are many officers or many of us who have served without fault. In his case, his lack of perfection was demonstrated by the counseling he received in connection with travel to the Bermuda Naval Air Station. In my judgment, however, that lapse in judgment pales in significance when compared to his 35 years of outstanding service. His retirement should be a time to honor his service, while certainly looking at any allegations against him, which we have done.

A public hearing on this nomination, regardless of the result, I think would be a very bitter and undeserved end to that career. In my judgment, a public hearing at this time on allegations which have been found to be unsubstantiated in accordance with the committee's standard procedures would be inappropriate.

So I oppose the motion on the nomination. I wish to also include in the RECORD Secretary of Defense Bill Perry's letter to the committee dated September 12. Secretary Perry, speaking for the Clinton administration, stated:

> Admiral Mauz has served his nation for over 35 years. His proven record of exemplary service has * * * clearly earned the honor of retirement with four stars.

Secretary Perry added:

> Admiral Mauz's relief has been confirmed by the full Senate and is ready to assume command. The operational demands of the Atlantic Fleet area of responsibility make it essential that we proceed with a smooth and timely transition. I strongly endorse the administration's and the committee's recommendation that Admiral Mauz be confirmed to retire in his four star grade and request expeditious Senate action.

Mr. President, this is not simply the Navy supporting Admiral Mauz. This is also the Secretary of Defense. Now, I am the first one to say, when the military is wrong, when the Navy is wrong, when the Secretary of Defense makes errors, this committee has a responsibility to correct them. We have no information that would lead us to conclude that the Secretary of Defense, the Secretary of the Navy, or the Chief of Naval Operations have made errors. We have no indication of that. In another case we do have indications they made errors, the Glosson case. We sent it back for another whole review with an independent panel. We did not try to resolve all that factual dispute ourselves. We sent it back over to the Department of Defense because we did not think they had done an adequate job and asked them to have an independent panel.

In this case, there is no indication that the Navy or that the Secretary of Defense or others in the responsible overall command did not do a thorough job of investigating each of these allegations, and I hope that our colleagues will agree that this nomination should be approved and approved today.

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

THE SECRETARY OF DEFENSE,
Washington, DC.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: It is my understanding that the retirement in grade confirmation of Admiral Henry H. Mauz, Jr. will be debated and voted on by the full Senate some time this week.

Admiral Mauz has served his nation for over thirty-five years. His proven record of exemplary service has included combat and positions of significant responsibility. Notably, Admiral Mauz commanded River Patrol Boats during the war in Vietnam, commanded USS AMERICA Battle Group in 1986 during the air strikes against terrorist related targets in Libya, served as Commander, U.S. Naval Forces Central Command during Operation Desert Shield, and, as Commander in Chief, U.S. Atlantic Fleet, has been responsible for operations ranging from the Arctic North to South America, including Haiti, Cuba and the War on Drugs. Admiral Mauz has clearly earned the honor of retirement with four starts.

This nomination was sent to the Senate four months ago and was cleared by the Armed Services Committee last month by a unanimous vote. Recently, a recorded vote on the confirmation was requested because of the allegations raised by two Navy servicemembers. These cases were exhaustively addressed by the Department of the Navy prior to submission of the confirmation, and the specific subsequent allegations were investigated in response to several queries from the Committee. After its own thorough investigation, the Committee concluded that these allegations were unsubstantiated.

The Administration believes that the Committee has conducted a thorough and impartial investigation of this matter and agrees with the Committee's conclusions that further inquiry is simply not warranted.

As you know, Admiral Mauz's relief has been confirmed by the full Senate and is ready to assume command. The operational demands of the Atlantic Fleet are of responsibility make it essential that we proceed with a smooth and timely transition. I strongly endorse the Administration's and the Committee's recommendation that Admiral Mauz be confirmed to retire in his four star grade and request expeditious Senate action.

I have sent a similar letter to Senator Thurmond.

Sincerely,

WILLIAM J. PERRY.

EXHIBIT 1

GOVERNMENT ACCOUNTABILITY PROJECT, NATIONAL OFFICE,
Washington, DC, September 9, 1994.

DEAR SENATOR: The Government Accountability Project (G.A.P.) is a non-profit, whistleblower protection organization. G.A.P. is gravely concerned about the pending retirement of Admiral Henry Mauz at the four-star level. Admiral Mauz has repeatedly failed to discipline officers in his command who have been found guilty of racial, sexual and whistleblower harassment.

Attached is documentation of Admiral Mauz's failure to hold an officer in his command accountable for an outrageous pattern of racial harassment and discrimination. The case involves Petty Officer Steven Barr, a 17-year veteran of the U.S. Navy with an unblemished record. Although the Navy did remove a retaliatory adverse performance evaluation from Petty Officer Barr's record, the Navy's statement that, "Appropriate corrective action has been taken" is incorrect. Admiral Mauz took no action to discipline Commander Brower. Admiral Mauz allowed Commander Brower to retire honorably, without any disciplinary action, at full pay and benefits.

Please read these excepts from the Navy's investigation into Commander Brower's record of racial harassment and decide if Admiral Mauz did the right thing.

Admiral Mauz's turning a blind eye toward racial harassment is demonstrative of a larger pattern. As G.A.P. has informed the Senate, Admiral Mauz has a history of failing to hold officers accountable for their actions of sexual and whistleblower harassment:

Lieutenant Darlene Simmons was sexually harassed aboard the U.S.S. Canopus in 1992. Despite her requests for relief that she filed up the chain of command—all the way to Admiral Mauz—she was forced to endure a retaliatory psychiatric lock-up and remained under her harasser's command for weeks. Although Simmons was ultimately vindicated and received a letter of apology from the Secretary of the Navy, Admiral Mauz failed to punish the officers responsible.

Senior Chief George Randell Taylor blew the whistle on the improper use of Naval Air Station Bermuda as a resort for high-level Navy officers and specifically implicated Admiral Mauz. Since his transfer to Port Hueneme, California, Taylor has been a target for harassment that includes being charged with forty-eight counts of dereliction of duty. Although Taylor has been cleared of any wrongdoing, G.A.P. has evidence that Admiral Mauz has directly and improperly interfered in Taylor's case.

These cases demonstrate that Admiral Mauz has repeatedly condoned violations of the law and naval regulations by officers in his command. Unfortunately, the Senate Armed Services Committee has never held a hearing concerning Admiral Mauz's record. His lack of respect for the law—and sailors who report violations—offers ample justification for the Senate to deny the high honor of four-star retirement.

Thank you for your consideration. Further documentation of the cases involving Petty Officer Barr, Lieutenant Darlene Simmons and Senior Chief Taylor are available upon request. Please contact Jeff Ruch or Christy Law at G.A.P. if we may be of further service.

DEFENSE/NAVY HOTLINE COMPLETION REPORT AS OF 3 AUGUST 1992

1. Name of Official Conducting the Investigation;

2. Rank and Grade of Official;

3. Duty Position and Contact Telephone Number of Official;

4. Organization of Official;

5. Hotline Control Number: DOD Hotline 920483

6. Scope of Examination, Conclusions, and Recommendations:

a. An unidentified caller made allegations concerning racial statements made by Commander Michael R. Brower, USN, Commanding Officer, Air Anti-Submarine Squadron Two Two (VS-22). The source alleged that Commander Brower made racial statements such as the following:

"Black personnel should be concerned about drugs because all blacks do drugs and sooner or later they will be wiped off the planet."

In conjunction with the Dr. Martin Luther King holiday during which the squadron was in a working status, "I do not have any blacks in VS-22, just sailors."

"I am the White Knight of this squadron."

"Drugs came to this country from black musicians who performed overseas and brought drugs back to us."

While talking to a junior officer who said he may have the HIV virus, "I will make you a tall black basketball player, then you can have AIDS."

Routinely telling black personnel, "You are a credit to your race," or if a black service member came to mast, "You are a disgrace to your race."

Used the term "nigger".

During a meeting of first class petty officers at which a report that a black airman had allegedly stolen a car was mentioned, "Black petty officers should hold their heads down because it does not look good on you that a black person stole."

"I am now your Great White Father."

"Blacks are more likely to do drugs than anyone else."

b. It was alleged that Commander Brower ordered certain personnel to go to schools to talk about Black History Month because Commander Brower knew he was in trouble.

c. It was alleged that Commander Brower was unfair towards * * *

d. AMH1 Steven A. Barr, USN, alleged unfair treatment as a result of a special adverse evaluation and withdrawal of AMHC recommendation resulting from his inability to complete Enlisted Aviation Warfare Specialist (EAWS) qualifications within Commander Brower's time-frame.

e. An investigation of each allegation was completed. The investigation consisted of review of available documents as well as personal interviews with 35 squadron personnel. The persons interviewed included individuals of all ethnic backgrounds.

h. Findings as to allegations that racial statements were made.

(1) A substantial number of the personnel interviewed indicated they heard Commander Brower say some of the alleged statements in some form. Additionally, some interviewees reported hearing Commander Brower make the following additional statements:

(a) Refer to various squadron members as a "fat nigger", "black nigger", and "jew boy."

(b) "Catholics are fish-eaters. Non-catholics are pagans."

(2) Various motivations were attributed to these statements. Some personnel believe Commander Brower to be a racist, others believed he was trying so hard not to be a racist that he wound up sounding like one.

(3) There was a climate within the command that allowed a perception that racism existed. Interviewees reported that other people, particularly * * * used terms like "nigger" and "blue gums" without any adverse consequences.

i. Findings as to the allegation that AMH1 Barr was given an unwarranted adverse evaluation.

k. Additional findings:

(1) Commander Brower's Change of Command was 22 April 1992. He is presently under training for ultimate assignment as the Air Department Head on board USS CONSTELLATION homeported in San Diego, California.

(2) * * *A number of enlisted personnel stated that they were embarrassed during the endless "dressing down" of junior officers that occurred in their presence. Several enlistea personnel stated he would turn to them and say, "I eat officers for breakfast." Junior officers were afraid to bring anything controversial up the chain of command. Feelings of racial disharmony would not be discussed up the chain of command. This further alienated enlisted personnel.

(3) Commander Brower has submitted a Letter of Retirement to be effective June 1993.

DEPARTMENT OF THE NAVY,
NAVAL INSPECTOR GENERAL,
Washington, DC, July 30, 1993.

AMH1 STEVEN BARR, USN,
Jacksonville, FL.

DEAR PETTY OFFICER BARR: I am responding to your complaint of reprisal and inappropriate racial behavior on the part of Commander Brower, your former Commanding Officer at VS-22.

An investigation conducted at my request by the Commander in Chief, U.S. Atlantic Fleet, found your allegations to be substantiated. Appropriate corrective action has been taken. Additionally, I have been informed that the adverse performance evaluation that was drafted by CDR Brower was never issued to you. My staff confirmed with BUPERS that the performance evaluation was not submitted; however, there is no record of a performance report for that same period of time (1 Dec 91-3 Apr 92). I would appreciate it if you would provide my office with a copy of the evaluation you eventually received for the time in question.

Pursuant to DOD Directive 7050.6, I have enclosed a redacted copy of the report of investigation for your information and retention. Be assured that the Navy will not tolerate such improper behavior on the part of commanding officers, nor will it allow any type of reprisal against sailors reporting the improper behavior.

Thank you for bringing this matter to my attention.

Sincerely,

D.M. BENNETT

THE SECRETARY OF THE NAVY,
Washington, DC,September 13, 1994.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am responding at the request of your Committee to the Government Accountability project letter of September 9, 1994 which raises allegations regarding Admiral Mauz's involvement in the case of Petty Officer Steven Barr. Petty Officer Barr initiated this case with a call to the Naval Inspector General on April 10, 1992. Admiral Mauz assumed command of the Atlantic Fleet on July 13, 1992.

Petty Officer Barr's complaint to the Naval Inspector General concerned racially insensitive comments made by his then-Commanding Officer of Air Anti-Submarine Squadron Twenty Two (VS 22), Commander Brower. The Naval Inspector General assigned the investigation to the Atlantic Fleet Inspector General who, in turn, assigned the investigation to Commander, Strike-fighter Wings, Atlantic (COMSTRKFIGHTWINGLANT), the first flag officer in the chain of command.

The investigation was completed on August 3, 1992 and forwarded via the chain of command to the Naval IG by Commander, Strike-Fighter Wings, Atlantic on August 10, 1992. In enclosure (1), COMSTRKFIGHTWINGLANT concluded that some of the statements alleged to have been made by Petty Officer Barr's commanding officer were substantiated. COMSTRKFIGHTWINGLANT personally counselled Commander Brower on August 6, 1992 regarding ". . . his unacceptable use of language and his insensitivity to the creation of a command environment unquestionably supportive of equal opportunity . . . ."

The results of the investigation were forwarded by enclosures (2) and (3) to the Naval Inspector General. The Naval IG approved the results of the investigation involving the actions taken against Commander Brower, closed the case and informed Petty Officer Barr of the results. As noted by the informed Petty Officer Barr of the results. As noted by the CINCLANTFLT IG in enclosure (3), Commander Brower was no longer in command and had submitted a Letter of Retirement, on April 22, 1992, to be effective June 1993. Commander Brower's change of command was also on April 22, 1992, 12 days after Petty Officer Barr's complaint to the Naval IG.

This case was appropriately addressed by the Naval Inspector General and the chain of command. There were three levels of command between CINCLANTFLT and the Commanding Officer of VS 22. Admiral Mauz had no personal involvement with this case and acted appropriately in relying on officers and flag officers within his chain of command to resolve the matter. It is important to note that the Naval Inspector General letter of July 30, 1993 (included in the GAP letter) advised Petty Officer Barr of the results of the investigation. Petty Officer Barr has never expressed concern or dissatisfaction of the Naval IG with the results or the outcome of the investigation.

In sum, after reviewing the allegations raised by the Government Accountability Project and the Navy's actions, I am satisfied that Admiral Mauz had no personal involvement with this case and that it was handled by the Naval Inspector General and the chain of command.

I have sent a similar letter to Senator Thurmond.

Sincerely,

JOHN H. DALTON.

Mr. NUNN. Mr. President, I ask unanimous consent that correspondence concerning the Mauz nomination be included in the RECORD.

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

[From the Congressional Record, Sept. 12, 1994]

GOVERNMENT ACCOUNTABILITY PROJECT,
Washington, DC, July 11, 1994.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee, Russell Senate Office Building, Washington, DC.

DEAR SENATOR NUNN: On behalf of the Government Accountability Project (GAP) I am writing to bring information to the attention of your committee bearing on the merits of the retirement of Admiral Henry Mauz at the "four star" level.

GAP is a non-partisan, non-profit whistleblower protection organization. GAP provides legal representation and other support services to workers both within and outside federal service. Two of our clients, Senior Chief Master-at-Arms George R. Taylor and Lt. Darlene S. Simmons, JAGC, USNR, have had direct, recent experiences with Admiral Mauz and their letters are attached for your consideration [Attachments 1 and 2].

As Senior Chief Taylor's letter indicates, Admiral Mauz misused government facilities and property at the Bermuda Naval Air Station for his and his family's personal use. When these actions were brought to public attention, Admiral Mauz and his staff retaliated against Taylor, stripping him of his duties and attempting to prosecute him for insubordination. Following his transfer to the base at Port Hueneme, California, Taylor was faced with a 48-count court martial on a supposedly unrelated matter. This incident was closely monitored by Admiral Mauz's legal staff for the Atlantic Fleet. All charges against Taylor were subsequently dismissed.

As Lt. Simmons's letter indicates, Admiral Mauz was aware of sexual harassment against Lt. Simmons and the failure of her command to take proper action. Admiral Mauz suppressed the findings of his own command's inquiry into the issue. Despite his personal involvement and knowledge of the situation, Admiral Mauz failed to order any corrective action to be taken on behalf of Lt. Simmons. Finally, the Vice Chief of Naval Operations, Admiral S.R. Arthur, refused to accept a formal complaint from Lt. Simmons alleging dereliction of duty in violation of the Uniform Code of Military Justice against Admiral Mauz.

While the Secretary of the Navy, John H. Dalton, recently ordered corrective action on behalf of Lt. Simmons (an apology, clearing her record, a new duty station and letters of censure for three officers in her former chain of command [see Attachment 3]), no action was taken against any flag commander who was responsible for the ongoing development of this situation over several months.

Besides reprisal for the reporting of wrongdoing, there is one additional common element in these two cases—the role played by the Inspector General of the Atlantic Fleet to cover up the nature and extent of the underlying problems and prevent any further remedial actions.

These two cases, in our minds, bear directly on the merits of the decision before your committee with respect to the appropriate level of retirement grade for Admiral Mauz.

Regardless of how this particular question is resolved, it is clear that the system of accountability within the military and the Military Whistleblower Protection Act, in particular, are broken and in dire need of repair. GAP strongly urges that a comprehensive review of these issues be undertaken by the Armed Services Committee as soon as it is practicable.

Cordially,

JEFFREY P. RUCH,
Policy Director.

PONTE VEDRA, FL,
July 8, 1994.

Senator SAM NUNN,
Chairman, Armed Services Committee, Russell Senate Office Building, Washington, DC.

DEAR SENATOR NUNN: I am writing this letter to express my concern that Admiral Henry Mauz may retire at the Four Star Level, a distinction indicative of extraordinary service. I request that during the deliberation process of this issue the information regarding Admiral Mauz's involvement in the handling of my sexual harassment case be considered. I believe Admiral Mauz was (1) Derelict in his Duty through his culpable inefficient and negligent handling of my case of sexual harassment. (2) Admiral Mauz failed to act on my report of sexual harassment, retaliation and reprisal. I specifically report to you that Admiral Mauz failed to follow those procedures directed by the Department of Defense and the Department of the Navy. (3) Admiral Mauz in his position as Commander In Chief of the Atlantic Fleet Mauz intentionally allowed sexual harassment, retaliation and reprisal by senior officers in my chain of command to go unchecked. Admiral Mauz used his official position to protect those guilty of sexual harassment and then to cover up his inefficient handling of the matter.

Admiral Mauz had knowledge in October 1992 that I was sexually harassed. This harassment was substantiated by a member of his staff, Commander Cathleen Miller. Admiral Mauz was also aware of the failure of my chain of command to handle the matter from May 1992 until October 1992. A command inquiry was conducted in October 1992. This command inquiry substantiated the sexual harassment which I had reported in May 1992. The command inquiry also substantiated the existence of a hostile environment in which I worked from May 1992 until October 1992. Admiral Mauz was familiar with those substantiated facts and took no action.

On December 28, 1992 I suffered reprisal for my report of sexual harassment when I received an adverse fitness report. I reported this retaliation and reprisal directly to the aide of Admiral Mauz. I was assured on that same day that Admiral Mauz was personally involved and that proper corrective action would follow. I relied in good faith on these assurances. My good faith reliance was not justified. Instead of taking corrective action the reprisal was covered up. Admiral Mauz was personally involved in this negligent handling of my report of reprisal. Admiral Mauz was the highest level of leadership in my chain of command.

I then reported the failure by my entire chain of command to properly handle my report of sexual harassment and reprisal to the Department of Defense, Inspector General's office. This report was then referred to the Navy Inspector General. I believe that Admiral Mauz used his position to influence the report from the Navy Inspector General's office in order to protect himself because he knew that he and the chain of command had failed to take appropriate action in my case of sexual harassment.

I actually swore to these facts on a charge sheet for violation of the Uniform Code of Military Justice Article 92 by Admiral Mauz. This charge sheet and supporting memorandum was returned to me without any investigation whatsoever. This too was inappropriate and not in accordance with applicable instructions and orders.

I believe Admiral Mauz has perpetuated the discrimination against women in the U.S. Navy with his failure to take swift and tough action against sexual harassment. I believe his failure to hold anyone accountable in my case of sexual harassment was Dereliction of his duties. One who is derelict in the performance of duty should not be rewarded for extraordinary service.

Sincerely,

DARLENE S. SIMMONS.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, DC, May 12, 1994.

Lt. DARLENE S. SIMMONS, JAGC, USNR,
Naval Legal Service Office, Naval Station, Mayport, FL.

DEAR LIEUTENANT SIMMONS: I am writing to discuss your future in the U.S. Navy. Before doing so, however, I wish to express my profound regret over the harassment that you unfortunately experienced. No one in our Navy or Marine Corps should be treated as you were. My goal is to send the message to every Sailor, Marine, and civilian in our Department that we are to treat others with the same respect and dignity we expect ourselves.

I believe we have made significant progress during the past 18 months to implement a comprehensive program aimed at eliminating sexual harassment from the workforce. As you know, we issued our revised policy guidance in January 1993 and also established an Advice and Counseling Line and an Informal Resolution System. Our Department-wide Reporting and Tracking System will provide us with information on formal complaints, results of investigations and administrative and judicial actions taken to resolve complaints. In March, we released the "Commander's Handbook," a single reference for commanders that addresses investigation, resolution, and prevention of sexual harassment. I thank you for your lessons learned, which were integrated into the first edition. While we have done much, I realize we still have far to go.

After you testified, I directed my staff to thoroughly review the circumstances of your case. Our review leads me to conclude that: you were sexually harassed by a fellow officer aboard USS CANOPUS; he retaliated against you by fostering a hostile work environment and polarizing the wardroom against you; the shipboard chain of command did not correct this environment; and your fitness report for the period 9 February 1992 to 28 December 1992 was improperly handled by the command.

As a result of my review of your case, I am issuing a Secretarial letter of censure to the officer who committed the harassment. The Chief of Naval Operations is also taking action with regard to two other officers in your former chain of command who did not measure up to our standards.

With regard to your specific situation, I recognize that your harassment, and the energy required on your part to address issues springing from it, impaired your ability to demonstrate fully what you can contribute to the Navy. Therefore, I have directed that the Navy make available to you the option to transfer to a new duty station with orders that you be retained on active duty until 1 September 1996. This represents an additional two years beyond the date currently established for your departure from active duty, and will afford you the opportunity to

compete again for augmentation to the Regular Navy.

I have been informed that you have applied to the Board for Correction of Naval Records (BCNR) in accordance with 10 U.S.C. 1552 to correct any injustice in your performance records. I have final authority to review the BCNR's recommendation and will direct action to correct your military record as necessary.

While my actions can never wipe the slate clean, they reflect my genuine desire that you have the opportunity to continue to serve, if you wish. Should you nevertheless decide to leave active duty on 1 September 1994, however, I want you to know that you have my respect and gratitude for your Navy service.

I have directed Rear Admiral H.E. Grant, the Judge Advocate General of the Navy, to meet personally with you to discuss your decision.

JOHN H. DALTON,
Secretary of the Navy.

July 8, 1994.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: I would like to introduce myself. My name is George R. Taylor. I am a Senior Chief Petty Officer (E-8) currently on active duty with the U.S. Navy stationed at the U.S. Naval Construction Battalion Center, Port Hueneme, California. Additionally, I am a whistleblower.

Sir, In December 1992, I blew the whistle on fraud, waste, and abuse concerning mismanagement at the U.S. Naval Air Station Bermuda. I would like to give you a very brief rundown on some of the events that transpired and are continuing to unfold in regards to Admiral Henry Mauz Jr., USN, Commander in Chief, U.S. Atlantic Fleet.

In November 1992, Admiral Mauz abused his power and authority as CINCLANTFLT by traveling to NAS Bermuda along with 12 other military and civilian personnel for a five day vacation.

Admiral Mauz was flown to Bermuda at government expense along with the other personnel. During his time on the island, his entire "official" visit consisted of playing golf, dining in the best restaurants, and shopping. This was in fact exposed on national television on ABC New's "Primetime Live" program. I appeared on the show and commented on the behavior of not only Admiral Mauz but numerous flag officers within the Armed Forces who had visited the beautiful island at taxpayer's expense. Additionally, Senator McCain had visited the island with a large group of family members and the nanny for his grandchildren all at taxpayer's expense or at a reduced rate.

As you know, this was not a popular thing for me to do. I was not politically correct. Needless to say, numerous high ranking officers within the Department of Defense were offended. Representative Schroder made arrangements for me to be transferred to NCBC Port Hueneme, CA. I was very naive, I believed in the system. However, I have very little faith left at this time. During the past 18 months numerous things have occurred that in my opinion and the opinion of my attorney have been nothing short of criminal.

Admiral Mauz in my opinion has not only abused his power but is a disgrace to the uniform of the Naval Service. He was a key player in me being charged with over 48 offenses of violating the Uniform Code of Military Justice in a supposed "unrelated to Bermuda situation". His attorney requested and received all legal documents and a brief in regards to my status. All charges were dismissed by Admiral Kelley, CINCPACFLT, 8 months later. Admiral Mauz took a personal interest in the prosecution of a case where nothing had been done wrong.

Senator, there is no doubt that if you or I committed some of the things that Admiral Mauz has, we would have been ran out of town.

As you know, the Navy has gone through a lot. However, I do believe with the current leadership in the Navy things will improve, but in order to correct wrongs and to ensure that senior, military officers do not continue to abuse their power and authority, you should take the lead in retiring Admiral Mauz at a two-star level.

You sir, are in the position to send a message to the entire Armed Forces announcing that misconduct at any level will not be tolerated, also that everyone in the Armed Forces from E1 to O-10 will be held accountable for their actions.

Sir, if you or your staff needs additional information feel free to call me at (805) 388-3915 or my attorney, Jeff Ruch at (202) 408-0034.

Very Respectfully,

GEORGE R. TAYLOR,
MACS(SW) USN.

CHIEF OF NAVAL OPERATIONS,
July 27, 1994.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am responding to your letter of July 21, 1994 to the Secretary of the Navy which enclosed a letter from the Government Accountability Project, concerning the retirement confirmation of Admiral Henry Mauz, Jr., U.S. Navy. I have reviewed the letter as well as the letters from Lieutenant Darlene Simmons and Senior Chief George Taylor that were included. It is my judgment that the allegations in these letters are not correct. Admiral Mauz has served faithfully and well in every assignment including this final one as a four star officer and deserves to retire in grade.

Before turning to these allegations, I want to state that Admiral Mauz is completing a career that exceeds thirty-five years of dedicated service to our Nation. He is scheduled to retire and desires to do so. His relief has been confirmed and is ready to assume the duties of Commander in Chief, U.S. Atlantic Fleet. Admiral Mauz's plans to enter the next phase of his personal and professional life are being delayed as is the assumption of command by the relieving officer. Admiral Mauz's performance has been outstanding throughout his career including, especially including, this final tour as Commander in Chief, U.S. Atlantic Fleet.

With regard to LT Simmons, Admiral Mauz did not suppress the evidence of any inquiry, did not fail to take corrective action on behalf of LT Simmons, nor did he fail to follow proper procedures in inquiring into allegations. Further, the Inspector General of the Atlantic Fleet did not cover-up the nature and extent of underlying problems nor prevent appropriate remedial action in the case.

The case of LT Simmons is an involved one with several complaints, overlapping in time, and inquiries that took place over nearly two years. It is clear that in 1992 LT Simmons was sexually harassed while stationed aboard USS CANOPUS (AS-34). While serving as Legal Officer in that ship she received repeated requests for dates and comments about her physical appearance from another officer who was one rank senior to her and with whom she worked closely in the performance of her duties.

The case was initiated at the shipboard level on 1 June 1992, when LT Simmons reported to the ship's Executive Officer that she was being sexually harassed by another officer. The allegations involved repeated requests for dates and comments about her physical appearance. On 5 June 1992, the officer was counseled and administrative action was taken. He requested retirement from the Navy as was his prerogative.

Unfortunately—and unacceptably—an atmosphere of harassment and hostility persisted, particularly as the retirement of the officer involved was not effective until April 1993, and he remained on duty on the ship. On 9 October 1992, an anonymous DOD IG hot line call and a call by LT Simmons to Congresswoman Schroeder and to the then Assistant Secretary of the Navy, Barbara Pope, raised the visibility of this case.

Admiral Mauz responded promptly when informed of the matter as a result of these calls. To assure fairness and high-level attention, he directed his Special Assistant for Women's Affairs, CDR Miller, to join an investigation by COMSUBGRU 10. Following a briefing by Commander Miller, the offending officer was moved off the ship by the Commanding Officer in October 1992. The CO assembled all officers and told them that LT Simmons had been sexually harassed, condemned this behavior, and emphasized that any harassment would not be tolerated.

LT Simmons states in her letter that Commander Miller substantiated the sexual harassment. That is true. There is no question that LT Simmons was sexually harassed. As the Commander in Chief, U.S. Atlantic Fleet, Admiral Mauz acted promptly and appropriately. He directed the necessary actions to ensure a thorough and timely response to LT Simmons's allegations. The expeditious assignment of Commander Miller to examine the case and ensure that LT Simmons had a direct conduit to his clearly substantiates his personal concern and direct involvement in investigating LT Simmons's allegations.

Nor was this the end of Admiral Mauz's concern. In December 1992, Admiral Mauz returned to this matter. He personally intervened with the Chief of Naval Personnel to extend LT Simmons on active duty and assure her assignment to another command.

At this time also, LT Simmons complained that her transfer fitness report was issued in reprisal. The Inspector General investigation, completed in the spring of 1993, substantiated LT Simmons's original allegations of sexual harassment and also concluded the Commanding Officer of CANOPUS failed to recognize the development of a hostile command climate. Accordingly, the Commanding Officer was counseled by his immediate superior. While the Inspector General concluded the fitness report was not reprisal, the Secretary of the Navy later concluded that he would review, through the Board for Correction of Naval Records, any alleged injustice in her military record and that LT Simmons would be given the option of a new duty station with orders retaining her on active duty until September 1996. The Secretary stated that his decision was based on his recognition that "* * * your [LT Simmons] harassment, and the energy required on your part to address issues springing from it, impaired your ability to demonstrate fully what you can contribute to the Navy." The Secretary's action in correcting the fitness report, intended to provide LT Simmons

with an opportunity to continue her naval career, was a decision that only the Secretary is empowered to make.

On his own initiative, Admiral Mauz returned to this matter for a third time in 1993. In a series of actions he manifested his concern that improvements should be made in handling cases of this kind. To effect change in this regard, Admiral Mauz, in April of 1993, issued a policy statement for the "Prevention of Sexual Harassment" to all Atlantic Fleet activities. It addressed Department of the Navy policy and the need for training in place. It tasked every manager, supervisor, and employee, military and civilian, within Admiral Mauz's command with the responsibility for carrying out the DON policy on prevention of sexual harassment.

In June 1993, Admiral Mauz signed a combined LANT/PACFLTINST 5354.1 (Equal Opportunity) that revised the Command Managed Equal Opportunity program and incorporated sexual harassment requirements from a new SECNAVINST.

In September 1993, Admiral Mauz issued a PERSONAL FOR to ensure each commander was cognizant of the contents of the combined LANT/PAC Equal Opportunity instruction. He directed each commander to review the implementation of the program, including sexual harassment, in his command to ensure compliance. ISIC's were directed to include this as a special interest item for command inspections, and were directed to utilize Equal Opportunity Program Specialists in their inspections to the maximum extent possible.

Going well beyond normal bureaucratic requirements, in April 1994, Admiral Mauz returned to this matter again. To assure that fleet priorities and procedures would be as good as they could be, he personally conducted a training session for all flag officers assigned to the Atlantic Fleet. The subject was a case study in sexual harassment, and on addressing it, Admiral Mauz used both information obtained from the inquiry about LT Simmons case and information provided by LT Simmons herself. Finally, Admiral Mauz recognized that additional training was needed beyond what the initial curriculum in sexual harassment provided. Accordingly, he directed the development and distribution of a kit to assist commanders with the investigation and disposition of sexual harassment complaints. This kit formed the nucleus for the newly published Navy Sexual Harassment Handbook.

In January 1994, LT Simmons forwarded allegations of criminal dereliction by Admiral Mauz in the handling of her case. As the facts of the case did not, in fact, justify criminal charges, they were determined to be more appropriate for resolution under the provisions of Article 1150, U.S. Navy Regulations, Redress of Wrong Committed by a Senior, than under the Uniform Code of Military Justice (UCMJ). The allegations were accordingly returned to LT Simmons by the Vice Chief of Naval Operations, on advice of counsel, for forwarding as a matter under Article 1150. In response, LT Simmons indicated she did not desire to pursue an Article 1150 complaint. Nevertheless, LT Simmon's allegations were referred to the Naval Inspector General. The Inspector General found the allegations against Admiral Mauz to be without merit. Admiral Mauz did not influence or attempt to influence, the Inspector General's decision in this matter.

With regard to Senior Chief Taylor, the allegation that Admiral Mauz influenced the charges against Senior Chief Taylor after Senior Chief Taylor arrived at Port Hueneme, California, is without basis.

By way of background, there were charges brought against Senior Chief Taylor after he began his tour of duty in California. These charges addressed irregularities in the manner in which Senior Chief Taylor performed his duties. Senior Chief Taylor declined to have his case heard under Article 15 of the UCMJ, as was his right. As a result, charges were referred to a special court-martial. After charges were referred, Senior Chief Taylor's chain of command in the Pacific decided it was appropriate to move the case out of the Port Hueneme area to ensure an independent review of the case. Accordingly, the charges were considered by a Flag Officer in command in the San Diego area.

Following a newspaper account which stated that the charges against Senior Chief Taylor had been withdrawn in response to allegations of retaliation for his whistle-blowing activity in Bermuda, Admiral Mauz's Executive Assistant asked the senior Staff Judge Advocate to call his counterpart at Port Hueneme for additional information. A call was made and the situation was clarified. The senior Staff Judge Advocate verbally reported his findings to the Executive Assistant who then back briefed Admiral Mauz as to the action he had taken. There was no influence on the case and, in fact, the charged has already been withdrawn at the time of the call.

Subsequently, unbeknownst to either the senior Staff Judge Advocate or Admiral Mauz, a junior Staff Judge Advocate obtained a copy of the defense motion that was the basis for withdrawal of the charges, as well as a copy of the charge sheets, from a friend who was then Officer in Charge, Navy Legal Service Office, Port Hueneme. The Officer in Charge believed that in providing that documentation, he was responding to an official request from Admiral Mauz's staff and acting quite properly he informed Senior Chief Taylor's military counsel of the actions he had taken to comply with that request. While these documents were shared with the senior Staff Judge Advocate, he did not speak of them to any other staff member. Clearly, the junior staff Judge Advocate's inquiry and receipt of documents did not stem from Admiral Mauz. In fact, Admiral Mauz did not become aware of the documents until their existence was revealed during my inquiry into Senior Chief Taylor's allegation preparatory to making this letter response. In this vein, Admiral Mauz's statement to Navy Times on July 21, 1994, that "I don't really recall this, but I think I said ok," to an inquiry regarding the newspaper account was not an accurate recollection. In fact, Admiral Mauz's Executive Assistant states that he, independently and without Admiral Mauz's knowledge, instituted that lawyer's inquiry into the newspaper article. These matters taking place after the withdrawal of charges at Fort Hueneme, could not have had any impact in any event.

The San Diego commander convened an Investigation under Article 32 of the UCMJ to inquire into the matter and make recommendations as to the appropriate disposition. The senior Judge Advocate assigned to conduct the Article 32 Investigation concluded there were reasonable grounds to believe that four offenses should be charged, with a total of seven specifications thereunder. The senior Judge Advocate recommended that the charges be adjudicated under Article 15 of the UCMJ, but noted that should Senior Chief Taylor decline Article 15, referral of the charges to special court-martial would be appropriate. The Commander in Chief of U.S. Pacific Fleet, however, determined that the nature of charges did not warrant referral to court-martial and directed counseling as the appropriate remedy, thereby closing the case.

In summary, Admiral Mauz was not involved in Senior Chief Taylor's case in California. He played no role in the charges themselves or in the disposition of the charges.

Senior Chief Taylor had accused Admiral Mauz of misconduct with regard to Admiral Mauz's travel to Bermuda. As a result of Senior Chief Taylor's allegations regarding Admiral Mauz's travel to Bermuda, the Naval Inspector General conducted a complete and thorough investigation. The investigation did not disclose any misuse of government facilities. The Inspector General determined that Admiral Mauz conducted significant official business while in Bermuda, including an inspection of the air station's facilities, addressing base personnel at an "All Hands" meeting and making calls on the U.S. Consul General and the Governor of Bermuda. Admiral Mauz took two days of leave while in Bermuda, in compliance with Navy guidelines for combining leave and official travel. The Inspector General determined that the scheduling of the trip created the perception of impropriety and that there was a violation in the use of government drivers during the period of time that Admiral Mauz was on leave, as a result of which Admiral Mauz received informal written counseling.

Admiral Mauz did not remove Senior Chief Taylor from his duties or attempt to prosecute Senior Chief Taylor for insubordination as a result of Senior Chief Taylor having publicly accused Admiral Mauz of misconduct, as alleged by Mr. Ruch of the Government Accountability Project. Senior Chief Taylor originally alleged that his Commanding Officer in Bermuda had taken those actions as reprisals for his whistle-blowing activity in Bermuda. After a thorough investigation of the facts surrounding those actions, however, the DoD IG concluded that the actions were warranted under the circumstances and did not constitute reprisal. In fact, at the time the actions were taken, no one was aware of Senior Chief Taylor's whistle-blowing activity. The difficulties Senior Chief Taylor was experiencing in Bermuda preceded any knowledge by naval personnel, including his Commanding Officer and Admiral Mauz regarding his complaints.

Admiral Mauz has served his Navy and Nation for over thirty-five years. He has served in positions of great responsibility and he has served his Nation well.

I have discussed this letter with the Secretary of the Navy and he and I are in complete agreement that Admiral Mauz should be confirmed to retire in his four star grade and that he should be permitted to depart his command in a timely manner.

I am, of course, prepared to provide you any additional information that you or the other members of the Committee may require. Thank you for your consideration. I have sent an identical letter to Senator Thurmond.

Very respectfully,

J.M. BOORDA,
Admiral, U.S. Navy.

ATTACHMENT 3

GOVERNMENT ACCOUNTABILITY PROJECT,
August 3, 1994.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee, Washington, DC.

DEAR SENATOR NUNN: Last month my client, Senior Chief Master-at-Arms George R.

Taylor (USN) wrote to you concerning the pending four-star retirement of Admiral Henry Mauz. In his letter, Senior Chief Taylor wrote that Admiral Mauz had taken "a personal interest" in the prosecution, that was later dismissed, against Senior Chief Taylor and the members of his security detachment. This personal interest raised questions concerning retaliatory motive since the attempted prosecution took place within the Pacific Command at a time when Admiral Mauz served as Commander of the Atlantic Fleet.

In the August 1, 1994 edition of Navy Times, Admiral Mauz told reporter Patrick Pexton that Taylor's allegation was "without foundation" and "nonsense." Mauz told the reporter that his staff contacted Port Hueneme authorities only once and then only for the purposes of learning the status of the case. In fact, Captain Joseph Baggett, the legal advisor to Admiral Mauz, did contact the legal advisor for the base at Port Hueneme after the withdrawal of the 48-count court martial against Taylor and his detachment on April 9, 1994.

Prior to Captain Baggett's call to Port Hueneme, however, Lt. Noreen Hagerty-Ford, a JAG attorney on Admiral Mauz's staff, contacted Lt. John Tamboer, the supervisor of Taylor's military defense counsel, Lt. Carter Brod. Lt. Hagerty-Ford asked Lt. Tamboer to provide her with a copy of a motion filed by Lt. Brod seeking dismissal of all charges against Taylor on the grounds of "vindictive prosecution" [attached]. Lt. Tamboer refused her request, on the grounds that the Atlantic Fleet had no legitimate reason to obtain defense filings. Lt. Hagerty-Ford called Lt. Tamboer later that same day and demanded a copy of the motion stating that her call was at the personal request of Admiral Mauz. Lt. Tamboer acceded to this direct request from a flag officer and provided a copy of the motion to Lt. Hagerty-Ford.

Admiral Mauz's public statements with respect to his role and the role of his personal staff in the Taylor prosecution do not square with the facts. The lack of candor displayed here is consistent with the "damage control" approach to high profile personnel cases Admiral Mauz has exhibited. More disturbingly, these repeated contacts represent an attempt to influence the prosecution of Taylor and to intimidate his military defense counsel.

As always, if you or your staff desire any further information from my clients, please do not hesitate to contact me.

Sincerely,

JEFFREY P. RUCH,
Policy Director.

NAVY-MARINE CORPS TRIAL JUDICIARY, SOUTHWEST JUDICIAL CIRCUIT, PORT HUENEME, CA

United States versus Taylor, George R., MACS/E-8, 424-86-0238, U.S. Navy.

Special Court-Martial: Motion to Dismiss for Vindictive Prosecution Pursuant to the Fifth Amendment.

Date: 23 March 1994.

1. Nature of Motion. This is a Motion to Dismiss for Vindictive Prosecution filed pursuant to the Fifth Amendment of the U.S. Constitution. This motion is filed as a direct result of an unlawful decision by Commander, Naval Construction Battalion Center, Port Hueneme, to prosecute MACS George R. Taylor, USN, the accused in this case.

2. Summary of Facts.

PRIOR TO MACS TAYLOR'S REPORTING AT NCBC

a. In 1992, MACS George R. Taylor, USN, held the position of Chief of Military Police at Naval Air Station Bermuda. While serving at NAS Bermuda, MACS Taylor produced evidence that the air station existed as a resort for top military officials at the expense of taxpayers. MACS Taylor and another "whistleblower" were featured on the 10 December 1992 episode of ABC's "Primetime Live" (tape of which will be hereinafter referred to as "the Bermuda tape"), which prompted Defense and Inspector General investigations. As a result of MACS Taylor's activities, Congress voted to close the Bermuda base in 1995.

b. MACS Taylor was transferred to Naval Construction Battalion Center, Port Hueneme, (hereinafter "NCBC"), in January 1993, under the protection of the Military Whistleblowers Protection Act.

c. Before MACS Taylor arrived at NCBC, members of the base security department posted an article about MACS Taylor's activities in Bermuda on the security department bulletin board. In addition, members of the security department gathered in a conference room to view the Bermuda Tape.

d. Before MACS Taylor arrived, a file was sent to NCBC from Bermuda which included a non-punitive letter of caution and materials related to MACS Taylor's activities at Bermuda.

e. Prior to MACS Taylor's arrival at NCBC, RADM David Nash, USN, Commanding Officer of NCBC, requested a copy of the Bermuda tape from Kari Lee Patterson, a civilian employee at NCBC. Ms. Patterson delivered the tape to Mr. W.E. Hudson, NCBC Security Officer, who delivered the tape to RADM Nash.

AFTER REPORTING AT NCBC

f. Upon MACS Taylor's arrival, RADM Nash held a meeting with top base officials to discuss the arrival of MACS Taylor.

g. Upon reporting on board NCBC, MACS Taylor was taken to Executive Officer's Inquiry for activities in Bermuda. At the XOI, Taylor was awarded the Nonpunitive Letter of Caution sent from Bermuda. The charge was for disrespect to a commissioned officer at Bermuda.

h. Immediately upon arriving at NCBC, MACS Taylor was directed to meet with LCDR Cole in his office. At that meeting, which was attended by BMCS Kossman, LCDR Cole told MACS Taylor that "this isn't Bermuda" and "You aren't going to get away with that s--t here", or words to that effect.

i. In January 1993, LCDR Cole was called by Jeff Ruch, an attorney with the Government Accountability Project, a public interest organization which was involved with the incident in Bermuda. Mr. Ruch called LCDR Cole to discuss the pending Captain's Mast for Disrespect in Bermuda. After the phone conversation, LCDR Cole confronted MACS Taylor, saying he had just gotten a call from his "liberal lawyers" and "this is bulls--t," or words to that effect. LCDR Cole told MACS Taylor that "they're not gonna get you out of this. * * * This package was sent here. We're going to adjudicate this here", or words to that effect.

j. Approximately one month after MACS Taylor reported aboard, MACS Taylor suggested to LCDR Cole that one of his practices was improper. LCDR Cole had, on several occasions, sent sailors to the Long Beach Brig with full knowledge that there would never be a court-martial. This was typically done on a Friday afternoon, where the magistrate would be unable to release the sailor until the following Monday. When MACS Taylor suggested to LCDR Cole that this practice was improper, LCDR Cole became incensed, telling MACS Taylor "I'm the f---ing lawyer on this base; who made you the base lawyer?", or words to that effect.

k. A meeting to discuss Workman's Compensation issues was held in September 1993 and was attended by LCDR Cole, MACS Taylor, NCBC Executive Officer, NCBC Command Master Chief, and other officials. At the meeting, LCDR Cole confronted MACS Taylor due to rumors he had heard about members of the Special Investigations Unit, of which Taylor was a member, being deputized by the federal government. MACS Taylor denied ever spreading the rumor. LCDR Cole responded by admonishing MACS Taylor for not addressing him as "Sir" when making a statement.

l. In a Memorandum dated 5 September 1993, LCDR Cole requested to the Commanding Officer, NCBC, that MACS Taylor be relieved of his duties. RADM Nash, however, declined to carry out LCDR Cole's request.

m. MACS Taylor has also had numerous personal confrontations with Mr. W.E. Hudson, NCBC Security Officer, since reporting aboard. Mr. Hudson is MACS Taylor's direct superior in the Security Department.

n. On 30 September 1993, MACS Taylor received a performance evaluation which covered the period since MACS Taylor's arrival on board NCBC and was signed by RADM Nash. Taylor received straight 4.0 evaluations on this evaluation. There was no mention whatsoever of any problems with MACS Taylor's performance. MACS Taylor was described as having "great depth of professional knowledge" and a "keen sense of responsibility". He was praised for "drafting and immediate implementation of the department's quality-focused Standard Operating Procedures." He was also praised for conducting a special task force to curtail the flow of drugs onto the base and for assisting civilian police in drug operations.

16 NOVEMBER ARREST

o. On 16 November 1993, MACS Taylor participated in the arrest of CE3 Richard Miller, USN, a deserter who had escaped from the Long Beach Brig. There were three other NCBC police officers at the scene. The arrest took place in the City of Oxnard with the participation of the Oxnard Police. No complaints were made by any persons involved in the arrest. Officers Ernie Eglin and L.E. Robertson of Oxnard Police executed the arrest and believe that MACS Taylor acted entirely properly.

p. On 17 November 1993, Mr. Hudson called MACS Taylor into his office and accused him of acting improperly during the previous night's arrest. Mr. Hudson then discussed with MACS Taylor the possibility of an early retirement for MACS Taylor.

q. On 18 November 1993, Mr. Hudson met with LCDR Cole to discuss this situation. At this meeting, the two men agreed to have Naval Investigative Service investigate MACS Taylor's activities on the night of the arrest.

r. On 22 November 1993, Mr. Hudson informed MACS Taylor that he planned to have NIS investigate the arrest.

s. Pursuant to advice from military defense attorneys, MACS Taylor and each of the other three officers consistently invoked his right to remain silent during the investigation.

t. On 3 January 1994, MACS Taylor was given a Report Chit citing one specification of violation of Article 92 related to the arrest of CE3 Miller. LCDR Cole's signature appears on the Chit for "person submitting report". Along with the Report Chit, MACS Taylor

received formal notification of contemplated Nonjudicial Punishment.

u. On numerous occasions after the Report Chit was drafted, LCDR Cole attempted to persuade MACS Taylor and the other three NCBC officers involved to answer questions about the arrest. On or about 3 January 1994, LCDR Cole informed MACS Taylor that the Incident Complaint Report for the incident in question had never been received, and he gave MACS Taylor a direct order to write a report describing what happened on the night in question. MACS Taylor has consistently maintained that he submitted the report immediately after the arrest. Pursuant to advice from LT Carter F. Brod, JAGC, USNR, Defense Counsel, MACS Taylor nevertheless prepared a new report to avoid violating a direct order.

v. When discussing with MACS Taylor his potential Captain's Mast, LCDR Cole ordered MACS Taylor to sit locked at attention. LCDR Cole told MACS Taylor that he would "add twenty more f--king charges" if Taylor refused Captain's Mast.

w. On or about 6 January 1994, LCDR Cole called LT Brod and asked LT Brod to give MACS Taylor pre-Mast advice. LCDR Cole told LT Brod that MACS Taylor was being really stupid in his attitude and that if he did not accept Mast then they were going to "throw the book at him." LCDR Cole told LT Brod that, if MACS Taylor refused Mast, "we have lots of other stuff on him to use which we will throw on there", or words to that effect.

x. On 10 January 1994, MACS Taylor refused Nonjudicial Punishment.

y. LCDR Cole has made numerous attempts to persuade the other three NCBC officers to discuss the details of the arrest. On 6 January 1994, LCDR Cole told LT Brod in a telephone conversation that "the command is unlikely to dismiss the charges against Senior Chief Taylor but would probably dismiss on the others if they opened up."

z. In a telephone conversation with civilian police lieutenant Byron Frank, which lasted over one hour, LCDR Cole told Lt. Frank that "if you all had just cooperated with the NIS investigation, then you would have just gotten a slap on the wrist", or words to that effect. LCDR Cole stated that "Senior Chief Taylor is manipulating the other three officers. I feel really sorry for them", or words to that effect. LCDR Cole stated that "ABC bailed his a-- out in Bermuda. They won't come to his rescue now", or words to that effect. LCDR Cole asked Lt. Frank, who was also an African-American, "why won't you just tell me what happened? I'm the smartest black attorney in the JAG Corps. Let's just talk brother to brother", or words to that effect.

aa. On 21 January 1994, 48 specifications of UCMJ violations were preferred against MACS Taylor. Many of the specifications related to the 16 November arrest, but 16 of the 47 new specifications related to incidents in April, May and June of 1993.

bb. Naval Criminal Investigative Service conducted an extensive investigation of the charges against MACS Taylor. Included as part of the NCIS investigation were interviews of over twenty-one witnesses. Many of the witnesses, including Petty Officer Pringle, Detective Wunsch and Lieutenant Frank, were asked questions about MACS Taylor's activities in Bermuda.

cc. LT Robert P. Morean, JAGC, USNR, Trial Counsel, conducted several witness interviews at NCBC on or about 15 February 1994. LCDR Cole was present for many of these interviews and occasionally participated in questioning. In the Interview with BMCS Kossman, USN, LCDR Cole corrected BMCS Kossman for giving an answer LCDR Cole believed was incorrect. When MS3(SS) Doyle was interviewed, LCDR Cole was "right there, only two feet away from me." When MS3 Doyle told LT Morean that he felt MACS Taylor was an excellent cop and excellent leader, LCDR Cole stormed out of the meeting and slammed the door. LCDR Cole also assisted LT Morean in the questioning of Dan Gordon, Security Department Training Officer.

dd. On 9 February 1994, LCDR Cole approached DT3 Fredia Wright, USN, who had a son living on base who had been barred from the base for juvenile delinquency. LCDR Cole offered DT3 Wright that her son could continue to live on the base if he would testify in the court-martial of MACS Taylor. LCDR Cole told her that she could disregard the barring notice if her son would cooperate.

ee. On or about 18 February 1994, LCDR Cole discussed the 16 November arrest while teaching a class to new NCBC security officers. While teaching this class, LCDR Cole referred to the four officers who made the 16 November arrest as "the four", and used their arrest as an example of illegal police activities.

OTHER SIMILAR NCBC SECURITY CASES

ff. In the past, there have been several other arrests by NCBC Police with the same characteristics as the 16 November arrest. No prosecution or disciplinary action was taken in any of the other arrests. There have also been egregious cases of clear dereliction of duty by NCBC Military Police where no prosecution was undertaken.

gg. On 23 September 1992, NCBC Detective A. Carpenter, MA1 Woods, USN, and NCBC Detective P. Wunsch arrested EOCN Jason S. Tyree, USN, a deserter from NMCB-40, off-base in the City of Oxnard. The facts of that arrest were effectively identical to those in the case at bar. There was no disciplinary action of any kind taken against any of the officers.

hh. In December 1993, a complaint was filed alleging that GSM2 E.J. Beman used unlawful force in an arrest of a female suspect. The investigation of the incident was handled internally; NCIS was never asked to investigate. Beman was not court-martialed for his actions.

ii. In mid-1992, evidence existed that civilian NCBC police officer Carlos Tangonan used unnecessary force by hitting a suspect in the mouth with a baton. No investigation of any kind was undertaken, and no disciplinary action followed.

jj. On 21 January 1992, F.D. Forbes, a civilian NCBC police officer, arrested a suspect in the City of Port Hueneme by pursuing him on an off-base street, drawing his service revolver and ordering the suspect to freeze. The suspect was unarmed and seen climbing over the base fence from on-base to off-base, which is not an offense under any criminal code. The "suspect" was not charged with any crime. Forbes was not disciplined in any way for making this off-base arrest.

kk. Many members of the NCBC Security Department believe that, based on their knowledge of the facts, the 16 November arrest was entirely legal and consistent with NCBC policy practices.

RECENT FACTS

ll. On 11 February 1994, LCDR Cole offered LT Brod that MACS Taylor could still go to Captain's Mast if he wanted. LCDR Cole told LT Brod that, if MACS Taylor accepted Mast, the charges would include only two specifications of dereliction of duty.

mm. On 9 March 1994, LCDR Cole ordered an administrative questioning of Byron Frank regarding the arrest of 16 November 1993. LT Morean told LT Caroline Goldner, JAGC, USNR, that this was done as a "discovery tool" for the court-martial of MACS Taylor.

nn. On 17 March 1994, LT Morean told LT Brod in a telephone conversation, that "it is my understanding that if everyone had been forthcoming, there would have been no charges. The Admiral just got ticked when everyone clammed up."

3. Statement of Law.

a. R.C.M. 907, MCM 1984. Motions to Dismiss.

b. Fifth Amendment, United States Constitution. "No person shall be * * * compelled in any case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

c. *Bordenkircher v. Hayes*, 434 U.S. 357 (1978). "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort."

d. *Chaffin v. Stynchcombe*, 412 U.S. 17 (1973). For an agent of the state to pursue a course of action whose object is to penalize a person's reliance on his constitutional rights is "patently unconstitutional."

e. *U.S. v. Davis*, 18 M.J. 820 (AFCMR 1984). For a claim of prosecutorial vindictiveness to succeed, it must be established that the decision to prosecute was based on impermissible considerations such as race, religion, or the desire to prevent the exercise of a legal right. "In the classic prosecutorial vindictiveness case the subsequent charges are harsher variations of the same decision to prosecute." See Also *U.S. v. Spence*, 719 F.2d 358 (11th Cir. 1983), *Hardwick v. Doolittle*, 558 F.2d 292 (5th Cir. 1977).

f. *U.S. v. Spence*, 719 F.2d 358 (11th Cir. 1983). "To help simplify prosecutorial vindictiveness claims, the Supreme Court developed a 'presumption of vindictiveness'." 719 F.2d at 361. "Courts in this circuit construing post-*Blackledge* decisions have held that whenever a prosecutor brings more serious charges following the exercise of procedural rights, 'vindictiveness' is presumed, provided that the circumstances demonstrate either actual vindictiveness or a realistic fear of vindictiveness." 719 F.2d at 361.

g. *U.S. v. Krezdorn*, 718 F.2d 1360 (5th Cir. 1983). If the defendant challenges as vindictive a prosecutorial decision to increase the number or severity of charges following the exercise of a legal right, the court must examine the prosecutor's actions in the context of the entire proceedings. If "the course of events provides no objective indication that would allay a reasonable apprehension by the defendant that the more serious charge was vindictive, i.e. inspired by a determination to 'punish a pesky defendant for exercising his legal rights,' a presumption of vindictiveness applies which cannot be overcome unless the government proves by a preponderance of the evidence occurring since the time of the original charge decision altered that initial exercise of the prosecutor's discretion." 718 F.2d at 1365.

h. *U.S. v. Blanchette*, 17 M.J. 512 (AFCMR 1983). "The test for prosecutorial vindictiveness is whether, in a particular factual situation, there is a realistic likelihood of vindictiveness for the preferral of charges against the accused." 17 M.J. at 514.

i. *U.S. v. Hagen*, 25 M.J. 78 (CMA 1987). Once a prima facie case of vindictiveness is made out, the burden shifts to the prosecution to

disprove the misconduct. See Also *U.S. v. Garwood*, 20 M.J. at 154 (CMA 1985).

j. *U.S. v. Falk*, 479 F.2d 616, 620 (7th Cir. 1973). If a defendant alleges intentional or purposeful discrimination and presents facts to raise a reasonable doubt about the prosecutor's purpose, then the prosecutor can be called to the stand to testify.

k. *U.S. v. Green*, 37 M.J. at 384 (CMA 1993). "This Court has previously stated that 'in referring a case to trial, a convening authority is functioning in a prosecutorial role'". See Also *U.S. v. Fernandez*, 24 M.J. at 78 (CMA 1987), *Cooke v. Orser*, 12 MJ 335 (CMA 1982), *U.S. v. Hardin*, 6 M.J. at 404 (CMA 1979).

l. In assessing a claim of prosecutorial vindictiveness, the Supreme Court focusses on practices which tend to chill the assertion of defendant's rights. *Blackledge v. Perry*, 417 U.S. 21 (1974), *NC v. Pearce*, 395 U.S. 711 (1969), *Bordenkircher v. Hayes*, 434 U.S. 357 (1978)

4. Discussion.

a. There are essentially three independent bases upon which the prosecution of MACS Taylor is vindictive. The first basis is due to retaliation for MACS Taylor's whistleblowing in Bermuda and his personal relationship with the convening authority's attorney, LCDR Cole. These two issues have been grouped together because they support the premise that MACS Taylor is being prosecuted for who he is, not what he has done. Second, MACS Taylor is being prosecuted for exercising his Constitutional right to remain silent. Third, MACS Taylor is being prosecuted for exercising his right to refuse Captain's Mast.

b. In light of the nature of these charges, the fact that forty-eight total specifications were preferred in this case, in itself, is strong evidence of the government's vindictiveness. An inference can be drawn that by charging MACS Taylor with such a large number of charges, the government intended to intimidate him, "show" him, or otherwise "retaliate" against him for any one of the three bases supporting this motion. The context of these charges, including the content and tone of statements made by the convening authority's attorney, further clarifies that this prosecution was undertaken with a vindictive purpose.

BASIS 1: BERMUDA AND PERSONAL RELATIONSHIP

c. Under this basis, this motion seeks dismissal of all charges pending against MACS Taylor. None of these charges would have been brought but for MACS Taylor's whistleblowing in Bermuda and his personal relationship with LCDR Cole. Pursuant to *U.S. v. Davis* and *Blackledge v. Perry*, these are both impermissible bases for undertaking a prosecution.

d. There is substantial evidence that the convening authority knew about MACS Taylor's activities in Bermuda and had distaste for those activities. RADM Nash requested a copy of the Bermuda tape before MACS Taylor arrived. Articles were posted and the tape was watched at the security department prior to MACS Taylor's arrival. LCDR Cole's statements to MACS Taylor when he arrived at NCBC shows his distaste for MACS Taylor's prior whistleblowing. MACS Taylor was taken to XOI by the convening authority for activities in Bermuda. The convening authority awarded him a letter of caution at this XOI for activities in Bermuda. NCIS, in conducting the investigation of these charges for the convening authority, asked numerous witnesses if they knew anything about the Bermuda incident. Furthermore, LCDR Cole's statement that "ABC bailed him out of Bermuda, they won't come to his rescue here", shows the vindictive tone of LCDR Cole based on MACS Taylor's activities in Bermuda.

e. There is also substantial evidence that LCDR Cole had a personal animosity for MACS Taylor. The statements by LCDR Cole at the meeting upon MACS Taylor's arrival is evidence of that animosity. MACS Taylor questioned LCDR Cole's professionalism by challenging his practice with regard to pretrial confinees. LCDR Cole was incensed at MACS Taylor's complaint. The 5 September 1993 memorandum shows that prior to this arrest, LCDR Cole sought to have MACS Taylor fired from his job. Ever since the first meeting when MACS Taylor reported at NCBC, there have been continual confrontations between the two men.

f. In addition to the evidence of vindictiveness, there is considerable evidence of fact situations similar to those in the case at bar that were not prosecuted. The off-base arrests involving detectives Forbes and Wunsch were very similar to this arrest, and no disciplinary action followed. There was evidence of dereliction by GSM2 Beman, but no disciplinary action was initiated. There was evidence of dereliction by Officer Tangonan, and no investigation was initiated. An examination of these other situations demonstrates that the government would not have ordinarily prosecuted this case but for MACS Taylor's activities in Bermuda and his personal relationship with LCDR Cole.

g. The vigor with which the command initiated this prosecution is further evidence of the other-than-official interest is seeing MACS Taylor prosecuted. For example, NCIS was called in to investigate and devoted a great deal of resources to this investigation. NCIS jurisdiction, however, is normally over major offenses only. LCDR Cole used his influence as base SJA over other legal matters to affect the investigation in this court-martial. LCDR Cole used the pressure of a barring order to enlist the support of an unwilling witness, Doug Lively. He used his administrative power to order a civilian, Byron Frank, to give, against his will, information to use against MACS Taylor. LCDR Cole also actively participated in interviewing witnesses with the Trial Counsel.

h. In sum, there is substantial evidence that this prosecution would not have normally been initiated but for the fact that MACS Taylor was the subject. Dislike of a sailor based on his past legal activities (Bermuda) and his personality is not a permissible basis upon which to initiate a prosecution. For the foregoing reasons, all pending charges against MACS Taylor should be dismissed.

BASIS 2: RIGHT TO REMAIN SILENT

i. Ever since initially being accused of dereliction, MACS Taylor has exercised his Constitutional right to remain silent. There is substantial evidence that all forty-eight charges in this court-martial are a result of vindictiveness due to MACS Taylor's invoking this constitutional right. Under this basis, this motion seeks dismissal of all charges.

j. On 17 March 1994, the Trial Counsel told the Defense Counsel that it was his understanding, based on his discussions with the Convening Authority, that no charges would have been brought but for MACS Taylor's invocation of this right. The Trial Counsel further stated that it was his understanding that the Admiral "got ticked" when MACS Taylor invoked this right. The Trial Counsel's statement is clear evidence that the government's decision to prosecute was based on MACS Taylor's decision to remain silent.

k. In discussing Taylor's court-material charges with Byron Frank, LCDR Cole stated that "if they had just cooperated with NIS, then it would've been a slap on the wrist", implying that the charges would not have been brought at all but for MACS Taylor's invocation of his right to remain silent.

l. LCDR Cole has made numerous attempts at pressuring MACS Taylor to give up his right to remain silent, including attempts to persuade LT Brod and * * * appeals to MACS Taylor. LCDR Cole further told MACS Taylor that if he didn't "open up" there would be "twenty more f---ing charges."

m. The convening authority has taken several other actions which demonstrate the vigor with which it has attempted to get MACS Taylor to give up his right to remain silent. First, LCDR Cole gave MACS Taylor a direct order to write a new Incident Complaint Report, alleging that the original had been lost. Second, LCDR Cole administratively ordered civilian police lieutenant Byron J. Frank, who participated in the arrest, to give details of the arrest. LT Morean described this administrative order as a "discovery tool".

n. In sum, there is considerable evidence that the convening authority was angered by MACS Taylor's silence, and was in fact motivated to prosecute in retaliation for MACS Taylor's silence. In fact, the convening authority expressly told the Trial Counsel that there would have been a prosecution at all had Taylor not "clammed up". It is evident that all forty-eight charges are in direct retaliation for MACS Taylor's exercise of a constitutional right, the right to remain silent.

o. To allow the government to prosecute as retaliation for exercising the right to remain silent would be to chill the exercise of this important constitutional right. Based on the foregoing, all charges now pending should be dismissed.

BASIS 3: RIGHT TO REFUSE CAPTAIN'S MAST

p. After MACS Taylor refused Captain's Mast, the charges against him rose from one specification of dereliction of duty to 48 specifications in total at special court-martial. There is substantial evidence that the additional 47 specifications were preferred in retaliation for MACS Taylor's refusal to accept Mast. Under this basis, the motion seeks dismissal of all charges added after the refusal of Captain's Mast. The charges sought to be dismissed include all additional specifications related to the 16 November arrest (beyond the one specification from Mast) as well as all specifications related to previous incidents.

q. LCDR Cole explicitly told MACS Taylor and LT Brod that if Taylor refused Mast "there would be twenty more charges" and that he would "throw the book at him". These statements demonstrate LCDR Cole's intentions to retaliate if MACS Taylor refused Mast.

r. Supreme Court and Military decisions support that a large increase in charges after the invocation of a legal right is a strong sign of prosecutorial vindictiveness. Here, the charges jumped from one to forty-eight after MACS Taylor exercised his right to a court-martial. In *U.S. v. Davis*, the court states that the classic prosecutorial vindictiveness case involves a harsher variation of the same decisions to prosecute. Clearly, if the first decision to prosecute was for only one specification, then a second decision for 48 specifications is a harsher variation.

s. In *U.S. v. Martino*, 18 M.J. 526 (AFCMR 1984), the government raised the number of

charges after the accused refused NJP. The court held such prosecution to be proper. *Martino* can be distinguished on several bases. First, the court emphasized that the defense counsel asserted prosecutorial vindictiveness with no evidence whatsoever of a vindictive motivation. Further, the government showed evidence of a valid motivation for the difference in number of charges. In the case at bar, however, there is considerable evidence of vindictiveness and there is no evidence of valid government motive for increasing the charges from 1 to 48.

t. In *Bordenkircher v. Hayes*, the Supreme Court held that in the normal give and take of plea bargaining, a prosecutor has valid discretion to increase and decrease the number of charges in order to secure a guilty plea. *Bordenkircher* is distinguishable on several grounds. First, in *Bordenkircher*, the only evident motive on the part of the prosecutor was the non-vindictive motive to receive a guilty plea. In the case at bar, there is considerable evidence of vindictiveness unrelated to the desire to secure a Mast conviction. Second, in *Bordenkircher*, it was not disputed that the defendant was properly chargeable for the additional charges. In the case at bar, however, there is considerable evidence that there was no valid basis for the additional charges. MACS Taylor's performance evaluation of September 1993 shows the convening authority's acknowledgement that there was no case of dereliction for any prior incidents. Third, the additional charges in the case at bar were not part of the course of normal plea bargaining. MACS Taylor was ordered to attention and threatened with more charges if he did not accept Mast. Further, the military relationship between a Lieutenant Commander and a Senior Chief Petty Officer is one of unequal bargaining power.

u. In *U.S. v. Davis*, a claim of prosecutorial vindictiveness was rejected. In *Davis*, however, there were no additional charges brought in the move from Mast to court-martial. In the case at bar, the charges rose from one to forty-eight. Justifying its rejection of the prosecutorial vindictiveness claim, the *Davis* court stated that the classic case of prosecutional vindictiveness occurs when the number of charges is raised.

v. *U.S. v. Blanchette* also involved a rejected prosecutorial vindictiveness claim. That case can be distinguished in that the reason for not charging the accused initially was due to insufficiency of evidence. The court found that the additional charges were justified due to the availability of new evidence. No such evidentiary justifications exist for the government in the case at bar.

w. In sum, because MACS Taylor refused Mast on one specification of dereliction of duty, the convening authority retaliated by preferring forty-seven additional charges against him at a court-martial. The possibility of retaliation is clearly "realistic", and the impression made on the accused is clearly one of intimidation. The statements by LCDR Cole are evidence that the convening authority was in fact motivated by vindictiveness. Dismissing the additional charges would be consistent with Supreme Court and Military case law. To allow vindictive charging as occurred here would be to chill the exercise of a sailor's legal right to refuse Captain's Mast. For the foregoing reasons, all charges beyond the initial specification of dereliction of duty should be dismissed.

5. Evidence.

a. Witnesses. The defense offers the testimony of the following witnesses in support of this motion: Detective Wunsch, Sergeant Forbes, LCDR Cole, MACS Taylor, Lieutenant Frank, Officer Elgin, Officer Robertson, MACS Kossman, Kari Lee Patterson, DT3 Wright, MS3 Doyle, Mr. Hudson, Mr. Flynt, R.J. Bryan, Petty Officer Bassett, Petty Officer Pringle, Andrew Stewart, LT Morean, Petty Officer Beman Officer Tangonan.

b. Documents. The following documents will be presented as evidence in support of this motion: Incident Complaint Report (ICR) for Wunsch arrest, ICR for Forbes incident, report of Beman incident, 5 September 1993 Memorandum from LCDR Cole, Bermuda file, MACS Taylor evaluation, Mast charges, Report chit, NJP Refusal Form, Court-martial charges, letter of caution, Bermuda tape, new ICR for 16 November arrest, Barring notice for Doug Lively.

6. Relief Requested. Pursuant to Basis 1, the defense respectfully requests that all charges be dismissed. Pursuant to Basis 2, the defense respectfully requests that all charges be dismissed. Pursuant to Basis 3, the defense respectfully rests that all charges other than the one specification charged at Mast be dismissed.

7. Oral Argument. The defense desires to make oral argument of this motion.

CARTER F. BROD,
LT, JAGC, USNR,
Defense Counsel.

Date: 23 Mar 94

CERTIFICATE OF SERVICE

I, Lieutenant Carter F. Brod, JAGC, USNR, certify that on this 23rd day of March 1944, I personally served upon government trial counsel a true and correct copy of this Motion.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, DC, August 9, 1994.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN, I am responding to your letter of August 5, 1994, concerning the retirement confirmation of Admiral Henry Mauz, Jr., U.S. Navy.

The latest GAP letter alleges improper communications between members of Admiral Mauz' staff and persons assigned in the Port Hueneme area who had knowledge of the court-martial case involving Senior Chief Taylor. In order to be able to assure the Committee that we were providing all information relevant to this matter, OPNAV staff spoke with the persons concerned and confirmed the accuracy of those parts of the Chief of Naval Operations' 27 July letter to you that addressed this issue (pages 4 and 5).

Senior Chief Taylor had charges brought against him arising out of actions in November 1993 while serving at the Naval Construction Battalion Center (NCBC), Port Hueneme, California. He had previously requested in writing to be transferred outside the Commander in Chief, U.S. Atlantic Fleet (CINCLANTFLT) chain of command, and the Bureau of Naval Personnel approved that request by assigning him to an appropriate billet in his rating at Port Hueneme. He reported to NCBC Port Hueneme for duty in December 1992.

After referral to trial of the November 1993 charges, the convening authority (NCBC Port Nueneme) decided it was appropriate to move the case out of the Port Hueneme area to ensure the fair and independent disposition of the case. To this end, the convening authority withdrew the charges on March 26, 1994. My inquiry revealed no communications between Admiral Mauz or anyone on his staff and those involved with bringing the charges, and ultimately withdrawing the charges, against Senior Chief Taylor prior to the withdrawal of charges in March 1994.

The proceedings in Senior Chief Taylor's case were mentioned in a short Orlando Sentinel article of March 29, 1994, which appeared in a Pentagon compilation of news articles on 1 April. In describing the withdrawal of charges relating to Senior Chief Taylor's alleged negligent and improper arrest of a service member, the article stated that his attorneys had filed documents "contending the misconduct charges were retaliation for Taylor's comments" in the past regarding Bermuda. Admiral Mauz' Executive Assistant saw the article and asked the senior Staff Judge Advocate to ascertain what, if any, connection there could have been between Senior Chief Taylor's current situation in Port Hueneme and Bermuda. Both officers were confident that CINCLANTFLT had taken no action whatsoever in retaliation against Senior Chief Taylor, and they were understandably concerned that such a suggestion might have been made and believed it important to ascertain the basis, if any, for such an allegation.

The CINCLANTFLT Staff Judge Advocate called the NCBC Staff Judge Advocate, who confirmed the news article was indeed misleading and that there was no suggestion during the proceedings of any involvement by CINCLANTFLT or his subordinates in Senior Chief Taylor's case. The NCBC Staff Judge Advocate explained the charges involved Senior Chief Taylor's law enforcement activities while assigned to NCBC Port Hueneme. The charges included an allegation that Senior Chief Taylor engaged in unauthorized off-base law enforcement activities, including carrying a government-issued firearm off-base. The CINCLANTFLT Staff Judge Advocate recounted this information to the Executive Assistant, who then spoke briefly to Admiral Mauz about the matter. The request for clarification of the short news article was appropriate in order for CINCLANTFLT to ascertain whether there were grounds for investigation into any alleged impermissible actions by anyone under the command of CINCLANTFLT.

Neither Admiral Mauz, nor any other CINCLANTFLT official, was involved with the referral or withdrawal of the charges, which arose solely from events centered in NCBC Port Hueneme nearly a year after Senior Chief Taylor's transfer to that command. On 23 March 1994, Senior Chief Taylor's defense counsel in the pending case filed a "motion to dismiss for vindictive prosecution," alleging the Port Hueneme convening authority had an unlawful decision to prosecute Senior Chief Taylor. The defense motion complained mainly about the vigor with which the Port Hueneme command pursued the charges against Senior Chief Taylor, alleging that members of that command "had distaste" for his previous whistleblowing activities and the charges were being pursued because Senior Chief Taylor exercised his rights to remain silent and to refuse nonjudicial punishment for his alleged improper law enforcement activities. The defense pointed to alleged statements by officials in Port Hueneme suggesting that they had focused inordinate attention on his previous, well-publicized disclosures relating to Bermuda. The defense motion did not allege "personal interest" or any actions or involvement relating to this case by Admiral Mauz or anyone subordinate to him.

With regard to receipt of a copy of the defense motion by a member of the office of the CINCLANTFLT Staff Judge Advocate,

the GAP letter is incorrect in stating that this occurred prior to the call seeking clarification of the news article. I have reconfirmed the office of the CINCLANTFLT Staff Judge Advocate received the motion more than a week after the charges were withdrawn. This occurred when the Navy judge advocate assigned to an NCBC Port Hueneme tenant command called some of his lawyer colleagues to offer to send them copies of the document, which he found to be unique and very interesting from a professional perspective. One of these officers was an attorney in the office of the CINCLANTFLT Staff Judge Advocate with whom he had worked closely in the past. The two officers had maintained a close professional association and friendship, and spoke with each other and exchanged faxes regularly on professional issues. The CINCLANTFLT Lieutenant accepted the offer, but upon receipt noticed that portions of it were illegible. In order to obtain a better copy, she called the Officer in Charge, Naval Legal Service Office Detachment, Port Hueneme, who was reluctant to provide the document, despite the fact that it was one of the papers in a public court proceeding, to people who were merely curious about the case and had no official reason to have it. The CINCLANTFLT Lieutenant replied that when allegations relating to a command appear in the press, the command has a valid interest in ascertaining the basis, if any, of such allegations. The Officer in Charge agreed that this was a valid reason and, believing that he had received a reasonable request from the CINCLANTFLT staff, he faxed her a copy. Since the Officer in Charge viewed the call as a CINCLANTFLT request, he so informed Senior Chief Taylor's defense counsel.

The request for the document did not stem from Admiral Mauz. During the further inquiry by OPNAV staff, the Officer in Charge verified the CINCLANTFLT Lieutenant neither demanded a copy of the motion, nor stated that her call was at the personal request of Admiral Mauz. Moreover, the document was not shared outside the CINCLANTFLT Staff Judge Advocate's office. Since the document included no allegations of impropriety by Admiral Mauz or anyone in CINCLANTFLT, and had not been requested by Admiral Mauz or anyone else on his staff, there was no reason for the Staff Judge Advocate to provide the document to, or discuss in with, others.

There is simply no basis whatsoever for any claim that Admiral Mauz took a personal interest in the case involving Senior Chief Taylor. The facts as confirmed by thorough inquiry show the accuracy of Admiral Mauz' public statement categorically denying any such allegation. The communications by members of his staff were permissible and in no way alter this conclusion. There was no attempt or intent in any of these communications to affect the case.

I have sought to answer the GAP letter's claims candidly, thoroughly and accurately in order to assist the Committee in its deliberations on Admiral Mauz' confirmation to retire in his four-star grade. I believe strongly that there is no basis for the GAP claims and that Admiral Mauz' confirmation—and the assumption of command by his successor—should not be further delayed.

I am available at any time to discuss this matter further with you or to provide you any further information you desire. Please do not hesitate to call on me. I have sent a similar letter to Senator Thurmond.

Sincerely,

JOHN H. DALTON,
Secretary of the Navy.

CAMARILLO, CA.

Senator SAM NUNN,
Chairman, Senate Armed Services Committee, Washington, DC.

DEAR SENATOR NUNN AND MEMBERS OF THE COMMITTEE: I am writing to address the inaccurate and misleading information provided to the committee concerning my case as it pertains to the retirement status of Admiral Henry Mauz. My primary concerns focus on the involvement of Admiral Mauz and his staff in charges (since dropped) that were brought against me while at Port Hueneme. I believe this involvement, and the Navy's obfuscation of the facts, provide more than enough reason why the committee should hold a full investigation into this matter, before bringing the matter to a vote.

Below is an outline of the most serious errors in the Navy's communications with the committee. It is by no means comprehensive, and full committee investigation would flush out the full details.

I. MANNER BY WHICH MAUZ'S STAFF ACQUIRED DEFENSE PROCEEDINGS

Not only do the Navy responses differ from the actual chain of events, the accounts from Admiral Boorda and Secretary Dalton differ from each other concerning the same events.

Statement from Boarda letter:

"Subsequently, unbeknownst to either the senior Staff Judge Advocate of Admiral Mauz, a junior Staff Judge Advocate obtained a copy of the defense motion that was the basis for withdrawal of the charges, as well as a copy of the charge sheets, from a friend who was then Officer in Charge, Navy Legal Service Office, Port Hueneme. The Officer in Charge believed that in providing that documentation, he was responding to an official request from Admiral Mauz's staff and acting quite properly, he informed Senior Chief Taylor's military counsel of the actions he had taken to comply with the request. While these documents were shared with the senior Staff Judge Advocate he did not speak of them to any other staff member."

Statement from Dalton letter:

"With regard to receipt of a copy of the defense motion by a member of the office of the CINCLANFLT Staff Judge Advocate, the GAP letter is incorrect in stating that this occurred prior to the call seeking clarification of the news article. I have reconfirmed the office of the CINCLANFLT Staff Judge Advocate received the motion more than a week after the charges were withdrawn. This occurred when a Navy judge advocate assigned to an NCBC Port Hueneme tenant command called some of his lawyer colleagues to offer to send them copies of the document, which he found to be unique and very interesting from a professional perspective. One of these officers was an attorney in the office of the CINCLANFLT Staff Judge Advocate with whom he had worked closely in the past. The two officers had maintained a close professional association and friendship, and spoke with each other and exchanged faxes regularly on professional issues. The CINCLANFLT Lieutenant accepted the offer, but upon receipt noticed that portions of it were illegible. In order to obtain a better copy, she called the Officer in Charge, Naval Legal Service Office Detachment, Port Hueneme, who was reluctant to provide the document, despite the fact that it was one of the papers in a public court proceeding, to people who were merely curious about the case and had no official reason to have it. The CINCLANFLT Lieutenant replied that when allegations relating to a command appear in the press, the command has a valid interest in ascertaining the basis, if any, of such allegations. The Officer in Charge agreed that this was a valid reason and, believing that he had received a reasonable request, he faxed her a copy."

The actual chain of events occurred as follows:

The junior Staff Judge Advocate contacted a friend of hers at Port Hueneme, a Lieutenant Wilson. Lieutenant Wilson approached Taylor's defense counsel supervisor, Lieutenant Tamboer, and asked for a copy of the defense proceedings. Lieutenant Tamboer refused the request. The junior Staff Judge Advocate contacted Lieutenant Tamboer directly and said it was a direct request from ADM Mauz. Lieutenant Tamboer then complied with the request.

II. ADMIRAL MAUZ'S INVOLVEMENT IN THE CHARGES AGAINST TAYLOR

Statement from Boorda letter:

"There was no influence on the case and, in fact, the charges had already been withdrawn at the time of the call."

Facts:

This statement is highly misleading. Although the extraordinarily high number of charges (48 total) were withdrawn at the time of the call, approximately two weeks later, Taylor was sent to an Article 32 hearing where he was re-charged.

In fact, the CINCLANTFLT Staff Judge Advocate called the Staff Judge Advocate for the Port Hueneme base, Lt. Cdr. Derrick Cole, to tell him that he was upset that the charges had been withdrawn against Taylor. Lt. Cdr. Cole assured the CINCLANTFLT Staff Judge Advocate that Taylor would be re-charged. This information is in the record of trial. The Navy withdrew charges, in all likelihood, because they were rightly concerned that if the case was brought before a judge, that judge would promptly dismiss the case.

Many of the key people involved in my case, who dispute the Navy's account of the chain of events, would be happy to provide the committee with statements or testify. Please contact me if I can be of any assistance. My work phone is: (805) 982-2007. My home phone is (805) 388-3915. My beeper number is: 1-800-482-3366, ext. 10397. I am at your service.

Very Respectfully,

GEORGE R. TAYLOR,
MACS (SW) USN.

CHIEF OF NAVAL OPERATIONS,
August 22, 1994.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter responds to a recent undated letter from Senior Chief George R. Taylor, USN, to "Senator Nunn and Members of the Committee." Senior Chief Taylor's letter was passed from the Armed Services Committee Staff to the Navy Chief of Legislative Affairs on 19 August asking for ". . . the Navy's review of the letter and information therein."

This is the third in a series of letters concerning Senior Chief Taylor and the pending retirement confirmation of Admiral Henry Mauz, Jr., U.S. Navy. This most recent letter provides no new allegations or information that have not already been addressed in the prior two letters. Nevertheless, the following paragraphs will address in additional detail each of Senior Chief Taylor's allegations.

With respect to Part I of his letter, Senior Chief Taylor states that the accounts in my 27 July letter and the Secretary of the

Navy's 9 August letter ". . . differ from each other concerning the same events." That is not correct. The Secretary's letter simply provided a more detailed description of the interactions between LT Hagerty-Ford (a junior staff judge advocate at CINCLANTFLT), LT Wilson (a legal officer at a Port Hueneme tenant command), and LT Tamboer (OIC Naval Legal Service Office Detachment, Port Hueneme).

The actual chain of events as stated in my 27 July letter and amplified in Secretary Dalton's letter is accurate. LT Wilson, a friend of LT Hagerty-Ford and a judge advocate assigned to a tenant command in Port Hueneme, called LT Hagerty-Ford to offer her a copy of the defense motion. When she received the copy with some illegible parts, LT Hagerty-Ford asked LT Wilson to send a better copy. LT Wilson asked the OIC, LT Tamboer, for a better copy for this purpose, but LT Tamboer was reluctant to provide it for the reasons stated in Secretary Dalton's 9 August letter. LT Wilson so informed LT Hagerty-Ford, who then phoned LT Tamboer to explain her reason for requesting a copy. As stated in attachments 1 and 2, LT Tamboer and LT Hagerty-Ford agree that my previous letter and Secretary Dalton's letter accurately describe their phone conversation. Specifically, LT Hagerty-Ford did not say she was making a direct request from Admiral Mauz. In addition, her statement indicates she never met Admiral Mauz or ever discussed this or any other case with him.

The foregoing reaffirms that Admiral Mauz played no role in a staff member's request for a copy of the defense motion to dismiss Senior Chief Taylor's case.

With respect to Part II of Senior Chief Taylor's letter, my 27 July letter stating that there was no influence exerted on the case and, in fact, that the charges had already been withdrawn at the time of the call, is absolutely accurate and not misleading. CAPT Baggett (Staff Judge Advocate at CINCLANTFLT) called LCDR Cole after the case had been forwarded to COMNAVBASE San Diego for disposition. At the time of the call, LCDR Cole no longer had any influence on the outcome because of the withdrawal of the charges and the case's transfer to a new convening authority. CAPT Baggett states in Attachment 3 that he never called the new convening authority, who later recharged Senior Chief Taylor.

On the final page of his letter, under the section entitled "Facts", Senior Chief Taylor notes that approximately two weeks after the charges against him were withdrawn, new charges were preferred and sent to an Article 32 hearing. He fails to note, however, that this action was taken by a different convening authority, COMNAVBASE San Diego, after a review of Senior Chief Taylor's alleged misconduct and redrafting of charges against him based on his actions in November 1993 as a member of the Naval Construction Battalion Center, Port Hueneme, Security Force.

In his next to last paragraph, Senior Chief Taylor says that CAPT Baggett was "upset" that the charges had been withdrawn and that LCDR Cole assured CAPT Baggett that Senior Chief Taylor would be recharged. CAPT Baggett rejects this in Attachment 3. Moreover, there is no evidence in the record of the Article 32 investigation that supports Senior Chief Taylor's assertions. Secretary Dalton's letter accurately states that the purpose of Captain Baggett's call to LCDR Cole was to clarify information contained in a newspaper article.

The foregoing demonstrates again that Admiral Mauz played no role whatever in Senior Chief Taylor's case in California.

In summary, as stated in the Secretary's and my prior letters, Senior Chief Taylor's accusations are inaccurate and should not be allowed to further delay the confirmation of Admiral Mauz for retirement in the grade of Admiral, which he so deservedly has earned.

I am sending a similar letter to Senator Thurmond.

Very respectfully,

J.M. BOORDA.

GRAND RAPIDS, MI,
August 20, 1994.

TO WHOM IT MAY CONCERN: Regarding the call I received from Lieutenant Noreen Hagerty-Ford of the CINCLANTFLT Staff Judge Advocate office in mid-April, the letters from the Chief of Naval Operations and the Secretary of the Navy to the Senate Armed Services Committee of July 27, 1994 and August 9, 1994, respectively, fairly and accurately describe my part in responding to her request. In April 1994, I was serving as Officer in Charge, Navy Legal Service Office, Port Huename. I have since left the Navy. My April discussion with Lieutenant Hagerty-Ford was about the purpose of her request for a copy of the notice filed by the defense in the Senior Chief Taylor case. She explained that Admiral Maus was CINCLANTFLT. I knew the motion included allegations about the CINCLANTFLT/Bermuda matter and therefore understood the command (CINCLANTFLT) would want to know about the allegations made in this motion. I recall being very busy when she called and that it did not take long at all for me to make the judgment that it would be appropriate to send her a copy of the motion. I agreed she had provided a valid reason and, believing I had received a reasonable request from the CINCLANTFLT staff, I faxed her a copy and so informed Senior Chief Taylor's defense counsel.

JOHN TAMBOER.

NORFOLK, VA,
August 22, 1994.

TO WHOM IT MAY CONCERN: The letter of 27 July 1994 and Secretary of the Navy's letter of 9 August 1994 are correct in describing my actions in April 1994 in obtaining a copy of the defense motion in Senior Chief Taylor's case. I was first afforded the document by my friend, LT Wilson, whom I know from a previous duty station. The copy I got had some illegible parts, so I called LT Wilson to ask him to send me a better copy. LT Wilson said he would ask LT Tamboar for one. Later that day LT Wilson called me to say LT Tamboar was reluctant to send out copies of the document unless there was a reason for the person to have it. I told him I would call LT Tamboar and ask him for it myself. Just as Secretary Dalton's letter states, I told LT Tamboar that I was on the CINCLANTFLT staff and explained that when allegations are made about a command, as apparently had been made in this case, the command has a valid reason to know about those allegations. LT Tamboar said he was satisfied I had provided a valid reason and agreed to send me a copy. I did not demand the document. I had no reason to do that and I simply do not work that way. It was a short and business-like conversation. I did not say the request was from Admiral Mauz because it most certainly was not. In fact, I am a relatively junior member on a large fleet staff and have never actually met Admiral Mauz or discussed this or any other case with him. No one else asked me to get it either. I did not provide it to anyone outside my office.

——— ———,
LT. JAGC, USNR.

NORFOLK, VA,
August 20, 1994.

TO WHOM IT MAY CONCERN: I became the Staff Judge for Commander in Chief, U.S. Atlantic Fleet, in mid-February 1994. The purpose of my phone conversation on 4 April 1994 with the Staff Judge Advocate at Port Hueneme was exactly as stated in Secretary Dalton's letter of 9 August 1994 to the Senate Armed Services Committee. At no time during the conversation did I indicate the LCDR Cole in any way that I was upset that charges against Senior Chief Taylor stemming from occurrences at Port Hueneme had been withdrawn. LCDR Cole explained that, contrary to an Orlando Sentinel newspaper article, the charges had not been dropped because of retaliation for being a whistleblower at Bermuda. He stated that the charges had been withdrawn and the case had been sent to another convening authority solely due to events at Port Hueneme which had prompted Senior Chief Taylor's defense counsel to raise a motion for dismissal based on vindictive prosecution. Upon being told the real reason for the withdrawal of the charges and transfer of materials pertaining to the case, I believed that the processing of the case had no connection with anything that had happened at Bermuda. The disposition of the investigation of Senior Chief Taylor had already been passed to a command in San Diego to determine independently at the time I talked with LCDR Cole. I had no further conversations with LCDR Cole and I never talked to anyone at San Diego about the case.

JOSEPH E. BAGGETT,
Capt. JAGC, USN.

ADDITIONAL MATERIAL

THE SECRETARY OF THE NAVY,
Washington, DC, September 13, 1994.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am responding at the request of your Committee to additional questions regarding Admiral Henry H. Mauz, Jr. Specific answers to each of the questions forwarded by your staff are attached.

I believe it significant to note when responding to questions regarding Admiral Mauz's involvement in the case of LT Simmons, that there are three levels of command between Admiral Mauz and the unit to which LT Simmons was assigned, USS CANOPUS (AS-34). Given Admiral Mauz's position as the Commander in Chief of the Atlantic Fleet and the size of the Fleet—two-hundred-and-twenty-four ships with twelve-thousand officers and one-hundred-and-twenty-five-thousand enlisted personnel—it would have been entirely appropriate for Admiral Mauz to have delegated resolution of LT Simmons's case to an officer, or flag officer, below him in the chain-of-command. Admiral Mauz's devotion to duty and extraordinary character are reflected in his personal involvement in ensuring a just and compassionate resolution of LT Simmons's complaint, to include LT Simmons's extension on active duty and assignment to a new command.

In summary, Admiral Mauz has served the nation for over thirty-five years, including combat and positions of significant importance and responsibility. He is completely deserving of a retirement in his present four star grade and his confirmation should not

be further delayed. I hope my response to these additional questions will resolve any lingering concerns.

A similar letter has been sent to Senator Thurmond.

Sincerely,

JOHN H. DALTON.

ADDITIONAL QUESTIONS REGARDING THE ACTIVITIES OF ADMIRAL MAUZ AND HIS STAFF WITH REGARD TO LT. DARLENE SIMMONS

(1) When did Admiral Mauz learn of Darlene Simmons' case of sexual harassment? How was he made aware of this case?

Answer: Admiral Mauz learned of the Simmons' case of sexual harassment on October 9th or 13th, 1992, by a telephone call from VCNO.

(2) What actions did Admiral Mauz take to censure the harasser?

Answer: Admiral Mauz accepted the recommendations by the chain of command (Squadron Commander, Group Commander (Rear Admiral) and Type Commander (Vice Admiral)) on the action by which the harasser was given a non-punitive letter of instruction by his command. The harasser also submitted a request to retire.

(3) What reasons did Admiral Mauz have for choosing not to take the corrective action that was ultimately taken by the Secretary of the Navy on May 12, 1994—almost two years after the events occurred?

Answer: Admiral Mauz was informed that corrective action had been taken by the harasser's command as stated in answer to question #2. This level of accountability was upheld by the Navy Inspector General and the DoD Inspector General. Admiral Mauz believed this corrective action was adequate, especially in light of the ship's overall performance. By assigning his Special Assistant, Commander Miller, to participate in the investigation, he further caused the harasser to be transferred from the ship and he personally arranged for LT Simmons to be transferred to another locale in order to get a fresh start. LT Simmons agreed with her transfer. Admiral Mauz also intervened twice to retain LT Simmons on active duty and caused her fitness reports to be reviewed for accuracy.

(4) What was Navy policy at the time of the Simmons' complaint with regard to removal of the harasser? What is the Navy policy now?

Answer: At the time of Lieutenant Simmons' complaint, Navy policy did not specifically address removal of a harasser from the workplace. During the process of Admiral Mauz's command inquiry Lieutenant Simmon's harasser was removed from the ship.

Current Navy policy does not specifically address removal of a harasser from the workplace. Such actions would depend on the circumstances of the incident. Nevertheless, current policy specifically prohibits reprisal and directs commanders to take appropriate action to resolve any incidents of sexual harassment and ensure no reprisal occurs.

5) What specific steps did Admiral Mauz take to correct the problems in LT Simmons' chain of command that resulted in the loss or destruction of evidence (specifically, the letter from her harasser)?

Answer: Admiral Mauz expressed his concern to the staff and to Commander Submarine Force Atlantic (a Vice Admiral) regarding the loss of the letter. The Commanding Officer was counselled by the Chief of Staff at SUBLANT for his handling of the case.

6) Is it the Navy's understanding that Darlene Simmons' confinement for four days in a locked psychiatric facility was voluntary or involuntary? Exactly when did Admiral Mauz and his office learn of LT Simmons' confinement? How did Admiral Mauz learn of her confinement?

Answer: Doctor Quinones, a psychiatrist on the staff of Naval Hospital Jacksonville, interviewed LT Simmons on October 9, and directed she be admitted to the hospital's psychiatric ward. After 24 hours, she was permitted to leave the ward but remained under observation and had to remain on the hospital grounds. Admiral Mauz learned of the hospitalization during October 1994, after LT Simmons had been released from the hospital, in the course of the investigation to which he had detailed CDR Miller, his Special Assistant for Women's Affairs.

7) Darlene Simmons maintains that her confinement was involuntary and done in reprisal for her sexual harassment charges. Did Admiral Mauz investigate the issue of how and why she was confined to a locked psychiatric facility for four days?

Answer: The circumstances of LT Simmons' hospitalization were investigated and it was determined that the allegation that the hospitalization was done in reprisal for her charges of sexual harassment was wrong. Rather, her hospitalization was directed by a Doctor Quinones who had no knowledge of the sexual harassment allegations. Doctor Quinones confirmed by phone on 13 September, that his decision to order her admittance to the psychiatric ward was his alone, based solely on his professional medical judgment.

8) Commander Miller, Special Advisor to Admiral Mauz for Women's Affairs, has indicated that she has questions about the quality of medical care given to Darlene Simmons at the time of her psychiatric examination. Did Admiral Mauz investigate this issue? Were steps taken to ensure that her treatment was satisfactory?

Answer: Commander Miller did not express any concerns regarding the quality of care provided to Lieutenant Simmons at the time of her psychiatric examination. The command inquiry, directed by Admiral Mauz, investigated all circumstances of her hospitalization. Commander Miller was satisfied that the command ensured that Lieutenant Simmons received quality treatment.

9) What is the Navy's position on the veracity of LT Simmons' testimony of March 9, 1994, before the House Armed Services Committee regarding sexual harassment?

Answer: The Navy does not dispute that Lieutenant Simmons was sexually harassed while she was assigned to USS CANOPUS or that her complaint was initially handled poorly by USS CANOPUS leadership. Nevertheless, the Navy does not agree with several statements raised in her testimony. In particular:

Lieutenant Simmons states that "several hours after the XO found out I was talking to a member of Congress, I was ordered to undergo a psychiatric evaluation."

The inference of cause and effect of these two incidents is not accurate. The hospitalization of Lieutenant Simmons was motivated solely by medical reasons. A referral was initiated by the ship's Medical Officer, despite the Commanding Officer's initial reluctance, and the hospitalization was actually ordered by a physician on the Naval Hospital's staff.

Lieutenant Simmons states that "the investigation was never closed."

The command inquiry was closed on February 5, 1993.

Lieutenant Simmons states that "I believe LCDR Catullo received a medal at his retirement ceremony."

LCDR Catullo did not receive a medal upon his retirement.

10) There were at least two occasions when Commander Miller made recommendations with regard to the Darlene Simmons case that were not followed by Admiral Mauz. Identify the specific instances when recommendations were made by Commander Miller that were not followed by Admiral Mauz, and provide explanation why an alternate course of action was chosen in each situation.

Answer: Commander Miller is aware of only one occasion where her recommendation with regard to the Lieutenant Simmons case was not agreed to by Admiral Mauz. This recommendation involved Lieutenant Simmons' fitness report upon her detaching from USS CANOPUS. Commander Miller recommended that this fitness report be written by the squadron commander instead of USS CANOPUS Commanding Officer. Several senior officers and flag officers in the chain of command disagreed with Commander Miller's recommendation and advised Admiral Mauz that the Commanding Officer should remain as the reporting authority. It should be noted that after Admiral Mauz directed the Commanding Officer to re-evaluate his initial grades on the fitness report, the Commanding Officer upgraded the report.

11) Why didn't Admiral Mauz complete the report of his own command inquiry on the Darlene Simmons' case?

Answer: The command inquiry directed by Admiral Mauz was completed on February 5, 1993 and forwarded to Commander, Submarine Group 10 for action. It was subsequently used during the investigation directed by the DOD Inspector General.

ADDITIONAL QUESTIONS REGARDING THE ACTIVITIES OF ADM MAUZ AND HIS STAFF WITH REGARD TO SENIOR CHIEF TAYLOR

1) ADM Mauz took two days leave while in Bermuda. How long was the official business portion of the trip?

Answer: As stated in the report of the Naval Inspector General, ADM Mauz arrived in Bermuda on a Thursday evening, conducted a full day of business on Friday, took leave over the weekend, and departed on Monday morning. (It is also noted that ADM Mauz, during his leave period (on Sunday), cancelled his recreation plans and did paperwork and wrote speeches instead.)

2) Following the withdrawal of the charges against Senior Chief Taylor, ADM Mauz's Executive Assistant asked the senior Staff Judge Advocate to call his counterpart at Port Hueneme for additional information. Did ADM Mauz direct his Executive Assistant to take this action? Was ADM Mauz aware of the Executive Assistant's action prior to it occurring?

Answer: As stated in the letter from the Chief of Naval Operations of July 27, 1994, ADM Mauz did not direct his Executive Assistant to take this action and was not aware of it prior to it occurring.

3) Before ADM Mauz's Executive Assistant informed him about the withdrawal of the charges against Senior Chief Taylor in March 1994, was ADM Mauz and/or his staff aware of the charges against Taylor or any investigation into alleged activities by Taylor at Port Hueneme?

Answer: ADM Mauz and his staff were aware from news accounts that disciplinary action was pending against Senior Chief Taylor for alleged activities at Port Hueneme, but were not aware of the specifics of the charges.

4) A junior Staff Judge Advocate at CINCLANTFLT obtained a copy of the defense motion that was the basis for the withdrawal of charges against Senior Chief Taylor. Was the junior Staff Judge Advocate directed to obtain a copy of the defense motion? If so, by whom and when? When did the junior Staff Judge Advocate obtain a copy of the defense motion? Was it before or after the actual withdrawal of the charges? Did the initial request to obtain a copy of the defense motion occur before or after the actual withdrawal of the charges?

Answer: As discussed in the Secretary's letter of August 9, 1994, and the Chief of Naval Operations' letter of August 22, 1994, the junior Staff Judge Advocate at CINCLANTFLT was offered a copy of the defense motion by a judge advocate assigned to a tenant command in Port Hueneme. She was not directed to obtain a copy of it. It was obtained in mid-April 1994. The offer to provide the copy and the receipt of the copy occurred after the withdrawal of the charges at Port Hueneme.

5) A junior Staff Judge Advocate at CINCLANTFLT obtained a copy of the defense motion that was the basis for the withdrawal of the charges from a legal officer at Port Hueneme, but upon receipt noticed that portions of the document were illegible. Was the legal officer's copy illegible or just the copy that was faxed/sent to the junior Staff Judge Advocate? Please provide copies of the following documents: the original defense motion; the Port Hueneme legal officer's copy of the defense motion; and the copy of the defense motion that was faxed/sent to the junior Staff Judge Advocate.

Answer: The Port Hueneme legal officer's copy of the motion was also illegible. (He is currently on leave, and the Navy has been unable to ascertain whether he retained a copy of the document.) A copy of the defense motion placed into the record at the Article 32 investigation later conducted in San Diego is attached as Tab A. Also, a copy of the legible motion, as faxed to the junior judge advocate at CINCLANTFLT in mid-April, is attached as Tab B. (The CINCLANTFLT Staff Judge Advocate office did not retain the illegible copy first received.)

6) ADM Boorda's letter of August 22, 1994, tries to explain discrepancies in Secretary Dalton's August 9 and ADM Boorda's July 27 letters. Assuming that ADM Boorda's August 22 letter is accurate, are there not factual discrepancies in ADM Boorda's original letter of July 27 and Secretary Dalton's August 9 letter?

Answer: There are no factual discrepancies between Secretary Dalton's August 9 and ADM Boorda's July 27 letters. The Secretary's letter responded to additional, more detailed questions from the Armed Services Committee, which the Department of the Navy received after ADM Boorda sent his July 27 response to an earlier inquiry. As ADM Boorda states in his August 22 response to this same question, the Secretary's letter "simply provided a more detailed description" of the matters in question.

7) After the charges against Senior Chief Taylor were withdrawn and referred to San Diego, did ADM Mauz or anyone on his staff have contact with Navy officials in San Diego involved in this case (including any indirect contact through officials at Port Hueneme)?

Answer: No.

8) Page 6 of ADM Boorda's 27 July 1994 letter states that, "In fact, at the time the actions were taken, no one was aware of Senior Chief Taylor's whistle-blowing activity." What exactly does this statement mean? What actions were taken and who was unaware?

Answer: The DoD Inspector General reported in his August 16, 1993, report that Senior Chief Taylor's assistant made anonymous phone calls to the Naval Inspector General and Congresswoman Schroeder's office on behalf of Senior Chief Taylor in September 1992. On November 9, 1992, the Security Officer removed Senior Chief Taylor from his duties as Assistant Security Officer because of pending disciplinary action relating to an allegation of disrespect toward the NAS Bermuda Material Division Officer. On November 23, 1992, Sam Donaldson revealed to the NAS Bermuda Commanding Officer Senior Chief Taylor's protected disclosures to Congresswoman Schroeder and the Naval Inspector General. This was the first indication to Senior Chief Taylor's chain of command that he had made protected disclosures. The DoD Inspector General later investigated whether unfavorable personnel actions were taken or favorable actions withheld as a result of his protected disclosures. The DoD Inspector General concluded that NAS Bermuda personnel were unaware of the protected disclosures when they took the personnel action. ADM Mauz also was unaware of the protected disclosures at the time of the personnel actions in Senior Chief Taylor's case, and had no role in those actions.

9) Page 3 of Secretary Dalton's August 9, 1994 letter states that, "Since the document included no allegations of impropriety by Admiral Mauz or anyone in CINCLANTFLT, and had not been requested by Admiral Mauz or anyone else on his staff. . . ." Is this statement accurate? Did not ADM Mauz's staff request a copy of the defense motion that was the basis for the withdrawal of the charges against Senior Chief Taylor?

Answer: The statement is accurate since the document was originally received by LT Hagerty-Ford, a junior judge advocate on the CINCLANTFLT staff, as a result of an unsolicited offer by her friend serving in Port Hueneme. When she found the faxed copy to have illegible parts, she requested and received a better copy. As LT Hagerty-Ford states in her statement attached to ADM Boorda's August 22 letter, she sought the better copy because of the possibility the document might contain allegations about her command. When she found the document did not allege involvement by CINCLANTFLT, she and her immediate supervisor concluded there was no reason to provide it to anyone outside the Staff Judge Advocate's office. LT Hagerty-Ford's signed statement, provided to the Armed Services Committee with ADM Boorda's August 22 letter, corroborates these facts, and the fact that Admiral Mauz had no knowledge of, or involvement in, this matter.

NAVY-MARINE CORPS TRIAL JUDICIARY, SOUTHWEST JUDICIAL CIRCUIT, PORT HUENEME, CA

United States versus Taylor, George R., MACS/E-8, 424-86-0238, U.S. Navy.

Special Court-Martial: Motion to Dismiss for Vindictive Prosecution Pursuant to the Fifth Amendment.

Date: 23 March 1994.

1. Nature of Motion. This is a Motion to Dismiss for Vindictive Prosecution filed pursuant to the Fifth Amendment of the U.S. Constitution. This motion is filed as a direct result of an unlawful decision by Commander, Naval Construction Battalion Center, Port Hueneme, to prosecute MACS George R. Taylor, USN, the accused in this case.

2. Summary of Facts.

PRIOR TO MACS TAYLOR'S REPORTING AT NCBC

a. In 1992, MACS George R. Taylor, USN, held the position of Chief of Military Police at Naval Air Station Bermuda. While serving at NAS Bermuda, MACS Taylor produced evidence that the air station existed as a resort for top military officials at the expense of taxpayers. MACS Taylor and another "whistleblower" were featured on the 10 December 1992 episode of ABC's "Primetime Live" (tape of which will be hereinafter referred to as "the Bermuda tape"), which prompted Defense and Inspector General investigations. As a result of MACS Taylor's activities, Congress voted to close the Bermuda base in 1995.

b. MACS Taylor was transferred to Naval Construction Battalion Center, Port Hueneme, (hereinafter "NCBC"), in January 1993, under the protection of the Military Whistleblowers Protection Act.

c. Before MACS Taylor arrived at NCBC, members of the base security department posted an article about MACS Taylor's activities in Bermuda on the security department bulletin board. In addition, members of the security department gathered in a conference room to view the Bermuda tape.

d. Before MACS Taylor arrived, a file was sent to NCBC from Bermuda which included a non-punitive letter of caution and materials related to MACS Taylor's activities at Bermuda.

e. Prior to MACS Taylor's arrival at NCBC, RADM David Nash, USN, Commanding Officer of NCBC, requested a copy of the Bermuda tape from Kari Lee Patterson, a civilian employee at NCBC. Ms. Patterson delivered the tape to Mr. W.E. Hudson, NCBC Security Officer, who delivered the tape to RADM Nash.

AFTER REPORTING AT NCBC

f. Upon MACS Taylor's arrival, RADM Nash held a meeting with top base officials to discuss the arrival of MACS Taylor.

g. Upon reporting on board NCBC, MACS Taylor was taken to Executive Officer's Inquiry for activities in Bermuda. At the XOI, Taylor was awarded the Nonpunitive Letter of Caution sent from Bermuda. The charge was for disrespect to a commissioned officer at Bermuda.

h. Immediately upon arriving at NCBC, MACS Taylor was directed to meet with LCDR Cole in his office. At that meeting, which was attended by BMCS Kossman, LCDR Cole told MACS Taylor that "this isn't Bermuda" and "You aren't going to get away with that s--t here", or words to that effect.

i. In January 1993, LCDR Cole was called by Jeff Ruch, an attorney with the Government Accountability Project, a public interest organization which was involved with the incident in Bermuda. Mr. Ruch called LCDR Cole to discuss the pending Captain's Mast for Disrespect in Bermuda. After the phone conversation, LCDR Cole confronted MACS Taylor, saying he had just gotten a call from his "liberal lawyers" and "this is bulls--t," or words to that effect. LCDR Cole told MACS Taylor that "they're not gonna get you out of this. * * * This package was sent here. We're going to adjudicate this here", or words to that effect.

j. Approximately one month after MACS Taylor reported aboard, MACS Taylor suggested to LCDR Cole that one of his practices was improper. LCDR Cole had, on several occasions, sent sailors to the Long

Beach Brig with full knowledge that there would never be a court-martial. This was typically done on a Friday afternoon, where the magistrate would be unable to release the sailor until the following Monday. When MACS Taylor suggested to LCDR Cole that this practice was improper, LCDR Cole became incensed, telling MACS Taylor "I'm the f---ing lawyer on this base; who made you the base lawyer?", or words to that effect.

k. A meeting to discuss Workman's Compensation issues was held in September 1993 and was attended by LCDR Cole, MACS Taylor, NCBC Executive Officer, NCBC Command Master Chief, and other officials. At the meeting, LCDR Cole confronted MACS Taylor due to rumors he had heard about members of the Special Investigations Unit, of which Taylor was a member, being deputized by the federal government. MACS Taylor denied ever spreading the rumor. LCDR Cole responded by admonishing MACS Taylor for not addressing him as "Sir" when making a statement.

l. In a Memorandum dated 5 September 1993, LCDR Cole requested to the Commanding Officer, NCBC, that MACS Taylor be relieved of his duties. RADM Nash, however, declined to carry out LCDR Cole's request.

m. MACS Taylor has also had numerous personal confrontations with Mr. W.E. Hudson, NCBC Security Officer, since reporting aboard. Mr. Hudson is MACS Taylor's direct superior in the Security Department.

n. On 30 September 1993, MACS Taylor received a performance evaluation which covered the period since MACS Taylor's arrival on board NCBC and was signed by RADM Nash. Taylor received straight 4.0 evaluations on this evaluation. There was no mention whatsoever of any problems with MACS Taylor's performance. MACS Taylor was described as having "great depth of professional knowledge" and a "keen sense of responsibility". He was praised for "drafting and immediate implementation of the department's quality-focused Standard Operating Procedures." He was also praised for conducting a special task force to curtail the flow of drugs onto the base and for assisting civilian police in drug operations.

16 NOVEMBER ARREST

o. On 16 November 1993, MACS Taylor participated in the arrest of CE3 Richard Miller, USN, a deserter who had escaped from the Long Beach Brig. There were three other NCBC police officers at the scene. The arrest took place in the City of Oxnard with the participation of the Oxnard Police. No complaints were made by any persons involved in the arrest. Officers Ernie Eglin and L.E. Robertson of Oxnard Police executed the arrest and believe that MACS Taylor acted entirely properly.

p. On 17 November 1993, Mr. Hudson called MACS Taylor into his office and accused him of acting improperly during the previous night's arrest. Mr. Hudson then discussed with MACS Taylor the possibility of an early retirement for MACS Taylor.

q. On 18 November 1993, Mr. Hudson met with LCDR Cole to discuss this situation. At this meeting, the two men agreed to have Naval Investigative Service investigate MACS Taylor's activities on the night of the arrest.

r. On 22 November 1993, Mr. Hudson informed MACS Taylor that he planned to have NIS investigate the arrest.

s. Pursuant to advice from military defense attorneys, MACS Taylor and each of the other three officers consistently invoked his right to remain silent during the investigation.

t. On 3 January 1994, MACS Taylor was given a Report Chit citing one specification of violation of Article 92 related to the arrest of CE3 Miller. LCDR Cole's signature appears on the Chit for "person submitting report". Along with the Report Chit, MACS Taylor received formal notification of contemplated Nonjudicial Punishment.

u. On numerous occasions after the Report Chit was drafted, LCDR Cole attempted to persuade MACS Taylor and the other three NCBC officers involved to answer questions about the arrest. On or about 3 January 1994, LCDR Cole informed MACS Taylor that the Incident Complaint Report for the incident in question had never been received, and he gave MACS Taylor a direct order to write a report describing what happened on the night in question. MACS Taylor has consistently maintained that he submitted the report immediately after the arrest. Pursuant to advice from LT Carter F. Brod, JAGC, USNR, Defense Counsel, MACS Taylor nevertheless prepared a new report to avoid violating a direct order.

v. When discussing with MACS Taylor his potential Captain's Mast, LCDR Cole ordered MACS Taylor to sit locked at attention. LCDR Cole told MACS Taylor that he would "add twenty more f--king charges" if Taylor refused Captain's Mast.

w. On or about 6 January 1994, LCDR Cole called LT Brod and asked LT Brod to give MACS Taylor pre-Mast advice. LCDR Cole told LT Brod that MACS Taylor was being really stupid in his attitude and that if he did not accept Mast then they were going to "throw the book at him." LCDR Cole told LT Brod that, if MACS Taylor refused Mast, "we have lots of other stuff on him to use which we will throw on there", or words to that effect.

x. On 10 January 1994, MACS Taylor refused Nonjudicial Punishment.

y. LCDR Cole has made numerous attempts to persuade the other three NCBC officers to discuss the details of the arrest. On 6 January 1994, LCDR Cole told LT Brod in a telephone conversation that "the command is unlikely to dismiss the charges against Senior Chief Taylor but would probably dismiss on the others if they opened up."

z. In a telephone conversation with civilian police lieutenant Byron Frank, which lasted over one hour, LCDR Cole told Lt. Frank that "if you all had just cooperated with the NIS investigation, then you would have just gotten a slap on the wrist", or words to that effect. LCDR Cole stated that "Senior Chief Taylor is manipulating the other three officers. I feel really sorry for them", or words to that effect. LCDR Cole stated that "ABC bailed his a-- out in Bermuda. They won't come to his rescue now", or words to that effect. LCDR Cole asked Lt. Frank, who was also an African-American, "why won't you just tell me what happened? I'm the smartest black attorney in the JAG Corps. Let's just talk brother to brother", or words to that effect.

aa. On 21 January 1994, 48 specifications of UCMJ violations were preferred against MACS Taylor. Many of the specifications related to the 16 November arrest, but 16 of the 47 new specifications related to incidents in April, May and June of 1993.

bb. Naval Criminal Investigative Service conducted an extensive investigation of the charges against MACS Taylor. Included as part of the NCIS investigation were interviews of over twenty-one witnesses. Many of the witnesses, including Petty Officer Pringle, Detective Wunsch and Lieutenant Frank, were asked questions about MACS Taylor's activities in Bermuda.

cc. LT Robert P. Morean, JAGC, USNR, Trial Counsel, conducted several witness interviews at NCBC on or about 15 February 1994. LCDR Cole was present for many of these interviews and occasionally participated in questioning. In the Interview with BMCS Kossman, USN, LCDR Cole corrected BMCS Kossman for giving an answer LCDR Cole believed was incorrect. When MS3(SS) Doyle was interviewed, LCDR Cole was "right there, only two feet away from me." When MS3 Doyle told LT Morean that he felt MACS Taylor was an excellent cop and excellent leader, LCDR Cole stormed out of the meeting and slammed the door. LCDR Cole also assisted LT Morean in the questioning of Dan Gordon, Security Department Training Officer.

dd. On 9 February 1994, LCDR Cole approached DT3 Fredia Wright, USN, who had a son living on base who had been barred from the base for juvenile delinquency. LCDR Cole offered DT3 Wright that her son could continue to live on the base if he would testify in the court-martial of MACS Taylor. LCDR Cole told her that she could disregard the barring notice if her son would cooperate.

ee. On or about 18 February 1994, LCDR Cole discussed the 16 November arrest while teaching a class to new NCBC security officers. While teaching this class, LCDR Cole referred to the four officers who made the 16 November arrest as "the four", and used their arrest as an example of illegal police activities.

OTHER SIMILAR NCBC SECURITY CASES

ff. In the past, there have been several other arrests by NCBC Police with the same characteristics as the 16 November arrest. No prosecution or disciplinary action was taken in any of the other arrests. There have also been egregious cases of clear dereliction of duty by NCBC Military Police where no prosecution was undertaken.

gg. On 23 September 1992, NCBC Detective A. Carpenter, MA1 Woods, USN, and NCBC Detective P. Wunsch arrested EOCN Jason S. Tyree, USN, a deserter from NMCB-40, off-base in the City of Oxnard. The facts of that arrest were effectively identical to those in the case at bar. There was no disciplinary action of any kind taken against any of the officers.

hh. In December 1993, a complaint was filed alleging that GSM2 E.J. Beman used unlawful force in an arrest of a female suspect. The investigation of the incident was handled internally; NCIS was never asked to investigate. Beman was not court-martialed for his actions.

ii. In mid-1992, evidence existed that civilian NCBC police officer Carlos Tangonan used unnecessary force by hitting a suspect in the mouth with a baton. No investigation of any kind was undertaken, and no disciplinary action followed.

jj. On 21 January 1992, F.D. Forbes, a civilian NCBC police officer, arrested a suspect in the City of Port Hueneme by pursuing him on an off-base street, drawing his service revolver and ordering the suspect to freeze. The suspect was unarmed and seen climbing over the base fence from on-base to off-base, which is not an offense under any criminal code. The "suspect" was not charged with any crime. Forbes was not disciplined in any way for making this off-base arrest.

kk. Many members of the NCBC Security Department believe that, based on their knowledge of the facts, the 16 November arrest was entirely legal and consistent with NCBC policy practices.

RECENT FACTS

ll. On 11 February 1994, LCDR Cole offered LT Brod that MACS Taylor could still go to Captain's Mast if he wanted. LCDR Cole told LT Brod that, if MACS Taylor accepted Mast, the charges would include only two specifications of dereliction of duty.

mm. On 9 March 1994, LCDR Cole ordered an administrative questioning of Byron Frank regarding the arrest of 16 November 1993. LT Morean told LT Caroline Goldner, JAGC, USNR, that this was done as a "discovery tool" for the court-martial of MACS Taylor.

nn. On 17 March 1994, LT Morean told LT Brod in a telephone conversation, that "it is my understanding that if everyone had been forthcoming, there would have been no charges. The Admiral just got ticked when everyone clammed up."

3. Statement of Law.

a. R.C.M. 907, MCM 1984. Motions to Dismiss.

b. Fifth Amendment, United States Constitution. "No person shall be * * * compelled in any case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

c. *Bordenkircher v. Hayes*, 434 U.S. 357 (1978). "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort."

d. *Chaffin v. Stynchcombe*, 412 U.S. 17 (1973). For an agent of the state to pursue a course of action whose object is to penalize a person's reliance on his constitutional rights is "patently unconstitutional."

e. *U.S. v. Davis*, 18 M.J. 820 (AFCMR 1984). For a claim of prosecutorial vindictiveness to succeed, it must be established that the decision to prosecute was based on impermissible considerations such as race, religion, or the desire to prevent the exercise of a legal right. "In the classic prosecutorial vindictiveness case the subsequent charges are harsher variations of the same decision to prosecute." See Also *U.S. v. Spence*, 719 F.2d 358 (11th Cir. 1983), *Hardwick v. Doolittle*, 558 F.2d 292 (5th Cir. 1977).

f. *U.S. v. Spence*, 719 F.2d 358 (11th Cir. 1983). "To help simplify prosecutorial vindictiveness claims, the Supreme Court developed a 'presumption of vindictiveness'." 719 F.2d at 361. "Courts in this circuit construing post-*Blackledge* decisions have held that whenever a prosecutor brings more serious charges following the exercise of procedural rights, 'vindictiveness' is presumed, provided that the circumstances demonstrate either actual vindictiveness or a realistic fear of vindictiveness." 719 F.2d at 361.

g. *U.S. v. Krezdorn*, 718 F.2d 1360 (5th Cir. 1983). If the defendant challenges as vindictive a prosecutorial decision to increase the number or severity of charges following the exercise of a legal right, the court must examine the prosecutor's actions in the context of the entire proceedings. If "the course of events provides no objective indication that would allay a reasonable apprehension by the defendant that the more serious charge was vindictive, i.e. inspired by a determination to 'punish a pesky defendant for exercising his legal rights,' a presumption of vindictiveness applies which cannot be overcome unless the government proves by a preponderance of the evidence occurring since the time of the original charge decision altered that initial exercise of the prosecutor's discretion." 718 F.2d at 1365.

h. *U.S. v. Blanchette*, 17 M.J. 512 (AFCMR 1983). "The test for prosecutorial vindictiveness is whether, in a particular factual situation, there is a realistic likelihood of vindictiveness for the preferral of charges against the accused." 17 M.J. at 514.

i. *U.S. v. Hagen*, 25 M.J. 78 (CMA 1987). Once a prima facie case of vindictiveness is made out, the burden shifts to the prosecution to disprove the misconduct. See Also *U.S. v. Garwood*, 20 M.J. at 154 (CMA 1985).

j. *U.S. v. Falk*, 479 F.2d 616, 620 (7th Cir. 1973). If a defendant alleges intentional or purposeful discrimination and presents facts to raise a reasonable doubt about the prosecutor's purpose, then the prosecutor can be called to the stand to testify.

k. *U.S. v. Green*, 37 M.J. at 384 (CMA 1993). "This Court has previously stated that 'in referring a case to trial, a convening authority is functioning in a prosecutorial role'". See Also *U.S. v. Fernandez*, 24 M.J. at 78 (CMA 1987), *Cooke v. Orser*, 12 MJ 335 (CMA 1982), *U.S. v. Hardin*, 6 M.J. at 404 (CMA 1979).

l. In assessing a claim of prosecutorial vindictiveness, the Supreme Court focusses on practices which tend to chill the assertion of defendant's rights. *Blackledge v. Perry*, 417 U.S. 21 (1974), *NC v. Pearce*, 395 U.S. 711 (1969), *Bordenkircher v. Hayes*, 434 U.S. 357 (1978)

4. Discussion.

a. There are essentially three independent bases upon which the prosecution of MACS Taylor is vindictive. The first basis is due to retaliation for MACS Taylor's whistleblowing in Bermuda and his personal relationship with the convening authority's attorney, LCDR Cole. These two issues have been grouped together because they support the premise that MACS Taylor is being prosecuted for who he is, not what he has done. Second, MACS Taylor is being prosecuted for exercising his Constitutional right to remain silent. Third, MACS Taylor is being prosecuted for exercising his right to refuse Captain's Mast.

b. In light of the nature of these charges, the fact that forty-eight total specifications were preferred in this case, in itself, is strong evidence of the government's vindictiveness. An inference can be drawn that by charging MACS Taylor with such a large number of charges, the government intended to intimidate him, "show" him, or otherwise "retaliate" against him for any one of the three bases supporting this motion. The context of these charges, including the content and tone of statements made by the convening authority's attorney, further clarifies that this prosecution was undertaken with a vindictive purpose.

BASIS 1: BERMUDA AND PERSONAL RELATIONSHIP

c. Under this basis, this motion seeks dismissal of all charges pending against MACS Taylor. None of these charges would have been brought but for MACS Taylor's whistleblowing in Bermuda and his personal relationship with LCDR Cole. Pursuant to *U.S. v. Davis* and *Blackledge v. Perry*, these are both impermissible bases for undertaking a prosecution.

d. There is substantial evidence that the convening authority knew about MACS Taylor's activities in Bermuda and had distaste for those activities. RADM Nash requested a copy of the Bermuda tape before MACS Taylor arrived. Articles were posted and the tape was watched at the security department prior to MACS Taylor's arrival. LCDR Cole's statements to MACS Taylor when he arrived at NCBC shows his distaste for MACS Taylor's prior whistleblowing. MACS Taylor was taken to XOI by the convening authority for activities in Bermuda. The convening authority awarded him a letter of caution at this XOI for activities in Bermuda. NCIS, in conducting the investigation of these charges for the convening authority, asked numerous witnesses if they knew anything about the Bermuda incident. Furthermore, LCDR Cole's statement that "ABC bailed him out of Bermuda, they won't come to his rescue here", shows the vindictive tone of LCDR Cole based on MACS Taylor's activities in Bermuda.

e. There is also substantial evidence that LCDR Cole had a personal animosity for MACS Taylor. The statements by LCDR Cole at the meeting upon MACS Taylor's arrival is evidence of that animosity. MACS Taylor questioned LCDR Cole's professionalism by challenging his practice with regard to pretrial confinees. LCDR Cole was incensed at MACS Taylor's complaint. The 5 September 1993 memorandum shows that prior to this arrest, LCDR Cole sought to have MACS Taylor fired from his job. Ever since the first meeting when MACS Taylor reported at NCBC, there have been continual confrontations between the two men.

f. In addition to the evidence of vindictiveness, there is considerable evidence of fact situations similar to those in the case at bar that were not prosecuted. The off-base arrests involving detectives Forbes and Wunsch were very similar to this arrest, and no disciplinary action followed. There was evidence of dereliction by GSM2 Beman, but no disciplinary action was initiated. There was evidence of dereliction by Officer Tangonan, and no investigation was initiated. An examination of these other situations demonstrates that the government would not have ordinarily prosecuted this case but for MACS Taylor's activities in Bermuda and his personal relationship with LCDR Cole.

g. The vigor with which the command initiated this prosecution is further evidence of the other-than-official interest is seeing MACS Taylor prosecuted. For example, NCIS was called in to investigate and devoted a great deal of resources to this investigation. NCIS jurisdiction, however, is normally over major offenses only. LCDR Cole used his influence as base SJA over other legal matters to affect the investigation in this court-martial. LCDR Cole used the pressure of a barring order to enlist the support of an unwilling witness, Doug Lively. He used his administrative power to order a civilian, Byron Frank, to give, against his will, information to use against MACS Taylor. LCDR Cole also actively participated in interviewing witnesses with the Trial Counsel.

h. In sum, there is substantial evidence that this prosecution would not have normally been initiated but for the fact that MACS Taylor was the subject. Dislike of a sailor based on his past legal activities (Bermuda) and his personality is not a permissible basis upon which to initiate a prosecution. For the foregoing reasons, all pending charges against MACS Taylor should be dismissed.

BASIS 2: RIGHT TO REMAIN SILENT

i. Ever since initially being accused of dereliction, MACS Taylor has exercised his Constitutional right to remain silent. There is substantial evidence that all forty-eight charges in this court-martial are a result of vindictiveness due to MACS Taylor's invoking this constitutional right. Under this basis, this motion seeks dismissal of all charges.

j. On 17 March 1994, the Trial Counsel told the Defense Counsel that it was his understanding, based on his discussions with the Convening Authority, that no charges would have been brought but for MACS Taylor's invocation of this right. The Trial Counsel further stated that it was his understanding

that the Admiral "got ticked" when MACS Taylor invoked this right. The Trial Counsel's statement is clear evidence that the government's decision to prosecute was based on MACS Taylor's decision to remain silent.

k. In discussing Taylor's court-martial charges with Byron Frank, LCDR Cole stated that "if they had just cooperated with NIS, then it would've been a slap on the wrist", implying that the charges would not have been brought at all but for MACS Taylor's invocation of his right to remain silent.

l. LCDR Cole has made numerous attempts at pressuring MACS Taylor to give up his right to remain silent, including attempts to persuade LT Brod and * * * appeals to MACS Taylor. LCDR Cole further told MACS Taylor that if he didn't "open up" there would be "twenty more f---ing charges."

m. The convening authority has taken several other actions which demonstrate the vigor with which it has attempted to get MACS Taylor to give up his right to remain silent. First, LCDR Cole gave MACS Taylor a direct order to write a new Incident Complaint Report, alleging that the original had been lost. Second, LCDR Cole administratively ordered civilian police lieutenant Byron J. Frank, who participated in the arrest, to give details of the arrest. LT Morean described this administrative order as a "discovery tool".

n. In sum, there is considerable evidence that the convening authority was angered by MACS Taylor's silence, and was in fact motivated to prosecute in retaliation for MACS Taylor's silence. In fact, the convening authority expressly told the Trial Counsel that there would not have been a prosecution at all had Taylor not "clammed up". It is evident that all forty-eight charges are in direct retaliation for MACS Taylor's exercise of a constitutional right, the right to remain silent.

o. To allow the government to prosecute as retaliation for exercising the right to remain silent would be to chill the exercise of this important constitutional right. Based on the foregoing, all charges now pending should be dismissed.

BASIS 3: RIGHT TO REFUSE CAPTAIN'S MAST

p. After MACS Taylor refused Captain's Mast, the charges against him rose from one specification of dereliction of duty to 48 specifications in total at special court-martial. There is substantial evidence that the additional 47 specifications were preferred in retaliation for MACS Taylor's refusal to accept Mast. Under this basis, the motion seeks dismissal of all charges added after the refusal of Captain's Mast. The charges sought to be dismissed include all additional specifications related to the 16 November arrest (beyond the one specification from Mast) as well as all specifications related to previous incidents.

q. LCDR Cole explicitly told MACS Taylor and LT Brod that if Taylor refused Mast "there would be twenty more charges" and that he would "throw the book at him". These statements demonstrate LCDR Cole's intentions to retaliate if MACS Taylor refused Mast.

r. Supreme Court and Military decisions support that a large increase in charges after the invocation of a legal right is a strong sign of prosecutorial vindictiveness. Here, the charges jumped from one to forty-eight after MACS Taylor exercised his right to a court-martial. In *U.S. v. Davis*, the court states that the classic prosecutorial vindictiveness case involves a harsher variation of the same decisions to prosecute. Clearly, if the first decision to prosecute was for only one specification, then a second decision for 48 specifications is a harsher variation.

s. In *U.S. v. Martino*, 18 M.J. 526 (AFCMR 1984), the government raised the number of charges after the accused refused NJP. The court held such prosecution to be proper. *Martino* can be distinguished on several bases. First, the court emphasized that the defense counsel asserted prosecutorial vindictiveness with no evidence whatsoever of a vindictive motivation. Further, the government showed evidence of a valid motivation for the difference in number of charges. In the case at bar, however, there is considerable evidence of vindictiveness and there is no evidence of valid government motive for increasing the charges from 1 to 48.

t. In *Bordenkircher v. Hayes*, the Supreme Court held that in the normal give and take of plea bargaining, a prosecutor has valid discretion to increase and decrease the number of charges in order to secure a guilty plea. *Bordenkircher* is distinguishable on several grounds. First, in *Bordenkircher*, the only evident motive on the part of the prosecutor was the non-vindictive motive to receive a guilty plea. In the case at bar, there is considerable evidence of vindictiveness unrelated to the desire to secure a Mast conviction. Second, in *Bordenkircher*, it was not disputed that the defendant was properly chargeable for the additional charges. In the case at bar, however, there is considerable evidence that there was no valid basis for the additional charges. MACS Taylor's performance evaluation of September 1993 shows the convening authority's acknowledgement that there was no case of dereliction for any prior incidents. Third, the additional charges in the case at bar were not part of the course of normal plea bargaining. MACS Taylor was ordered to attention and threatened with more charges if he did not accept Mast. Further, the military relationship between a Lieutenant Commander and a Senior Chief Petty Officer is one of unequal bargaining power.

u. In *U.S. v. Davis*, a claim of prosecutorial vindictiveness was rejected. In *Davis*, however, there were no additional charges brought in the move from Mast to court-martial. In the case at bar, the charges rose from one to forty-eight. Justifying its rejection of the prosecutorial vindictiveness claim, the *Davis* court stated that the classic case of prosecutional vindictiveness occurs when the number of charges is raised.

v. *U.S. v. Blanchette* also involved a rejected prosecutorial vindictiveness claim. That case can be distinguished in that the reason for not charging the accused initially was due to insufficiency of evidence. The court found that the additional charges were justified due to the availability of new evidence. No such evidentiary justifications exist for the government in the case at bar.

w. In sum, because MACS Taylor refused Mast on one specification of dereliction of duty, the convening authority retaliated by preferring forty-seven additional charges against him at a court-martial. The possibility of retaliation is clearly "realistic", and the impression made on the accused is clearly one of intimidation. The statements by LCDR Cole are evidence that the convening authority was in fact motivated by vindictiveness. Dismissing the additional charges would be consistent with Supreme Court and Military case law. To allow vindictive charging as occurred here would be to chill the exercise of a sailor's legal right to refuse Captain's Mast. For the foregoing reasons, all charges beyond the initial specification of dereliction of duty should be dismissed.

5. Evidence.

a. Witnesses. The defense offers the testimony of the following witnesses in support of this motion: Detective Wunsch, Sergeant Forbes, LCDR Cole, MACS Taylor, Lieutenant Frank, Officer Elgin, Officer Robertson, MACS Kossman, Kari Lee Patterson, DT3 Wright, MS3 Doyle, Mr. Hudson, Mr. Flynt, R.J. Bryan, Petty Officer Bassett, Petty Officer Pringle, Andrew Stewart, LT Morean, Petty Officer Beman Officer Tangonan.

b. Documents. The following documents will be presented as evidence in support of this motion: Incident Complaint Report (ICR) for Wunsch arrest, ICR for Forbes incident, report of Beman incident, 5 September 1993 Memorandum from LCDR Cole, Bermuda file, MACS Taylor evaluation, Mast charges, Report chit, NJP Refusal Form, Court-martial charges, letter of caution, Bermuda tape, new ICR for 16 November arrest, Barring notice for Doug Lively.

6. Relief Requested. Pursuant to Basis 1, the defense respectfully requests that all charges be dismissed. Pursuant to Basis 2, the defense respectfully requests that all charges be dismissed. Pursuant to Basis 3, the defense respectfully rests that all charges other than the one specification charged at Mast be dismissed.

7. Oral Argument. The defense desires to make oral argument of this motion.

CARTER F. BROD,
LT, JAGC, USNR,
Defense Counsel.

Date: 23 Mar 94

CERTIFICATE OF SERVICE

I, Lieutenant Carter F. Brod, JAGC, USNR, certify that on this 23rd day of March 1944, I personally served upon government trial counsel a true and correct copy of this Motion.

THE SECRETARY OF THE NAVY,
Washington, DC, September 13, 1994.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Attached are responses to five additional questions forwarded from your Committee regarding the pending confirmation of Admiral Henry H. Mauz, Jr.

Again, I hope that my response to these additional questions is helpful and will finally resolve any pending issues.

Sincerely,

JOHN H. DALTON.

Enclosure.

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1. When was Admiral Mauz first informed of the Lieutenant Simmons case? What was he told and by whom?

Answer. On either 9 or 13 October, Admiral Mauz's Executive Assistant received a call from the Executive Assistant to the Vice Chief of Naval Operations asking whether he had any knowledge of a sexual harassment case on USS CANOPUS concerning Lieutenant Darlene Simmons. Neither Executive Assistant can, today, two years after the fact, recall whether the call occurred on Friday, 9 October or Tuesday, 13 October. Both agreed that the call occurred during a normal workday around the Columbus Day weekend, with Monday being a holiday. Both Executive Assistants confirm that this phone call did not include any mention of Lieutenant Simmons' hospitalization. Because this was the first time he had received any indication of a sexual harassment case on USS CANOPUS, Admiral Mauz's Executive Assistant called Admiral Mauz's Special Assistant for Women's Policy. This was her first notification of

a sexual harassment case on USS CANOPUS and she also confirms that this initial notification did not include any mention of hospitalization. Admiral Mauz's Executive Assistant then called the Chief of Staff at COMSUBLANT to inquire. The Chief of Staff was not aware of the case, but indicated that he would look into the matter. One of two working days later, the Chief of Staff called to advise that they had verified that there was a sexual harassment case on the USS CANOPUS, but COMSUBLANT did not have all the details and would inquire further. Admiral Mauz's Executive Assistant advised Admiral Mauz of all these telephone calls.

2. When did Admiral Mauz find out about Lieutenant Simmons's referral to the psychiatric ward?

Answer. Lieutenant Simmons was admitted to the hospital on Friday, 9 October and released on Tuesday, 13 October. On Tuesday, October 13, 1992, Admiral Mauz's Special Assistant for Women's Policy began to inquire into the sexual harassment case regarding Lieutenant Simmons. Sometime on October 13 or 14, the Special Assistant for Women's Policy learned that Lieutenant Simmons was hospitalized over the weekend. She verified this hospitalization with medical documentation on October 15. Sometime on October 14 or 15, she advised Admiral Mauz of Lieutenant Simmons's hospitalization. In sum, Admiral Mauz was first advised of Lieutenant Simmons' hospitalization after she was released from the hospital.

3. Did Admiral Mauz or anyone on his staff know of Lieutenant Simmons's hospitalization or referral for hospitalization at the time of her hospitalization?

Answer. No.

4. Was the admitting psychiatrist informed by Navy officials of Lieutenant Simmons' sexual harassment complaint at the tome of admission?

Answer. The admitting physician, Dr. Quinones, had no knowledge of the sexual harassment allegations at the time of admission.

5. Did Admiral Mauz investigate the order by the Bermuda commanding officer that Senior Chief Taylor undergo a forced psychiatric examination?

Answer. No, because the responsibility for the investigation was assigned by the Vice Chief of Naval Operations to the Naval Inspector General, except the reprisal and psychiatric referral, which were assumed by the DoD Inspector General. The allegation of reprisal including a psychiatric referral became first known to the Department of the Navy on December 9, 1992. On December 11, 1992, the Vice Chief of Naval Operations directed the Naval Inspector General to investigate all Senior Chief Taylor's allegations, except the reprisal and psychiatric referral, which were assumed by the DoD Inspector General. On August 16, 1993, the DOD Inspector General concluded in his report that Senior Chief Taylor's "referral for psychiatric evaluation was justified and was not reprisal."

Mr. DURENBERGER. Mr. President, in response to the statements of my colleague from Georgia, the Chairman of the Armed Services Committee, with respect to the availability of Navy inspector general reports through the Armed Services Committee, I want to make sure that the record clearly reflects my understanding of the facts in the case of Rebecca Hansen.

I was told by the Navy inspector general that I needed to get a copy of his report from the Senate Armed Services Committee. On that same day, May 27, 1994, my staff made a request of the Armed Services Committee staff for the report. They were told that the reports were made available only to the members of that committee. When pressed, the Armed Services Committee staff told my staff that they would talk with the chairman and see if an exception could be made in the Hansen case.

After the June recess my staff called again and asked about progress on the request. They were told that there had been no progress, but that they would expedite getting a response.

By June 24, 1994, the decision was made to discharge Lieutenant (junior grade) Hansen and the Arthur nomination was withdrawn. These events removed, to some extent, the urgency of receiving the report.

But at no time was my staff informed that I could review the report. In fact, they were given to believe that the committee staff was working to make the report available, but that it was not available to me at that time.

Whether the report would have been made available to me eventually was never determined, as events overtook that question and rendered it moot.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California [Mrs. BOXER] is recognized.

Mrs. BOXER. Mr. President, I thank the Chair.

I rise with great respect for the chairman of the Armed Services Committee. He and I have always been very open with our views when we have disagreed, as we do in this case. I understand that he is frustrated at the prospect of looking into this matter further.

I had the honor of serving on the Armed Services Committee in the House for several years, and there is a tremendous workload there, particularly at a time when there are so many problems in the world that may require action.

So in that context, I say to my friend respectfully, that notwithstanding all of those responsibilities, we must always honor our responsibility to individuals. It is sometimes a very cumbersome thing. We go long distances to protect single individuals, whether it is in the courtroom, whether it is in the workplace, in any circumstance, and certainly I hope in the U.S. Senate.

I want to say to my friend and colleague, Senator MURRAY from Washington, that I always have an enormous amount of respect for her. To bring this matter forward is not pleasant. As you can see from the tenor of the debate so far, it is not pleasant. It is not pleasant to stand up and say we are not going to do business as usual. It is not pleasant to stop a four-star train from going down the track.

We faced the same issues in another case—the case of Admiral Kelso. Particularly for me, opposing this nomination certainly is not pleasant because in California we have an enormous number of retired Navy personnel for whom I have great respect.

But, I want to say to my colleagues, it is because of that great respect that I have for the Navy, for the military, and for their commitment to this country, that I think we owe it to them that this kind of debate is not perfunctory. I wish in many ways we were not involved in this issue. I discussed that with the chairman. But the fact is article 2, section 2 of the Constitution says we must provide our advice and consent on Presidential nominees.

Therefore, when we put our yes, or no, behind a vote, we need to feel good about it. I am sure that my friend from Georgia feels perfectly comfortable with this. I assume that my friend from Arizona feels extremely comfortable with this nomination. Senator DURENBERGER, although he said he had some reservations, feels that he could vote on this nomination. I respect that. That is fine. But if there are some of us who believe that there ought to be a little more looking at this nomination to see whether the four-star level is deserved, I would hope that they would not be subjected to such comments suggesting that we don't know anything about the military. It reminds me of an appointee of the Reagan administration who said women did not understand the concept of throw weight. I remember that. So I hope that we can keep this debate on a higher level than that.

Mr. McCAIN. Mr. President, my name was used. Will the gentlelady yield?

Mrs. BOXER. Certainly. I am happy to yield.

Mr. McCAIN. I am trying to point out to the gentlelady that the chain of command is a specific set of words that means a certain thing, and that is that it flows to the Commander in Chief.

Yes, the U.S. Senate has responsibility. In fact, I do not hear the Commander in Chief being mentioned in this issue of who is responsible and who is in the chain of command. Facts are facts. The Senate has responsibilities. The chain of command is very clear. It flows to the Commander in Chief who is the President of the United States.

The Senate has its responsibilities. I do not dispute that. But facts are facts, I say to the Senator from California, and the fact is that the chain of command is a specific set of responsibilities. I thank the gentlelady from California for yielding.

Mrs. BOXER. I say to the Senator that when we speak on the floor of the U.S. Senate, we do take poetic license once in a while, and we will use terms to make a point.

What the Senator from Washington was simply stating in her way was, she

was not commenting on every single rule and regulation in the military. She was basically stating that in her mind the Senate has a responsibility here entrusted to us under article 2, section 2 of the Constitution.

The issue at hand is not whether Admiral Mauz deserves four stars. The question is, Should we do it today, or should we have a hearing to give us a better and deeper look at some of the issues before us?

I think we should recommit this nomination to the committee. I think the Senator from Washington is making a very conservative motion here. We should be careful. We should be cautious. It is important. It is important to the Navy.

I believe that we cannot provide our advice and consent on this nomination at this time. It is very clear to me that there are allegations that have been raised. There are parts of the record that are disturbing. There are conflicts in the record, and they involve whistleblowers. I go back a long way in the defense of whistleblowers. For years on the House side I was involved not only in general legislation involving whistleblowers, the Whistleblower Protection Act and others, but the specific issue of committing military personnel to the psychiatric ward in retaliation for whistleblowing. So it is a very important issue to me and I have a long history with it.

In each of the instances of Darlene Simmons and Master Chief George Taylor, both were committed for psychiatric evaluations, and it seems a little suspicious to me both were working in a chain of command with Admiral Mauz at the top.

I will not restate the facts of the cases, but I will allude to them briefly. The one disgraceful similarity, as I have said, is that the whistleblowers were ordered to undergo psychiatric evaluation shortly after reporting their experiences of sexual harassment in the case of Lieutenant Simmons and wasteful military spending in the case of Chief Taylor.

You may say that is just a coincidence, but I think we ought to look at it a little bit. It was my amendment offered to the DOD bill in 1990 that made it illegal to retaliate against whistleblowers by ordering them to undergo mental fitness evaluations. That amendment became the law of the land.

We saw psychiatric evaluations being used regularly. As a matter of fact, at my request there was an open hearing about those psychiatric evaluations. The whistleblowers wanted to come forward and tell their story because they were put in the psychiatric ward for no reason other than they had blown the whistle against their superiors. They wanted to tell their story.

I want to be very fair here today. The inspector general in fact did look at the law and found that the hospitalizations were not retaliatory. But I must say, I am still suspicious. And I think all Senators should be suspicious. And I think PATTY MURRAY's motion before us will help us resolve our suspicions.

It may very well be that when that hearing is held, we will find out that there is no problem, that it is just a coincidence—just a coincidence—that two whistleblowers were sent to the psychiatric ward—one of them for 4 days.

Admiral Mauz has been accused by military personnel of improper conduct in handling the cases of Lieutenant Simmons and Senior Chief Taylor. Now the Senator from Georgia says there is another charge from the Government accountability project—by the way a very, very well-respected nonprofit organization. But I am not going to get into that charge. I know nothing about that. I do not even know why the Senator from Georgia raised it here. I guess it is just to point out that there could be many accusations made against an individual. But I am not talking about that new situation.

In the case of Lieutenant Simmons, Admiral Mauz is accused of being derelict in his duty to protect her and to oversee the vigorous prosecution of her harasser. In Chief Taylor's case, he is accused of attempting to influence a military prosecution not under his jurisdiction as Commander of the Atlantic Fleet. Those are the accusations.

Let me talk about the case of Lt. Darlene Simmons. This case demonstrates that many key issues remain unresolved. It shows why we need a full investigative hearing before we can act responsibly on this nomination. I would like to lay out my concerns, and I hope that Senators are listening. I hope they will vote for the Murray motion so that we can investigate these questions. I know that if this issue does get remanded to his committee, the Senator from Georgia will do a vigorous job of pursuing the truth.

In the Simmons case, the key question is simple: What did Admiral Mauz know and when did he know it? When did he learn about the sexual harassment and involuntary hospitalization of Lieutenant Simmons? Although this nomination has been on the Executive Calendar for more than a month, we still do not know the answer. Some Senators may wonder why we care so much about this question. But I think we must care. Article II, section 2 of the Constitution says we must provide our advice and consent on this nomination. Just as we want to know the facts about a Supreme Court nominee that comes before us—and we take that very seriously—we need to know the facts about this nomination.

Let me briefly review what we do know about this case. From December 1991 until May 1992, Lieutenant Simmons was sexually harassed. She reported this harassment up the chain of command in accordance with Navy procedures, but her complaint seemed to go nowhere. Finally, as many of our constituents do, Lieutenant Simmons asked one of her State's Senators to intervene on her behalf. On October 9, 1992, the Friday preceding the Columbus Day holiday weekend, Lieutenant Simmons was ordered to undergo a psychiatric evaluation. When a whistleblower is ordered to undergo a psychiatric evaluation—or, frankly, when anybody is—on a Friday of a holiday weekend, it automatically arouses suspicion. This is because you cannot be released until the next business day, the following Tuesday, even if you are quickly found fit for duty, which she was. She was found entirely fit for duty; yet, she was stuck in a psych ward.

How would you feel, I say to my colleagues, if that happened to your wife or your daughter, or your mother, or your sister, or your aunt? You are stuck in a psych ward, and you are perfectly fine, and you cannot get out because you were sent there on a Friday, and the rule is you cannot get out until the next business day. It is a long holiday weekend, and you are perfectly fine, and you are sitting in a psych ward.

This is the United States of America; this is not the former Soviet Union. That is why we passed the law that prohibits that kind of treatment. But here is a whistleblower who happens to be sent for a psych evaluation and happens to be sent on a Friday, and happens not to be released until Tuesday. All we are asking is let us take a look at this, Armed Services Committee; we need your help. We want to understand this better.

Lieutenant Simmons was a virtual prisoner in a military hospital for 4 days. Here is the interesting thing: Before Lieutenant Simmons reported to the hospital that Friday, she made an important telephone call. She telephoned the Under Secretary of the Navy to report that she believed that this order was issued in retaliation for her complaints of sexual harassment. What happened with that telephone call is the subject of my concern about this case.

We know that the Navy undersecretary gave this information to the Vice Chief of Naval Operations and that the Vice Chief of Naval Operations then gave the information to Admiral Mauz. That is on the record. Admiral Mauz was told.

Here is the key question: When did he know? We tried to get the answer. We tried to get the answer from Admiral Mauz, Senator MURRAY and I, and other women Senators, who have been interested and concerned about this. We asked the question. Do you know what we got back? Different answers.

Let me tell you what those answers were. The first question was:

When did Admiral Mauz learn of the Darlene Simmons case of sexual harassment? How was he made aware of this case?

Answer:

Admiral Mauz learned of the Simmons case of sexual harassment on October 9 or October 13, 1992, by a telephone call * * *.

I explained who made that call. It was the Vice Chief of Naval Operations. It is either October 9 or 13. Well, there is a big difference between the two. If it was October 9 then perhaps he knew Lieutenant Simmons was hospitalized, and perhaps he could have intervened. If it was the 13th, that was the end of her confinement.

Answer:

Admiral Mauz learned of the Simmons case on October 9 or October 13.

I am troubled by that.

We asked another question:

Exactly when did Admiral Mauz and his office learn of Lieutenant Simmons' confinement?

Answer:

Admiral Mauz learned of the hospitalization during October 1992, after Lieutenant Simmons had been released from the hospital.

Those answers may be inconsistent. We cannot get what I consider to be a straight answer. It is either October 9 or 13, and then it is in October after the confinement.

So it seems to me that we need to look at this. And in addition, we need to look at the other issue, the other issue posed by Chief Taylor when he reported the fact that Admiral Mauz was using Government drivers and cars on a vacation in Bermuda when he was there on "official business." This story was reported on a TV show. I am not one to believe TV shows. As a matter of fact, I discount a lot of what I see. But is it not amazing that shortly after this, we have harassment of this gentleman, Chief Taylor, and a psychiatric evaluation? So you have Chief Taylor blowing the whistle. And, by the way, the IG did put a letter into the file of Admiral Mauz saying that it was an improper use of this material.

Let me tell you exactly what was said. The Navy concluded that the scheduling of the trip created the perception of impropriety because he mixed business and pleasure. Furthermore, it found that Admiral Mauz had misused Government property because he requisitioned a military vehicle and driver while on personal leave, and he received an official letter critical of his action. And then we have a situation where the guy who blows the whistle on this activity gets what? He gets a psychiatric evaluation. Then we also have on the record a very high-level staff of Admiral Mauz calling the military prosecutor's office, which was looking into a case involving Chief Taylor. By the way, there were 48 counts lodged against Chief Taylor, none of which ever came to anything. Here you have a guy who blows the whistle, gets sent for a psych evaluation, and they bring a case against him in which he is ultimately not found guilty of anything.

All I can say to my colleagues is that we have a responsibility here. I do not have enough information to know whether it is just a coincidence that these people happen to be sent for a psych evaluation because they blew the whistle. I do not have enough information, because it is conflicting as to whether or not Admiral Mauz, in fact, knew that Darlene Simmons was sent in on a Friday before a long holiday. We do not know that.

So how can we, in good conscience, vote on this today? Senator MURRAY is giving us a way out, a good solid, conservative motion to take a hard look at these issues, entrusting it to our Armed Services Committee. I think that is a very sensible course.

I hope our colleagues will go along with the Murray amendment. I am proud to be associated with it.

Again, this is not easy. This is not easy. But once in a while you have to slow down the four-star train and take a hard look at what we are doing.

I think at this point we ought to take that hard look and then come back and vote on this fourth star.

I at this time thank the President and yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

AMENDMENT NO. 2582

Mr. McCAIN. Mr. President, on behalf of Senator DOLE and myself, I send an amendment in the first degree to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. DOLE, proposes an amendment numbered 2582.

Mr. McCAIN. 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:

At the end of the instructions add the following:

The Senate finds that:

The President has proposed to use the United States Armed Forces to intervene militarily in the situation in Haiti;

The stated purpose of the proposed United States military intervention in Haiti is the restoration by force of Jean-Bertrand Aristide to the Office of President of Haiti;

The President has not presented a comprehensive case for United States military intervention in Haiti to either the American people or their representatives in Congress;

The support of the American people is critically important to the success of any offensive military action;

All national public opinion surveys taken to date establish that a substantial majority of Americans oppose United States military intervention in Haiti;

The State Department Country Reports on Human Rights Practices for 1991 characterized President Aristide's regime as "unwilling or unable to restrain popular justice through mob violence";

Allegations connecting President Aristide to several incidents of human rights abuses, including allegations of his involvement in the assassination of a political opponent, remain unresolved;

United States vital national security interests are not threatened by the situation in Haiti;

It is the sense of the Senate that the Armed Services Committee also consider the fact that it is the sense of the Senate:

That the lives of United States Armed Forces personnel should not be risked in combat for the purpose of restoring Jean-Bertrand Aristide to the office of President of Haiti.

Ms. MIKULSKI. Mr. President, reserving the right to object, will the Senator explain the first-degree amendment? There is so much buzz on the floor I did not hear it.

Mr. McCAIN. I am glad to explain to the Senator from Maryland.

The PRESIDING OFFICER (Ms. MOSELEY-BRAUN). The Senator is recognized.

Mr. McCAIN. Madam President, this amendment expresses the sense of the Senate that the lives of the United States armed service forces personnel should not be risked in combat for the purpose of restoring Jean-Bertrand Aristide to the office of President of Haiti.

The fact is that it is well known that the President of the United States intends to invade Haiti, probably this weekend, and 73 percent of the American people are opposed to that invasion.

The President of the United States has had the time to consult with various countries, including the United Nations Security Council. He has had time to consult with and get the agreement from Antigua and Barbuda, Argentina, the Bahamas, Bangladesh, Barbados, Belize, Belgium, Bolivia, Britain, Dominica, Guyana, Israel, Jamaica, the Netherlands, Panama, St. Vincent, and Trinidad and Tobago.

The President has been unable or unwilling to come to the Congress of the United States and seek our approval for this invasion.

Madam President, I want to make it perfectly clear I do not believe that the United States is constitutionally bound to seek the approval of the Congress of the United States, although in the case of the Persian Gulf and several other occasions the Congress of the United States has acted in an affirmative fashion.

The fact is 73 percent of the American people, according to a poll yesterday, are opposed to this invasion. The President of the United States has refused to come to receive our approval.

The Secretary of State over the weekend and the United Nations representative have both stated that the President will not.

So, Madam President, in this rather unusual fashion, I intend to force a

vote on this issue before this weekend because that is the time of this invasion as we all know, perhaps the most publicized invasion in the history of warfare.

Madam President, I yield the floor.

Mr. SMITH and Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire is advised I had heard and seen the Senator from Maryland on her feet previously.

Mr. SMITH. She was not even on the floor, as I recall, at the time.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SMITH. Madam President, a parliamentary inquiry.

Ms. MIKULSKI. Madam President, I rise to——

Mr. SMITH. Madam President, a parliamentary inquiry.

Ms. MIKULSKI. Address the original topic of debate of the Senator from the State of Washington.

Mr. SMITH. Madam President, a parliamentary inquiry.

Ms. MIKULSKI. I believe I have the floor.

The PRESIDING OFFICER. Does the Senator from Maryland yield?

Ms. MIKULSKI. No, I do not yield.

The PRESIDING OFFICER. The Senator does not yield.

The Senator from Maryland.

Ms. MIKULSKI. Madam President, I rise today to explain why I support the motion to recommit the retirement of Adm. Henry Mauz to the Armed Services Committee with instructions to hold a hearing on Admiral Mauz' retirement at four stars.

Today, we debate the retirement of Adm. Henry Mauz. Let me say first that I do not prejudge any of the allegations made against Admiral Mauz. There is no doubt that he has had a distinguished career.

But, Madam President, I also acknowledge the right of those within this Chamber who wish to debate Haiti, but I would wish out of respect for the admiral and the process that we complete the debate on the motion to recommit of the Senator from the State of Washington. I believe we conclude that debate in a crisp and civil fashion and then upon the conclusion of that debate, I understand it is the intention that was agreed upon by both the Republican leader and the Democratic leader to have full and ample debate on the Haiti issue.

I now understand there is a first-degree amendment pending. I am not going to go through the parliamentary quagmire or the parliamentary thicket.

But I do ask my colleagues to then let us move forward on the debate on the Mauz nomination and whether or not we should return it to committee.

Good people with good intentions can have civil debate on this topic, and we can conclude it. Then we can move on to the 7 hours to talk about Haiti. We can listen to the President tomorrow night, and we can debate Haiti all of next week. But let us, out of respect for the admiral, move ahead and at least have a vote on this issue. I believe we can conclude it.

That is why I wish to say about the Mauz issue, I do not prejudge any of the allegations made against him. I acknowledge the validity of recommending him for four stars.

What I have questions about is the process. I have more questions about the process than in some ways I have about the admiral.

The questions about the admiral are how he handled charges of sexual harassment by Lt. Darlene Simmons, and charges of retaliation against a whistleblower, Senior Chief George Taylor, and allegations made about the admiral by even those within this body.

There are many unanswered questions. Earlier this month, my colleagues, Senators MURRAY, MOSELEY-BRAUN, BOXER, and FEINSTEIN, and I wrote to the chairman of the Armed Services Committee to urge the committee to hold a hearing on the unanswered questions.

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

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

U.S. SENATE,
Washington, DC, September 9, 1994.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On August 12, the Committee on Armed Services reported out the nomination of Admiral Henry Mauz, Jr., US Navy, to retire in grade. Because important questions have been raised about this nomination, we are writing to request that a public hearing be held by your Committee prior to Senate consideration of Admiral Mauz's retirement status.

As you know, Lt. Darlene Simmons alleges inappropriate action by Admiral Mauz with respect to the investigation and disposition of her sexual harassment case. In addition, Senior Chief George Taylor alleges that Admiral Mauz inappropriately used government assets and retaliated against a whistleblower. Both Lt. Simmons and Senior Chief Taylor have written to the Committee expressing the view that Admiral Mauz should not be retired at four stars.

We are concerned that the allegations raised against Admiral Mauz are sufficiently troubling to merit an open and full public hearing. While we in no way seek to pass judgement on any of the allegations involved, we do believe that a public hearing would serve to answer the important questions that have been raised.

Thank you for your consideration of our request.

Sincerely,

PATTY MURRAY,
CAROL MOSELEY-BRAUN,
BARBARA MIKULSKI,
BARBARA BOXER,
DIANNE FEINSTEIN.

Ms. MIKULSKI. Madam President, the letter talks about how we are concerned that the allegations raise questions that we should have a hearing. While we in no way seek to pass judgment, we do believe that there are questions related to how certain allegations that were made were handled.

There is conflicting and contradictory information about how the Navy and Admiral Mauz handled the Simmons sexual harassment case. There is conflicting information regarding what steps were taken and when they were taken to address the harassment issue. There is conflicting information regarding whether Admiral Mauz allowed an adverse fitness report by senior officers in Lieutenant Simmons' chain of command to go unchecked.

Now, the Senator from California has gone into this in great detail and, therefore, I will not need to go into those issues, but they are the questions that we have submitted to the committee.

The admiral has been accused of retaliating against a whistleblower. Senior Chief George Taylor, raised those questions about the propriety of a trip that the admiral took to the Naval Air Station in Bermuda.

Now all of us know what that is like. You take a trip, you try to do business, and then you could be accused of any number of things. We all understand that.

So all we want to do is get to the facts; get to the facts.

There was contradictory information about whether Senior Chief Taylor was transferred to another assignment and charged with insubordination and retribution for reporting the admiral's alleged misconduct in Bermuda. And I keep saying "alleged." I want to underline—a-l-l-e-g-e-d—alleged. We just want to clear it up. We want to clarify the controversy.

There is contradictory information regarding whether or not Admiral Mauz used the Navy resources for his personal benefit.

These are serious allegations and discrepancies which should fully be aired. I do not accuse the Navy of mishandling either this case or the disciplinary action against Senior Chief Taylor.

But I do believe, because of the serious nature of these various charges, a full and open hearing should be held before the Senate votes on Admiral Mauz's retirement at the rank of four stars.

I believe that a hearing will get all involved—the Navy, the admiral, the lieutenant, the chief—the chance to present their story.

Now Senator MURRAY has submitted a 3-page list of questions to the Armed Services Committee. A hearing will give the Navy the chance to answer those questions and any others. A hearing will give Senators the chance to make their own determination as to whether these incidents were handled appropriately.

We have a very able chairman of the committee, Senator NUNN, whose career within this body is distinguished. I believe that he has tried to handle many of these nominations in the most expeditious way. But the distinguished chairman of the Armed Services Committee raises the question about how he cannot hold investigative hearings on each and every situation. And we understand that.

But what we are saying to the members of the Armed Services Committee, what we are saying to the Armed Services Committee is we need to anticipate those situations that are high profile and highly controversial, anticipate the type of questions that we would have on those issues, and then anticipate what we need to answer in order to move on the fitness or whether we should proceed with the recommendations. That is what we are saying.

But, do you know what? There was talk about the Commander in Chief; there was talk about the Navy. I would like to raise a question with the Secretaries of the armed services personnel, whether it is the Secretary of the Navy, the Secretary of the Army, the Secretary of the Air Force, which is when a nomination or a recommendation is coming forward, anticipate the controversy; anticipate the questions; work with the committee.

This committee has had a wonderful reputation for bipartisanship. The relationship between Senator NUNN of Georgia and Senator JOHN WARNER of Virginia, I believe, is a model of cooperation and civility that should be a hallmark of this entire institution. We need less partisanship, less bickering, and they have done that in the Armed Services Committee.

Now when they look to the executive branch to send over those nominations or recommendations on rank for retirement, they should anticipate that and answer those questions. And that is what we are now faced with here. Somehow or another, we did not close the loop on this.

It is not with joy that the women of the U.S. Senate keep raising these issues. It is not with joy that we keep doing that. We respect our U.S. military. And, on the brink of a possible military action, we want to show our enthusiastic support for the U.S. military. We do not want to be jackpotted. But we are continually jackpotted by the bungling processes that come before us.

We honor and respect the men and women who make heroic sacrifices, and some are on this floor and some have spoken earlier today who have made incredible sacrifices. We are not here to fussbudget. We are not fussbudget Senators. We have to take these things seriously.

We thought when we raised the Kelso issue that we had changed the culture. We did not change the culture because they very shortly followed with this.

Now, once again, an admiral with a distinguished history of 35 years of service is now here while we raise three pages of questions. The questions that the gentlelady from the State of Washington has raised are the questions that the Secretary of Navy should have raised and gotten the answers; should have anticipated that when he came to the distinguished chairman and the ranking Republican on that committee, that they would have those questions. And that is what we are saying. Anticipate the needs, anticipate the questions that would be raised in high-profile cases.

Nominations have been held up or other recommendations have been held up in the Foreign Relations Committee for Ambassadors, and so on. So we should not be accused of holding something up. And we should not be accused of being the problem.

Now this takes me to something else.

And I would like to compliment the gentlelady from the State of Washington for the outstanding job that she has done to raise these issues. As she said, she felt that she had the responsibility to raise the questions—that is all we are doing—raise the questions and let us get the answers and let us get on with it.

But what disturbed me is not only where the Secretaries of the U.S. military continue not to anticipate what we would be raising on some of these high-profile issues, but when we raise the issues, we become the issue. And that is what has happened to the junior Senator from the State of Washington. When she raised the issue, suddenly she became the problem.

When we raise the issue, it looks like the Democratic women are the problem. Madam President, we are not the gender cops of the U.S. Senate. We do not see ourselves as the gender cops of the U.S. Senate.

But we do believe we need to stand sentry over making sure that questions raised are questions answered. That is all we are saying.

I believe that what has happened to the junior Senator from the State of Washington is not a very nice thing. She has been made the issue. She has been hounded into letting this nomination go. Tart things were said about her behind her back, to her face, and even on this floor. This Senator knows the chain of command. She spoke about it in terms of responsibility.

We are getting all jacked up and juiced up about being self-righteous. All we are saying is, the reason we want this to be referred to the committee is for questions to be answered.

But I come back to, yes, the Secretary of Defense and his Secretaries, where there are high-profile cases with controversy there, raise those questions and so on. And then when the distinguished chairman of the Armed Services Committee says this is more than they can handle, I believe we could handle them if they were handled first at the executive branch and then, second, we need to anticipate them in the committee.

Now we have just had an unfortunate thing occur on this floor about the recognition. I would like to say to the distinguished Senator from New Hampshire, who is one of the most active members of the Ethics Committee and who I have been with and in circumstances requiring integrity and judgment and so on, I can only attest to his, to his; and also to his own deep commitment to the U.S. military. I regret that there seems to be some confusion over recognition. I understand that the Senator from Illinois took the chair in anticipation of my speaking in support of this motion, and that I was to speak at this time.

But, Madam President, I do believe that it would be in the interest of all concerned if we could conclude the debate on the pending request of the junior Senator from Washington, that we vote on this, that it be one way or the other; that one way or the other the Senate exercises its will. And that we then conclude that and then move on to what needs to be a robust, amplified, and extensive debate on the Haiti question.

So, Madam President, we are on the eve of Yom Kippur when all people reflect on their souls, and I hope we will take this time over the next few days to reflect on our own role in public policy, where we do our best and where we serve. We ask, then, that we really cooperate in terms of bringing certain issues to closure, being able to move forward on this, having the debate.

And I note that on the floor is the distinguished chairman of the committee. I would like to say to that Senator, we thank you for your cooperation. I think you know what we have raised. We have discussed it one other time, where the executive branch needs to beef up its investigation on complaints. But we really do believe the Secretaries of the various armed services should anticipate these concerns. I just want to say to you: We do not want to be fussbudgets. As I said, we do not see ourselves as gender cops.

Also, whether we are on the brink of a military action or whether we are not, I can say as the dean of the Democratic women, we respect the U.S. military. We so want to work with them. And one of the finest opportunities I have had is being on the board of visitors of the U.S. Naval Academy to help produce naval officers for the 21st century and working with the Senator from Arizona on accomplishing that. And of course we look forward to working with you on that.

Mr. NUNN. I thank the Senator from Maryland, Madam President.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Madam President, I thank the Senator from Maryland. I can assure her that our committee and I personally will continue to work very diligently with the military services because I think they recognize that they are going through a difficult transition. I think they know that this transition is going to be several years in process. I think they understand that they are going to have to act on sexual harassment or sexual assault cases in a very timely, expeditious manner and a thorough manner in fairness to all the parties, both the alleged victims and the people who are accused and to our top ranking officials.

That is a continuing process. It is far from perfect now. There are a lot of improvements that have to be made, and I will certainly pledge to continue to work with the Senator from Maryland along that line.

Ms. MIKULSKI. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been noted. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SMITH. Madam President, parliamentary inquiry. When a Senator is seeking recognition on the floor on a debate, why are we going into a quorum call?

The PRESIDING OFFICER. A quorum call is in progress.

Mr. SMITH. What is going on? Madam President, may the Senator from New Hampshire call the quorum off so he can speak on the floor?

The PRESIDING OFFICER. The Senator from Maryland has a right to request the quorum call. The quorum call is in progress.

Mr. SMITH. I ask unanimous consent the quorum call be dispensed with, Madam President.

Mr. NUNN. Madam President, I object but I will not object for long. I object for a moment. I have to confer for a moment, and then I will withdraw my objection.

The PRESIDING OFFICER. Objection is heard.

The bill clerk resumed the call of the roll.

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

The PRESIDING OFFICER. Is there objection? Without objection, it so ordered.

Mr. NUNN. Madam President, I know the Senator from New Hampshire has been on the floor for quite awhile and desires to be recognized. I know he is on the floor seeking recognition. I hope the Chair will recognize him. I know he has remarks on this nomination. I also know the Senator from South Carolina has not made his remarks on the Mauz nomination. So I hope that both of them will present their views.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader, the Senator from Maine.

Mr. MITCHELL. Madam President, my understanding now is that the Senator from New Hampshire, followed by the distinguished Senator from South Carolina, and then followed by the Senator from Texas, all are to address the Senate on the subject of the Mauz nomination.

Following the remarks of the Senator from Texas, a quorum call will be called by either the chairman or whoever is acting in his behalf on this side. We discussed this here. There is no time limitation on the Senators. They are free to discuss it as long as they wish.

My request is that first Senator SMITH be recognized to address the Senate with respect to the Mauz nomination; that upon the completion of his remarks, Senator THURMOND be recognized for the same purpose; and that upon the completion of Senator THURMOND's remarks, Senator HUTCHISON be recognized for the same purpose; that upon the completion—perhaps I should inquire on the length of time. If he could just give some idea.

Mr. SMITH. Approximately 15 minutes.

Mr. MITCHELL. Fifteen minutes?

Mr. SMITH. Approximately.

Mr. MITCHELL. Why do we not say the Senator be recognized for up to 20 minutes? That will give him plenty of time on that subject.

Mr. SMITH. That should be sufficient.

Mr. MITCHELL. And the Senator from South Carolina to be recognized for 5 minutes. Then the Senator from Texas for up to 15 minutes, following which there will be a quorum call, and I will then be recognized following the quorum call.

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

Mr. MITCHELL. I thank my colleague.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

To the Senator from New Hampshire, the Senator is over 6 feet by, I imagine, about 4 inches, and the Senator from Maryland is probably less than 5 feet no inches. But the fact is, the Chair saw and heard the Senator from Maryland prior to the Senator from New Hampshire, and that is why the priority of recognition pursuant to our rules was given.

It is the Chair's hope that the Senator from New Hampshire takes no personal affront or offense from the priority of recognition being given under the rules based on the fact of the Chair having seen and heard the Senator from Maryland previously.

The Senator from New Hampshire is now recognized for up to 15 minutes.

Mr. SMITH. Up to 20 minutes, Madam President.

The PRESIDING OFFICER. Up to 20 minutes.

PRIVILEGE OF THE FLOOR

Mr. SMITH. Madam President, first of all, I ask unanimous consent that a fellow in the office of Senator HUTCHISON, Colonel Dave Davis, be allowed the privilege of the floor during this debate.

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

Mr. SMITH. Madam President, since you brought this up, the RECORD and the recording will make very clear what happened. I do not wish to pursue this in an argumentative manner, nor do I take it personally—I do not think it is a personal matter—but I think the RECORD will very clearly show that the Senator from Maryland was not seeking recognition at the time that the Senator from New Hampshire was seeking recognition.

The RECORD will also show during the time when two of your predecessors were in the chair, the Senator from New Hampshire was on the floor for approximately 2 hours seeking recognition while the chairman, who is on your side of the aisle, had recognition; Senator MURRAY, who is on your side of the aisle, had recognition; Senator BOXER, who is on your side of the aisle, had recognition; Senator NUNN, again was recognized on your side of the aisle; then Senator MIKULSKI was recognized, and all of the time, all during that debate, I sought recognition after each one of those individuals. So that is the record. The RECORD will also show that I called at least three times asking for recognition from the Chair, and the Chair did not recognize me.

That is the record. I do not wish to pursue it anymore on my time. The record speaks for itself, Madam President. I do not question anybody's motives.

Madam President, with all of the hoopla here, I was simply trying to get the floor to support my chairman in your party, by the way, Senator NUNN, and to support the ranking member of this committee, on behalf of the nomination of Admiral Mauz to retire in grade. That is all I have been trying to do. I regret that it has taken so much time to get here to do it. I think we ought to be a little bit more fair in terms of recognition in the debate. There will be other opportunities at some point in the future, maybe it might be January, it may be later—I hope it is January—when this party will have the majority in the Senate.

I wish to caution my colleagues on what is becoming what I believe to be a very unfair and increasingly damaging perversion of this whole confirmation process. It is simply impossible for the Senate to look over the shoulders of the UCMJ or all the decisions that are made throughout the military and do our job, the very extensive job that we have to do, from nominations to the

budget and other things that we do in the Armed Services Committee.

I wish to reaffirm my absolute support for the Senate's constitutional prerogatives to advise and consent on this nomination or any other nomination. The Senator from Washington has the perfect right to recommit this. It is certainly within her prerogatives. I do not question that. The advise and consent process is a fundamental element of our system of checks and balances and each of us should take it very seriously.

But, unfortunately, there has been a growing trend among Members of this body to exploit the military nomination process in a manner that runs very contrary to how the framers intended it. There seems to be this lofty theory of accountability, accountability for some and not accountability for others. And it has become standard fare for a select few to slander and denigrate the service of our distinguished military leaders, leaving their reputations tarnished and their career history distorted in the Senate. We saw it with Admiral Kelso. We saw it with Admiral Arthur. We are seeing it again today with Admiral Mauz, where a very small minority is seeking—maybe not seeking, but in fact accomplishing—the tarnishing of the 35-year career of an outstanding military leader based on allegations which are, frankly, unsubstantiated, and this cannot be allowed to occur.

That is why Chairman NUNN is out here today and why Senator THURMOND is out here today, and others, speaking so strongly and forcefully, because 22 members of the Armed Services Committee, of both political parties, from the liberal to the conservative side, said that this nomination should go forward—22 to zero. That is a fact. We do not take this lightly. We do our job. And we did do our job. We did it. And we did it well under the leadership of this chairman. Numerous meetings were held and numerous investigations were held, and we looked into it. I happened to look into it personally every step of the way.

Admiral Mauz has been nominated by the President of the United States to retire in grade as a four-star admiral. The President made this decision. The Secretary of Defense made this decision. The Chairman of the Joint Chiefs made this decision. The Secretary of the Navy made this decision. And the CNO made this decision.

Madam President, 22 members of the Senate Armed Services Committee, in a vote of 22 to nothing, made this decision. But that is not good enough. We have to come out in the Chamber now and tarnish this brilliant military leader, who had a brilliant military career, who served his country well. Now he has to go out with this on his record, because this will be part of the debate.

It is a textbook story. He has a long list of awards. And I will not go through them all, but to begin with: Four Distinguished Service Medals, the Defense Superior Service Medal, the Legion of Merit, the Bronze Star with a Combat "V," the Meritorious Service Medal, three Navy Achievement Medals, the Combat Action Ribbon, the Navy Unit Commendation Medal, Meritorious Unit Commendation Medal, Japanese Order of the Rising Sun, and on and on and on, including eight relating to service in Vietnam.

This is an impressive record. And, yes, if he was even remotely guilty of some of the things that have been said about him in looking the other way at harassment and this nonsense, he should be held accountable, but that is not the case. The President knows it. The Secretary of Defense knows it. The Secretary of the Navy knows it. That is why his nomination is being recommended to retire in the four-star grade. His reputation should not be destroyed in the Senate. It is outrageous.

To those very few Members who are seeking to prevent Admiral Mauz from retiring in grade, I say the burden of proof lies with you, not with him. It lies with you. He has served his Nation for 35 years. His career is an open book. His cards are on the table. He put them there. On the contrary, those who are alleging this improper conduct and are alleging that we did not do our job in the Armed Services Committee do not have any substance for these allegations.

They are allegations. That is all they are. This is a critical point. Those who are opposing the nomination are also criticizing this committee, maybe not openly, but blatantly underlying that is the message: We did not do our job. And I resent it, frankly. I resent it, because I know how hard Senator NUNN and Senator THURMOND and other members of this committee worked to try to review it.

We have had nomination after nomination. Every single time any member of that committee, any Member of the Senate, for that matter, has ever raised an objection to anybody, I do not care if it is a lieutenant, this chairman has given us the opportunity to be heard—every time, every single time. Sometimes they are frivolous, too, but we are heard. Never has he pushed a nomination through. From the most junior member of the committee to the most senior member of the committee, they are treated equally under this chairman.

The truth is that the committee thoroughly and methodically investigated every single one of these allegations against Admiral Mauz. Now, maybe some do not like the result, but the truth is they were investigated and there is nothing there—nothing there, period.

The criticism being lodged against Admiral Mauz centers on his alleged mishandling of a sexual harassment case. It has been debated he is not involved in sexual harassment, lest some think he may be. He did not condone it. He is a four-star admiral. He is trying to do his job in the fleet to conduct the operations that a four-star admiral has to do, and something happened down in his command. It was bad, no question about it, and disciplinary action was taken.

If someone in one of our offices commits a crime tonight, is that our fault? Is that our fault? Should we be held responsible? Maybe we should resign because of it. That is the logic being used here. We are totally accountable for everybody else's actions. Nobody is accountable for their own actions.

The Senator from Washington is alleging that Admiral Mauz used his position to protect those guilty of sexual harassment and to cover up alleged improper handling. It could not be further from the truth. These are very serious allegations. They are not supported by the facts.

The truth is that an individual was harassed. We went through all of that. I am not going to mention names. Admiral Mauz did not learn of it until October 1992. We cannot micromanage every single decision in the command of an admiral or a general or anybody else. It is impossible. Anybody who even remotely understands the military would understand that; even if you remotely understand it. When he learned of what happened, he investigated it immediately, and even assigned a member of his personal staff, his Special Assistant for Women's Affairs, to assist with the investigation to ensure that the victim had direct contact to Admiral Mauz at all times.

That did not end Admiral Mauz' involvement in this case. In fact, upon reviewing the proposed inspector general's report, Admiral Mauz was dissatisfied and he returned the report for more specific accountability. He personally intervened at the flag level twice in an effort to retain the victim in the Navy. He directed corrective action to ensure that there was no repeat of the harassment in the Atlantic Fleet or the Navy. I can say with all personnel in the Navy from the highest levels—CNO on down—since I have been on this committee, and since I have been in the Congress, there have been cases of sexual harassment, and they have tried to look into them and to deal with them fairly and appropriately. This admiral did the same. This is not dereliction of duty.

And to bring Admiral Mauz back up before another hearing, the damage will be done. It is being done now as we debate it on the floor of the Senate. It should not be here being debated frankly on the floor of the Senate. It can be. It has a right to be. But there is no reason, none, for it to be here. It is just that somebody does not accept the investigation.

So here is an opportunity to be macho here to show we are not going to let anybody get away with sexual harassment. Nobody got away with sexual harassment. Nobody got away with it. Admiral Mauz did not tolerate it, and he ought to be commended instead of being challenged on his integrity.

The Chief of Naval Operations, Admiral Boorda, thoroughly reviewed this case and Admiral Mauz' involvement and determined that Admiral Mauz did not suppress the evidence of any inquiry, did not fail to take corrective action on behalf of the victim, nor did he fail to follow proper procedures on inquiries into allegations; and, further, the CNO determined the Atlantic Fleet did not cover up the nature and the extent of these actions.

I do not profess to say that Admiral Mauz and 35 years of military service made flawless judgments. Does anyone in the Senate consider themselves flawless in their judgments in every decision that you have ever made? He surely has not. I surely have not. I am speaking for myself. But who among us could hold up such a standard? No one.

The issue before the Senate is whether his 35 years of service to our Nation warrant retirement in a grade of a four-star admiral. That is the issue. It is not a gift. He earned it. He earned the fourth star—earned, not gift. Understand what the military means. Do you realize what is happening out there today in this military situation? We have people in some cases that have been home 3 or 4 weeks in the last year while they have been in Somalia, Rwanda, Haiti, Cuba, and where else? How much more do we ask of these people? They give their service to their country.

They come to retire in the fourth star, in this case an admiral, and what do we do? We beat him up on the floor of the Senate and try to get a hearing to beat him up again. So he has to have that stigma with him for the rest of his life. It is disgraceful. It has to stop. We are losing good people in the U.S. Navy and all across the board in the military because of this stuff—good people; people that fought these wars and won these wars for us, who won the cold war for us.

I have several cases right now before me as a Senator, good people being basically harassed out of the service. You talk about harassment, being harassed out of the service because they are fed up with it, they cannot take it anymore. He served 35 years, and to just be treated like this. This is an honorable man.

My colleague from Washington and those who are joining her are saying in effect if you are fortunate enough to survive the reductions in force, serve your Nation with distinction, reach the pinnacle of success in your field, Senators still may decide that politics is more important than your reputation, and torpedo your retirement. It is bullying. What can the man do? He has to answer. He has to come up here, and he did answer. He answered through the proper channels—throw out our constitutional obligations, throw them out the window——

Mrs. BOXER. Will the Senator yield?

Mr. SMITH. I will not yield.

Mrs. BOXER. I want to make a——

Mr. SMITH. To be politically correct—Madam President, I would appreciate order. We should accommodate our responsibilities fairly and objectively. This is an outrage. It reflects very poorly on this institution, and it must not be permitted to prevail. I am extremely sensitive again to the underlying charges that somehow this committee was derelict. One or two, you might make that charge, but 22 to 0, including the chairman and the ranking member.

Let me conclude on the limited remarks that I agreed to, even though there is no limit to this debate and I finally was recognized, by urging my colleagues to reject this motion to recommit, reject this motion to recommit and accept the fact that Chairman SAM NUNN and Senator STROM THURMOND and 20 other members of this committee thoroughly investigated these charges and found them wanting. They are not worthy of the debate on the floor. He did nothing wrong. On the contrary, he did everything right. He checked it out as he should. He is a good admiral. He is a good soldier. He deserves to retire in that fourth star without any negative stigma being thrown his way as he leaves the military. Have the decency at least to allow this great soldier the opportunity to do that.

Madam President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

[Applause in the galleries.]

The PRESIDING OFFICER. There will be no disturbance in the gallery or the people will be removed by the Sergeant at Arms.

The Senator from South Carolina.

Mr. THURMOND. Madam President, I previously have spoken on this matter so I shall make very brief remarks.

I just want to say that I oppose the motion to recommit Admiral Mauz' nomination. The Armed Services Committee has thoroughly reviewed each allegation and voted 22 to 0 in favor of the nomination. There are three issues:

Admiral Mauz' trip to Bermuda. This was investigated by the Navy, and Admiral Mauz was censured by the Navy.

Next, Lieutenant Simmons was verbally harassed, which was wrong. Admiral Mauz was three levels of command above Lieutenant Simmons.

The next is the Navy and the DOD investigated the allegations of reprisal and found no wrongdoing on the part of Admiral Mauz. That was proper. He was three levels above her.

Now, if she wanted to bring allegations against her commanding officer, that is one thing. But to go above that and above that and above that, and the admiral probably did not even know about the matter because her commander should have handled that.

The next is, Master Chief Taylor says that Admiral Mauz influenced the court-martial charges against him and reprisal for whistleblowing. Again, the Navy and the DOD investigated and found no connection to Admiral Mauz. He did not even know about this.

This nomination has been pending since May 10. This great man, admiral in the Navy—the nomination was sent to us May 10. We spent 4 months on it. It is an injustice to a man like that to hold it up when there is no real reason. He deserves to retire in grade.

I urge my colleagues to vote against the motion to recommit and to vote in favor of Admiral Mauz' nomination to retire as an admiral. I just want to say that he has had 35 years' service, valuable service, during some of the most critical time in our Nation's history. He has commanded riverboats in Vietnam, big ships of war, the U.S. 7th Fleet, and is currently serving as commander in chief of the U.S. Atlantic Fleet involving about 140,000 people.

I just cannot imagine after these things have been investigated by the Navy, and then further by the Defense Department, that it would continue to go on and haunt this man. He deserves better. He is a great patriot. We are proud of him. And I hope this nomination will go through and not be recommitted.

I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Madam President, I am rising to speak against the motion to recommit the nomination of Admiral Mauz. But let me say that I do commend Senator MURRAY for having the courage to raise the questions. I raised many of the same questions in committee. I have worked with Admiral Boorda. I have had the questions answered to my satisfaction, which is why I wanted to speak here today.

But Senator MURRAY did call me to raise concerns, to ask questions, which I appreciate very much. I think she has handled this very professionally, and I certainly know that sometimes it is difficult when you are raising an issue, where there are competing and very valid views. So I do want to commend her. But I have come to a different conclusion from Senator MURRAY, such that I am satisfied that we do not have to go back to the committee. I am on the committee and, as you know, I have raised questions before and have

gotten the answers that I asked for. I have worked with the chairman of the committee, Senator NUNN. He has been very forthcoming. I want to say that the committee has, in every instance where there is a question about a nomination, been very careful to inform members of the committee that there is a question on the nomination. The committee has gone overboard to get information. I have asked for information and I have received information. I do commend the chairman of the committee, who has had a tough time dealing with so many questions about so many nominations. I know that in a future time we are going to talk about how we can satisfy everyone in the nomination process and also protect the people who are involved in questionable situations. So it is difficult, and I commend the chairman and the ranking Member, and I also commend Senator MURRAY.

Let me say that I have come to a different conclusion, because when I asked the questions, I felt that Admiral Mauz really has done an exemplary job of handling a very delicate situation. So let me speak on a couple of the questions and then go forward.

We do know that Admiral Mauz has had a distinguished career, with over 35 years of service to our Nation. When allegations are made against a senior officer in Admiral Mauz's situation, the Armed Services Committee must investigate the charges to determine if the officer in question deserves the benefit of retirement at a higher grade. In this case, my colleagues and I on the committee, after reviewing the evidence and documentation and reexamining certain aspects of it over a period of weeks and months, voted unanimously to approve the nomination of Admiral Mauz to retire in grade. Clearly, this was a poll and not a vote of the committee as a whole, but that was because of the constraint of time and the difficulty of getting a committee meeting when we were in, I believe, the health care debate at the time.

I want to talk about a couple of the issues that have been mentioned. First, there was one allegation about an official trip to Bermuda in November 1992. Believing there was impropriety in the Admiral's actions, CPO George R. Taylor registered an initially anonymous complaint through the Navy's complaint hotline. Chief Taylor also alerted ABC–TV news, which did produce an account of the event in the news story. In this case, Admiral Mauz clearly made a mistake. Anyone with a long and distinguished career certainly makes mistakes, and I think that we have been able to weigh that lapse, and I think he has paid for any indiscretion that was made.

The issue that concerns me here is the sexual harassment complaint that was brought by Lt. Darlene Simmons, who was the victim of verbal harassment of a superior officer while serving on the U.S.S. *Canopus*. Admiral Mauz had an important and affirmative responsibility as commander of the Atlantic Fleet. To have fallen short of the discharge of his duties—to ensure a swift, thorough, and impartial investigation, appropriate disciplinary action and effective followup—would have been, in my view, a serious breach of his command responsibilities. But the record reflects that Admiral Mauz's actions were a model for effective leadership. Although he was fleet commander, separated from Lieutenant Simmons by several levels of command, he personally became involved to ensure that Lieutenant Simmons was treated fairly.

When the harassment complaint reached his desk, Admiral Mauz assigned a member of his staff, his Special Assistant for Women's Affairs, Comdr. Cathy Miller, to investigate the incident. The investigation led to the removal of the offending officer from the ship and his subsequent retirement from the Navy.

In the wake of the disciplinary actions against the offending individual, Admiral Mauz ordered additional instruction in handling sexual harassment matters for the captain and officers of the *Canopus*. He also took it upon himself to initiate two official messages to the Atlantic Fleet. First, in April 1993, he directed that steps be taken to eliminate sexual harassment. Subsequently, in September 1993, he ordered that official inspections would henceforth include a review of the effectiveness of efforts to combat sexual harassment. So it was clearly not just the investigation itself, but a followup to make sure that everyone knew of the seriousness of sexual harassment in the Navy, and especially in the Atlantic Fleet, which was under the charge of Admiral Mauz.

Finally, then, Admiral Mauz took steps to ensure that Lieutenant Simmons would be protected against reprisal. After Lieutenant Simmons took issue with a subsequent unfavorable fitness report that she received, Admiral Mauz intervened with the Chief of Naval Personnel in order to extend Lieutenant Simmons' tour of duty, provide for her reassignment, and assure that she would have a full opportunity to appeal the adverse findings. I think we must make clear that Lieutenant Simmons remains on active duty today as a judge advocate general officer. She is an attorney in the judge advocate general's office. So the person that has made the charges is still in the Navy, while the person accused of harassing her is no longer in the Navy.

There is an issue that has been brought up that is of great concern to me, and that is the hospitalization of Lieutenant Simmons and perhaps the allegation that she was hospitalized because of a sexual harassment complaint. This is an issue which has concerned me in every instance where I have read of it. I am concerned that on an allegation that a service member makes, he or she is then referred for psychiatric evaluation based on the fact that they have a problem that needs to be looked at, as opposed to the fact that they have made an allegation. But the facts in this case, which I have carefully reviewed, showed that the hospitalization was motivated solely by medical reasons. A referral was initiated by the ship's medical officer, a woman doctor, despite the commanding officer's initial objections, and the hospitalization was actually ordered by a physician on the hospital's staff. Most important, Admiral Mauz was not aware of the hospitalization until after Lieutenant Simmons was released from the hospital.

(Mr. MATHEWS assumed the chair.)

Mrs. HUTCHISON. Mr. President, I want to say that because of my concern for this type of possibility I specifically have asked Admiral Boorda what is the policy now with regard to psychiatric examinations after a sexual harassment charge. He has told me that it is not allowed anymore, that in the past they tried to be careful to make sure that it was not looked upon as any type of retaliation, but because of the questions and because it is such a difficult situation, they now just have a flat rule that there cannot be a psychiatric evaluation after a sexual harassment charge.

I hope that we can have the ability for someone who wants counseling after an occurrence like this to be able to have it, but I also think we must make sure that no one is ever, against their will, put into a psychiatric referral because of a charge. I think we have to walk a very fine line here, and I believe that Admiral Boorda agrees with that and is taking the steps that are necessary to make sure there is not any kind of abuse of this possibility.

The facts as they bear on Admiral Mauz' performance are unequivocal: He responded correctly and positively at every turn, and set an example for others in command positions to follow. He discharged his duties in this case in exactly the manner in which we would expect him to act and I would want to encourage other commanders to look at what he did to make sure that we follow every avenue that is necessary to look into sexual harassment charges without in any way hurting the person who is making the charges but also, of course, trying to make sure there is integrity and equality in the process.

The matters we are discussing here today are serious ones, and the committee took them very seriously. This nomination has been pending for months. Whenever questions are raised about abuse of command authority and administering justice within our military services, they do deserve our full

attention. The committee undertook a review of all of the relevant information and a critical appraisal of Admiral Mauz' performance. At the conclusion of the committee's work, it was our recommendation that he merit the retirement in grade. And I am going to support that nomination.

I do want to say that I think on the issue of investigation, here is the key for a commanding officer, for a person that is not in the direct line when a charge is made like this: I think the judgment that we must make is the judgment of how the commanding officer handled the chain of command to make sure that there was fairness in the process and particularly that the person who is making the charge is handled with complete fairness. I believe Admiral Mauz met our standard.

But I also want to say that I have talked to Admiral Boorda and other commanding officers of our military services. They know that all of us, including the chairman of our committee, the ranking member of our committee, every member of the Armed Services Committee, know that it is very important that we have integrity in our process. It is difficult for members of the committee to come in and judge on a record after the fact. But nevertheless, we have taken great pains to do that.

But I think we also must take as great pains to protect the officer, such as Admiral Mauz, as we are trying to protect Lieutenant Simmons here. I think he deserves the promotion into retirement, and I think Admiral Boorda, as the Chief of Naval Operations, is doing everything he can to try to make sure that occurrences of this kind do not happen, but, if they do, that there is an investigation. I have said in the past that I think one of the failures in the Navy has been the investigation, but I am convinced that Admiral Boorda is taking steps to assure that there will not be lapses in investigation.

I also commend Secretary Dalton for having these types of interests uppermost in his mind for the U.S. Navy as well.

So I wanted to make my views known because I think there are a lot of lives that we are affecting here today. I do hope that we can have a vote quickly so that this can be handled today if at all possible so that we will not have to go back over a week and come back and refresh everyone's memories.

I think Senators should give the fairness of their judgment weight on behalf of the Navy, and I think Admiral Mauz deserves this promotion into retirement.

Thank you, Mr. President.

Ms. MIKULSKI. Mr. President, will the Senator yield?

Mr. THURMOND addressed the Chair.

Ms. MIKULSKI. Mr. President, will the Senator yield?

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, my understanding is that there is an agreement that we have a quorum call as soon as the Senator from Texas has finished speaking.

The PRESIDING OFFICER. The Senator may suggest the absence of a quorum.

Ms. MIKULSKI addressed the Chair.

Mr. THURMOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mrs. MURRAY. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk continued to call the roll.

Mr. BROWN. Mr. President, I rise to give a brief statement and ask unanimous consent that the order for the quorum call be rescinded.

Mrs. MURRAY. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk continued to call the roll.

Mr. COHEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mrs. MURRAY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The clerk continued to call the roll.

The PRESIDING OFFICER (Mr. DORGAN). The Chair advises that a quorum is not present in the Senate.

Mr. MITCHELL. Mr. President, I move to instruct the Sergeant at Arms to request the presence of absent Senators, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to instruct.

The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Colorado [Mr. CAMPBELL], the Senator from Hawaii [Mr. INOUYE], and the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from New York [Mr. D'AMATO], the Senator from Kansas [Mr. DOLE], the Senator from Texas [Mr. GRAMM], and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

The result was announced—yeas 74, nays 19, as follows:

[Rollcall Vote No. 299 Ex.]

YEAS—74

Akaka	Bennett	Bingaman
Baucus	Biden	Boxer
Bradley	Gorton	Mikulski
Bryan	Graham	Mitchell
Bumpers	Gregg	Moseley-Braun
Burns	Harkin	Moynihan
Byrd	Hatch	Murray
Chafee	Heflin	Nunn
Coats	Hollings	Packwood
Cochran	Hutchison	Pell
Cohen	Jeffords	Pressler
Conrad	Johnston	Pryor
Coverdell	Kassebaum	Reid
Danforth	Kempthorne	Riegle
Daschle	Kennedy	Robb
DeConcini	Kerrey	Rockefeller
Dodd	Kerry	Roth
Domenici	Kohl	Sarbanes
Dorgan	Lautenberg	Sasser
Durenberger	Leahy	Shelby
Exon	Levin	Simon
Feingold	Lieberman	Simpson
Feinstein	Lugar	Thurmond
Ford	Mathews	Wofford
Glenn	Metzenbaum	

NAYS—19

Bond	Helms	Smith
Boren	Lott	Specter
Breaux	Mack	Stevens
Brown	McCain	Wallop
Craig	McConnell	Warner
Faircloth	Murkowski	
Grassley	Nickles	

NOT VOTING—7

Campbell	Gramm	Wellstone
D'Amato	Hatfield	
Dole	Inouye	

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

The Chair recognizes the Senate majority leader. The Senate will be in order.

AMENDMENT NO. 2583 TO AMENDMENT NO. 2582

(Purpose: To express the sense of the Senate with respect to Haiti)

Mr. MITCHELL. Mr. President, I send an amendment to the desk and ask it be read.

The PRESIDING OFFICER. The clerk will report.

Mr. McCAIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The amendment must be read first. The clerk will read.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for himself and Mr. NUNN, proposes an amendment numbered 2583 to amendment No. 2582.

The amendment is as follows:

Strike all after the first colon and insert the following:

SEC. . SENSE OF THE SENATE ON THE USE OF FUNDS FOR UNITED STATES MILITARY OPERATIONS IN HAITI.

(a) STATEMENT OF POLICY.—It is the sense of the Senate that the Armed Services Committee also consider the fact that it is the sense of the Senate that—

(1) all parties should honor their obligations under the Governor's Island Accord of July 3, 1993, and the New York Pact of July 16, 1993;

(2) the United States has a national interest in preventing uncontrolled emigration from Haiti; and

(3) the United States should remain engaged in Haiti to support national reconciliation and further its interest in preventing uncontrolled emigration.

(b) LIMITATION.—It is the sense of the Senate that funds should not be obligated or expended in Haiti unless—

(1) authorized in advance by the Congress;

(2) the temporary deployment of United States Armed Forces into Haiti is necessary in order to protect or evacuate United States citizens from a situation of imminent danger and the President reports as soon as practicable to Congress after the initiation of the temporary deployment;

(3) the deployment of United States Armed Forces into Haiti is vital to the national security interests of the United States, including but not limited to the protection of American citizens in Haiti, there is not sufficient time to seek and receive congressional authorization, and the President reports, as soon as is practicable to Congress after the initiation of the deployment, but in no case later than 48 hours after the initiation of the deployment; or

(4) the President transmits to the Congress a written report pursuant to subsection (c).

(c) REPORT.—It is the sense of the Senate that the limitation in subsection (b) should not apply if the President reports in advance to Congress that the intended deployment of United States Armed Forces into Haiti—

(1) if justified by United States national security interests;

(2) will be undertaken only after necessary steps have been taken to ensure that safety and security of United States Armed Forces, including steps to ensure that United States Armed Forces will not become targets due to the nature of their rules of engagement;

(3) will be undertaken only after an assessment that—

(A) the proposed mission and objectives are most appropriate for the United States Armed Forces rather than civilian personnel or armed forces from other nations, and

(B) the United States Armed Forces proposed for deployment are necessary and sufficient to accomplish the objectives of the proposed mission;

(4) will be undertaken only after clear objectives for the deployment are established;

(5) will be undertaken only after an exit strategy for ending the deployment has been identified; and

(6) will be undertaken only after the financial costs of the deployment are estimated.

(d) DEFINITION.—As used in this section, the term "United States military operations in Haiti" means the continued deployment, introduction, or reintroduction of United States Armed Forces into the land territory of Haiti, irrespective of whether those Armed Forces are under United States or United Nations command, but does not include activities for the collection of foreign intelligence, activities directly related to the operations of United States diplomatic or other United States Government facilities, or operations to counter emigration from Haiti.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. MITCHELL. Mr. President, the amendment just read is identical in substance to an amendment which the Senate approved on June 29, by a vote of 93 to 4. The only changes are technical in nature and they appear in the statement of the policy and in the sentence on limitation. That is to make them conform to the procedural status in which this amendment exists as opposed to the procedural status of the amendment of June 29.

The Senate overwhelmingly approved this amendment, as I noted. Mr. President, 53 Democrats and 40 Republicans voted for it; 1 Democrat and 3 Republicans voted against it; 3 Senators were absent.

It is a sense-of-the-Senate amendment and by its terms it expresses the interest in the United States that all parties honor their obligations under the Governor's Island accord of July 3 of last year and the New York Pact of July 16.

All Senators will recall that under those agreements the military dictators who illegally seized power in Haiti expressed a willingness to relinquish power and to permit the democratically elected government of that country to return. Subsequently, the military dictators reneged on the agreement and that has led to the current situation in that unfortunate country.

The amendment further expresses the interest of the United States in preventing uncontrolled emigration from Haiti, which earlier this year reached levels that created serious problems in some parts of our country. The amendment then includes a limitation which provides that funds should not be obligated or expended in Haiti unless first authorized in advance by Congress. And the temporary deployment of United States forces into Haiti is deemed necessary to protect or evacuate United States citizens. And the deployment of the U.S. Armed Forces is vital to the national security interests of the United States.

In the alternative, the President can submit a report to Congress, pursuant to a subsequent section and the subsequent section details the provisions of such report.

Mr. President and Members of the Senate, we are in a unusual parliamentary situation. We are in executive session under which we are considering a nomination. The underlying amendment to the motion to recommit that nomination and the amendment which I have just offered of course represent legislative business. Not in my knowledge has this ever occurred in the Senate; that is, an attempt to conduct legislative business when the Senate is in executive session considering a nomination.

We have asked the Parliamentarian to review the matter to determine whether or not such a procedure is in order, and we will await a final determination before attempting to proceed in that regard.

I think all Senators should be aware that if this process proceeds, then the distinction between legislative and executive sessions will have been obliterated and all matters regarding nominations and other matters in executive session would then be open to some form of legislative action. Wholly apart from the subject matter of the discussion, which is a very serious and important one and which deserves full and thorough debate by this Senate—that is the subject of Haiti—from the standpoint of the integrity of this institution and the procedures under which we operate, this is also a very serious matter. And it is important that all Senators understand that, and, at the appropriate time, I will have more to say on that subject.

For now the question, of course, is the situation that is set forth in the underlying amendment and in the amendment which I have just set forth.

Clearly, this is a serious matter. Clearly, it requires thorough debate and consideration by the Senate. As we all know, in this Congress, the Senate has already debated and voted seven times on the subject of United States policy to Haiti. We are now doing so for the eighth time, and I expect that there will be many more occasions, and that is appropriate given the importance of the subject matter.

But I think the first point to be made is that everyone should understand that there has been extensive debate and discussion in the Senate, although it is correct that not every issue has been squarely confronted and voted on until now in the Senate.

Second, of course, under the rules of the Senate, any Senator has the opportunity to speak at any time on any subject, and many Senators have availed themselves of that opportunity. So we have not only had seven debates and seven votes on specific amendments, we have had very extensive debate, outside of that context, as a large number of Senators of both parties have expressed themselves on this important matter.

Mr. President, I offered this amendment in behalf of myself and Senator NUNN because I believe this is an appropriate expression of what the Senate should do. I believe it is appropriate that the Senate go on record, as it has previously, in urging all parties to honor the obligations under the prior agreements that are set forth, in describing our national interest with respect to emigration and in expressing our view that funds should not be obligated in Haiti unless the terms and conditions set forth in this amendment are met.

All Senators have had a chance to review this matter. As I said earlier, 93 out of 97 Senators voted for it. My hope and expectation is that there will be another substantial, indeed overwhelming, vote for the amendment at this time because I think the reasons which led Senators to vote for it in June exist today in a form that has not abated.

And so I think it is appropriate that we deal with this subject as expressed in this sense-of-the-Senate resolution at the appropriate time.

Mr. President, I say to Members of the Senate, we are in an unusual situation in another respect. Several weeks ago, I consulted with the distinguished

Republican leader and with many other Senators on the Senate schedule. As we are all aware, a high holiday for persons of the Jewish faith commences at sundown this evening and continues until sundown tomorrow evening. It has been a longstanding practice of the Senate, a custom honored in at least the 15 years since I have been in the Senate and no doubt longer than that, that the Senate not conduct business during that time.

Therefore, at the request of many Senators, and in accordance with the practice that has been followed for many years, I announced several weeks ago that the Senate would not have any rollcall votes or conduct any business after 2 p.m. today, and also at the request of many Senators, Republicans and Democrats—and from this there was no dissent—that since the holiday ends on Thursday evening, I was strenuously urged not to have a session on Friday because that would require Senators to return for just that 1 day. And so the schedule was set forth weeks ago, and there has not been any protest or disagreement with that, to my knowledge, to this very moment. No Senator has come to me and said, "I disagree with the schedule. I think we should be in session." Every single Senator who spoke to me—and there was a very large number, both Democrats and Republicans—urged that I do what I eventually did, and that is to say there would be no session on Thursday or Friday and no business would be transacted after 2 p.m. today. That is to say, no rollcall votes or other matters that would require the presence of a Senator occur. That would not preclude debate in the Senate after 2 p.m. today.

Yesterday, I met with the distinguished Republican leader to prepare the schedule for today and for the remainder of the session. In the discussion that we had, the subject of Haiti and how to handle it in the Senate arose. I had requested that the Senate proceed to a vote on the Department of Defense authorization bill, which was then the pending matter, yesterday afternoon. The response I received from the distinguished Republican leader was that a Republican colleague had agreed to permit such a vote to occur yesterday afternoon provided I agreed in exchange to have 6 hours of debate on the subject of Haiti today after all of the votes, if any, which were to occur today had occurred. The 6 hours was later amended by a request of our Republican colleagues to 7 hours, and I agreed to that, and that order was entered.

It was my understanding that pursuant to that agreement, we would take up the subject of Haiti today and have the 7 hours for debate, and that there would be no further action with respect to that matter or any other matter today. Pursuant to a separate order entered last evening, the Senate agreed to take up the nomination of Admiral Mauz of the U.S. Navy. During the course of debate on that nomination, Senator MURRAY made a motion to recommit the nomination to the Armed Services Committee for purposes of holding a hearing, and subsequently Senator MCCAIN offered the now pending underlying amendment to include the subject of Haiti.

The second-degree amendment which I have just offered, and which has been stated, deals also with that subject. As I stated earlier, both of those amendments—the underlying McCain amendment and the amendment which I have offered—appear to be an attempt to legislate in executive session on a nomination, something which at least to my knowledge has not ever occurred and something which I have asked the Parliamentarian to review.

So we now are in a situation where we will, of course, be prepared and are prepared to debate this matter, as we had agreed yesterday, for a period of time under an agreement which would have divided the time equally between the parties in morning business.

The effect of this matter arising so late, and given the importance of the matter, and given the 2 o'clock deadline which had been established several weeks ago, made it, of course, a practical impossibility that any vote would occur today on this subject.

I repeat, the request for, first, 6 hours of debate, and then 7 hours of debate, was made initially by our Republican colleagues, and I agreed to that. I think it is clear that on a subject of this importance there ought to be at least that much debate, and possibly more, before there is a vote. But the presentation of an amendment dealing with the subject—obviously it was done late because that is the only opportunity that was created when the motion to recommit was made, but nonetheless it created a situation where there simply is no feasible way to have a vote on this matter without the kind of debate that is necessary and appropriate prior to 2 p.m. today. I do not know the exact time that the McCain amendment was offered, but it was a couple of hours ago, I estimate. It was sometime, I think, between 11 and 12—between 11 and 12 this morning—following the motion to recommit by the Senator from Washington.

So, Mr. President, my belief now is that we should proceed to have the debate on which we agreed yesterday, and which is the subject of an order, and that it be conducted in a way that the time is equally divided so that every Senator will have some opportunity to get his or her view across. And the time can be allocated as between the two parties in what I hope will be a fair and responsible way.

I note the presence of the acting Republican leader in the Chamber at this time and wish to inquire of him as to whether it would not be agreeable to proceed to a vote, to proceed to a debate under the terms that we had agreed upon yesterday, that is to say, 7 hours would be equally divided between the two parties under the control of the majority leader and the acting Republican leader or their designees.

I so inquire, without losing my right to the floor.

Mr. SIMPSON. Mr. President, the witching hour is now past—2 o'clock—and I think we all understand we will continue to debate this issue. After all, it is certainly a debatable motion. I am assuming it is considered as a second-degree amendment to the first-degree amendment of Senator MCCAIN.

Obviously, the Republican leader is not present. I am not privy to the full communications that took place with regard to what would transpire today, but I think there may have been something in the way of miscommunication rather than any intent to mislead the majority leader.

The 7 hours of debate was constructed so that we could debate Haiti. Since the issue was so volatile and would cause great delay with the consideration of the Department of Defense legislation, it was determined to process that properly; we could then debate the 7 hours' worth on Haiti so as not to obstruct the DOD report.

The 2 o'clock hour, indeed, was adhered to, and we do adhere to it, and the rest of the week's activity. We understand that. I would say only that whatever miscommunication may have come from the 7 hours, and that that would be the only issue, there was a similar miscommunication with many on our side thinking that this would be an up and down vote on Admiral Mauz. And then that changed and was altered by the motion to recommit. There were some on our side who felt, perhaps, as I say, with miscommunication, that, indeed, then opened it up again for discussion of Haiti. And on that entry I would yield in a moment to the Senator from Arizona.

But in any case, that up-and-down vote was not available, as the floor managers had wished, and that was altered by the motion to recommit. And then, of course, that made it open to an amendment.

But let me just conclude to the leader that many things have changed since June when we adopted this exact language by a vote of 94 to 3. Many things have changed. It is very important we have this national debate. We have been trying to get that national debate because there is not one of us here on either side of the aisle who does not know that this invasion is imminent.

The President of the United States seems to wish to go forward with it, without congressional participation, and many on our side of the aisle have

compiled the record of the debate during the gulf war and just flipped it over, and now those same things are being said by those on the other side of the aisle and the other side of the issue, just flipping it over as to the necessity for congressional response before the body bags are flown here to Dover Air Base, and I will not go into that. That is something that is heavy on all of us.

But I think if we are going to go forward, and this was the Senator's question, with regard to the 7 hours, it be appropriately divided and alternated so that it does not just stack up with 2 hours and then—if we can alternate that, that would be very important.

Then it was very difficult—and I am not going to get into the unfortunate activity, but it was very difficult for those of us on our side of the aisle and caused some of the anguish here when the occupant of the chair earlier in the day refused to recognize one of our Members who was here seeking recognition for many minutes. The Chair refused to recognize that Member from our side of the aisle, who was intending to participate in the debate, perhaps intending to offer a second-degree amendment.

I do hope that that is not a portent of anything to come as we get down into the crush of these next few weeks where tempers will be short and it would be very difficult, but the rules are the rules, and no one adheres to that more than our fine majority leader. But that was very unfortunate, and that must not be, it cannot be, if we are to have the comity and the coordination and cooperation we must have in what is going to be a very fractious national session until we then recess for the year sine die.

So we will be pleased to work with the leader with regard to the allocation of time as long as it is done in an alternate fashion, back and forth.

I did want the RECORD to be clear as to how we got here. I did not know, nor did the leader know, exactly what would take place with regard to this amendment. Certainly, this Senator was not aware until a moment before I came to the floor. Therefore, I wanted that to be very clear. I think the sponsor of the amendment would like to address that issue. But I hope that is a response to the question, which was rather lengthy.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I thank the Senator for his comments. He indicated that he and his colleagues are prepared for some comments contrasting the current situation with the Persian Gulf situation, that there has been a flip. I understand that, because we have also, on our side. Many comments were made by Republican Senators at the time of Panama and Grenada. And there was a flip there as well. If there is to be one, in any case, I expect that will all be part of the debate that is forthcoming.

What I propose now, Mr. President—and before presenting the request formally I will describe it to the distinguished acting Republican leader—what I suggest is that we agree to 7 hours equally divided, under the control of the majority leader and the acting Republican leader, or their designees; that the statements alternate beginning with a Democratic Senator, then a Republican Senator, and then back and forth, but that no statement exceed 30 minutes in length, so that you do not get a situation where one person or one side talks for 2 hours or 2½ hours, effectively foreclosing the other side until later in the day.

I inquire of my colleague and my other colleagues whether that appears to be an agreeable proposal.

Mr. McCAIN. Reserving the right to object, Mr. President, I ask the majority leader if I will be able to make a few remarks prior to that, since my name was liberally mentioned concerning what has transpired today. I do not object at all to the equal division. I would like to make some additional comments to those made by the distinguished whip before we go into that.

If the majority leader does not find that acceptable, that is fine with me. My name was used liberally about the parliamentary procedures that were employed by the majority leader. I would like to be able to respond to that.

Mr. MITCHELL. Mr. President, may I suggest that the Senator would have, under this proposal, a full 30 minutes to do so, following remarks by one Democratic Senator.

Mr. McCAIN. The distinguished majority leader just said the first speaker would be a Democrat. I would like to respond to the comments made concerning what transpired here today since about 10 o'clock, when I came on the floor, I say to the majority leader. I think I should have the right to do that since words like unprecedented and things like that were stated concerning procedures that took place today, which this Senator initiated.

Mr. SIMPSON. Mr. President, I inquire if there is leader time allocated today.

Mr. MITCHELL. That will not be necessary. Mr. President, why do I not make the request that the Senator from Arizona be recognized for 10 minutes, and that following his remarks, there be 7 hours of debate equally divided, with the time under the control of the majority leader or the minority leader or their designees; that the speakers alternate, the Democratic Senators speaking first, a Republican Senator second, and then alternating back and forth; but that in that sequence, no Senator be permitted to speak for more than 30 minutes so as to ensure fairness in allocation of time on each side.

Mr. NICKLES. Reserving the right to object, and I shall not, I ask the majority leader, when will we have a chance to vote on either his second-degree amendment or the underlying amendment?

Mr. MITCHELL. Next week.

Mr. NICKLES. Monday or Tuesday?

Mr. MITCHELL. Mr. President, I have not made a decision on that. For one thing, we do not know how long the debate will be. There are many Senators who have left or are leaving who may well want to speak on this subject. Of course, that is exactly what happened to us on the DOD authorization bill on Monday. We took it up on Monday. We had a few hours of debate. We were told there were several Republican Senators who were not here on Monday. They wanted to speak on it. We had to wait until Tuesday.

So we do not know what Senators will be able to speak today, or how many will want to speak for how long, and therefore we will have a vote when all Senators have an opportunity to speak who wish to speak.

Mr. NICKLES. I appreciate the majority leader's answer, Mr. President. So to further clarify, the 7 hours is not all inclusive. Further debate could transpire on Monday or Tuesday, and this will be the pending business when we return on Monday.

Mr. MITCHELL. Absent some agreement to the contrary, it will be the pending business.

Mr. NICKLES. I thank the majority leader. This does not limit it to 7 hours. We can speak on this issue on Monday or Tuesday. We will not be capping the total debate time.

Mr. MITCHELL. I did not intend the proposal to be the only time; we will debate it today, and then when we get back into session, if any other Senator wants to speak, he or she will be able to speak, absent some agreement to the contrary.

Mr. NICKLES. I appreciate that.

Mr. NUNN. Mr. President, reserving the right to object, I will not object, but I would like 2 minutes simply to address the underlying issue, which is the Mauz nomination, prior to beginning —about 2 minutes. I do not want to delay the Senator from Arizona, but I do think we ought not to leave this simply hanging without some explanation.

Mrs. MURRAY. I reserve my right for 5 minutes, as well.

Mr. NUNN. Mr. President, I do not intend to debate.

Mr. MITCHELL. Mr. President, we have a situation where, in order to accommodate several Senators earlier on the Mauz nomination, we concluded that debate with statements by three Republican Senators. Senator MURRAY

had requested the opportunity to address the Mauz nomination, as well. She was not able to do so because of the agreement that we reached.

Why do I not ask at this time that Senator NUNN be recognized for 5 minutes on the Mauz nomination; that following his remarks, Senator MURRAY be recognized for 5 minutes on the Mauz nomination; and then Senator MCCAIN be recognized for 10 minutes.

Mr. MCCAIN. I object. I ask that Senator NUNN's words come after mine.

Mr. NUNN. Mr. President, I will not object. The majority leader is trying to get an agreement. I really just wanted to make the point that the Mauz nomination is the underlying business, and he is an individual who may very well be involved in the debate we are talking about; that is, the Haiti situation, if we intervene there. His nomination has been pending 2½ months now. And the fact that the Haiti resolution has been put on top of his nomination, which is the Senator's right, has basically prevented this from being considered. I hope we can get to it next week, either with or without Haiti.

But that is the underlying matter, and I think it is an important matter. It has to do with the whole chain of people who will be replacing him, and those who are replacing those who are replacing him.

So there are a lot of people in the Navy chain that are not present. That was the only point I wanted to make. I did not want to debate it.

So I withdraw any objection or any request for time.

Mr. MITCHELL. I renew my request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Arizona is recognized.

Mr. MCCAIN. Thank you, Mr. President.

I say to the majority leader, before he leaves the floor, that I always admire his skill; I always admire his capabilities, especially in the area of manipulating the process here on the floor, the parliamentary process. I have not seen anyone in the short time I have been here as skillful as he is in successfully shepherding the legislative agenda through this body. And there are several technical statements that the majority leader made which I will reserve for another time because I want to make the major thrust of my remarks in saying to the majority leader that I am deeply, deeply, deeply disappointed. He has used legislative procedures in which he is so adept and efficient and skillful to prevent the Senate of the United States to speak on the issue of the risk of the lives of young Americans who are going to go into combat, and some of them are going to die sooner or later.

The majority leader of the Senate by delaying, by keeping us in a quorum call, by proposing to second-degree an amendment that was passed last June that says in it "There is not sufficient time to seek and receive congressional authorization" has successfully—and I congratulate him—prevented the United States Senate from speaking on this issue before an invasion takes place of Haiti and American lives are lost.

I am not going to spend a lot of time quoting from the debate on the Persian Gulf conflict. I am not going to waste this body's time talking about this, but the majority leader said:

> * * * the Founders knew that a legislative body could not direct the day-to-day operations of a war.
>
> But they also knew that the decision to commit the Nation to war should not be left in the hands of one man. The clear intent was to limit the authority of the President to initiate war.
>
> But yesterday the President said that, in his opinion, he needs no such authorization from Congress. I believe the correct approach was the one taken by the President 2 days ago when he requested authorization. His request clearly acknowledged the need for congressional approval.

Continuing to quote from the majority leader:

> The Constitution of the United States is not and cannot be subordinated to a U.N. resolution.
>
> It is universal. If there is to be war in the Persian Gulf, it should not be a war in which Americans do the fighting and dying while those who benefit from our efforts provide token help and urge us on. Yet, as things stand, that is how it should be.
>
> But in the event of war, why should it be an American war, made up largely of American troops, American casualties, and deaths? We hope there is no war, but if there is, we hope and pray it will not be prolonged and with many casualties.

The majority leader of the Senate, on January 10, 1991, made a compelling case, one of the most compelling cases I have ever seen. Before our young men and women sail into harm's way, the Congress of the United States speaks. The Congress of the United States, by the Constitution—about which I happen to have some disagreement—but clearly, on January 10, 1991, the majority leader sincerely and strongly believed that.

Now, Mr. President, we all know that there is going to be an invasion—estimates range from a matter of days—and it is perhaps the most publicized invasion since the first Battle of Bull Run, where residents proceeded south in their buggies to observe the conflict. We know that there is going to be an invasion, and this body will be silent. This body will be silent—an abrogation of our obligations under the Constitution of the United States and to the people that sent us here.

Mr. President, I can only express my deep disappointment and hope that in the future, before this happens again, on both sides of the aisle we recognize that we have our obligations. If we find ourselves in a position, I say to the distinguished majority leader, where the American people oppose that involvement, we should think very long and very carefully, because there are some of us, including the present occupant of the chair, that know that without the support of the American people, military enterprises do not succeed. And 73 percent of the American people, as of yesterday, oppose our involvement in Haiti.

When that invasion starts, Mr. President, I will hope and pray that it succeeds, that not a single American life is sacrificed, and I will not speak out. But prior to that invasion, I feel it is my obligation to do so.

Finally, I express my deep and profound regret that the majority leader of the Senate, exercising his authority, rightfully, without abuse, has prevented this body from speaking on an issue of grave, grave, grave national importance to this country and to the mothers and fathers and husbands and wives of the men and women who will now sail into harm's way without the approval of Congress.

Mr. President, I yield the remainder of my time.

Mr. MITCHELL. Mr. President, let me express my deep disappointment that a Senator, knowing in advance that no vote could occur after 2 p.m., comes in here a couple of hours before the deadline and offers an amendment which no other Senator has seen, which there has not been any opportunity to scrutinize or analyze, and then suggest somehow that there was a design to prevent that vote from occurring.

Every Senator knows this is a serious matter. Every Senator knows that it deserves full and thorough debate, and every Senator knew that there could not be any votes after 2 p.m. So when an amendment is offered just a couple of hours before the deadline, with no advance notice to anyone, there was a certain knowledge on the part of all concerned that no vote would occur, that there would have to be the opportunity for Senators to debate the matter. Therefore, the amendment is not intended to get a vote. The amendment is intended to be able to make a political argument. That is the situation we are in. Since this amendment is offered in a procedure that is without precedent, it could have been offered earlier in a procedure that is without precedent.

The fact of the matter is that the Senate is in session this week only because I insisted that it be in session this week. The Republican leader requested that the Senate not be in session this week. That request was made to me repeatedly up to and through last week. And if I had the plan, and if my intention was as stated by the Senator from Arizona, I would simply have accepted the request of the Republican leader and had no session. Not only would there then not have been a vote, there would not even have been an opportunity for debate. There would not

have been opportunity for a single speech to be made on the Senate floor criticizing others. That is all it would have taken.

I repeat: The Republican leader asked me not to have the Senate in session this week. If I had the plan or design attributed to me by the Senator from Arizona, all I had to do was accept the suggestion of the Republican leader. And then the Senator from Arizona would not have had this forum to make the speech he just made, or to offer the amendment he has offered. So the facts of the matter directly contradict the assertion made. The Senate is in session this week only at my insistence, only because I would not accept the request of the Republican leader to have the Senate out of session this week.

We can debate the issue, as we will now for the next several hours, and as we should, but I hope we will keep the debate on the issues. I repeat that this amendment is offered in a situation that is without legislative precedent. It could have been offered in a situation without legislative precedent yesterday, or the day before, when people would have a chance to debate it and not wait until just prior to the deadline at a time in which everybody knows it would be possible to have the kind of debate and vote this issue warrants.

Mr. McCAIN. Mr. President, how much time do I have remaining of my 10 minutes?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, the fact of the matter is that there has been no option this week to offer an amendment. The fact of the matter is there would not have been any option to offer the amendment if it had not been for the Senator from Washington proposing a motion to recommit, which came as a surprise, I believe, on both sides of the aisle.

There was no option this week to propose any amendment on the pending invasion of Haiti. If there was, I will be pleased to hear about that from the majority leader. If there was, I am sorry I missed it because there was a number of us seeking that opportunity to try to get a vote on the part of the Senate of the United States.

But laying that aside, I say to the distinguished majority leader and my colleagues what we have ended up with, after all the discussion about procedures or not procedures or who had what opportunity or who did not have what opportunity, is the fact that there will be an invasion without the endorsement of the Senate of the United States.

I suggest, in all due respect, that if the majority leader of the Senate had wanted us to have a vote approving or disapproving the invasion of Haiti, it would have happened.

79-059 O—97 Vol. 140 (Pt. 17) 45

I yield the remainder of my time.

Mr. MITCHELL. Mr. President, I will just conclude by saying it seems to me almost certain that the amendment offered is not in order. It is in a situation for which there is no precedent and which I think will be held out of order.

If an amendment is offered out of order today, it could have been offered out of order yesterday; it could have been offered out of order the day before. Being more or less out of order is insignificant.

I yield the floor and designate the Senator from Connecticut to control the debate and allocate the time on the Democratic side.

The PRESIDING OFFICER. Who yields time?

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, today I would like to begin this debate by doing something that our colleagues who have spoken over the last few days, weeks, and months have not done, and that is I would like to spend a little time talking about Haiti, if I may, and what has happened there about the murders and the rapes, the kidnapings, the disappearances, about deep, deep fear, Mr. President, deep fear and despair, and about democracy, democracy stolen, I might point out, in a poor, impoverished, predominantly black nation some 125 or 150 miles to the south of the borders of this country.

It has been almost 3 years now since the Aristide government was overthrown by a military coup. Shortly after the coup occurred in 1991, Secretary of State James Baker, articulating U.S. policy, stated and I quote him: "This coup must not and will not succeed."

Since that time, Mr. President, U.S. policy has been driven by one overriding objective, that is, one overriding objective initiated and commenced under the Bush administration and by and large sustained and supported during the Clinton administration. And that objective, as stated by the Secretary of State in 1991 and continued up to now in 1994, was to restore democracy to Haiti by returning President Aristide to power. This has been the objective, the stated objective of two administrations, ironically a Republican and a Democratic administration.

On December 16, 1990, Haitians went to the polls in their country and chose as their President a priest by the name of Jean-Bertrand Aristide. The election of President Aristide, in the most free and fair elections in that nation's history, I would tell you, Mr. President, because I know this country, gave great hope, great hope to a watching world and to the people of that nation that possibly they had seemed finally to overcome a bitter, bitter legacy of repression and military rule.

Sadly, Haiti's brief encounter with democracy would end almost as soon as it had begun. In September 1991, just 10 months later, military and security forces overthrew the Aristide government and resumed their iron grip on the people of Haiti.

For those who have followed the sad fortunes of Haiti over recent years, Mr. President, the events of 1991 had a very familiar and unsettling ring to them. Time and time again since the fall of Jean-Claude Duvalier in 1986, the military has taken the reins of power in Haiti. Time and time again the military has promised the international community that reform and democratic rule were just around the corner. Time and time again, Mr. President, the military has gone back on its word.

First there was Gen. Henri Namphy, who assumed power in 1986 and was rewarded, I might point out, with U.S. military aid after promising to hold free and fair elections. Those elections, for those who may recall this—I realize, Mr. President, the danger in talking about history because we all think the world began yesterday. It is not what happened now over the last 7 or 8 years here but what happened in the last week or last 10 days, because that is all our collected attention can encounter and hold at any one time. There is a little danger to go back, but I want to remind some people that there is some history here.

Those elections, as I pointed out, that General Namphy allowed to happen and quickly were canceled turned into a bloodbath in the country.

Then there was a civilian in charge, Leslie Manigat, who was handpicked by the military to lead the country in 1988. The Reagan administration decided against imposing sanctions on Haiti in the hopes that the military would allow the new President a measure of autonomy. Those hopes were soon dashed by a military coup that was led by none other than General Namphy himself, the very guy who said "Give me the military and support and we will allow for free and fair elections."

Then there was Prosper Avril, who overthrew Namphy in yet another coup 3 months later. General Avril also promised to hold elections and even managed to convince the Bush administration to publicly defend his record on human rights. He, too, went back on his word.

Then there was Herard Abraham, who took over from General Avril. Abraham

sat on his hands while opponents of democracy tried unsuccessfully to disrupt the 1990 elections. After permitting the supporters of Duvalier to plot the assassination of then President-elect Aristide, he too was forced to step aside as commander of the Haitian Armed Forces and allow then Col. Raoul Cedras—now people start to register—to take his place. But like his predecessors, Raoul Cedras' commitment to democracy was no more than his predecessors had been and was short-term as commander in chief and solely self-serving in his capacity as general of the Army.

So it should have come as no surprise when, about this time last year—as General Cedras and others were to have stepped aside; that was the commitment—the military reneged on yet another agreement to restore democratic rule in Haiti. The Governors Island Accord called on the military to take a number of steps toward democratic reform, culminating with the return of President Aristide by October 30. But no sooner was the ink dry on the accord, and no sooner had sanctions on Haiti been lifted, than the military signaled its disdain for the agreement and the commitments it had made. Most notably, the military prevented the arrival of U.N.-sanctioned military personnel and engaged in a number of serious human rights abuses including, I might point out, the high-profile murders of several of President Aristide's close associates and cabinet members.

While I know voices have been raised in opposition to the prospect that the President may decide to use force, I would take serious issue with anyone who would suggest that the President and his predecessor had not tried all other options available to him short of force. Ever since the overthrow of President Aristide in September 1991, this administration and its predecessor has given the military regime in Haiti every opportunity to seek a peaceful way out.

When the leaders of the Haitian military agreed to go to the conference table last summer, the administration met with them in New York City and helped to negotiate the Governors Island Accord—an accord that would be violated by the Haitian military almost as soon as it was signed.

When multilateral sanctions against Haiti failed to dislodge the regime—let me point out, those sanctions began under the Bush administration, not as complete as eventually imposed by the Clinton administration, but the path was commenced by the previous administration to impose sanctions as a result of the coup in that country.

As a result of more tightening of those sanctions, a fuel and arms embargo at the United Nations was supplemented by a worldwide embargo on trade and a ban on noncommercial flights to Haiti.

When these sanctions also failed to change the course of events in Haiti, the administration tightened the noose even further, adding a ban on commercial flights and financial transactions between the United States and Haiti and a freeze on the United States assets of all wealthy Haitians. These sanctions also failed to convince the military regime to step aside.

It has been an incremental approach, beginning in September 1991, slowly ratcheting up, trying to find a way to resolve this problem. We did not act precipitously. We did not seek a military solution to the problem at the very outset.

Ambassador Albright, our Ambassador to the United Nations, summed up the situation very succinctly, July 31, when explaining to the U.N. Security Council, why it should in her words, "authorize the use of all necessary means" to restore democracy to Haiti. She said in part:

> This Council has pursued patiently a peaceful and just end to the Haitian crisis. The Organization of American States has pursued a parallel effort. Member states, including my own, [speaking of the United States] have taken steps independently to encourage the illegitimate leaders to leave. Together, we—in the international community—have tried condemnation, persuasion, isolation and negotiation. At Governors Island we helped broker an agreement that the military's leader signed but refused to implement. We have imposed sanctions, suspended them, re-imposed them and strengthened them. We have provided every opportunity for the de facto leaders in Haiti to meet their obligations.

She concluded as follows:

> The status quo in Haiti is neither tenable nor acceptable. Choices must be made. And although the situation in Haiti is complex, this choice is as simple as the choice between right and wrong. Today, the Council has made the right choice—in favor of democracy, law, dignity and relief for suffering long endured and never deserved.

One need only watch the nightly news or read the newspapers to know that the situation in Haiti has only gotten worse in recent months. Before the U.N./OAS civilian mission was expelled in July, it tracked and reported on a daily basis the unspeakable—the unspeakable and sick—atrocities committed by the de facto regime and its supporters earlier this year—nearly 400 murders, over 100 kidnapings—including children, I might point out—and at least several hundred arrests and beatings during the 6-month period in 1994 this operation was permitted to operate in Haiti.

Now, I might add, there was a new element discovered recently, and that is taking orphan children and using them as target practice. You are talking about some of the worst elements in the world. This is 125 to 130 miles off our shores. This is not China. This is not Rwanda. This is not some distant land. It is one that is almost in shouting distance of this country that we have these problems, serious problems, and some of the worst human rights violations going on anywhere in the world.

These individuals are so vile and so shameless that they have mutilated bodies, removed faces and left the corpses lying in full view as further intimidation of an already frightened and demoralized people. Nothing—absolutely nothing—is apparently sacred to them. Last year, they went into church while services were ongoing and dragged a prominent Aristide supporter outside and shot him in full view of the congregation. And, just a few weeks ago they murdered another supporter of President Aristide, this time a Catholic priest, Rev. Jean-Marie Vincent.

It is not surprising that thousands of refugees have left Haiti in search of our shores, desperate to escape the deteriorating political conditions in their country—or that hundreds of thousands more live in hiding within Haiti. At this moment there are more than 15,000 displaced Haitians in our custody at Guantanamo, Cuba. This is clearly a temporary solution—a holding pattern. Ultimately, the only permanent solution is a political solution in Haiti that is responsive to the Haitian people. That is what President Aristide represents and that is why I happen to believe it is so important that we make every effort to try and seek his return.

Yet all of the efforts taken to date by Presidents Bush and President Clinton have so far failed to restore democracy to Haiti. As my colleagues know, it has been my judgment that sanctions, effectively applied, coupled with a credible threat of force can be successful in achieving our objectives. But at some point we will be left with two choices if over time sanctions prove ineffective. We can do nothing, and let the military continue its reign of terror in Haiti. Or we can exercise the military option and seek to remove the dictators and the tyrants, and give the people of Haiti a chance to build a nation once again.

Each one of us debating here today has the luxury of expressing his or her personal view without having the heavy burden of knowing that any one of us individually affects the course of our Nation. The President does not have that luxury. He and he alone has the heavy burden of deciding the course the United States will take. And I am convinced that whatever choice he makes with respect to the use of force, it will only be made after he believes that he has exhausted all other possibilities.

Mr. President, I am deeply offended at the suggestion some have made that this President is considering, after all of these months, all of these weeks, through two administrations to resolve this problem, that the consideration of the use of force is political motivated.

What were the numbers today? Seventy-three, eighty percent? You would

have to be out of your mind to consider this a great political advantage, given the public reaction to the situation, to engage in a military operation, if he decides to do so. Quite the contrary; quite the contrary.

But I happen to believe, and I think most of my colleagues here understand, that being President is different than being a Senator or being a Congressman. We can debate, discuss, and get on our planes and go on home for a few days. This individual ultimately bears the responsibility of making tough, tough decisions.

And we have exhausted a lot of options here. I would tell you, Mr. President, I am not enthusiastic about the use of force at all. I hope sanctions, well applied, would produce the desired results in time.

But I also understand that after a while, when you run out that string and it does not produce the kind of results, that you may not be left with any other options.

And to talk about this in terms of just how the polls are moving back and forth—in fact, throughout history, on many occasions, what has been terribly unpopular in foreign policy happened to have been right; happened to have been right.

The Marshall plan, I do not think, had 30 percent support among the American public when Harry Truman advocated it.

As I recall going back—some of my colleagues may provide some additional statistical information on this—but at most times when the threat of a foreign involvement was upon us, Americans historically and for good cause and reason have been resistant to becoming involved and engaged in so-called foreign entanglements.

Even foreign aid—if you stand up and vote for 5 cents in foreign aid you run the risk of political reprisal at home because of how our people feel about involvement in foreign nations. So it does not come as any great surprise here that there is a great deal of resistance and concern about whether or not we ought to go forward in Haiti with the use of force.

But I think it is important that the American people understand that there is a history to this fact situation. This just did not happen in the last 6 weeks. I happen to believe there are some interests here that are important. They are not as clear as a canal or a missile pointed at us. There, there is no doubt or question about the dangers to our country. But I believe—maybe I am in the minority, maybe a minority of one—that democracy within our neighborhood is important. It is a very important issue. We are seeing democracy emerge throughout the hemisphere, fragile democracies struggling to be free. The people of Haiti proved it: 70 percent of their people chose a leader. That should not be taken lightly.

I know that goes on in other places around the world and that every time there is a democracy threatened you cannot start talking about the United States becoming militarily involved. But in this hemisphere, as close as it is to us, with the threat of a wave of humanity coming to our shores for good reason, that changes the equation. For Rwanda and the People's Republic of China and other nations, that risk is not there. They cannot get to our shores too easily. But a wave of humanity from Haiti can come here.

So democracy stolen, democracy hijacked should have value. The concern about the refugees coming to our shores should be a matter of deep concern to all of us—not as immediate as the threat would be if there were some hostility or some military aggression that we were facing.

I might also point out, it has not been mentioned too often, Haiti is a major transit point in drugs—a major transit point. These generals down there live like potentates, not just because of what they are stealing from their own people, but they are directly and deeply involved in the drug trafficking that plagues our society. That, in and of itself, Mr. President, I would not suggest is a justification. But when I hear people say there is no justification here whatsoever—none whatsoever—I disagree with that. I think there is a justification for our involvement. That is why President Bush and Jim Baker made the statements they did in 1991. They talked about it as being in our interest to be concerned and care about what goes on in Haiti. And they stated so repeatedly. This administration carried on basically the same commitment in foreign policy.

The irony is this administration ends up having run out the string on the diplomatic, political, and economic front and is left in this ugly choice. I suspect, had the Presidential elections in 1992 turned out differently and that George Bush was still the President of this country, and we had no change in Haiti on the political front, we might very well be standing here today debating whether or not President Bush, in seeking possibly to use military force, deserved support if that option were exercised. That is how longstanding this problem is and how it has run out.

So again, I want to be very clear here. I am not—and I have stated this—I am not enthusiastic about this option being exercised. But let us not give comfort to the thugs in Haiti today in our debate. Let us remember why this problem arose, who created this situation, and what is happening to 6 million people as we stand here on the floor of this body today. Do not give the comfort, do not give the kind of protection to those who engage in the brutal human rights violations of these desperate, poor, and helpless people. We may disagree about tactics. But do not let these people leave convinced that we do not care, that we are not going to do anything about this, that we are just going to walk away from it, as some have suggested we ought to. "It is just too messy. It is just too complicated. It is just too unpopular. The election is around the corner."

All of these arguments do not go to the heart, the central question of whether or not this country, our country, the United States of America—we are not any other nation. We are the leader in the world today, the unchallenged leader in the world. If we were just any other country then maybe we could just wash our hands of it as many do in Europe when it comes to Bosnia or problems in Africa—that many of them helped create, I might add, in their colonial efforts over the years. We are not those nations. We are special because we care about problems like this.

It ought not to be something we are ashamed of or walk away from. Try to effectuate the result, maybe through some different means, but let us not forget our heritage as a people. Let us not forget our history. Let us not forget we have stood up in the past when others have faced hardship and difficulty.

There were those in 1941, while Europe was aflame, who felt there was no validity in being involved in a foreign conflict. It took an attack on Pearl Harbor to energize the opinion in this country to think differently. But when we did, we made a significant and profound difference in the world.

So I hope in this debate, while one can argue about the use of force or not, do not let these thugs look to your words as some source of comfort as they continue to thumb their noses at us and the rest of the world in perpetuating the dreadful, frightening situation just a few miles from our shores.

Mr. President, we are going to have a long afternoon here. I probably have exceeded my time already. But I feel very strongly this issue is one that deserves our careful consideration. I would just say I wish we had voted on this as well. Others have raised the point. But I quickly point out to my colleagues, I suspect every Congress since 1789 has wanted Presidents to come before them and seek their approval for foreign engagements. With the exception of George Bush and the Persian Gulf, where he voluntarily asked the Congress to act, every other President since Franklin Roosevelt after the declaration of war in December 1941, have found reasons not to come up here.

I suspect that is going to be the situation here. We can decry that, and I think there is a lot of legitimacy to that point. But the fact of the matter is, at the end of the day, this action may be taken. If it is, then I hope at least we will offer the kind of support

and backing to the American forces that they deserve in a difficult situation, and hope and pray that it succeeds without the loss of any life. And that if it is exercised, that is the military option, that it not only succeeds without the kind of harm and difficulty that our military people can face, but that democracy can be restored and that this little, poor, country to the south of us will have a chance to recapture the hopes it thought it had achieved with the first free election ever in its history, of its first democratically chosen President. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank the Chair. I would designate—as acting leader of our party, I would designate Senator HELMS as my designee with regard to controlling the debate on our side of the aisle, a fine ranking member of the Senate Foreign Relations Committee. And Ms. Ann Sauer and Mike Tongour, my chief of staff, will be here to assist in the allocation of time in accordance with the unanimous-consent agreement. I now yield to Senator ROTH for 10 minutes.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, I would like to take this opportunity to send a succinct message to President Clinton concerning the projected invasion of Haiti: "Don't do it."

The Commander in Chief of this Nation has every right to consider placing the U.S. Armed Forces in harms way in order to protect the security or economic interests of this Nation. In considering this course of action, the President must also consider the crucial importance of winning support in the Congress and explaining the case for military action to the American people.

The invasion of Haiti fails on all counts. The situation in Haiti poses no threat to the national security of the United States. I am aware that some members of the Clinton administration have contended, somewhat tortuously, that further floods of Haitian refugees constitute a threat to our national security. But if this is true they know that they can obviate the threat immediately by returning to the Bush policy of turning back Haitian boats on the high seas, a policy to which President Clinton wisely adhered until he gave in to pressure from within his own party and abandoned it.

Nor does the Haitian situation constitute an economic threat to this Nation. Indeed, so wrecked is the Haitian economy that it can barely be said to exist, as such.

So far as congressional support is concerned, the White House has apparently concluded that it has no chance of winning congressional approval for military action against Haiti so it has decided to ignore its constitutional responsibility to obtain an affirmative vote in favor of military action. I draw the attention of my colleagues to the fact that when President Reagan and George Bush initiated surprise military action against Grenada and Panama, they did so on the basis that United States lives were in danger.

Under these circumstances, they were acting within their legitimate emergency powers in initiating that military action.

Opponents of the Grenada and Panama operations have objected to this legitimi- zation of military action. But the fact remains that the legitimization was made and both the Reagan and Bush administration were able to produce evidence to support their assertions. But no one has attempted to suggest that United States lives are in danger in Haiti, or that an element of surprise is called for in order to save those lives.

Under these circumstances, President Clinton has no choice but to adhere to his constitutional duty, as President Bush did prior to launching Operation Desert Storm. He must formally seek the support of the Congress in favor of a United States military intervention in Haiti and if that support is not forthcoming, that action may not take place.

Quite frankly, I am amazed that we are here today discussing a nonbinding sense-of-the-Senate resolution while the Clinton administration prepares for war. The question should be: Does this body approve an invasion of Haiti—Yes or no? And that vote should be fully binding. I still hope that President Clinton will grasp this truth and seek the approval of this body before undertaking any military action against Haiti.

I have heard it asserted that all of this is justified because of President Clinton's overriding need to maintain his international credibility. We are told that, having threatened to invade Haiti so often, President Clinton must now proceed or his international credibility will be damaged beyond repair.

Mr. President, the credibility of this great Nation cannot, and must not, be equated with the credibility of one man, even if he is the President. President Clinton has, in my opinion, made some unwise statements. It is not the duty of U.S. service men and women to lay down their lives in order to protect him from the political consequences of his statements.

I grant that abandonment of the Haiti operation at this time will, no doubt, once again call President Clinton's credibility into question. But these are problems which, I regret, he has brought upon himself. I for one, have no doubt that the Saddam Hussein's of this world will still know that, while the executive branch of the U.S. Government may not have a firm grip on foreign policy, the American people still stand ready and willing to defend their true interests—with force if necessary—whenever they are threatened.

Moreover, once the military operation is completed, what then? Are we going to imprison the active Haitian military and police force? Are we to become an army of occupation until the scheduled Haitian elections in 1996? Will we try to interpose our forces if Haiti's downtrodden masses seek bloody revenge on their traditional persecutors? How is a Haitian occupation force to be financed out of a military budget severely stretched by budget cuts and multiplying international commitments?

I fear that the Clinton administration has no convincing answers for these all important questions. Under these circumstances, President Clinton should not initiate a military invasion of Haiti, especially without congressional approval and with little public support.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. LEAHY). Who yields time?

Mr. DODD. Mr. President, I yield as much as 10 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The distinguished Senator from New Mexico is recognized for up to 10 minutes.

Mr. BINGAMAN. Mr. President, I thank the Senator from Connecticut for yielding time to me on this important issue.

I rise to urge the President to rethink his policy toward Haiti; in particular, to rethink the idea of invasion that it is widely rumored could take place as early as next week.

I see no rationale for taking this action, which will put at risk the lives of thousands of young Americans. In my view, there is no compelling national interest at stake that requires military action. As the Washington Post editorial states this morning:

> The national security/national interest case for the evidently planned action seems to us to hover somewhere between exceedingly thin and preposterous.

The President and his national security team have simply not convinced the public and they have not convinced their representatives in the Congress that we should undertake an invasion of Haiti at this time. They have boxed themselves into a corner by making a series of threats to the thugs presently in control of Haiti, and evidently the administration now feels compelled to carry out those threats to preserve their credibility. This is a sorry reason to put American lives at risk.

The main rationale that we hear for the invasion from administration officials is that we cannot allow the ouster of President Aristide by the thugs in the Haitian military to stand, and that

having exhausted various diplomatic and economic sanctions, the only course now is to remove those thugs by force. In other words, the generation that grew up criticizing Lyndon Johnson for his attempt to "make the world safe for democracy" in Vietnam is now undertaking a new effort 30 years later to bring democracy to Haiti.

Haiti clearly is not going to be Vietnam in terms of the cost of American lives. By all reports, the military expects very few casualties in this invasion. This seems to be one of the main rationales for undertaking the invasion. But I would note that when President Bush decided, in consultation with President-elect Clinton, to undertake the humanitarian effort to feed the starving in Somalia, it was also supposed to be without casualties. And instead, we found ourselves drawn into the civil war and into the misguided efforts at nation-building, which were only abandoned after a military catastrophe.

If the President is undertaking this invasion to restore democracy, when will we know that we have succeeded? It is easy to be drawn into one of these so-called easy military actions; it is very hard to get out.

We may well be no more successful at nation-building in Haiti this time than we were the last time we sent marines 80 years ago.

After two decades of American military occupation, the country soon sank once again to the depths of the Duvalier era. We may well be no more successful in Haiti now than they were in Somalia last year or in Vietnam three decades ago.

Mr. President, we cannot get into the practice in the post-cold-war world of trying to remove dictators and install democracy by force of arms. The very democrats that we install will be tainted from the first day they take office, and we will be doing them no favors.

Mr. President, the tide of history is on our side. Democracy is on the rise across the world. There is no competing successful model. Patience will in the end be rewarded. We have to have the courage to exercise restraint, to resist the easy victory that will bring up the question of why we do not undertake the hard ones. If Haiti, why not Cuba? If Haiti, why not Libya? If Haiti, why not Zaire or why not Bosnia? The only answer is that Haiti, like Grenada before it, is easy and close by and the others are hard or farther away.

I urge the President to change course and to stand down preparations for the pending invasion. I urge the President to seek congressional approval for his actions before he undertakes those actions. I believe that a resolution of approval would be defeated if it were brought to a vote. And I do not expect that the President's speech to the Nation tomorrow evening will change the outcome of that vote.

The Congress and the American public already understand what the President proposes to do in Haiti, and a majority of the Congress and the public oppose the action. It is a very dangerous course for the President to embark on military action with so little support. It is an unwise course to risk American lives for so tenuous a national interest. I hope that Congress will be given the opportunity to express its will on this invasion before it occurs, and I hope the President and his national security team will have the courage to change course.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Under the previous agreement, it would be customary now to go to the Republican side of the aisle.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I would yield so much time as he may need to the distinguished chairman of the Foreign Relations Committee, Mr. PELL, of Rhode Island.

The PRESIDING OFFICER. If no one on the Republican side of the aisle is seeking recognition, the Senator from Rhode Island is recognized.

Mr. PELL. I thank my colleague from Connecticut.

Mr. President, for the last 3 years the international community has wrestled with how to restore democracy in Haiti. There are no easy solutions there and I, like many of my colleagues, have grappled over the question of what is the best policy. I am deeply disturbed by the horrendous human rights abuses in that small country and by the military regime's blatant rejection of democracy and the commitments it made under the Governors Island accord.

However, in my view there are not sufficient United States interests to justify an invasion of Haiti and, in fact, I so advised the President in a letter of July 22.

I believe President Clinton would be in a stronger position, too, if he sought a formal authorization from Congress. I recognize, though, that more often than not, Presidents have taken military action without the prior authorization of Congress. I would point out, furthermore, that although the President is not seeking prior authorization, the administration has made every effort to consult with me and with the Members of Congress, appearing at more than 75 hearings, briefings, and meetings on this issue.

I commend the President for his success in marshaling the support of the world community via the U.N. resolution authorizing the use of force to restore democracy in Haiti and for putting together a multinational force. If the President feels compelled to take this step, it is best to do it in a multilateral forum with the support of the international community.

While President Clinton and I may differ on the wisdom of using force in Haiti, I know the President has the best interests of the United States at heart.

I yield the floor.

Mr. BURNS. Mr. President, I rise today to state my grave concerns for the imminent invasion of Haiti. I appreciate having this chance to share my concerns, and I hope that President Clinton will give us a chance by asking Congress before he commits our troops to an invasion of Haiti.

President Clinton has been flip-flopping on our policy on Haiti ever since he took office. But over time the threat of military intervention has moved to the forefront. And now we are on the verge of sending American troops to Haiti.

I am not alone in sounding alarm bells for this haphazard decision.

Montanans want to know why we are rushing into this situation. Why are we putting American lives on the line? The administration has failed to give sound reasons for why we have to get involved.

Where is our national interest in sending an invasion force of 20,000 troops? Seventeen other countries only think it is important enough to send 1,500 troops. And that is just the first stage. And then the second stage will be to restore order. What are our plans to disengage? The last time we went in to take care of Haiti, we stayed for 19 years.

At the second stage, the United Nations are likely to replace the invasion force and take over the operation. Remember, they were the ones who came in while we were in Somalia. That mission ended in more chaos than order before we were able to withdraw.

Another question: How much is this going to cost? Our defense budget has been slashed and money for a Haitian invasion is not there. We have already spent nearly $200 million to rescue Haitians. Polls show that Americans are not in support of this invasion and they sure do not want their tax money to go for paying for it. Montanans are absolutely against this, and they have been.

While we are at it, let us look at another stated administration goal; the need to restore democracy in Haiti. President Clinton has made it a key goal to restore Aristide as President of Haiti. Aristide was hardly the perfect picture of democracy during his time as president. In fact, he ruled with a strong fist and often resorted to violence against his people. That is not democracy and that is not what Americans should fight to defend.

Let us not rush into a foolhardy invasion. We still have not exhausted all of our policy options. And most of all, we should take the time to reexamine the policies that are already in effect.

Something is obviously not working. For one thing, it is time to lift the sanctions. Let us help the innocent victims of the tough economic sanctions. They are the ones who are risking their lives by attempting to cross the ocean in rickety boats. And they are the ones who have been caught in the Clinton administration's ever-changing policy web.

I do not see any need for an invasion at this time. And President Clinton has not given good, hard reasons for this invasion that convince me that this is the best, and only, course of policy.

UNITED STATES POLICY TOWARD HAITI

Mr. HATCH. Mr. President, I rise today to express my opposition to the current slide toward American military intervention in Haiti.

The White House is playing a dangerous game and American foreign policy is starting to look a lot like the Waco of the Caribbean. Once again, the administration is clearly exasperated and frustrated by a standoff. And once again, the White House apparently believes that the only way out of this box is through the use of force. This is an act of sheer desperation on the part of the White House and it is a foreign policy prescription for disaster.

The administration has always lacked a fundamental appreciation of how to conduct foreign policy, and under what circumstances military force should be used to achieve foreign policy goals. Military force is not a good vehicle to help reform a political system or culture, particularly one lacking any history of democracy and ranking among the poorest countries in the world.

I challenge this administration to outline its specific goals in Haiti and to explain how we plan to achieve them through the use of force.

The simple fact is that we do not have a vital national security interest at stake in Haiti. We are not fighting Soviet or Cuban surrogates as we did in Grenada. We are not using force to defend vital interests as we did against Noriega in Panama. We had a legitimate stake in Panama's internal developments because of our interest in the Panama Canal and our need for information about Noriega's involvement in drug trafficking. The situation in Haiti is vastly different from either Grenada or Panama, but the White House has been unable to discern these important distinctions.

Secretary of State Christopher, in a Tuesday afternoon press conference, stated that our general objectives in Haiti include the restoration of civil law and the establishment of a free government. However, he also insisted that the United States will not be involved in nation-building. Secretary Christopher said that:

> Now the aim of the multinational coalition, the aim of the United States here, is not to be involved in nation building, but to give the people of Haiti an opportunity to build their institutions, to reclaim their country and have that opportunity with respect to the building of their own institutions.

I have some news for the administration: restoring civil order and replacing a government is nation-building—pure and simple.

The administration has asserted that it does not have to come to Congress prior to the introduction of troops because the President has the authority to do so on his own. That is a constitutional debate that has continued for over two centuries.

Mr. President, Congress is not obligated to sit by idly when an administration embarks on a potentially dangerous and inappropriate use of American military power. The use of force is the most important decision a President can make because it places the lives of American troops at risk.

While I believe that the President has the prerogative to use military force in matters of national security, Congress also has a role to play, and both are accountable to the American people. Members of this Chamber have an obligation and a right to respond to the inappropriate use of this executive branch prerogative. And in this context, I am completely opposed to sending troops into Haiti.

Mr. President, the Clinton administration has some explaining to do. We have heard bits and pieces from the administration about its intentions in Haiti. Many of these statements have been contradictory, including Sunday's confusion between Secretary Christopher and U.N. Ambassador Madeline Albright concerning whether Lieutenant General Cedras must leave the Caribbean island republic, in addition to surrendering power.

It is clear that this administration lacks a coherent policy toward Haiti. Holding an occasional State Department press conference to talk briefly about Haiti—when it suits the needs of the administration—is not a substitute for a rational formulation of American foreign policy. And it is certainly no substitute for congressional support for this action.

We are about to place American troops in harm's way and Congress has neither seriously discussed the possible costs of an invasion nor explored the possible consequences of this action. I would pose several questions to the administration concerning United States intervention in Haiti:

First, do we have an approximate timetable for how long a military operation would last? The administration has given us no reason to believe that there is any such estimate.

Second, what are the short- and long-term goals of the intervention force in Haiti? There has been no clear explanation of the specific political and military objectives.

Third, do we have any idea how long we plan to stay in Haiti and who will oversee the political, economic, and military transition? The administration has not provided us with clear answers.

Fourth, who will bear the financial costs of this so-called multinational effort? We have not even begun to consider the financial costs of an invasion, or the financial implications of maintaining a large occupying force in Haiti.

Finally, is it actually worth the life of one American soldier to put Aristide back into political power? Serious questions still exist about Aristide's commitment to human rights, pluralism, and democracy.

Mr. President, let us face the facts. This administration has sought to avoid discussing these issues in depth because it does not have any answers at this time. Yet these critical questions deserve a response before the President decides to intervene with American forces.

I would argue that it is time for the administration to review the current policy options and available alternatives. I do not believe that we have exhausted all diplomatic efforts. The administration should reconsider a plan that calls for an immediate lifting of the economic embargo if the current military leadership steps down and allows free and fair elections to be monitored by international observers. We should redouble our efforts to seek a compromise agreement among all of the parties involved.

Mr. President, there is simply no way that the administration will be able to establish a viable, functioning, and effective democracy in a few short weeks after an invasion. Once we are in Haiti, we will be there for a long time. We have attempted nation-building in Haiti before, and after 19 years and major infrastructure projects, the country slipped back into a state of civil disorder. We should have learned what happens when you attempt to perform nation-building after the debacle in Somalia.

The administration is playing a high stakes game that commits the United States to an invasion of a sovereign nation and that opens up the prospect of an indefinite stay for American forces on that island. There is no consensus in Congress or among the American people for intervening in Haiti, or for a prolonged occupation of that country. Before we place our troops in imminent danger, the American people deserve a clear and concise explanation of what we hope to achieve in that country.

I urge the administration to reexamine its current policy on Haiti and to come to Congress prior to an introduction of forces into Haiti.

Mr. President, I thank the Chair.

Mr. CRAIG. Mr. President, once again the Senate is addressing the

issue of United States foreign policy toward Haiti.

Once again, talk of invasion has risen.

The level of rhetoric coming out of the administration leads to one conclusion: The inconsistent foreign policy of this administration will result in the use of U.S. forces.

I do not support the administration's proposed invasion of Haiti. I have demonstrated that opposition through several votes expressing concern and opposition to the use of military action.

I do not enjoy finding myself in a position opposing the Commander in Chief, but will do so.

If President Clinton insists on ignoring public and congressional dissent and chooses to exercise his authority as Commander in Chief, I will stand firmly in support of our troops.

Mr. President, this is not the first time the issue of the use of force has been debated during my short tenure in the Senate.

As a Member of Congress and a U.S. Senator representing the people of Idaho, I established a set of conditions that I look for in making a decision to either support or oppose the use of our military. On the top of that list is the opinion or sentiments of my fellow Idahoans.

In making my determination, I also look at what economic, security, or national interests are at stake. I also review our policy or strategy: When are we going in; why are we going in; what are our objectives and goals and how will they be carried out?

These important questions have not been answered to my satisfaction.

In addition, as part of my decision-making process, I ask if all other policy options have been exhausted. It is my position that there are unexplored options that should be considered.

Through the auspices of a bipartisan commission, a range of viable options could be considered and a sound and consistent policy established that would lead us toward a welcome solution.

As I just mentioned, the implementation of a sound and consistent policy is very important.

Mr. President, as the situation in Haiti has evolved, there have been a number of efforts to restrict the President's use of force. I have been gravely concerned about setting a precedent that would restrict the authority of the Commander in Chief.

However, the continual lack of a clear U.S. foreign policy in trouble spots around the world has led me to the conclusion that without clear leadership, the Congress is left to micromanage foreign policy in order to protect U.S. interests and security. This has not been a direction that I have happily embraced, rather it has been a reluctant necessity.

Mr. President, this administration has repeatedly changed the direction of its policy, often in the middle of implementing the policy. In dealing with the refugee issue, candidate Clinton opposed the Bush policy of direct repatriation of Haitian migrants. Then, President-elect Clinton expressed support for that policy.

Finally, earlier this year, the President changed his position once again in an effort to counter criticism from different groups that he had not kept his promise to change the policy on dealing with Haitian refugees.

While doing this flip-flop on the refugee problem, the administration was also tightening sanctions on this very poor nation. As a result, the administration's policy has encouraged more people to flee because of severe economic depression.

There is no question that if you use sanctions to block the fragile economy of that small island nation, people will attempt to flee its shores—and that is exactly what has happened. Sanctions aimed at the rich supporters and members of the junta government have fallen on the backs of Haiti's poorest citizens.

In short, Mr. President, the administration's efforts to tighten sanctions on Haiti seem unlikely to force out the military chief, Lt. Gen. Raoul Cedras and his allies.

So where does that leave us?

I do not believe that we are left with only the option to invade. As I mentioned before, it may require a bipartisan committee to review the situation and alternative policy options so that we are resolved to carry out a consistent policy.

In an effort to respond to growing concerns in the Congress and concerns in the general population about a possible invasion of Haiti, Senator DOLE sponsored an amendment recently that would create a bipartisan commission on the situation in Haiti.

I supported that amendment. However, it unfortunately did not pass.

The amendment was offered during debate on the 1995 foreign operations appropriations bill and would have deterred, for now, the imminent invasion.

The amendment would have established a bipartisan commission, assigned to assess diplomatic and political conditions in Haiti. The commission would have been required to report on its findings within 45 days after enactment. This amendment could have slowed the progression toward invasion.

Prior to this, there were a number of earlier efforts to require the President to consult the Congress before ordering an invasion of Haiti. Three such attempts occurred this summer in the form of amendments to bills moving through the Senate.

There was also a vote last fall on an amendment offered by Senator HELMS and dealing with the Haiti situation. Regrettably that amendment also failed.

Mr. President, in addition to the concerns I have expressed here, I am troubled that in the name of democracy, this administration is planning to return to power a man who certainly does not hold democratic principles in esteem.

Rather, this is a man who uses such practices as necklacing as a tool of leadership. President Jean-Bertrand Aristide's commitment to human rights and democratic principles is questionable at best. Judging by reports I have reviewed, a number of incidents that occurred following Aristide's election in December 1990, can only be described as gross violations of human rights. A specific example of this violence was the attack on the Papal Nuncio in January 1991.

If Aristide is restored to power, we will likely see the kind of repression he imposed when he was initially elected and attempted to wipe out those who dared to dissent from his opinions. Instability and unrest are inevitable if he seeks to destroy those who supported his ousting and the implementation of the junta government.

In light of this, I am very concerned about the aftermath of an invasion.

If we are to occupy Haiti, will our service people be asked to serve as domestic police? What authority will they be granted to maintain order? Will that include the authority to quell domestic unrest?

Mr. President, many questions remain unanswered in the administration's pursuit of an invasion of Haiti. Once our military has prevailed in ousting the junta government, where do we go from there?

Mr. President, how is order established and how is it maintained? And, finally, when and how do we leave? These are all very important questions that have not been answered—they are questions, Mr. President, that must be answered.

I do not relish the position I am in, opposing the actions of our Commander in Chief. However, I cannot support the use of our Armed Forces in a situation that does not meet any reasonable test for military involvement.

Let me reiterate, Mr. President, I will fully support our troops in Haiti if the President chooses to exercise the military option. I have no doubt in the ability of our forces to prevail in an invasion. We have a fine group of men and women who have dedicated their lives to serving the United States.

Mr. President, there is a final point that I would like to make. The United States is the remaining superpower in the community of sovereign nations. How we use our military in this instance may affect our ability to exercise policy options in other areas of concern that are far more critical to U.S. national interests and security.

Mr. President, it is my hope that this debate will serve to deter our present

course and set us on the course of a consistent policy that will allow us to be a leader and continue to pursue a cornerstone of U.S. foreign policy, which is to support democracy.

ARISTIDE UNDESERVING OF U.S. MILITARY SUPPORT

Mr. HELMS. Mr. President, the administration obviously is hopeful that Jean-Bertrand Aristide will become a small "d" democrat sometime before the President orders American troops to invade Haiti. The problem is, neither Mr. Aristide's philosophy nor his background indicates that he is motivated by democratic values or principles.

Consider whom the man looks to as models for his philosophy. In his autobiography, Aristide identifies his role models as being Che Guevara, the Cuban Communist revolutionary; Salvador Allende, the Marxist President of Chile; and Robespierre, the 18th century French revolutionary who was an architect of the bloody reign of terror in France.

Sure, Mr. President, Aristide speaks of "beauty, dignity, respect, and love," but his heroes are history's synonyms of brutality and violent revolution. No doubt, Robespierre, who so effectively used the guillotine to silence his adversaries, would approve of executions by necklacing—that cruel, bloodthirsty ultimate in horror in which gasoline-filled tires are hung around the necks of victims and ignited.

Aristide has no relationship whatsoever with democracy; he is neither a peacelover nor a peacemaker. He is a mean-spirited revolutionary and an anti-American demagog. Just as his heroes endeavored to create totalitarian governments, they like Aristide had no commitment to democracy nor respect for human rights. Aristide's philosophy and record cannot and should not be overlooked as a factor in any decision involving calling on United States troops to invade Haiti.

Mr. President, the distinguished and courageous newspaper, Human Events, has stripped Aristide of his phony piety. Human Events has spelled out Aristide's record for all to see. The very able editor of Human Events, Allan Ryskind, understands that militants, Aristide being no exception, see nothing wrong with resorting to violence to attain power. Mr. Ryskind went to Aristide's own writings to determine exactly what Mr. Aristide supports. I am astounded that the President of the United States is said to be willing to risk the lives of U.S. troops to restore Aristide to power.

Mr. President, I ask unanimous consent that portions of Allan Ryskind's article, "Has Aristide Changed His Extremist Stripes?" published in the July 29 issue of Human Events, be printed in the RECORD at the conclusion of my remarks.

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

HAS ARISTIDE CHANGED HIS EXTREMIST STRIPES—ARISTIDE'S REVEALING AUTOBIOGRAPHY

Indeed, in his autobiography, published just two years ago, Aristide comes across as a full-blown leftist revolutionary. In the English-language edition, published by the Maryknoll Order's Orbis Books in 1993, Aristide says (page 125) that his foes would like to label him "a follower of Fidel Castro, an admirer of the Sandinistas * * * an imitator of Salvador Allende [the late Marxist-Leninist leader of Chile] or of the Shining Path [Peru's Maoist revolutionaries]."

Astonishingly, Aristide then refuses to flatly deny the charges of his enemies. "Rather than searching for models," he explains (page 126), "I prefer to welcome those ideas that rest on the values of beauty, dignity, respect and love. Che Guevara * * * certainly incorporated some of those values, as did Allende. They were sincere men, like so many others * * * I feel more affection and sympathy for them than I do for many others."

Che Guevara, of course, was the Marxist-Leninist revolutionary who helped Fidel Castro impose communism in Cuba and got killed in Bolivia attempting to spread Marxist revolutions throughout the hemisphere. Salvador Allende was the late Marxist-Leninist ruler of Chile, deposed in a military coup in 1973.

In his autobiography, Aristide also makes it clear he favors "liberation theology," the violent, Marxist philosophy that has gripped so many revolutionaries in Latin America and the Caribbean, that he rejects "western democracies" and that he worships historical figures such as Robespierre.

In chapter 15, titled "Convictions," Aristide is asked in a question and answer format—it is unclear who's doing the questioning—if he sees himself as resembling the notorious revolutionary leader who unleashed a reign of terror in France in the late 1700s.

Aristide replied (page 184): "There is no question that there are common denominators between us and the makers of the French Revolution: 1789 is an essential reference point as is 1793 [the beginning of Robespierre's rule]. The memory of the heroes of the rights of humanity should always be in our minds, as their texts are in our hands. Robespierre himself denounced the 'patripockets.' From Saint-Just to Abbe Gregoire, how much I owe to the makers of the Revolution!"

Aristide's fanaticism was underscored last week in a revealing Washington Post profile of the man the Clinton Administration hopes to restore to power in Haiti. Written by Daniel Williams, the piece does not suggest any reason to believe that Aristide is a "changed man," as some of his supporters have been saying.

Williams, who interviewed Aristide in his Washington, D.C. apartment, allows that Aristide "is a very untypical beneficiary of American muscle not to mention blood. He is more the kind of leader U.S. governments frequently opposed during the Cold War; he certainly would have been labeled anti-American. * * *

"He is a populist who used mob power to intimidate political critics. During his brief stay in office, he spoke glowingly of the 'necklace,' the burning tire ignited around the neck of victims of street execution. * * *

"Aristide, ordained in 1982 as a Catholic priest, is a disciple of liberation theology, an interpretation of the Bible as a revolutionary document. 'The Gospel in its raw form,' he once said, 'could act like a stick of dynamite.'"

Though in his effort to get U.S. support he has proposed a moderate program for Haiti. Williams noted that Aristide won't apologize for his past remarks or try to explain them away, insisting they are irrelevant.

Nor does he reveal any inclination to compromise with his political opponents.

"From his exile," said Williams, "Aristide has resisted naming a new prime minister and shelved his own plans to form a 'government of concord.'

"Last winter, U.S. officials tried to persuade Aristide to build a broad cabinet to include political opponents. Aristide refused, claiming such a move would effectively marginalize him."

Mr. KEMPTHORNE. Mr. President, I rise in strong opposition to any United States invasion of Haiti. I have just returned from Idaho and while I was home I did not meet one person advocating a United States invasion of Haiti. Instead, I met a number of Idahoans who expressed concern and opposition to an American invasion of Haiti. I could not agree more with my constituents.

If this administration thinks the American people want to put our troops at risk in order to restore President Aristide to power, then I urge these policymakers to get out of Washington and meet with the American people. The American people have considered this question and an overwhelming number of Americans oppose a United States invasion of Haiti. And they do so because there is absolutely no United States national interest that requires the use of American military power in Haiti.

I hope President Clinton will listen to our warnings and turn back from the policy of preparing to invade Haiti. I believe it will be a mistake for United States forces to invade Haiti because there is no objective in Haiti that is worth the cost of one American life. If the United States invades Haiti what will the President tell the American men, women, and children who lose a loved one in Haiti? What goal will the administration cite to justify this loss? I do not want to see grieving parents asking us if their child died in vain.

There is no doubt that United States military forces can successfully invade and conquer Haiti. The real questions facing us are: What do we do once we have conquered Haiti and how do we get out? Once we have taken over Haiti we will be faced with an enormous nationbuilding task. In Haiti, we will find a poverty stricken people. Analysts have looked at this enormous nationbuilding task and they estimate that the United States might be required to stay in Haiti for months or even years. In addition, we do not know how Haitian people will view our presence. In short, we will be faced with a potentially dangerous, international welfare case with no hope that we can get out anytime soon.

As my colleagues know, I have been actively involved in bringing an end to the United States military and diplomatic presence in Somalia. This exercise demonstrated that the U.S. has a very difficult time leaving once we send our troops into a country. The last time the United States invaded Haiti, it took us 19 years to withdraw. We must not make that mistake again.

Before a President considers putting the lives of U.S. military personnel at risk, we need to determine that our national interests are involved. When President Reagan invaded Grenada there was a clear and imminent threat to United States citizens. When President Bush toppled Manuel Noriega in Panama, there had been attacks on American citizens in Panama. When President Bush liberated Kuwait, he stopped Saddam Hussein from seizing the Persian Gulf and a large percent of the world's oil reserves. In each of these cases, there was a compelling reason for the President's action. Today, however, there is no such compelling reason to invade Haiti.

I am not adverse to the United States using force when it's warranted. There was a time during the Reagan era when nations of the world knew they couldn't mess with the United States. If you did, you might be the recipient of a smart bomb or a Tomahawk missile. I think that's healthy. We should use our military forces sparingly, but if some other country has done something to merit the use of force, it should be done rapidly and effectively. It should not be done simply to prove that we have the strength to do it, and certainly not because the administration wants to prove it's finished bluffing.

Mr. President, I urge President Clinton to step back from this abyss. Time is on our side. We must not put our troops at risk in order to restore the reliability of this administration. It is a travesty that our reliability now seems in such disrepair that it now requires rebuilding. This is no way to conduct foreign policy. We can do better than this.

Mr. SIMPSON. Mr. President, I rise to address the troubling issue of a possible impending invasion of Haiti by United States military forces.

It is unfortunate, Mr. President, that those of us on this side of the debate must feel compelled to preface our remarks by making certain disclaimers and caveats. But such has been the nature of the criticism against the position that many in my party have taken regarding such an invasion, so some clarifications and reassurances to the President and to the public seem necessary.

Let it be firmly understood that this Senator at least, as well as my Republican colleagues, do not challenge the President's authority, if national security requires it, to invade Haiti or indeed to take any other appropriate action involving the United States military. That is his charge and his right, to act with full authority in the interest of national security as the Commander in Chief of the U.S. military forces.

That should be clearly understood, and I would remind my colleagues that previous resolutions offered on this side of the aisle, even as they would have required consultation with Congress before deploying United States forces in Haiti, would have made appropriate exemptions for the event that the President deemed our vital "national security" interests to be at stake.

So let that be understood. President Clinton enjoys full support from this side of the aisle, just as previous Republican Presidents have, for his authority to use his powers as the Commander in Chief to act on behalf of vital U.S. interests.

But that is the rub, isn't it? The singular lack of an assault on our national security. I do not believe that there would be this kind of showdown between the President and congressional leaders if we faced an Iran-style hostage situation, or if we faced, as we did in Iraq, an international aggressor straddling a large fraction of the world's precious energy reserves. But instead we are not facing any of those obvious challenges to our national security, nor to the security of our private citizens.

Furthermore, we do not face a military situation in which surprise and secrecy seems to be deemed by the administration as essential to preserving the lives of American soldiers. We are not facing a situation where we have the necessity of remaining silent on this issue so as to preserve the ignorance of the Haitian junta. In other words, we do not have a situation where the President is seeking to use the most extensive powers he has as Commander in Chief to launch a sudden and secret assault, the war-making powers of Congress notwithstanding.

No, Mr. President. Indeed we see quite the contrary. We have seen every manner of verbal hint and threat from the administration that an invasion will come if the Haitian military does not abdicate. The administration clearly intends to force the Haitian military out of its position of power, if not by invasion, then by the threat of it. The military action envisioned here clearly has the character of a willful entrance into warmaking, quite distinct from an urgent and time-sensitive military rescue mission or urgent national security action.

We well recall when President Bush laid out for Saddam Hussein the consequences of his action in invading Kuwait. "This will not stand" it was an ultimatum much like today's that seems to be coming from the Clinton administration. And President Bush was told by Congress that he must come before us and make his case for the use of force. Which, he did. And his arguments carried the day, because he was able to demonstrate a clear and demonstrable threat to the international order, and was able to generate the requisite support from the American people and their elected representatives.

If President Bush was so obliged, certainly President Clinton is as well. Indeed I cannot see any reason for the President to claim an exemption from this necessity, that was not available to President Bush when he faced the aggression of Saddam Hussein. The only credible argument I can see advanced within the administration against congressional authorization is based on the apparent fact that he does not, indeed, have the support either of the American people or of the Congress for this action.

Having said that, let me reiterate: I have an open mind. If the President can make a convincing case that this action is worth American blood, I am listening. But it seems bizarre to me that we would even be contemplating such an action when no such case has been made.

We hear that democracy has been "hijacked" in Haiti, which indeed it has, by military thugs. And this is certainly ample reason to apply sanctions and economic pressure against the Haitian military junta. But what is it, Mr. President, that distinguishes Haiti from the many other nondemocratic governments around the world? Of course we support and argue for democratic processes everywhere, and we support the rights of people for self-determination. We do not always, however, shed American blood in that cause. We are not contemplating an invasion of Burma. We are not, to my knowledge, contemplating an invasion of Cuba. Haiti is not the only country—not even the only Caribbean country—where democracy has been hijacked. Why Haiti?

Is it the case that there is so clear a choice between the virtue of the Aristide Presidency and the evil of the existing military junta? Mr. President, I respect to overwhelming electoral victory won by President Aristide. But is President Clinton, and the Government of the United States, so confident that his return will mean a respect for democratic norms, and a respect for individual human rights, that we are willing to stamp the "made in USA" label on the Aristide government from this day forward? Because, make no mistake—once Aristide is installed at American gunpoint, he will be considered our "client" in the eyes of Haitians, Americans, and in the eyes of the world. Let no one mistake that inevitable result.

I therefore cannot support the use of American military force in Haiti, at

least—at the very least—until a compelling, not contrived, case is made that the situation in Haiti poses a direct threat to our national security, in a way that Cuba or Burma or any other "outlaw regime" does not. The President ought to know, as well as any American citizen does, how inappropriate, how unworkable it is to ask Americans to fight and die for confused and uncertain objectives.

And finally, let me make absolutely clear: No one is suggesting that the President decide against an invasion solely because of popular opposition to the idea. Foreign policy, and military policy, cannot be made by pollsters. But leadership requires more than acting in defiance in popular opinion. In matters of war, the Nation must be led, it must be rallied, if our aims are to be met. We have not seen that kind of leadership from this administration on this issue, and until we do, this Senator has no choice but to oppose the use of United States military force in Haiti.

I would like now to address this subject of making the specific case for war in Haiti. I assume that one of the reasons offered in justification of an invasion of Haiti will be the need to stop illegal immigration from Haiti. I have an abiding interest in this issue, arising from my position as ranking member on the Immigration Subcommittee.

I want to specifically address Haitian illegal immigration, and that problem—and it is a problem—as a justification for an invasion of that tiny country.

Illegal immigration from Haiti is indeed a problem, but it is a small problem compared to illegal immigration to this country from Cuba, from China, from Mexico, and from other Central American countries including the Dominican Republic which shares with Haiti the island of Hispaniola.

No one is suggesting that we invade any of those countries to stop illegal immigration, and in my view, it is pretty difficult to justify an invasion of Haiti on that basis.

Justification for an invasion aside, we do not need to invade Haiti to deter illegal immigration from that country.

We have had a number of Caribbean nations offer their territory for "holding centers" for Haitian illegal immigrants—places where persons leaving Haiti could stay until they felt it was safe to return to their country.

I assume those offers of locations for holding centers are still open, and establishing holding centers to provide temporary safe haven to the Haitians outside the United States, is the solution to illegal immigration from Haiti. We do not need an invasion.

Experience has shown us rather clearly that if we do not allow illegal boat people, whether they be from Haiti, or from Cuba, to enter the United States, no matter what their claim to safe haven may be, the boat flow will dry up.

All we need to do is by our words, and by our actions, clearly establish the policy that attempting to enter the United States without proper authority will not give boat people an opportunity to live in the United States until his or her claim for asylum is determined.

However, if potential illegal immigrants do not believe we mean it when we say they cannot come, and the Clinton administration's remarkable confusion on the issue has given them good reason not to believe us, they will continue to try to come.

The answer to illegal immigration from Haiti is not an invasion, but a clear, firm, consistent, and persevering policy which does not permit the entry into the United States of persons attempting to come on vessels without proper immigration documents.

I would close, therefore, by reiterating the point that a convincing case for invasion has not yet been made, and certainly not with respect to resolving problems of illegal immigration. Until and unless other convincing justifications arise, this Senator must continue to oppose risking American lives in a military invasion of Haiti.

I ask that an article by Charles Krauthammer, "To Die for Aristide?", be printed in the RECORD.

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

[From the Washington Post, July 22, 1994]

TO DIE FOR ARISTIDE?

(By Charles Krauthammer)

Unless Haiti's military rulers panic and flee in the face of Bill Clinton's threats—it would be a first—we will have to invade to get them out. The administration has neatly maneuvered itself into a corner from which there is no other escape. It could, of course, declare its entire Haiti policy misbegotten from Day One. It could admit that the restoration of Jean-Bertrand Aristide, hardly a vital American interest, is not worth the bones of a single American grenadier. But there is no chance of such an admission.

The invasion will have to go forth. Before it does, before the first American dies, it is worth asking why. What national interest do we have in Haiti?

Among the welter of interests offered by Clinton, the only one with any real resonance is refugees. A tidal wave of refugees washing up on Florida shores is something the United States cannot tolerate.

This would be a perfectly reasonable rationale—if the refugee exodus were not the direct consequence of Clinton's own policies. The refugee flow shows a striking mathematical relationship between Clinton's ever-changing asylum policies and the numbers of Haitians taking to their boats.

In May, responding to the pressure of Randall Robinson's hunger strike, Clinton declared a new U.S. policy on Haitian refugees. It offered the possibility of asylum hearings to any Haitian who could make it by boat to a U.S. ship. On June 16, it took effect. Surprise: Within two weeks, refugees were arriving at the rate of more than 1,000 a day. On July 4 alone, 3,247 were picked up.

On July 5, overwhelmed, Clinton reversed course. Henceforth refugees who took to sea would no longer be considered for asylum in the United States but sent instead to third countries. Surprise: A week later, the number of refugees fell almost 90 percent.

Clearly, these wild fluctuations in refugee flow are not a function of Haiti's military repression—the repression continues unabated—but of the prospect of admission to the Promised Land. People genuinely in fear of their lives are not terribly fastidious about where they are granted safe haven. Yet large numbers of Haitians—once they realized that they would end up not in Florida but in Grenada or Antigua or even, God forbid, Benin—have apparently decided that Haiti is the better place for them.

Our interest in preventing a flood of refugees is incontrovertible. But the refugee crisis is Clinton's own creation. It is exacerbated by sanctions that have done nothing but further impoverish the most impoverished nation in the hemisphere. And it is inflamed by an administration that periodically, as between June 16 and July 5, makes the possibility of asylum far easier for Haitians than for, say, Chinese boat people who, when intercepted at sea, are almost automatically turned away.

The other reason offered for invading Haiti is that we stand for democracy. Coming from Democrats, this is a touching concern. They spent the better part of the 1980s vilifying the Nicaraguan contras, who were trying to restore democracy to their country too. (In the end, they did.) In that case, moreover, all that was being asked as military aid. Today it is American blood.

But apart from hypocrisy, there is illogic. Democracy alone cannot be reason enough for American intervention—or we should be intervening in half the world. There must also be some strategic rationale. The strategic threat in Nicaragua was that it might be turned into a forward base for a hostile superpower. (That was during the Cold War—a time, Clinton now laments, of unusual moral clarity.) What possible strategic threat emanates from Haiti?

Moreover, intervening to install Jean-Bertrand Aristide in the name of democracy is quite a stretch. Yes, he was elected president of his country. But many dictators and psychopaths have been elected as well. Juan Peron won election (twice!). So did Hitler.

Aristide is no Hitler, but he quite admires Robespierre, who ranks high among history's bloodthirsty executioners. "I am inclined to see in you a certain resemblance to Robespierre," he writes in a self-interview in his autobiography. "Robespierre was called 'the incorruptible.' That is a rare quality in politics, and it doesn't always make for a long term in office." The parallel is meant to be both obvious and flattering.

Accordingly, Aristide incited mobs to intimidate judges and (democratically elected) legislators. He spoke rhapsodically in praise of the "necklace," the burning tire used to murder political opponents, the modern revolutionary's improvement of the guillotine: "It is beautiful, it looks sharp. It is fashionable, it smells good," he, as president, told a crowd in September 1991.

And then there is the matter of his anti-Americanism. The United States, he writes in the chapter "My Convictions," is one of the "gang of four" "enemies of Haitian people." His affection for Che Guevara, his references to American imperialism, have been muted of late, for good reason. He now lives in Washington and will ride the backs of U.S. Marines into Port-au-Prince. But it is a curious American policy that seeks to advance

American interests at the risk of American lives by installing an anti-American demagogue.

American Marines patrolling the streets of Port-au-Prince to keep Robespierre in power—this, after Somalia and Bosnia and Korea, will be Clinton's great demonstration of muscularity. Makes you pine for flabbiness.

A U.N. LICENSE TO INVADE HAITI

Mr. MOYNIHAN. Mr. President, the U.N. Charter is not a social science experiment. It is a treaty about the use of force. Chapter VII of the charter prescribes the authority of the Security Council to deal with "threats to the peace, breaches of the peace, and acts of aggression." It is not about nation-building.

Let me be clear: I do not support an invasion of Haiti. I do believe that the United States has an interest in promoting democracy and stability in Haiti. We have done more than any other country to restore the legally elected Government of Haiti. I support those efforts. They should continue.

But Haiti is not—simply put—a threat to the peace or to the United States sufficient to justify a chapter VII invasion. In the words of the New York Times, "Washington recklessly stretched the boundaries of what constitutes a threat to international peace and security" in order to obtain Security Council authorization for an invasion.

An invasion would endanger the lives of American service men and women in the cause of a most uncertain mission—nation-building. Not a theoretical concern.

It also jeopardizes one of the finest achievements of American statecraft—the U.N. Charter. To cite again the New York Times:

Having taken its lumps trying to be a world police force, the U.N. has now fallen into the unhealthy habit of licensing great-power spheres of influence. In recent weeks the Security Council has commissioned France to send troops to Rwanda and endorsed Russia's "peacekeepers" in Georgia. Now the U.S. is authorized to lead an invasion of Haiti. Such crude power politics damages the U.N.'s standing as an organization valuing the sovereignty of all its member states.

This is no small issue. Hard cases make bad law. Haiti is indeed a hard case. The human rights abuses there are extraordinary. We are trying to help. But what law do we create by invading under the authority of chapter VII? What will we say 6 months from now if Russia engages in a police action to protect Russian nationals in the Baltics or Ukraine?

The people of Haiti need and should receive our continued support in their struggle to restore their elected government. But Haiti is no more a threat to the United States and has no less a democratic government than numerous other regimes. Is the military dictatorship in Haiti less democratic and more dangerous to the United States than Colonel Qadhafi's regime in Libya, a terrorist state which blew Pan Am 103 out of the sky and murdered score upon score of Americans? Is it less democratic and more threatening to the United States than other terrorist states such as Syria, Sudan, and Iran? The military dictatorship in Burma threw those chosen in its last election in prison and murdered thousands of others. Burma is probably the source of most of the heroin which reaches the United States. Is it more democratic and less a threat to the United States than Haiti?

Frankly, while the situation in Haiti is deplorable, Haitian refugees are a problem for the United States, not a threat to our national security. Indeed. Haiti is not even a threat to the Dominican Republic with which it shares the island of Hispaniola, much less the sole remaining superpower in the world.

I have served as U.S. Ambassador to the United Nations and have represented the United States as President of the Security Council. Save on the sternest instructions of the President himself, I would never have countenanced a Security Council resolution authorizing the invasion of Haiti under chapter VII of the charter.

In closing, I must make clear that if troops are sent into the field by the Commander in Chief that they must be fully supported. In asking them to put their lives at stake we must ensure that they are given the means to adequately perform the task at hand and are protected from undue risk.

Mr. President, I ask unanimous consent that the entire New York Times editorial of August 2, 1994 be printed in the RECORD and I yield the floor.

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

[From the New York Times, Aug. 2, 1994]

A U.N. LICENSE TO INVADE HAITI

If it persuades Haiti's military leaders to leave on their own, then Sunday's U.N. Security Council resolution authorizing a U.S.-led invasion will have done some good. The resolution contains no deadline, and the Clinton Administration has no plans for an imminent military strike.

Perhaps only the threat of force will convince Haiti's top soldiers they should depart. They viscerally oppose the social and economic changes they believe President Jean-Bertrand Aristide would make if he returns. And they are reportedly profiting handsomely from the status quo.

But the threat to use force implies a willingness actually to use it if the military leaders hold fast, and an invasion of Haiti under present circumstances would be a big mistake. Meanwhile, the Administration's strained interpretation of the U.N. Charter to classify the Haitian situation as a threat to regional peace and security damages the U.N.'s legitimacy and invites trouble.

The resolution, orchestrated by Washington envisions several countries taking part in any invasion, but the operation would remain under direct U.S. military and political control. Presumably, the Clinton Administration will heed its constitutional duty and seek previous Congressional approval, which it may not get. But even a properly authorized invasion would add to the long string of dubious U.S. military interventions in the Caribbean basin during the past century, including a 19-year occupation of Haiti itself.

Some of these actions had nobler ends than others. But very few did any lasting good and each poisoned U.S. relations with the rest of the hemisphere. Significantly, one of the two Latin American members of the Security Council, Brazil, abstained Sunday, while the non-members Mexico, Uruguay, Venezuela and Cuba all spoke out against an invasion. The other Latin member, Argentina, voted yes.

Even though President Aristide implicitly endorsed the resolution, an invasion could weaken his domestic legitimacy while diminishing Haiti's sovereignty. And despite plans to quickly hand off peacekeeping authority to a more broadly based U.N. force, an invasion would saddle the U.S. with political responsibility for controlling the violent vendettas that might erupt once the present repressive structure is disarmed.

To justify the use of U.N. force, Washington recklessly stretched the boundaries of what constitutes a threat to international peace and security under Chapter Seven of the U.N. Charter. Gen. Raoul Cédras's violation of the pledges he made in the Governors Island agreements last year is legitimately an international issue. So is the tide of refugees and systematic violation of human rights. But none of these issues now rise to the threshold necessary to justify invasion. On many of the same grounds, Cuban émigrés might well lobby the Clinton Administration to seek U.N. authorization for invading Cuba.

Having taken its lumps trying to be a world police force, the U.N. has now fallen into the unhealthy habit of licensing great-power spheres of influence. In recent weeks the Security Council has commissioned France to send troops to Rwanda and endorsed Russia's "peacekeepers" in Georgia. Now the U.S. is authorized to lead an invasion of Haiti. Such crude power politics damages the U.N.'s standing as an organization valuing the sovereignty of all its member states.

Licensing big-power armies was justified in cases like the Persian Gulf war and the Korean War where the necessary level of force could only be supplied by major military powers. But it is surely not justified in Haiti, with a 7,000-man regular army and a comparable number of lightly armed paramilitary troops.

The Clinton Administration, under attack from critics on the left and right for alleged timidity in deploying U.S. military power, now reveals a dangerously low threshold for using force in Haiti.

Mr. DANFORTH. Mr. President, in the strongest terms, I oppose President Clinton's apparently unstoppable course of preparing for a United States invasion of Haiti.

The test for military action against another country must be the national interest of the United States. No American interest would be served by invading Haiti. While the regime of General Cedras is deplorable, the troubles of Haiti are internal to itself. As a matter of foreign policy, it is appropriate for the United States to encourage democracy elsewhere in the world. But encouraging democracy does not give our

country license to send in American troops wherever democracy does not exist. The test of military force must be national interest, not a general interest in improving the governments of other countries.

The Clinton administration points to Haitians fleeing that country by boat in an attempt to reach the United States. In large part, they are fleeing terrible economic conditions which have been worsened by the Clinton administration's tightened economic embargo. The stated purpose of the administration is to tighten the embargo, cause Haitians to flee their country, arrest them on the high seas and transmit them to detention camps at Guantanamo Bay, Cuba. This does not constitute the kind of national interest necessary to justify the use of military force.

After many weeks of bluster, the Clinton administration claims that the United States would lose its credibility if it did not follow through with an invasion of Haiti. But loss of credibility is the fault of the administration's incompetence in the first place. The loud speaking diplomacy of President Clinton should not propel the United States toward the inexorable use of our military.

The best policy for our country to follow would be to abandon the planned invasion, lift the embargo—which is hurting poor Haitians and sending them to their boats—and terminate recognition of Cedras's regime.

I have often spoken and written of the importance of establishing a bipartisan foreign policy. In dealing with the world, Americans should speak with one voice. Members of Congress of both parties should be quick to support Presidents in the conduct of foreign policy and reluctant to substitute our own views for those of the executive branch.

However, the ground beneath a bipartisan foreign policy is undercut when the basis for proposed action is the political needs of a President in an election year rather than the requirements of the country as a whole.

When the invasion occurs, there will be predictable efforts to appeal to the pride of Americans in a successful mission by our military. Yet there would be little source of pride when the strongest country in the world invades one of the weakest. And any short-term pride, however, misplaced, will soon be supplanted by what will become America's long-term stake in the internal affairs of Haiti and in the conduct of the Aristide regime.

Finally, and most importantly, an invasion of Haiti without a declaration of war by Congress violates Congress's responsibility in declaring war. There is no possible basis for argument that the use of military force against Haiti is simply a police action, for it is not. This is not a matter of saving American lives that are endangered, as was the case in Grenada, or bringing to justice a person perpetrating crimes against America as was the case in Panama. This is the use of military force for the purpose of intervening in the internal affairs of another country. It will not be a police action, it will be a war. It will be a war which cannot be justified by any standard of national interest and which will be clear violation of the constitutional powers of Congress.

The PRESIDING OFFICER. Who seeks recognition?

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. I yield myself 30 minutes.

The PRESIDING OFFICER. The Senator from Maine is recognized for 30 minutes.

Mr. COHEN. Mr. President, just a short time ago, the Senator from Connecticut [Mr. DODD]—I believe I am correctly quoting him—indicated the President, and he alone, has a very heavy burden. I would like to respectfully submit that I object to the notion that the President alone carries a heavy burden. That really is at the heart of the debate that is taking place this afternoon and, I am sure, will continue in the days ahead. Congress also has a heavy burden to bear, and what we are suggesting is that Congress is not either being asked or required to bear that heavy burden of responsibility.

Mr. President, when our parents and we as parents send off our sons and daughters to the military, we expect a number of things. We expect them to be well trained. We expect them to be well disciplined. We expect them to be well led. We expect them to be well cared for. We expect that they will be used prudently and wisely, with careful consideration given before they are ever sent off to face the dangers of war.

I will recall during the debate on the Persian Gulf war a really poignant moment in my office. I was absolutely deluged with thousands of letters and thousands of phone calls and people coming into my office demanding that they have an opportunity to speak to me before I voted on whether to send their sons or daughters off to war. I will never forget a session where a delegation from Mothers Against War met with me in my office for some time. It was very emotional. And they said:

> You cannot send our sons and daughters off to fight this war. It is not in our national security interests. You, Senator Cohen, will have the blood of our sons on your hands if you vote in this fashion.

So it was a pretty heavy responsibility we had at that time. Some of us voted to authorize the President to go to war and some voted against it.

Mr. President, as the United States military forces poise themselves to invade Haiti, it seems to me there are two questions facing the Congress and the President. One is whether military intervention in Haiti would be a wise policy, and the second is the constitutional issue of who answers the first question. Who determines whether it is wise or not. Perhaps President Clinton could persuade me and Congress and the American people that his plan to intervene is wise. Perhaps he will be as persuasive as the Senator from Connecticut is passionate. But he has not yet persuaded us. Indeed, I do not think he has even seriously attempted to persuade us, to make his case. Apparently, he intends to do so tomorrow evening. But it appears also that he does not intend to attempt to persuade us out of fear that he might fail and then be faced with launching an invasion against the expressed will of Congress. Given the most recent polls showing—I think the Senator from Connecticut indicated—some three-fourths of the American people are opposed to military intervention into Haiti, it is clear the President will have a very heavy burden to bear if he is going to persuade the American people and Congress that there should be an invasion.

There are only two ways for the President to respond to the gulf between his plans and congressional and public opinion. He can either engage Congress, and thus indirectly the public, in a meaningful dialog followed by a vote. Or he can roll the dice, proceed with military intervention without congressional authorization and hope that it is successful enough that the public and congressional critics will then lend their support.

The President, it seems to me, is pursuing the latter option. I think it is regrettable because in my opinion it is both politically unwise and inconsistent with the requirements of the Constitution. It is unwise because the President will have assumed complete responsibility for the outcome. If the operation is successful, then he will receive the credit whether the Congress gave its approval or not. But if it is unsuccessful, if things go awry, if U.S. forces get bogged down in a long-term engagement in Haiti, the President will not have had the benefit of sharing the burden of responsibility with a Congress that had voted its prior approval of the operation. Instead, Members of Congress, including those of his own party I might add, will quickly turn on him. They will recount the many analyses that have been done that warned an invasion will make a very bad situation worse, and bemoan the administration's naivete, perhaps even its arrogance.

Such second guessing would not be possible for Members of Congress who, forced to vote, had cast their lot with the President.

Beside being bad politics, invading without congressional authorization is

also contrary to the Constitution. While the President is the Commander in Chief of the Armed Forces, the Constitution reserves unto Congress the power to declare war.

I wanted to take the floor this afternoon to make these points because I made the same arguments to President Bush when he was contemplating the very initial stages of conducting warfare in the Persian Gulf, Operation Desert Storm. I, along with a number of my colleagues, went to the White House on several occasions with many Members, and I stood up and expressed my opinion. I said:

Mr. President, you must come to Congress to get authority. If you disagree that the Constitution requires you to do so, set that aside for a moment. I think it is clear that the Constitution requires you to, but set that aside. If you do not have us on record before the bullets start flying, the blood starts flowing, the bodies start dropping, and the body bags come home and are received at Andrews or Dover, if you do not have us on record before that happens, then surely you can count on one thing: We will be in full flight chasing public opinion which will be racing in the complete opposite direction of your policy. You must put us on record. You must have us as your advocates. You must force us to share the responsibility. Otherwise, you are out there all alone with little support, and we guarantee you even that support will evaporate if things go awry.

Mr. President, at that time there were some very important Members of Congress in the Senate and in the House who stated that President Bush had an absolute obligation to come before the Senate and the House. My colleague from Maine, my good friend, the majority leader, said the following:

Mr. President, for two centuries Americans have debated the relative powers of the President and Congress. Often this has been an abstract argument. But today the debate is real.

The men who wrote the Constitution had as a central purpose the prevention of tyranny in America. They had lived under a British king. They did not want there ever to be an American king. They were brilliantly successful. In our history there have been 41 Presidents and no kings.

Well, now there are 42 Presidents, and hopefully no kings. My colleague from Maine said:

President Bush was not required to seek the approval of Congress to order (the deployment of forces to the Persian Gulf area), and he did not do so. But if he now decides to use those forces in what would plainly be war, he is legally obligated to seek the prior approval of Congress.

I think Senator MITCHELL was absolutely correct at that time. The same arguments obtain to President Clinton.

Senator BIDEN is also someone I have a great deal of confidence in as a leading voice on the Foreign Relations Committee, as well as chairman of the Judiciary Committee. He said the following:

Yet President Bush has claimed that his power as Commander in Chief gives him the authority, acting alone, to start a war. His Secretary of Defense has said, "We do not believe the President requires any additional authorization from the Congress for committing U.S. forces to achieve our objective in the gulf." His Secretary of State has said, "The President has the right, as a matter of practice and principle, to initiate military action." To put it simply, these views are at odds with the Constitution. They may accurately describe the power of leaders of other countries, but they do not describe the power of the President of the United States.

Senator BIDEN went on to say:

Finally, we have been told that the congressional debate on war could tie the President's hands or limit his discretion. To this charge, I have one simple response—exactly right. Americans once lived under a system where one man had unfettered choice to decide by himself whether we could go to war or not go to war, and we launched a revolution to free ourselves from the tyranny of such a system.

Senator KENNEDY also spoke passionately and vigorously on the Persian Gulf war. He said:

What is clear is that President Bush has not the right to go to war on his own. Article II of the Constitution makes the President the Commander in Chief of the Armed Forces, but Article I gives Congress, and only Congress, the power to declare war.

During that debate, Senator KENNEDY offered a letter that was signed by 241 of the Nation's most distinguished law professors. And, in sum, they said, "The Constitution thus requires the President meaningfully to consult with Congress and receive its affirmative authorization before engaging in acts of war."

I could at some length quote other more extensive statements by these individuals and many of our colleagues. But I think it is unnecessary to do so at this time.

Some are going to argue that the impending invasion of Haiti is something other than war and therefore this provision of the Constitution really does not apply. Our Ambassador to the United Nations argues that this would be a "police action," not a war. I wonder whether those young men who are now poised to go into Haiti think that is simply a police action with two aircraft carriers sailing off the coast.

Officials of the Justice Department argue that it would not be "a major military action," and therefore Congress has no right or duty to demand a say. That is our Justice Department. It is not a major military act of war, only a minor one, therefore Congress has no role.

Mr. President, this really raises the question of who is to determine whether a premeditated offensive military intervention is a war or something else—a war, police action, conflict? The clear implication of Ambassador Albright's and the Justice Department's argument is that only the President can make such a determination; only the President can decide what is a war, what is a conflict, what is a police action, or what is a minor war.

Well, that is an interesting argument. I would refer my colleagues to the U.S. District Court for the District of Columbia's 1990 decision, Dellums versus Bush, a lawsuit filed by our House colleagues. I believe there were some 53 of them who joined in that particular court action. But let me just repeat a part of what the court had to say:

If the Executive had the sole power to determine that any particular offensive military operation, no matter how vast, does not constitute warmaking but only an offensive military attack, the Congressional power to declare war will be at the mercy of a semantic decision by the Executive. Such an "interpretation" would evade the plain language of the Constitution, and it cannot stand.

So no matter what euphemisms are employed, the simple fact is that we are about to wage war. We are about to engage in an act of war.

The Senator from Connecticut has made a passionate plea that it is justified under concerns about the rape, pillage, torture, and the horrendous abuses of human rights not too far from our shores, and that is one argument to be made. But I do not think it is a controlling one, because if you apply that logic, we can apply it also to Cuba, where we also have outrageous abuses of human rights and torture, a country also flooding our shores with people trying to flee that dictatorship.

We are also going to hear from the Justice Department and others the argument that this is no different than interventions in Grenada or Panama, which were not authorized in advance by Congress. And the implication is that if you ignore the Constitution on one occasion, or two, that gives you license to ignore it on each and every following occasion.

I think we can draw some distinctions between the case of Haiti and that of Panama and Grenada. There was a sense of urgency, an emergency, certainly, with respect to Grenada, prompted by the killing of Maurice Bishop and the resulting unstable situation. I think prompt action was required, and obtaining congressional authorization would have been impractical under those situations, especially without raising the already high risk to the Americans who were in Grenada. In contrast, the Clinton administration has been publicly threatening to invade Haiti for months. There is no great urgency that would preclude a congressional debate and a congressional vote.

In both Grenada and Panama, the primary objective was to protect the American citizens in those countries. In Grenada, the Americans were believed to be endangered by an unstable situation, while in Panama, Americans were already the target of assault and murder. In contrast, the executive branch's own assessments do not indicate any untoward threats to American

citizens. The greater danger to Americans in Haiti may be in the form of an American invasion in Haiti.

The United States also had some strong national security interests that justified our military intervention there, quite unlike the case of Haiti. I think having such strong interests does not waive the requirement for congressional approval for military intervention, but it helps to explain better the context and the rationale behind President Bush's decision.

Finally, Grenada and Panama were quick operations, which few analysts believe will be the case in Haiti. The fighting in Grenada lasted only about 8 days, and all of the troops were withdrawn after 7 weeks. The fighting in Panama lasted about 4 days, with all of the forces withdrawn after 8 weeks. In contrast, most analysts estimate that after a few days of fighting to overcome whatever organized resistance there might be in Haiti, the United States troops would be required to remain for well over a year, possibly as long as a decade.

Based on these factors, the invasion of Haiti more closely resembles the gulf war against Iraq than the invasions of Grenada and Panama. It is not an emergency. It is being pursued for foreign policy objectives, not to rescue Americans whose lives are in danger. After a quick period of hostilities, there will be a years-long deployment in order to maintain order and support for the local people we might favor. Like in the war against Iraq, congressional authorization is clearly required.

None of the credible or even usual arguments for unilateral Presidential employment of military force exists in the case of Haiti—not one. It is not an emergency. It is being pursued for foreign policy objectives, not to rescue Americans. And we can expect a short period of hostilities followed by a long commitment on our part. It requires congressional authorization.

Another argument we hear is that the United Nations has given its approval to an invasion, so congressional authorization is not required. I saw that in today's Washington Post by one of the leading political scientists/constitutional authorities. Well, the Senate has rendered its view on that question. Last month, by a vote of 100 to 0, the Senate categorically rejected the notion that the United Nations resolution satisfies the requirements of the Constitution or the War Powers Act. So I hope we will not hear any of that argument made in this Chamber, that now that the United Nations has acted, Congress no longer is required to act.

I want to bring to my colleagues' attention an article by the syndicated columnist, Samuel Francis in which he asks:

> What is wrong with the following sentence: "The Security Council authorized the United States today to lead a multinational invasion to drive out the military rulers of Haiti and restore exiled President Jean-Bertrand Aristide to power"?

Then he goes on to answer his own question:

> If you don't know what's wrong with that, the lead sentence of the Washington Post's lead story (on August 1), maybe another sentence will give you a clue: "The Congress shall have power * * * to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water * * *."
>
> Sentence number two, as it happens, comes not from the Washington Post morning edition, but out of something the people once thought was a rather more enduring document—the Constitution of the United States. And now, thanks in part to the Clinton administration, we know it was not so enduring after all.
>
> Of all the powers that characterize the sovereignty of a nation, the power to make war is the most basic.

Let me paraphrase the remainder because some of this is acerbic: But those in the administration seem to have spent much of their weekend making certain it was the United Nations and not the U.S. Congress that exercised this power.

Mr. President, the reason the Framers put the power to decide whether to go to war in the hands of Congress was to ensure that one person could not put American lives and treasure at risk for spurious reasons. The case of Haiti, in my judgment, highlights the wisdom of the Constitution's allocation of power.

The administration's argument for intervening, when you strip off all the varnish, comes down to this: Our credibility is now on the line. Our credibility is on the line. There are abuses taking place down there that is a subversion of democracy. They are close to our shores, and our credibility is now on the line. We have been beating the drum so loudly, if we do not act now, nobody will ever take us seriously.

That seems to be the driving force behind this impetus now to go to war. There is something to be said for the argument about taking us seriously, that credibility is something that we should treasure. Unfortunately, the administration has painted itself into a corner by its own action. Let me respectfully suggest that the administration's credibility will be little enhanced by sending the most powerful military in the world to invade the most impoverished country in the Western Hemisphere.

In my view, if the administration feels the need to demonstrate its credibility and its willingness to use force, perhaps it should do so in a venue in which American national interests are genuinely at stake, such as in North Korea. There we have real national security interests.

Putting the Congress at the center of the decision to go to war was intended precisely to ensure that we would go to war only when the representatives of the people were persuaded that our interests justified the costs and the chances of success were sufficient to justify the risks. That is what Senator BIDEN was saying during the debate before the Persian Gulf war, and he was right. We do not want this President, or any other President, to have a totally free hand to send our sons and daughters into war without consultations and without authorization. On an emergency, yes; to protect American lives, on an emergency basis, yes. To rescue another country's democratically elected president—not without authorization from us.

Mr. President, the events of the past year have demonstrated the practical wisdom of not leaving such assessments to the President and his advisers. It was just 11 months ago that President Clinton ordered the U.S.S. *Harlan County* to set sail toward Haiti with 200 lightly armed troops. And he did so even though the Departments of Defense and State could not agree on the mission they would perform or how they would respond to resistance. He did so even though the intelligence community warned that there would be resistance. The President's principal adviser on Haiti at that time dismissed the concerns expressed by Members of Congress by declaring:

> Suddenly Chicken Little says the sky is falling, but there is no problem of major proportion. Somebody's making it sound very dramatic. These are all minor issues. We're moving on course.

Mr. President, indeed, they moved on course until the *Harlan County* reached the docks of Port-au-Prince and found a rock-throwing rabble on the docks, and the President of the United States ordered our troops to turn around and return to the United States.

Now, as we approach the first anniversary of this event, the President once again is about to order troops to go to Haiti.

The administration seems to be saying that if the Congress would only remain silent and play along, the military leadership in Haiti will be intimidated enough to flee on its own and our invasion force will face no opposition.

Mr. President, that may be one of the calculations involved. The calculation may be that the administration decided that if they put two aircraft carriers off the coast of Haiti, threaten to put in 20,000 or 25,000 troops, heavily armed tanks, sophisticated weaponry, those thugs who now govern and control that small, tortured country will simply take flight.

I hope that is the case. I hope that is the case. But if that is part of the game plan, it has never been conveyed to us. To my knowledge, there has been no consultation of what the administration intends, not even with a select group of leaders. I am not even suggesting that they have to talk to the entire Congress. But to my knowledge,

genuine consultations have been held with not even the Big Eight, not the Senate majority and minority leaders, not the House leaders, not the Foreign Relations and Foreign Affairs Committee leaders, not the Armed Services Committees leaders, not the Intelligence Committee leaders.

To my knowledge, there has been no such consultation, no conveyance of what are the original intent or plans or options they might have in mind.

Mr. President, a decade ago, Secretary of Defense Caspar Weinberger set forth a list of criteria to help us decide when military force can be used effectively and when it cannot. In his speech, he said:

> Some theorists argue that military force can be brought to bear at any crisis. Some of these proponents of force are eager to advocate its use in even limited amounts simply because they believe if there are American forces of any size present they will somehow solve the problem.

Somehow, U.S. military forces will "restore democracy" to a country that, while it has had a free election, has never known democracy.

I doubt it, Mr. President, I seriously doubt it.

Mr. President, I inquire how much time I have remaining.

The PRESIDING OFFICER. The Senator from Maine has 5 minutes remaining.

Mr. COHEN. Mr. President, last year, Air Force magazine warned about the administration's attitude toward the use of military force—and I am quoting:

> These people are not dealing in abstract concepts. They are tinkering with deadly force. If their notions become policy, we may learn all over again that it is much easier to get into a fight than it is to get out of one.

I think it is worth remembering that we slid into the Vietnam quagmire not because of a lack of intelligence but an excess of arrogance—arrogance regarding America's ability to impose its will, even where our interests were limited; and arrogance regarding the Executive's primacy over the Congress.

Arrogance and power is a dangerous brew. We must resist the temptation to drink this hemlock masquerading as the nectar of the gods.

Mr. President, let me associate myself with something that the Senator from Connecticut has said. I agree with him completely that suggestions that President Clinton has some ulterior motive, that somehow he is seeking to gain a bounce in popularity, is cynical beyond words. I do not think it is true.

I think the President of the United States is convinced that he has to go to war to restore democracy in Haiti. He believes it is in our national security interests to do so.

I disagree with that assessment, but I believe he is sincere in that conviction of his own.

But what I am respectfully suggesting is whether one challenges the motives of the President, which I think is uncalled for, whether one is convinced he is acting out of the most sincere motivations, ultimately the debate that has to take place must occur right in this Chamber and in the House of Representatives.

This President, I believe, will make a mistake in going forward without our expressed endorsement. As I indicated before, he may get a temporary success out of this invasion. We, I think, could be expected to overcome any significant force within a matter of a few days at most. But that is only the beginning of the problem.

Then it is maintaining order until stability is restored. Then it is maintaining a presence until the institutions of democracy are built and sustained. Then it is part of another peacekeeping operation for months and perhaps longer, maybe years.

Mr. President, this President and no President can engage our forces for that kind of a long-term commitment without us playing a coequal role.

That is the key part of this debate. We can differ as the Senator from Connecticut and I may differ on the wisdom of it. But, nonetheless, the only recourse that the President should have in this circumstance is to turn to us.

If we reject the President, so be it. We have expressed the will of the American people not to put our sons' and daughters' lives on the line, put them in jeopardy, however few they may be.

But you can also anticipate that any kind of a military operation is going to involve risk, that some people will die, some people will die. We ordinarily would then be called upon to justify to their parents why it was important, why it was imperative that we spilled their sons' and daughters' blood in order to save the lives and a standard of well-being for another nation.

That burden the President has to carry, not just over a public address over television one night, he has the burden to come here and persuade us. I believe if he can make the case, he may be able to change people's minds on this matter.

Perhaps he will be able to be as persuasive as the Senator from Connecticut has been passionate. But if he cannot persuade us, then there is no reason he should go in. And if he ignores what we are saying and suffers a great foreign policy misadventure, I believe it will inflict mortal damage to his Presidency. That is something I do not want to see. I do not want to see the President embarrassed by a resolution. I do not want to see him embarrassed by a failure, and I do not want to see his Presidency undermined by his going forward without congressional approval and then facing the consequences standing by himself.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Connecticut.

Mr. DODD. Mr. President, we have no one prepared to speak at this point on this side. I will be glad to yield from the other side's time a half hour, or whatever time the Senator from Indiana wishes.

The PRESIDING OFFICER. What amount of time does the Senator from Indiana seek?

Mr. COATS. Mr. President, I would like to yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 15 minutes.

Mr. COATS. Mr. President, I sat through what I thought was the unfortunate procedural debate that took place just a couple hours ago in this Chamber.

It is clear that there are a number of us who believe the press reports and the administration's own comments that an invasion of Haiti is imminent. Spokesmen for the administration have said that there are no other options, all other recourses to solve the problem in Haiti, all those recourses have been tried and failed, and, therefore, the only option left is an invasion.

Many of us do not accept that argument, do not believe that argument, do not think that is true. And we have been pressing for a debate on the issue with an expression of the Senate's will before such an invasion takes place.

This is, in a last desperate hope of sending a signal to the President and to the administration that they are following a misguided and wrong course of action, an attempt to send a signal that the Senate, in a bipartisan way, does not believe that an invasion should take place, in hopes that the administration would change its mind, would step back and try to come to a different conclusion, and would perhaps be willing to once again examine some other options.

The reason we are concerned about an invasion is that we do not believe a case has been made to the American people nor a case made to their elected representatives, either the U.S. Senate or the House of Representatives, by the President or this administration, for an invasion, an imposition of a so-called democratic regime under Mr. Aristide; an imposition that can only be made by force—gunboat liberalism, in a sense, of building a new democracy where no democracy exists or has existed for a long, long time.

It is clear that the leadership was not anxious to move to a vote on this matter, probably because they did not have the votes to prevail and it would be difficult for the administration to accept, perhaps at a time when the invasion is imminent; an expression of disapproval, not only from Republicans in the Senate but probably from a number of Democrats, judging from statements

that have been made on this floor in just the last few days and other statements that have been made public by a number of Democrats and Democrat leaders.

Senator MCCAIN has all week been looking for an opportunity to offer an amendment or a sense-of-the-Senate resolution or some vehicle by which this Senate could express its will on this matter, for several reasons.

One, because we have a constitutional obligation to advise the President of the United States, provide consent to his actions, because we believe the Constitution requires a congressional authorization before the United States sends its young men and women into war. We understand that there is a decades-long dispute over whether or not the President has authority to do this as Commander in Chief without the consent of or the authorization of the Congress. Constitutional scholars have argued this for some time. Clearly, in cases of emergency; clearly, in cases where the national security of the United States is in peril and time does not warrant or allow for congressional deliberation and debate; clearly, in situations like that, the President, as Commander in Chief, has not only the right but the obligation to commit U.S. forces.

But that is clearly not the case in the situation that we face today. We have been discussing this for months. The administration has been engaged in a public relations campaign to lay the groundwork for an invasion. We read about it in the papers every day and watch it on television, and we have been talking about it now for weeks. We watch as the forces are being assembled and the ships sailing.

So there was plenty of time to consult with the Congress, had the administration wanted to consult with the Congress. It clearly does not want to consult with the Congress. And they do not want to consult with the Congress because they are certain that Congress is not going to accept their position on this issue, and they do not want an embarrassing defeat.

They have had time to consult with the United Nations. They have had time to consult with the leaders of the countries that some Americans have never even heard of that are now joining us, or supposedly joining us, in this effort with this invasion. But they have not had time to consult with the Congress.

I serve on the Armed Services Committee. We have not been briefed by any member of this administration on what the plans are or justification for this invasion. My understanding is that, just yesterday, the chairman and ranking member met with the Secretary of Defense. I do not know what was discussed. I do not know if you could classify that as consultation or not. But it is, I believe, an objective, fair statement to say that most Members of the U.S. Senate have not been consulted at all.

With the actions taken by the Senate leadership and Senator MITCHELL today, a vote on this matter has been precluded until, at earliest, next week. If an invasion takes place before that time, the administration will then have acted without congressional authorization. And perhaps that is the intent. I do not know when the invasion is supposed to occur.

But it is clear that the administration and the Democrat leadership in this Senate did not want a debate and vote on this matter this week. They did not want that to precede the President addressing the Nation tomorrow, and perhaps an invasion shortly thereafter.

Procedurally, they have placed us in a position where we will not have that vote. We are able to debate it here to an empty Chamber, virtually, at a time when the Senate will be shortly in adjournment, with no opportunity tomorrow or Friday to come back and seek a vote on this matter.

And so Senator MCCAIN has been procedurally boxed out. He saw an opportunity, he seized the opportunity, and we thought for a moment there might be an opportunity for the Senate to express its will and the will of the people, as we represent those people and best understand what their wishes are.

The polls show 73 percent oppose this invasion. I think it is much higher than that. The expressions that I have received from the people I represent in Indiana certainly are higher than 73 percent. I cannot find the 27 percent that support an invasion of Haiti.

So the case has not been made. And we know from history, we know from experience, that unless the American people support an action involving sending our young men and women into combat and putting their lives at risk, that that is ultimately not going to succeed.

The President, for, I believe, constitutional reasons, but also for policy reasons and political reasons, ought to be seeking the support of the American people and the Congress first before he reaches a conclusion on whether or not to invade Haiti. Or he at least ought to make a strong case. And that has not been done, either.

It is only in just the last few days that any attempt at defining a justification for an invasion of Haiti has been made.

Today's New York Times, September 14, has this headline: "Democrats Hope to Avoid an Embarrassing Vote on Haiti."

A spokesman for the Democrat leadership said a vote in the House probably could not be escaped early next week. What the White House and Democratic leaders want to avoid is a clear vote on whether to authorize the President to order an invasion. As matters stand now, Mr. Clinton would lose such a vote by a wide margin.

That is a report from the New York Times.

So it is no secret as to why the majority leader went to such extraordinary lengths to preclude the Senate from coming to a vote. They did not want to lose that vote and now procedurally we are precluded from coming to that vote.

Mr. President, I have a friend I have known for a long time. Obviously, you do not base conclusions on foreign policy on the basis of one individual's opinions. But this is a friend who has lived in Haiti for 35 years. He is not a businessman. And, as he states in his letter, he has nothing to gain financially either way on this decision by the United States.

But I would like to quote from a letter he wrote me recently, because I think he makes the case as to why an invasion is not in the best interests of the United States and why it is a false conclusion to authorize an invasion.

He writes:

DEAR DAN: Thank you for lending your support to a non-invasion of Haiti. I recall you speaking on the floor and saying, "why are we doing this?" Indeed, why? I believe that question is at the core of everything. No one seems to know the justifiable cause behind the invasion rhetoric. I am very much aware of the surface reasons as supplied by the White House, Aristide's lawyers and lobbyists, Madeleine Albright, liberal senators and the media. But they all wither away under close scrutiny as having no substance.

The emerging middle class, once identified by small industrial ventures, and providing jobs for tens of thousands, is finished. This was to have been the foundation upon which democracy would be built in time, as a process, not legislated by Washington, the lobbyists and the international community. These were young Haitian businessmen, Haiti's new blood, the majority of whom studied in the States and returned with democratic ideals. Their dreams were shattered when Aristide exercised his dictatorial powers and promoted a non-democratic environment. Knowing Aristide's intentions was one thing. Clinton pursuing and supporting this same policy and insisting on a return to "democratic" rule is quite another thing.

He goes on to say that—it is not ironic that someone who knows Haiti far better than I concludes that it was Mr. Aristide's policies that denied and suppressed the democratic movement in Haiti and now we are attempting through force to insert Mr. Aristide back into power, the very person who by many Haitians is perceived to be the one who is denying the democratic process.

My friend goes on to say:

These young businessmen, many of whom are my friends, are the first ones to say there was no democracy under Aristide. They don't blame the military, General Cédras in particular, for the present chaotic situation, they rightfully put the blame at the feet of President Clinton and Aristide.

An invasion of Haiti by Clinton led forces would be a disaster. Haiti, a peaceful country, is at war with no one. There is no civil war. Haiti is not a threat to this hemisphere in general, and to the United States in particular. The U.S. interests in Haiti are the

refugees. The solution is quite simple. The embargo and sanctions must be lifted. Air travel must be restored. People are not fleeing military and political repression, rape and violations of human rights. They are fleeing a devastating economic situation created by the embargo. It's a self-perpetuating thing. Clinton's policy is fomenting the very thing he wants to avoid.

An invasion is no substitute for a policy that's broken or as a face saving measure. Thanks for listening.

I doubt that 1 American in 100 if not 1 in 1,000 can explain what the justification is for an invasion of Haiti. Mr. Aristide is not the kind of individual the United States should be putting its credibility behind and installing by force into a nation which does not want him back and which does not believe he can lead that country to democracy. We are committing 20,000 or more young American men and women in uniform. We are putting them at risk of life and limb. And we are doing so for at most a dubious purpose.

Those of us who were here during the Persian Gulf war participated in the process of understanding the basis and justification for U.S. use of force in the Persian Gulf. That was authorized by this Congress; it was to the President's benefit to have that authorization. This has not been authorized by the Congress nor understood by the American people. And I think it is a tragic mistake that the President is about to embark on.

The PRESIDING OFFICER (Mr. PRYOR). The Senator has yielded himself 15 minutes. Does he yield himself further time?

Mr. COATS. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, it is my understanding I was next on our side.

The PRESIDING OFFICER. The Chair would advise the Senator from Oklahoma that the agreement is to alternate from side to side. But the Chair notes there is no Democrat seeking recognition and it has been the procedure this afternoon that, if one side does not have somebody seeking recognition, the other side just takes another turn. How much time did the Senator from Oklahoma wish to yield himself?

Mr. NICKLES. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator is recognized for 15 minutes.

Mr. NICKLES. Mr. President, I wish to thank the Senator from Indiana for an outstanding speech. I hope my colleagues, and I hope the American people, had a chance to listen to it. I also wish to compliment our colleague, Senator MCCAIN, from Arizona, for his sense-of-the-Senate resolution and for his ability to get it at least entered into the debate.

I noted earlier in the debate today that Senator MITCHELL said this could have been offered earlier. Frankly, the bill that we had before us earlier was the Department of Defense conference report, which was not amendable; it could not have been amended. So I just mention that.

Many of us have stated time and time again we wanted to debate this issue. It has been reported—I know Senator MITCHELL mentioned, we voted on seven resolutions dealing with Haiti. I would call those to the attention of this body. Four of those resolutions passed overwhelmingly. All of those were sense-of-the-Senate or sense-of-the-Congress resolutions basically telling the President of the United States, "Do not invade Haiti." Granted they had some caveats and they had some exceptions. I know this one which Senator MITCHELL has introduced as a second-degree amendment to Senator MCCAIN's amendment gives the President an out. He said it is a sense of the Senate that limitation in this amendment should not apply if the President reports in advance to Congress that the intended deployment of United States forces into Haiti is justified by United States national security interests.

Evidently, this President feels that he can define that very broadly. As a matter of fact, in a news conference with the Indian Prime Minister on May 19, he gave six instances where our national interests are involved—six justifications for invasion of Haiti; five are: Haiti is in our backyard, the United States has a million Haitian Americans, there are several thousand Americans in Haiti, drugs are coming through Haiti to the United States, and the United States faces continuous possibility of a massive flow of Haitian migrants to the United States.

Mr. President, all five of those are not justifications. Not one of those is justification to risk thousands and thousands of American lives on invading Haiti—not one. You can go through the list:

It is in our backyard. There are other countries in our backyard. That does not mean it poses a national security threat to the United States.

The United States has a million Haitian Americans. Well, we have millions of Mexican-Americans. There is no reason or justification of an invasion for that reason.

Several thousand Americans are in Haiti. Their lives are not in jeopardy. This invasion or potential invasion jeopardizes their lives. Certainly, the administration's action jeopardizes their lives more than anything from the past.

Drugs are coming through Haiti to the United States. It just so happens that happens in Bermuda, it happens in the Bahamas, it happens in Mexico. Are we going to invade those countries as well? Actually, I think the amount of drugs coming through Haiti is less than from most of those countries. Again, this is no justification whatsoever for invading.

The United States faces the possibility of a massive flow of Haitian migrants to the United States—only because of this administration's policies where they have been clamping down the economic vice that is really not hurting the military in Haiti. It is hurting the Haitian people.

And then this administration's vacillating policy of how they will handle the migrants. Are we going to accept them in? Are we going to handle their cases on ships? Are we going to allow them to stay in the country? Are we going to return them? Where is the safe harbor going to be? The administration's statements during the campaign; their change of those statements and change in policy because Randall Robinson went on a hunger strike—all of this vacillation has greatly increased the desire of a lot of people in Haiti to come to the United States. But those are by the administration's own actions and none of which would justify military invasion of Haiti.

The real point is, I hear time and time again, the sixth justification is we want to restore democracy to Haiti. I just will read a comment from a Wall Street Journal article dated June 16, entitled "From Port-au-Prince to Gucci Gulch." I will just read the first couple of paragraphs of this article by Christopher Caldwell.

President Clinton appears to be seriously considering using U.S. troops to return exiled Haitian President Jean-Bertrand Aristide to power. Taken on their face, the stated reasons for his pro-Aristide policy—stemming the flow of refugees and drugs and improving human rights—are absurd. The refugee flow is due to U.S. economic sanctions; Haiti's role in drug shipments is dwarfed by its neighbors; and Mr. Aristide flagrantly violated human rights during his brief reign.

The administration policy amounts to blind subservience to Mr. Aristide's agenda. It's a warning of what can happen when virtually the entire budget of a sovereign nation is funneled into a massive Washington lobbying and public relations campaign.

Mr. President, I ask unanimous consent this entire article be printed in the RECORD.

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

[From the Wall Street Journal, June 16, 1994]

FROM PORT-AU-PRINCE TO GUCCI GULCH

(By Christopher Caldwell)

President Clinton appears to be seriously considering using U.S. troops to return exiled Haitian President Jean-Bertrand Aristide to power. Taken on their face, the stated reasons for his pro-Aristide policy—stemming the flow of refugees and drugs and improving human rights—are absurd. The refugee flow is due to U.S. economic sanctions; Haiti's role in drug shipments is dwarfed by its neighbors; and Mr. Aristide flagrantly violated human rights during his brief reign.

The administration policy amounts to blind subservience to Mr. Aristide's agenda. It's a warning of what can happen when virtually the entire budget of a sovereign nation is funneled into a massive Washington lobbying and public relations campaign.

After the September 1991 coup that ousted Mr. Aristide, President Bush issued an executive order that Haitian government funds frozen in the U.S. be delivered to Mr. Aristide. While the U.S. Treasury and State Departments have imposed no oversight requirements, the rough amounts of the money Mr. Aristide can tap are known. According to State and Treasury sources, the funds contain upwards of $50 million, and Mr. Aristide's forces have spent more than $30 million so far. Disbursals from the U.S. Treasury started at $500,000 a month and have risen steadily, to their current point of $5.6 million to $5.9 million per quarter.

What is happening to all that money is unclear: During the brief premiership of Robert Malval last autumn, the U.S.-based newspaper *Haiti Observateur* was leaked a copy of the Aristide government's fourth-quarter budget for 1993, which showed $740,000 per month budgeted for Mr. Malval's ministerial cabinet. The scrupulous Mr. Malval, who was a major Aristide supporter, claims he never received a penny. That $2.2 million has never been accounted for.

The democratically elected Haitian Chamber of Deputies in April asked Secretary of State Warren Christopher for a thorough accounting of Mr. Aristide's expenditures. The request has not even been acknowledged. While it's true that Mr. Aristide is spending Haitian, not U.S. funds, his finances should be of concern to U.S. taxpayers. The handover of Haitian assets to Mr. Aristide violates the Haitian constitution and possibly international law. "When this is all over," says one American consultant to Haitian interests, "the Haitians are going to sue us for the money Aristide has spent, and we're going to have to pay it all back."

Since his arrival in the U.S., Mr. Aristide has used those funds for a public relations blitz. Miami attorney Ira Kurzban gets a six-figure salary as Mr. Aristide's lawyer. Another lawyer, Haitian-American Mildred Trouillot, is paid $6,000 a month, plus rent, expenses and office space. Mr. Aristide also engaged the services of Rabinowitz, Boudin, Standard, Krinsky & Lieberman to defend him against a $10 million suit filed in Brooklyn by the widow of Roger Lafontant, a Haitian coup leader slain in prison in 1991, allegedly by Aristide supporters. The law firm was paid tens of thousands of dollars out of the Haitian treasury before the suit was finally thrown out.

Mr. Aristide's PR is coordinated by the firm of McKinney & McDowell, which charges $175-per-hour for its services. However, the Aristide budget printed by the Haiti Observateur has no money earmarked for public relations. That led the newspaper's editor, Raymond Joseph, to speculate that the Aristide government has been fabricating its outlays to dupe the U.S. into releasing frozen funds.

But Mr. Aristide's most effective representative in the U.S. has been former Rep. Michael Barnes (D., Md.). As chairman of a House Foreign Affairs subcommittee in the 1980s, Mr. Barnes was among the most outspoken leaders of the congressional effort to thwart supply of the Nicaraguan Contras. Today, Mr. Barnes is all for U.S. intervention—in Haiti.

Mr. Barnes has used his connections to give the Aristide government a beachhead inside U.S. foreign policy, and earn his current firm, Hogan & Hartson, compensation that started at $55,000 a month. (In March, perhaps reacting to the Aristide government's straitened circumstances, the firm cut its retainer in half.) Mr. Barnes has claimed to charge Mr. Aristide half his going rate, but that still adds up to big money: $303,237.60 for billings between Sept. 29 and Dec. 7, 1993, to take the last period for which records are available. (Mr. Barnes did not return repeated calls seeking comment.)

According to an Aristide source, when associates of the exiled president expressed unhappiness with Mr. Barnes' work in late 1992, Mr. Barnes was able to play his trump card—his access to the incoming administration. He had run the Clinton campaign in Maryland. What's more, deputy national security adviser Samuel R. "Sandy" Berger, who is in charge of Haiti policy at the National Security Council, is by all accounts a close friend of Mr. Barnes. Just four months after Mr. Berger left his partnership at Hogan & Hartson to take up his administration post, Mr. Barnes pulled up stakes at Arent, Fox, Kintner, Plotkin & Kahn and took his account to Hogan & Hartson. This potentially brings millions into a firm that Mr. Berger will have every right to rejoin after his White House stint.

Dealing with Haiti at all may have become a serious ethical violation on Mr. Berger's part. The issue was first broached by Rep. Frank Wolf (R., Va.), after an article in the National Journal raised questions about Mr Berger's negotiating most-favored-nation status for China after having lobbied for Payless Shoes, a major Chinese trading partner. Then-White House counsel Bernard Nussbaum found no conflict. Nonetheless, he said in a May 12, 1993, letter, Mr. Berger "has a 'covered relationship' with Hogan & Hartson for a year after severing his relationship with that firm, and [we] would be required to undertake the same inquiry if Hogan & Hartson represented a party in a particular matter."

Five days after the letter was written, Michael Barnes brought the Haiti account to Hogan & Hartson. Since Mr. Berger's "covered" status with Hogan & Hartson didn't expire until Jan. 19, 1994, an inquiry should have been opened into his Haiti role, and Mr. Berger should have recused himself from Haiti policy until his covered period expired. It is unlikely that any such inquiry was ever launched, for by Nov. 14, 1994, the Washington Post was describing Mr. Berger as the "principal driver of the U.S. policy of supporting Aristide's return."

According to Justice Department records, Hogan & Hartson had direct phone contact with Mr. Berger during this period to discuss the "restoration of democratically elected government in Haiti." (White House counsel Lloyd Cutler later wrote me that Mr. Berger did consult both the White House counsel and the NSC's legal adviser, and that both approved his participation.)

All of these questionable dealings should, at the very least, give Americans pause as President Clinton continues his campaign to return Mr. Aristide to power.

Mr. NICKLES. But, Mr. President, there are another couple of paragraphs that talk about a former Member of the House, Mr. Barnes, Michael Barnes, and his public relations firm Hogan & Hartson, was given compensation which started at $55,000 a month. They received over $303,000 for billings between September 29 and December 7, 1993.

Mr. President, that is hundreds of thousands of dollars of PR money that Mr. Aristide's group is paying for Mr. Barnes and, I guess, his access to this administration. And now this administration is taking the total case of restoring Mr. Aristide to power.

I think we have to look at why are we doing that, and why Mr. Aristide gets all this money from funds that were locked up for Haiti, how in the world can they afford to pay that kind of money, and then why would we be following that kind of agenda—and who is Mr. Aristide—for all the purported reasons that the President mentioned on May 19, our reasons for going into Haiti, none of which justify an invasion.

Our national security interests are not at stake, are not in jeopardy. Lives are not threatened. Yet we are going to be threatening the lives of countless U.S. soldiers, and I say U.S. soldiers. It is not a U.N. force, it is a U.S. force. Those are United States men and women who will be on the ships, who will be invading Haiti, who will be risking their lives. For what? To restore Mr. Aristide to power. Is he an Abraham Lincoln, a George Washington of Haiti? Is this the real democrat, the savior? I do not think so.

I am looking at a Washington Post article dated January 24, 1993. It says:

Haiti Suspect Savior: Why President Aristide's Return From Exile May Not Be Good News.

I do not think it is good news, but yet this administration has made their entire foreign policy on Haiti the restoration of Mr. Aristide as President of Haiti. We hear some people say, "Well, he was elected." Well, so was his predecessor. His predecessor, "Papa Doc" Duvalier, was elected; we did not have our foreign policy to keep him in power at all costs, but he was elected. Mr. Milosevic of Serbia was elected. He is a tyrant, but is it our foreign policy to put him back into power—he is already in power—but to keep him there? No, that should not be our policy. Hitler was elected. Mistakes happen in elections, and if you look at some of the statements Mr. Aristide has made, I think you would agree that maybe some mistakes were made there.

I do not find him as a true democrat in the legends of Washington or Lincoln or Jefferson. As a matter of fact, I see some of the statements that he has made, and it bothers me. I also note that when he was a priest, he was expelled from the order. He was expelled. He was defrocked because "He is protagonist of destabilization." That was back in December 1988. The church kicked him out. They did not want him as a church leader because he was a "protagonist of destabilization." I have that article, as well.

I want to allude to a couple of the statements made in this Washington Post article. I read the Washington

Post on occasion. I do not always agree with it. I notice they made some comments on Mr. Aristide. This is the individual we are going to be risking American lives to reinstate in power. But he is no real democrat, as I can see:

In speeches, Aristide called on his followers to attack freely anyone who dared disagree with him. This included even organizations such as the labor union CATH, which had supported Aristide's election but later criticized some of his actions.

Aristide actually urged his followers to engage in the hideous practice of "necklacing"—slapping a petrol-soaked tire around the neck of a political opponent and igniting it, thus burning the victim alive. On September 27, 1991, shortly before he was overthrown by the military, the former Haitian President—

Mr. Aristide.

told a mass rally that if they could see "a faker who pretends to be one of our supporters * * * just grab him. Make sure he gets what he deserves * * * with the tool you have now in your hands [the burning tire] * * *. You have the right tool in your hands * * * the right instrument * * *. What a beautiful tool we have. What a nice instrument. It is nice, it is chic, it is classy, elegant and snappy. It smells good, and wherever you go, you want to smell it.

Mr. President, this is a statement not made 10 years ago, this is a statement not made 20 years ago, this is a statement made in 1991, and we are talking about trying to reinstate this person as the President of Haiti?

I also happened to sit in on the classified briefing where many of us heard this. I am just reading from the Washington Post right now. I cannot believe that this administration would risk American lives to reinstate Mr. Aristide to power. I do not know why they would do it. But I think it is a serious mistake.

Congress has spoken seven times and, basically, has said, "Mr. President, don't do this." You can look at every one of these Senate resolutions. We had a few that said, "Mr. President, you can't do it; no funds would be allowed." It was law, and those were not passed because a lot of people do not want to tie the President's hands that tightly.

Every sense-of-the-Senate resolution that says, "Let's not invade until you get congressional authorization"—and, granted, some of them had caveats, unless it was an emergency or national security interest—those passed overwhelmingly. But the President has ignored those, totally ignored them.

So the Senator from Arizona comes up with a resolution that says, "Wait a minute. Let's not risk the lives of any American soldiers to reinstate Mr. Aristide." Senator MITCHELL offers a second-degree amendment, in other words, to wipe out the McCain amendment because he does not want us to vote on the McCain amendment, and for good reason, because if we have an up-or-down vote on the McCain amendment—and some of us are going to work very diligently to see that we do—but if we have an up-or-down vote on the McCain amendment, it is going to be adopted. It is going to be adopted. That is the reason we are not going to have a vote.

I know this holiday was scheduled, and I heard Senator MITCHELL say, "Well, this came up a couple of hours before." But it would not take our colleagues very long—the McCain resolution is one page—it would not take us long to determine how to vote on that. I certainly wish we would stay here, even on this religious holiday, and vote on Friday, if necessary, but I wish we would vote on it before we make this mistake.

I think we have to look at what we are doing. Let us say we reinstate Mr. Aristide. What is going to happen then? He has a lot of opponents. Not just the generals, but a lot of people have opposed him. In the past, when he was in power, he had a lot of his opponents locked up. Some were killed.

In the same article, I will just mention a couple more:

Aristide supporters may claim reliance on mob violence was needed to counteract the military, but Aristide's mob also killed other antimilitary politicians, such as Sylvio Claude, the founder of the Democratic Christian Haitian Party—a man who had been jailed and tortured by Duvalier but was a political opponent of Aristide. Although Claude sought shelter in a police station, he was turned over to the mob and burned to death.

The Catholic Church was a central target of Aristide's more violent supporters. Monsignor William Murphy wrote a graphic account of events in January 1991 when, according to Murphy, "* * * a group of thugs, supporters of newly elected President Aristide, went on a rampage. They destroyed the old cathedral, gutted the archbishop's house * * * and then went on to the nunciature, the home of the Pope's representative. There, they completely destroyed the building, attacked the nuncio and his priest-secretary, broke both legs of the priest and roughed up and stripped the nuncio * * * who was saved only by the intervention of a neighbor.

And I could go on. In the same article it says:

U.S. Government officials cite extensive evidence showing that Aristide personally gave the order to kill Roger Lafontant, the Duvalierist who was incarcerated in the National Penitentiary after his conviction for leading a coup attempt in January 1991.

* * * Lafontant was killed by his jailers on the night Aristide was overthrown.

Mr. President, this concerns me. How in the world could we risk U.S. lives to put Mr. Aristide back in power? This is his proven track record. And if we put him back in power, what is going to happen when we have these types of conflicts in the future? Are we going to have to maintain U.S. forces and police personnel to be in some type of a policing action for not only months but years? What are we going to do when the mobs reignite and start killing somebody? What are we going to do if somebody tries—we are going to be engaged in a policing action possibly for years and years.

How much will it cost? I have not heard anybody talk about the cost, but I happen to be concerned about that, too. I know the Senator from Arkansas hopefully is.

According to the New York Times, we already invested about $200 million in this operation to rescue Haitians fleeing the country by boat, and it is estimated we will spend another $400-some million if we invade. That is about $600-some million. So this is expensive.

Who is going to pay for that? Are we going to ask other Caribbean nations to pay for that? I doubt that.

Mr. President, I ask unanimous consent for an additional 5 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from Oklahoma is recognized for an additional 5 minutes.

Mr. NICKLES. Mr. President, I hope I have laid out a case that this is a serious, serious mistake. I do not believe that the reinstatement of Mr. Aristide into Haiti is worth the life of one —one—American soldier. Yet, this President is willing to risk the lives of a lot of American soldiers. And it seems to be a foregone conclusion, if you listen to statements now by the Secretary of State and by our U.N. representative, that this is going to happen. I heard my colleague from Maine, Senator COHEN, say he hopes maybe they will leave under this ominous force that is now presented before them. I hope and think that a rightful thinking person might do that.

But I hate to think that we might lose any lives to reinstate somebody like Mr. Aristide. I think that is a serious mistake. I do not want to see us obligated for years again with the risk of loss of life, with the tying up of military forces and personnel.

It is embarrassing to me to think that we have to do this, and then also find out we even have to call up reserves, or at least it was reported that reserves may be called up to help make this action happen. For the invasion of Haiti?

Mr. President, I have not even touched on the constitutional questions, but the Constitution clearly says Congress has the right and the power and the authority to declare war, not the President of the United States.

This is not a national security interest. This is not Panama, this is not Grenada, and this is not the Persian Gulf.

Frankly, this is clearly a war action, when you are talking about a couple of aircraft carriers, several combat ships, 20,000 troops, all the U.S. troops. This is not a multinational police-keeping force. This is the invasion of another country. This does require congressional authorization. The President does not have it.

Not to let us even have a vote on this resolution, and a real resolution that

says that we do not favor this action, I think is a serious mistake. Senator MITCHELL says we can return to it on Monday. I have a little sneaky suspicion that Monday is going to be too late. I hope we do not lose lives in the process. Mr. President, I hope and pray that we do not lose lives in the process, and that if this action is commenced, I hope and pray every single American soldier will be able to return healthy and we do not have the body bags coming back, especially for what we are gaining, because I do not see a national interest. I do not see national support. The support is not there for good reason. It is not in the national interest to make this action happen, and it is certainly not in the national interest to restore Mr. Aristide.

Mr. President, I will just conclude with the fact that we are going to spend, are spending hundreds of millions of dollars. We are risking and jeopardizing United States leadership and prestige.

More importantly, we are risking thousands of U.S. lives. For what? Maybe for political gains, maybe to fulfill the desires of a lobbying firm and "Gucci Gulch" makes hundreds of thousands of dollars, maybe to make Randall Robinson happy or the Black Caucus happy. But it is not in the United States' interest. The case has not been made for an invasion of Haiti. I believe it is a serious mistake, and I hope Congress would have a chance to express itself.

The United Nations got to vote. The United Nations had a vote on authorizing this. I think the Congress should vote as well, and I hope that we will have a vote before the invasion will occur. And I hope the vote will occur on Monday and no later than Monday.

I ask unanimous consent to insert in the RECORD the article I quoted from the Washington Post.

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

[From the Washington Post, Jan. 24, 1993]

HAITI'S SUSPECT SAVIOR; WHY PRESIDENT ARISTIDE'S RETURN FROM EXILE MAY NOT BE GOOD NEWS

(By Lally Weymouth)

Before his inauguration, well aware that thousands of Haitians were planning to set sail for America in direct response to his perceived campaign promises, Bill Clinton reversed course and adopted the Bush administration policy he had bashed resoundingly—ostensibly on humanitarian grounds—during the campaign. The president-elect announced that Haitians trying to reach U.S. shores would be forcibly returned to Haiti.

Human rights groups have attacked Clinton for the reversal. Their chief hope now with regard to Haiti is that the incoming administration will restore disposed President Jean-Bertrand Aristide to power. A leftist priest, Aristide was chosen president of Haiti in a free election in December 1990. Seven months later, he was ousted from office in a military coup.

After the coup, the Bush administration, in coordination with the Organization of American States, slapped a harsh embargo on Haiti. A senior Bush foreign policy official explains that the action was meant to remind the militaries of other Carribean and Latin American countries that coups don't pay.

Not surprisingly, however, the Haitian people became the primary victims of the embargo. While Aristide lived nicely in Washington—enjoying access to thousands of dollars in frozen Haitian assets made available to him by the U.S. government—Haiti, already the poorest country in this hemisphere, saw the loss of thousands of jobs as companies in electronic assembly, clothing manufacture and other light industry sold out to Haitian businessmen or moved operations elsewhere.

Before the Clinton administration sets out to restore Aristide to power, newly appointed officials would be wise to study carefully the true character of Aristide's short, but brutal, tenure in office. Not only did he abuse democratic practices but Aristide condoned and even encouraged violence.

The State Department 1991 human rights report said that under Aristide there were fewer instances of abuse by the military but "the government proved to be unwilling or unable to restrain popular justice through mob violence. . . ."

In his speeches Aristide called upon his followers to attack freely anyone who dared disagree with him. This included even organizations such as the labor union CATH, which had supported Aristide's election but later criticized some of his actions.

Aristide actually urged his followers to engage in the hideous practice of "necklacing"—slapping a petrol-soaked tire around the neck of a political opponent and igniting it, thus burning the victim alive. On Sept. 27, 1991, shortly before he was overthrown by the military, the former Haitian president told a mass rally that if they should see "a faker who pretends to be one of our supporters . . . just grab him. Make sure he gets what he deserves . . . with the tool you have now in your hands [the burning tire] . . . You have the right tool in your hands . . . the right instrument . . . What a beautiful tool we have. What a nice instrument. It is nice, it is chic, it is classy, elegant and snappy. It smells good and wherever you go, you want to smell it."

A few days later an Aristide-inspired mob attacked Sylvio Claude, the founder of the Democratic Christian Haitian Party (PDCH)—a man who had been jailed and tortured by Duvalier but was a political opponent of Aristide. Although Claude sought shelter in a police station, he was turned over to the mob and burned to death.

The Catholic Church was a central target of Aristide's more violent supporters. Monsignor William Murphy wrote a graphic account of events in January 1991 when, according to Murphy, " . . . a group of thugs, supporters of newly-elected President Aristide, went on a rampage. They destroyed the old cathedral, gutted the archbishop's house . . . and then went on to the nunciature, the home of the pope's representative. There, they completely destroyed the building, attacked the nuncio and his priest-secretary, broke both legs of the priest and roughed up and stripped the nuncio . . . who was saved only by the intervention of a neighbor."

According to senior U.S. government officials, Aristide also participated in a cover-up of the killing of five teenagers on July 26, 1991. Members of an anti-gang unit claimed the killings occurred when they became involved in a struggle with the youths as they tried to escape. Photographs, however, showed that the young men were severely beaten and shot at point blank range by several weapons. The Haitian armed forces—in particular Interim Commander-in-Chief Raoul Cedras—demanded that the incident be investigated. But Aristide, who had been building his own security forces outside the military chain of command, tried to block the investigation and sided publicly with one of the officers involved in the slaying.

U.S. government officials cite extensive evidence showing that Aristide personally gave the order to kill Roger Lafontant, the Duvalierist, who was incarcerated in the National Penitentiary after his conviction for leading a coup attempt in January 1991.

When Lafontant was tried in July 1991, a mob of Aristide supporters assembled outside the courtroom carrying tires and gasoline cans and threatening to kill the judge in the case if Lafontant were not given a life sentence. As a result, Lafontant received a life sentence although the Haitian constitution sets the maximum penalty for his alleged crime at 15 years. Aristide praised his followers for their efforts, asking whether, without the threat of necklacing, "don't you think that the sentence handed down would have been 15 years?" Lafontant was killed by his jailers on the night that Aristide was overthrown.

After the coup, Cedras became chief of staff. He is, nevertheless, credited by U.S. officials with saving Aristide's life the night of the coup. In a December interview, Cedras said he also has information that Aristide intended to have other political prisoners killed, not just Lafontant: "He [Aristide] gave the orders to kill around 20 people, but they had the courage to execute only Lafontant.".

During Aristide's short rule, says Canadian journalism professor Gerard Etienne, a Haitian-born staunch opponent of Duvalier who conducted a detailed study of Aristide's rule, soldiers were regularly assassinated and several military posts were burned. Aristide, according to Etienne, not only failed to denounce these brutal slayings, but "backed them up by his silence and his demagogic tirades. . . ."

In August 1991, Haitian legislators met to deal with the government's abuses. They planned to question Prime Minister Rene Preval—who, according to the State Department human rights report, had personally interrogated political prisoners and denied them recourse to legal counsel—and then to consider censuring him. Before parliament met, shots were fired outside the headquarters of the National Front for Change and Democracy (FNCD)—a political party that had originally supported Aristide but had begun to criticize some of his actions. The home of an FNCD legislator was also stoned.

When the parliament met, its members found themselves surrounded by about 2,000 demonstrators, many carrying burning tires. Under the threat of the mob, the legislators decided to recess.

Cedras says he did his best to keep order in Haiti during the 1990 elections that brought Aristide to power. Moreover, he recalls trying subsequently to cooperate with Aristide. "But we could never really find out why he behaved the way he did," said Cedras. "He spent seven months violating the constitution of this country which he was there to guarantee."

After Aristide was overthrown by the military on Sept. 30, 1991, the army soon appointed a civilian government, headed by

Prime Minister Marc Bazin. Since then, efforts have been made—with U.S. assistance—to arrive at a negotiated settlement between Aristide, the army and Bazin.

The closest the two sides came to an agreement was the Washington Accord reached 11 months ago. But the accord reached a stumbling block after Aristide changed his mind on a central element—amnesty for the armed forces leadership. Negotiations dragged on, and Aristide proved to be in no hurry to make a deal.

During the transition, the threat that thousands of Haitian boat people might descend on Florida quickened the negotiating pace. The two sides appear to have approached a solution—amnesty would be granted to the army in return for a recognition of Aristide's right to return to power. In theory, both sides have agreed to accept a large team of international monitors that would hopefully reduce the widespread human rights violations currently being committed by the army and prevent future abuses by Aristide's supporters should he return.

The challenge for Haiti and its U.S. friends is to turn to building institutions that can sustain a measure of democracy. Helping Aristide regain power may make sense as a way of stemming the flow of Haitian immigrants to Florida. But it is foolish to assume that he represents a return to human rights and democratic rule for that impoverished island.

Mr. NICKLES. Mr. President, I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I am anticipating the arrival of a couple of our colleagues on this side who wish to be heard on the issue. Pending their arrival, let me just take a minute or so if I can. Let me reiterate what I said a while ago, Mr. President.

If I had my druthers here, I prefer that the President come to the Congress, and we have a chance to vote on these matters, not because I necessarily believe that a vote is required for the President to act, but because I think there is value in having a debate and even perhaps a resolution.

I must say, Mr. President, having said that, to listen to some of the comments being made today by some of our colleagues about their deep concern and commitment to having resolutions every time there is a matter like this, the history and the record show a quite different reaction when confronted with different fact situations involving the use of U.S. military forces.

Now, the way I read the history of these issues is as follows: If someone agrees with a certain action to be taken, then the necessity, as he or she perceives it, for the Congress to vote is probably less. If one disagrees with a potential action, then the demand for congressional involvement seems to increase. What is lacking is consistency in the comments on these issues over time, when you go back and review the history of congressional reaction to recent involvements by various Chief Executive officers of our country.

Now, one can start to split hairs about Grenada and Panama. In Panama, Mr. President, we knew for months that Panama would likely involve a military involvement. That was not any overnight decision by President Bush. We were pursuing General Noriega for months and insisting over and over again that we were going to take action if necessary in order to protect our interests.

Now, I recall that I received a call about 1 o'clock in the morning from then Secretary of State Jim Baker informing me that the planes were basically on their way, or had landed. I supported the action in Panama. Yet I do not recall any similar outcry about the failure of Congress to act even though we were more than aware that there was a strong possibility our Armed Forces would be used in achieving our desired goals in Panama.

Now, you can go back, and I have looked back, to 1975, 20 years, and there are some 31 different examples where Presidents, Republicans and Democrats alike, have committed U.S. forces, some in situations I could make a strong case that the President had no other choice but to act immediately because the emergency demanded it. But many, Mr. President, many were ones where we were involved for some time in the issue leading up to a decision to take military action.

Let me just cite that we had President Bush—and I happened to agree with him on this—in August 1990 committing thousands of U.S. forces to the Persian Gulf. Now, we voted in January 1991 as to whether or not the President ought to have authority to use force. But with the decision to send hundreds of thousands of people to the Persian Gulf to defend Saudi Arabia from further expansion by the Iraqis into that area, certainly placed United States forces in harm's way without any question—the Scud missiles proved that later on. I seem to recall—maybe I am wrong—some of these same noises that I hear from this side today insisting that we vote on Haiti were just awfully silent during those days.

Now, again, I am not suggesting that we ought not to vote. I happen to think we should. I think it is important to do so. But I have to say it just does not strike me as being terribly consistent.

Let me quote some of the comments that were made during that time.

> Politics does stop at the water's edge. If I were Saddam Hussein, I would be doing handsprings of joy with things that are being published and said about it.

Here were people being critical. That is our minority leader BOB DOLE.

> I do not believe the President requires any additional authorization from Congress.

Dick Cheney, Secretary of Defense, December 1990.

> No doubt about it, the President's policy is working. The last thing we need are more timid signals from Congress.

BOB DOLE, our minority leader, on the Persian Gulf.

Again, it depends where you come out on some of these issues, that all of a sudden people find the necessity of congressional involvement.

I recall, Mr. President, having been involved in Central American issues in the mid-1980's, that any time I offered a resolution or various other proposals, I would be very significantly criticized by some of my colleagues because I was tinkering with the President's authority to conduct foreign policy.

Now, I may have taken objection to the notion that I was tinkering. I certainly thought it my right as a Member of this body to express my views on whether or not I thought American tax dollars ought to be expended in various involvements in which we were engaged.

All I am suggesting here is that as people listen to this debate, it might be worthwhile to reflect, refresh their memories about some of the same people making entirely different statements when it came to the question of whether or not Congress ought to give prior approval to a President's decision to commit U.S. forces. All Presidents, it seems—I have gone back 20 years, but other than Thomas Jefferson, who requested the Congress to give him approval before committing our forces to take on the Barbary pirates in about 1804, I do not recall too many other Presidents other than Franklin Roosevelt, in 1941, requesting a declaration of war from Congress. Since him, we had police actions in North Korea; 50,000 people died there—more.

Vietnam, police action—you can go down the long list. All of our Presidents have been reluctant to come up here and to seek approval from Congress in the conduct of foreign policy. Some have suggested over the last several weeks that we probably ought to revisit this war powers debate. I agree with that because there are some very significant rules. Clearly, the power to declare war rests with the legislative branch. Clearly, the powers of Commander in Chief rest with the President of the United States. There is a huge gap between declarations of war and performing your functions as Commander in Chief.

It is our obligation, it seems to me, with all of these examples that we are all painfully familiar with over at least the last 20 years where Presidents of different parties have exercised their authority as Commander in Chief without first coming to Congress for authorization. Now we all of a sudden decide this President in this fact situation which some may happen to disagree with, that this is an outrage. I did not hear that same sense of outrage, as I say, even a few short years ago when other Presidents have sought to commit forces.

Ronald Reagan, I remember, in 1982 sent the Marines to Lebanon. Tragically that ended in ultimate disaster. We had to hightail it out of there. There was no doubt about it. This was a longstanding conflict. It was not a surprise decision. It was debated between March and the summer of 1982, and ultimately he sent them in. I do not recall anybody standing around, with all due respect, on this side of the aisle, Mr. President, saying President Reagan ought to come up here and get the approval of this body before subjecting those marines to the dangers of Lebanon. Tragically, it was a great misfortune.

Mr. BENNETT. Mr. President, will the Senator yield?

Mr. DODD. I am glad to yield to my colleague.

Mr. BENNETT. Mr. President, I am enjoying this. My friend from Connecticut is being articulate and appropriate as always. I am wondering if he is indeed waiting for another speaker to come to the floor and the other speaker is delayed.

My question is answered by the arrival of the other speaker. I thank the Senator.

Mr. DODD. Mr. President, I will finish my remarks. And then I think my colleague from Massachusetts will be finished shortly. I appreciate that.

Mr. BENNETT. I was asking, if the other speaker was not coming, if I could proceed. Since the Senator from Massachusetts has arrived and it is the Democrats' turn, I will appropriately listen to my friend from Massachusetts with great interest.

Mr. DODD. I thank my colleague from Utah very much.

I do not want to dwell on this point. But I do think it needs to be, for the purpose of the record, stated clearly. I have heard, again it is bipartisan, objection to the idea that we commit forces to Haiti. But I cannot sit here silently in the face of some of the statements that are being made about prior congressional approval when previous Presidents, not in the distant past, Mr. President, but only a few short years ago, were up here denying that they needed to have authority from this body in order to commit U.S. forces. I will not mention Panama.

Grenada again was a bit more spontaneous because of the kidnaping and assassination of Maurice Bishop. We had medical students there in Grenada. I would argue that, one, the proximity of time was one where President Reagan probably did not have to meet the obligation that is being insisted upon here. But clearly Panama was. There is no question about it. There were months involved in debating Panama before we sent the troops, as I say, between the summer of 1990 and the actual decision in January 1991. And the Persian Gulf, clearly months. Yet I do not recall the kind of demand for prior congressional approval.

Last, I want to make one additional point and then I will yield to my colleagues.

Mr. President, I ask unanimous consent to include in the RECORD at this juncture the remarks made on October 2, 1991, before the Organization of American States by our then-Secretary of State, James Baker. I will just read them and ask unanimous consent they be printed in the RECORD.

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

ATTACK ON DEMOCRACY IN HAITI

(By Secretary Baker)

[Address before the Organization of American States (OAS), Washington, DC, Oct. 2, 1991]

Today, the international community and this Organization of American States are being tested. A small group of willful, violent men have betrayed their uniform and their nation; they have seized power in Haiti, usurping the government elected by a clear mandate of the Haitian people just 9 months ago.

Two centuries ago, the people of Haiti led this hemisphere in the struggle for independence. This year, with struggle and sacrifice and the support of the international community, they won their democratic rights. Today, with their democracy under attack, the people of Haiti look for our reaction.

The test we face is clear: to defend democracy; to stand united as a community of democracies; to make clear that the assault on Haiti's constitutional government has no legitimacy and will not succeed. I commend the Secretary General for the speed with which he has acted, first to convene the Permanent Council, then to convene this meeting. The elections is Haiti were held with unprecedented international support. The OAS, the United Nations, and the democratic community helped oversee and verify that this electoral process was open, free, and fair. Jean-Bertrand Aristide is the democratically elected President of Haiti. He and his government have and deserve our support.

This organization, more than any other, has a legitimate claim to speak to this crisis. The OAS election observer mission in Haiti did more than help in the conduct of the elections; the OAS mission was a strong symbol of this hemisphere's commitment to the path of democratic development the Haitian people have chosen. Thousands of citizens of this hemisphere struggled and died, were exiled and jailed, to establish democracy. Indeed, many of you sitting at this table are veterans of that struggle. Let the coup plotters in Haiti—and any who dream of copying them—know this: This hemisphere is united to defend democracy.

Last June, the General Assembly took the historic step of guaranteeing that this body would convene to respond to any "sudden or irregular interruption of the democratic order in any member state." Today, that mechanism faces its first test, and it is imperative that we agree—for the sake of Haitian democracy and the cause of democracy throughout the hemisphere—to act collectively to defend the legitimate government of President Aristide. Words alone will not suffice.

This is a time for collective action. Let no one doubt where the United States stands as a member of this proud organization. The United States condemns this assault on Haiti's democratically elected government and the violence committed against innocent Haitians. We demand the immediate restoration of President Aristide's constititional rule. We have suspended all foreign assistance to Haiti. We do not and we will not recognize this outlaw regime.

My government also calls on all the people of Haiti—in uniform or in civilian life, regardless of political persuasion—to desist from all violent actions. Surely this week's events show that violence only begets more violence, and the way to justice lies in the rule of law, not in recourse to violence.

Now is the time for us to act. There are a number of draft resolutions in circulation. We urge the drafting committee to take the best elements in each to produce the strongest possible draft. We must not settle for the lowest common denominator if we are to keep faith with the people of Haiti. By sending a mission from this body to Haiti, led by the Secretary General, we will send an important message to those who have taken power in Haiti and to the Haitian people: This junta is illegitimate. It has no standing in the democratic community. Until President Aristide's government is restored, this junta will be treated as a parish throughout this hemisphere—without assistance, without friends, and without a future.

Multilateral assistance must also be suspended to reinforce the message already sent by the United States, Canada, Venezuela, France, and the European Community. And this meeting must remain open in order to show that this hemisphere will not lose interest or forget the suffering of Haiti's people.

If these steps do not succeed, we must consider additional steps. Those who pretend to govern Haiti should know: The path they have chosen leads nowhere. But once democracy is restored, Haiti will again receive the generous cooperation of the international community in promoting development and alleviating poverty.

My colleagues, our immediate purpose today is to defend the rights and noble aspirations of the people of Haiti, but our interests do not stop there. This is the hemisphere that stands poised to achieve what the world has never seen before; the fulfillment of democratic rights across two continents. This is the hemisphere that is building a future of free trade from Alaska to Argentina. This is the hemisphere whose nations are cooperating to eliminate weapons of mass destruction. We are fulfilling the promise of the New World, enshrined in the OAS Charter, "to offer to man a land of liberty." That is the future we are defending, and the people of Haiti are and must continue to be part of that community. This is a moment of darkness, but this coup must not and will not succeed. I believe the people of Haiti will regain their liberty. I believe this hemisphere will meet its test.

This Organization of American States must not and will not rest until the people of Haiti regain their democracy.

Mr. DODD. Mr. President, let me for my colleagues read a couple of poignant paragraphs about this Haiti policy and how it just did not all of a sudden occur on January 20, 1993, the day President Clinton was inaugurated. This goes back to the previous administration. Here is President Bush's Secretary of State Jim Baker speaking about Haiti.

Today the international community and this Organization of American States are being tested. A small group of willful, violent men have betrayed their uniform and

their nation. They have seized power in Haiti, usurping the government elected by a clear mandate of the Haitian people just nine months ago.

He goes on down to excoriate what these thugs did and talks about ripping out of Haiti their duly elected President. To listen to some of my colleagues talk it was as if they were Haitian. I do not know whether I would have voted for President Aristide or not were he a candidate and I was a Haitian. It is not our business to decide whether or not we like people other nations elect as their heads of state. But no one has contradicted the fact that 70 percent of the people of that country in the freest and fairest election ever held in the nation of Haiti chose this man to be their President. That is their business, not ours.

To be sitting here and suggesting somehow that because we do not like this guy or we do not particularly care for his speeches—Mr. President, I should tell you, and I will state this in the way for someone to challenge me. I spent more time than any other person I know in this body reviewing the record on President Aristide through our intelligence community and the various files; hours going over it. I must tell you, Mr. President, putting aside whether one likes Mr. Aristide's policies or not, I have rarely seen such an assassination on a person's character done to the extent it was done on this man.

I would invite my colleagues to do what I did and read the record, and to go back and listen to the people who knew this individual. Read the transcripts and the files. Read the memos. Read the cables coming out of Haiti from Ambassador Adams, President Bush's Ambassador in Haiti from the time Aristide was elected to the time of the coup. The remarks that are being attributed to President Aristide and the character assassination just do not hold up under the scrutiny of an examination of that file.

But going back to the point here, whether or not we like President Aristide is not the issue. He was elected by an overwhelming majority of that people and then summarily thrown out by the very people now who want to sustain power, the very ones involved in the drug trafficking and the ones engaged in the blatant, violent human rights violations.

Let me also go further in my quotation of James Baker's speech that day because I think there are some important paragraphs.

This hemisphere is united to defend democracy.

I would point out that the Organization of American States has taken a strong position with regard to Haiti, as has the United Nations. That is not committing us to use force but it is worthy of note that the entire world unanimously have indicted the Haitian Government for what they have done.

Jim Baker goes on further in his remarks and he talks about the various sanctions. I will not take up the time to read all of this. But I goes down and lists the various things that we are going to be doing—cutting off assistance, suspending various things—to show that we mean business.

Then President Bush's Secretary of State says the following:

If these steps do not succeed, we must consider additional steps. Those who pretend to govern Haiti should know the path they have chosen leads nowhere.

He further says that once democracy is restored, we would be willing to provide some help.

Jim Baker did not say that day that if this fails other additional steps will be taken including the use of military force. He did not say that. He would have been terribly unwise to do so. I do not think those words were chosen idly. When the then Secretary of State under the previous administration is talking about what happened in Haiti, he says that, if these steps do not succeed, the economic sanctions, we must consider additional steps. I do not recall people expressing any great outcry at the time when the Bush administration properly indicted the military leadership of Haiti that stripped that nation of its democratically elected Government. In fact, most of us applauded the Bush administration. When they started with the sanctions—all of us, in my view, will remember it as I remember it—we agreed with that.

As I said earlier today, when you start that process and run that string out, you get to what Jim Baker talked about—additional steps. I would suggest to you today that, if President Bush had been reelected in November 1992 and the diplomatic and political efforts had not succeeded, instead of President Clinton considering the use of military force, I suspect that President Bush in 1994 would be considering the use of force because that is what Jim Baker committed that administration to, in my view, if all of those other steps had failed.

We do not know that for certain. Obviously, a lot of other things could have happened along the way. But I think in describing this situation, where we are today, to go back and review that history is important. There has been a longstanding effort through two administrations to try and resolve this problem.

I will conclude by saying this to you, Mr. President: I sincerely hope that the de facto military leadership of Haiti will decide in the next few days to live up to the commitments they made in Governors Island, that they made to the Bush administration, to this administration, and to the United Nations, and to the OAS, and pack their bags and give us a chance to restore this democracy and get this country back on its feet again.

I hope my colleagues, in talking about Haiti, will not offer any comfort to these guys. They do not deserve it. Disagree about the use of force; disagree, if you will, about sanctions and so forth, but do not let these leaders and others pretend we do not care about what they are doing. It is an outrage what they are doing to the people of their nation. Their violent, vile assassinations and mutilations of people ought to offend everybody in this Chamber, regardless of our differences over what tactics ought to be used.

As the most important deliberative body in this great Nation, it is important that we send a message—and they watch and listen, by the way, to what we say and do—that we do not support what they are doing and are adamantly opposed to it, and that we are determined collectively to find a way to change that situation.

I hope we do not have to use force. That has been my position all along, that using force ought to be the last thing considered. But do not deny this President entirely the ability to exercise his office as President of the United States and Commander in Chief. Let us come back and debate this question of war powers and declarations of war and the role of a Commander in Chief. But let us not apply such a rigid standard here.

This issue is not all black and white. It falls into a gray area. It is a difficult one. I agree with the statements made earlier by Senator COHEN of Maine. Yes, the burden falls here as well on all of us as to how we vote on matters that commit young men and women to war in this Nation. I will repeat what I said earlier. It certainly falls to a severe and profound degree on the President of the United States—any President—and whatever else one may think about this President, whether you like him or not, to suggest somehow that he is pondering the use of military force and committing young men and women in a potentially life-threatening situation because of some desire to do better on the local elections in November is a cynical, cynical, cynical comment and statement to make.

I do not believe any American President has ever engaged in that kind of a tactic. To attribute it to this one, in my view, is unfair and undermines our democratic process. Debate, argue, fight, disagree, but let us also understand what is at stake here. I hope in the coming days we might have a chance to vote on this. I really believe that. That has been my position consistently throughout the years here, and I will not change it for this fact situation.

But, again, I find it somewhat disingenuous that the people who stood here and berated some of us who suggested we have votes earlier on other issues and are now demanding that we have one here, fail to look at their own

record and the history that goes back when other Presidents have committed troops—or threatened to—because they found it to be in the interest of this Nation.

With that, I will yield the floor. I yield to my colleague from Massachusetts whatever time he may consume.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for up to 30 minutes.

Mr. KERRY. Mr. President, there is not one of us in the Senate who does not approach a subject such as this with enormous concern for country, for those who might go into harm's way, for the principles that are at stake. And I think it is fair to say that the Senator from Connecticut and I have no illusions about where this debate begins at this point in time in this country.

It is sad. It is probably regrettable that there has not been more debate, that there really has not been a more intense focus on the connection of Haiti to the United States, to the hemisphere, and to our interests. It is regrettable that at the moment, when Americans are beginning to focus most on Haiti, there is perhaps the least understanding. I regret that there has not been a greater effort to try to explain our interests so that the American people can understand them. I do not think that this is the best of situations in the waning moments of confrontation of one kind or another.

I also think that it is absolutely vital that we try to maintain a base of reality in this discussion so that we assist the American people in really discerning the facts. I have heard a lot of talk about war, a lot of revisionist history here about Panama and Grenada, and I think it is very important for us to understand what we are really talking about. Under both legal and, frankly, commonsense definitions if we were to engage in military action in Haiti, it would not be war.

I think many of us still remain hopeful that we will not have to engage in military action. I know I share with the Senator from Connecticut a deep aversion to military action by the United States in this hemisphere. We all know the history, and we all understand the difficulties. But we also ought to recognize that this is not a case, as it was in most of history, of the United States acting alone. This is not some freewheeling, trigger-happy, potential involvement of U.S. forces to protect a business. This is not an effort to protect United Fruit. This is an internationally sanctioned effort by the friends of Haiti, by the United Nations, by the OAS, and others, all of whom have been deeply involved over a period of almost 3 years in focusing on a renegade group of thugs who have stolen a democracy.

My colleagues have used the word "war." Under any technical definition, war is a state of open armed hostilities between political units or states, or nations. And a state of war cannot, by definition, exist between countries, unless they both have their own government and the governments are involved.

We all know that the Government of Haiti was duly elected by its people with 68 percent of the vote. The Government of Haiti is President Aristide, and the Government of Haiti is asking the United States of America for help.

The group of people against whom we might conceivably proceed with our Armed Forces are a small group of thugs who have stolen a government and who have no standing in the international community to fit under any "declarations of war" or otherwise.

I have heard allusions to Vietnam in the course of this debate. But we ought to remember that there were maybe 3, almost 4 years of involvement of American troops in Southeast Asia before we even got to the Gulf of Tonkin resolution.

I would be the last person in the United States to suggest that that is good or that that ought to be replicated. But there is not one iota of a breathe of a plan here that suggests that we are somehow going to be involved for a long period of time. There is, in fact, every indication to the contrary that the United Nations is going to be involved, that international peacekeepers would be involved, that if U.S. forces were involved, they would be withdrawn as rapidly as possible, and that an exit strategy is as central to this question as an entry strategy.

I have also heard arguments being made about no consultation. Again, we ought to have honesty and candor on the floor of the U.S. Senate. There has been no end of consultation with the U.S. Senate and the Congress.

I have a list here of hearings and briefings on Haiti just to this Congress. The list is not exhaustive, but it reflects State Department organized consultations, I will run down the list.

As recently as this month, Defense Secretary Perry was meeting with House and Senate Republican leadership. The day before that senior administration officials were meeting with the House and Senate Democratic leadership. A few days before that, State Department officials were briefing the House Appropriations Committee. National Security Adviser Lake and Special Adviser Gray briefed the House Intelligence Committee in August. And so the line of consultation goes, including the Secretary of State, the Secretary of Defense, Ambassador Albright, and others.

I ask unanimous consent that the full list of consultations be printed in the RECORD.

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

HEARINGS AND BRIEFINGS ON HAITI, 103D CONGRESS

This list is not exhaustive but primarily reflects State Department organized consultations. In addition, senior Administration officials have made numerous phone contacts with various Members of Congress over the past year.

13 September 1994 Meeting. Defense Secretary Perry met with House and Senate Republican leadership to discuss recent developments on Haiti policy.

12 September 1994 Meeting. Senior Administration officials met with House and Senate Democratic Leadership to discuss recent developments on Haiti policy.

30 August 1994 Briefing. State Department officials briefed staff of the House Appropriations Committee on Migrant and Refugee Assistance funding.

18 August 1994 Briefing. National Security Advisor Lake and Special Advisor Gray briefed the House Intelligence Committee on Administration Haiti policy.

16 August 1994 Briefing. ARA DAS Patterson briefed House Foreign Affairs Committee staff on sanctions enforcement in the Dominican Republic.

12 August 1994 Briefing. State Department officials briefed House and Senate appropriations staff on Haiti refugee funding.

11 August 1994 Briefing. OAS Ambassador Colin Granderson met with Senate staff to discuss the current human rights situation in Haiti.

5 August 1994 Meeting. Special Advisor Gray met with House and Senate members of the Arms Control and Foreign Policy Caucus to discuss Haiti.

4 August 1994 Hearing. Secretary Perry and Joint Chiefs of staff Chairman Shalikashvilli testified before the House Defense Appropriations Subcommittee.

4 August 1994 Meeting. Secretary Christopher, Ambassador Albright, National Security Advisor Lake, and AID Administrator Atwood met with members of the Congressional Black Caucus on Haiti and other foreign policy issues.

3 August 1994 Meeting. Secretary Christopher met with Senator Byrd to discuss Haiti and other foreign policy issues.

3 August 1994 Meeting. Secretary Christopher met with Minority Leader Michel and Minority Whip Gingrich to discuss Haiti and other foreign policy issues.

3 August 1994 Meeting. Secretary Christopher met with Majority Leader Gephardt to discuss Haiti and other foreign policy issues.

2 August 1994 Briefing. Special Advisor Gray briefed Republican members: Goss; Chris Smith; Livingston; Fowler, Ros-Lehtinen; Hobson; Shaw; Mica; Boehlert; Houghton; Coble; Hunter; Bateman; Hutchinson; and buyers.

2 August 1994 Briefing. Special Advisor Gray briefed Majority Leader Gephardt.

2 August 1994 Meeting. Secretary of State met with Rep. Berman on Haiti and other issues.

29 July 1994 Briefing. Haiti Refugee Issues. State and Justice briefed HFAC and House Judiciary Committee staff.

28 July 1994 Briefing. State DAS George Ward briefed SFRC and CJS on the UN Security Council Resolution on Haiti.

27–28 July 1994 Briefings. Haiti Resolution; 5 Day Advance Notice. State DAS Chapman briefed HFAC, CJS, HASC, SFRC, SFRC, House and Senate Appropriations, and Sen. Dole's staff.

21 July 1994 Briefing. Deputy Secretary Talbott briefed Sen. Nunn.

21 July 1994 Meeting. Deputy Secretary Talbott spoke with Rep. Richardson regarding his trip to Haiti.

21 July 1994 Briefing. Special Advisor Gray briefed Senator Wellstone.

21 July 1994 Meeting. Special Advisor Gray met with the Senate Democratic Policy Committee.

21 July 1994 Briefing. Special Advisor Gray briefed Rep. Major Owens.

20 July 1994 Briefing. Special Advisor Gray briefed Rep. Porter Goss.

19 July 1994 Briefing. Special Advisor on Haiti William Gray briefed HFAC members in a closed session.

14 July 1994 Briefing. Assistant Secretary of State Gati and officials from CIA and Justice brief Senate Select Intelligence Committee on Haiti and Iran.

13 July 1994 Briefing. Secs. Christopher, Perry, Ambassador Albright, National Security Advisor Lake, and General Shalikashvili briefed the Senate and House Leadership "Consultative Group" (leadership, chairs and ranking of HFAC/SFRC; HASC/SASC; Intelligence; Appropriations—full committee/DoD/Foreign Operations/Commerce, State, Justice) separately.

13 July 1994 Hearing. OAS Ambassador Babbitt and State DAS Skol testified on Dominican Republic elections and Haiti before the HFAC subcommittee on Western Hemisphere.

13 July 1994 Briefing. Peacekeeping Monthly State official Bob Loftis briefed SASC staff.

13 July 1994 Briefing. Coast Guard officials briefed House Merchant Marine committee members and staff.

13 July 1994 Briefing. State officials briefed House Appropriations staff on Emergency Refugee and Migrant Assistant.

12 July 1994 Briefing. Peacekeeping Monthly, State DAS Ward briefed HFAC staff.

12 July 1994 Briefing. Peacekeeping Monthly, Ambassador Dobbins briefed senior House staff.

12 July 1994 Briefing. Peacekeeping Monthly, State DAS George Ward briefed SFRC staff.

7 July 1994 Briefing. Ambassador Dobbins briefed majority and minority SFRC staff.

7 July 1994 Briefing. Special Advisor Gray briefed HFAC chairman Lee Hamilton.

5 July 1994 Phone Calls. State officials made phone calls to Congressional staff of SFRC and HFAC, and Judiciary on "safehaven" policy.

28 June 1994 Hearing. U.S. Policy Towards Haiti Special Advisor Gray, Assistant Secretary of State Shattuck, State DAS McKinley testified before SFRC Subcommittee on Western Hemisphere Affairs.

28 June 1994 Meeting. Secretary of State met with Speaker Foley on Haiti and other issues.

20 June 1994. State and DoD officials briefed HFAC staff on Dominican Republic elections and the Administration's sanctions-monitoring efforts.

16 June 1994 Briefing. State, DoD, and CIA officials briefed SSCI staff on drug trafficking in Haiti.

15 June 1994 Hearing. Haitian Asylum-seekers; State DAS Brunson McKinley testified before the House Judiciary Subcommittee on International Law, Immigration, and Refugees on legislation on Haiti introduced by Reps. Meek and Dellums.

8 June 1994 Hearing. Special Advisor Gray testified before House Foreign Affairs Committee.

8 June 1994 Briefing. Assistant Secretary of State Watson briefed Senator Bob Graham on Haiti and other regional issues.

1 June 1994 Briefing. Haiti Refugee Processing; State and Justice staff brief HFAC staff.

26 May 1994 Briefing. Ambassador Dobbins briefed Reps. Dixon, Richardson, and Reed prior to their trip to Haiti.

26 May 1994 Briefing. Ambassador Dobbins briefed Rep. Rangel.

25 May 1994 Briefing. Haiti Intelligence Community Briefing (closed) HPSIC Members and Staff. Briefers: CIA/NIO Lattrel, INR, others.

24 May 1994 Briefing. Haiti Pre-trip Intelligence Community Briefing, Rep. Dixon and HPSCI staff. Briefers: CIA, INR, DIA, DEA, NSA, JCS/J-2.

18 May 1994 Briefing. State and INS officials briefed Senate Judiciary committee staff on Haitian refugee processing.

17 May 1994 Briefing. Special Advisor Gray briefed House Democratic Leadership.

17 May 1994 Briefing. Special Advisor Gray briefed Senate Democratic Leadership.

17 May 1994 Briefing. Special Advisor Gray briefed Congressional Black Caucus.

17 May 1994 Briefing. Special Advisor Gray briefed Senate Republican Leadership.

17 May 1994 Briefing. Special Advisor Gray briefed House Republican Leadership.

17 May 1994 Briefing. Acting Refugee Policy Director Oakley and INS Commissioner Meissner briefed Reps. Mazzoli, Canady, and Lamar Smith on Haiti refugee processing.

12 May 1994 Briefing. Haiti Refugee Policy. House Judiciary Subcommittee on Immigration; RP & INS.

3 May 1994 Briefing. Haiti Refugee Issues: HFAC Staff with RP, ARA, and INS.

3 May 1994 Briefing. Haiti. Senator Dodd and other SFRC Members. Briefers: Acting Secretary Talbott and NSC Sandy Berger.

24 March 1994 Meeting. Assistant Secretary of State Shattuck met with Rep. Joe Kennedy regarding Haiti.

8 March 1994 Hearing. Haiti. SFRC Subcommittee on Western Hemisphere. Witness: Ambassador Pezzullo.

2 March 1994 Meeting. Ambassador Swing met with Rep. Torricelli on recent events in Haiti.

9 February 1994 Hearing. Ambassador Pezzullo and AID Assistant Administrator Schneider met with HFAC members in a closed session to brief Members on humanitarian relief.

14 January 1994 Meeting. Assistant Secretary of State Watson met with Sen. Dodd to discuss recent developments in Haiti.

9 November 1993 Briefing. Haiti: HFAC Western Hemisphere Members Briefing; (Amb. Pezzullo).

3 November 1993 Briefing. Haiti (closed); HPSCI Members & Staff. Briefers: State/CIA/DIA/DOD.

27 October 1993 Briefing. Haiti-Intelligence; House Republican Policy Committee Members. Briefers: CIA, DIA.

20 October 1993 Hearing. Roundtable on Haiti; HFAC.

20 October 1993 Briefing. Recent Events in Haiti: House Intelligence Committee. Included State Department witnesses.

21 July 1993 Hearing. Recent Developments in Haiti; HFAC W. Hemisphere Subcommittee.

21 July 1993 Hearing. Governor's Island Implementation; HFAC.

18 June 1993 Briefing. Haiti; Reps. Torricelli and HFAC staff. Briefer: Amb. Pezzullo.

26 May 1993 Briefing. Assistance from Haiti; Sen. Leahy. Briefers: ARA Pezzulo & Watson.

18 May 1993 Briefing. Haiti; SACFO Minority Staff. Briefers: ARA-Pezullo, AID.

13 May 1993 Briefing. Haiti; SACFO Minority Staff. Briefers: ARA—Pezullo, AID.

13 May 1993 Briefing. Haiti; HAC Foreign OPS Subcommittee and Associate Staff. ARA/Pezzullo, AID, and DOD.

3 May 1993 Briefing. Situation in Haiti/Request for Contingency Fund; SACFO Majority and Minority Staff Briefers: ARA-Pezzullo, AID-Williams.

10 March 1993 Briefing. Haiti; for HAC Foreign OPS Minority Staff w/ Majority Staff.

9 March 1993 Briefing. Haiti; for HAC Foreign OPS Minority and Majority Staff. Briefer: ARA/?

27 January 1993 Vote. Haiti; HAC Foreign Ops Subcommittee Staff. ARA/ Gelbard.

12 January 1993 Briefing. Update on Haiti; Senate Judiciary Committee Staff Briefers: ARA/RP/INS.

Mr. KERRY. Mr. President, in addition to that, we have heard arguments a moment ago from the Senator from Arizona that somehow there is some setup here to avoid a vote.

Let us be fair. The majority leader has said this and I think most Senators know it is fact. The 2 o'clock deadline on voting was set long before we even left for our recess a month ago or 3 weeks ago. Every Senator knew that as of 2 o'clock today we would not be able to vote. And it was only by agreement with the Republicans that we were allowed to have two votes last night that cleared some business, and the agreement was it was an exchange for 7 hours of debate on Haiti at their request.

So the entire parliamentary situation in which we find ourselves was frankly dictated to us by the Republicans who would not let us vote unless there was the commitment to 7 hours of debate.

By happenstance, a motion was made in the course of that debate that opened up the possibility for an amendment. The Senator from Arizona seized that opportunity and offered an amendment. Now that Senator and others are complaining that the second-degree amendment offered by the majority leader has precluded any opportunity for the Senate to vote today on their amendment. But that is not true, because the majority leader's amendment was not even offered until we had reached the previously scheduled hour beyond which votes would not occur.

So to somehow play politics with this issue, always politics, and to suggest to the American people that there is some conspiracy to prevent a vote does a disservice to the quality of debate and the obligations of all of us in the U.S. Senate. That is not what has happened here.

I would prefer to have a vote. It is consistent with everything I have ever said since I fought in Vietnam. I know this country is stronger if it sends people into combat when the Congress agrees. I know that the American staying power will last longer if we have had a healthy debate and we have come to a resolution and the American people are part of it. I have personally suggested historically that I do not like

American troops going off into harm's way unless there is that consent. But we do not always get our druthers in the course of human events.

For whatever reasons, Mr. President, it sometimes falls to the President of the United States to make a judgment under the Commander in Chief power that the fathers of this country, in their wisdom, gave to the President in the Constitution. We have a War Powers Act and still hold the President accountable if in fact the President exercises that authority, and we have checks and balances by which we gain control over whatever judgments the President might make with respect to that use of power.

But no one in the U.S. Senate can legitimately make the argument that the President does not have that power, and that is why again and again when the issue of curtailing the power has come before the Senate with respect to Haiti and elsewhere we, as Senators, have upheld that power of the President.

And that is the lonely decision that my friend from Connecticut referred to earlier, I am not suggesting disrespectfully that Congress does not have a role—of course, it does—but I am simply suggesting the reality: that there are times when the buck stops at the desk of the President of the United States who has to make a decision.

What is the quality of that decision that the President has to make and in what context is the President making it?

I would ask my colleagues on the other side of the aisle to search their consistency compass and perhaps their conscience when they come to the floor to debate Haiti because this policy was not begun by Bill Clinton. This policy was set in place by a person whose stewardship as Secretary of State I respect enormously, one of the better players on the international scene, and that is Jim Baker. And it was set in place by a President of the United States who had a string of successes in foreign policy and whom this Nation came to respect for his acumen in foreign policy and his accomplishments.

Lest anybody question to what degree President Bush and Jim Baker put this policy in place, I want to remind them with Jim Baker's words, and I read.

Two centuries ago, the people of Haiti led this hemisphere in the struggle for independence. This year, with struggle and sacrifice and the support of the international community, they won their democratic rights. Today, with their democracy under attack, the people of Haiti look for our reaction.

The test we face is clear: To defend democracy; to stand united as a community of democracies; to make clear that the assault on Haiti's constitutional government has no legitimacy and will not succeed. . . . The elections in Haiti were held with unprecedented international support. The OAS, the United Nations, and the democratic community helped oversee and verify that this electoral process was open, free, and fair.

I quote Jim Baker.

Jean-Bertrand Aristide is the democratically elected President of Haiti. He and his government have and deserve our support.

That was the Republican policy when they held the Presidency and when they believed that they would be reelected and continue to conduct the foreign policy of this country. It is only with the defeat of that President and the ascendancy of a Democratic President that suddenly our Republican friends have found new routes of policy and new reasons to doubt Jean-Bertrand Aristide and the democratic election.

Let me continue on with Jim Baker's words spoken October 2, 1991, before the Organization of American States. He said:

This organization, more than any other, has a legitimate claim to speak to this crisis. The OAS election observer mission in Haiti did more than help in the conduct of the elections; the OAS mission was a strong symbol of this hemisphere's commitment to the path of democratic development the Haitian people have chosen. Thousands of citizens of this hemisphere struggled and died, were exiled and jailed, to establish democracy. Indeed, many of you sitting at this table are veterans of that struggle. Let the coup plotters in Haiti—and any who dream of copying them—know this: This hemisphere is united to defend democracy.

Mr. President, I am skipping through some of this, but I want to read another important paragraph of Secretary Baker's statement.

Now is the time for us to act. There are a number of draft resolutions in circulation. We urge the drafting committee to take the best elements in each to produce the strongest possible draft. We must not settle for the lowest common denominator if we are to keep faith with the people of Haiti. By sending a mission of this body to Haiti, led by the Secretary General, we will send an important message to those who have taken power in Haiti and to the Haitian people.

And here are the most important words of all.

This junta is illegitimate. It has no standing in the democratic community. Until President Aristide's government is restored, this junta will be treated as a pariah throughout this hemisphere—without assistance, without friends, and without a future.

Mr. President, I ask unanimous consent that the full statement of Secretary Baker before the Organization of American States be printed in the RECORD.

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

[From the U.S. Department of State Dispatch, Oct. 1, 1991]

ATTACK ON DEMOCRACY IN HAITI

(By Secretary Baker)

Today, the international community and this Organization of American States are being tested. A small group of willful, violent men have betrayed their uniform and their nation; they have seized power in Haiti, usurping the government elected by a clear mandate of the Haitian people just 9 months ago.

Two centuries ago, the people of Haiti led this hemisphere in the struggle for independence. This year, with struggle and sacrifice and the support of the international community, they won their democratic rights. Today, with their democracy under attack, the people of Haiti look for our reaction.

The test we face is clear: to defend democracy; to stand united as a community of democracies; to make clear that the assault on Haiti's constitutional government has no legitimacy and will not succeed. I commend the Secretary General for the speed with which he has acted, first to convene the Permanent Council, then to convene this meeting. The elections in Haiti were held with unprecedented international support. The OAS, the United Nations, and the democratic community helped oversee and verify that this electoral process was open, free, and fair. Jean-Bertrand Aristide is the democratically elected President of Haiti. He and his government have and deserve our support.

This organization, more than any other, has a legitimate claim to speak to this crisis. The OAS election observer mission in Haiti did more than help in the conduct of the elections; the OAB mission was a strong symbol of this hemisphere's commitment to the path of democratic development the Haitian people have chosen. Thousands of citizens of this hemisphere struggled and died, were exiled and jailed, to establish democracy. Indeed, many of you sitting at this table are veterans of that struggle. Let the coup plotters in Haiti—and any who dream of copying them—know this: This hemisphere is united to defend democracy.

Last June, the General Assembly took the historic step of guaranteeing that this body would convene to respond to any "sudden or irregular interruption of the democratic order in any member state." Today, that mechanism faces its first test, and it is imperative that we agree—for the sake of Haitian democracy and the cause of democracy throughout the hemisphere—to act collectively to defend the legitimate government of President Aristide. Words alone will not suffice.

This is a time for collective action. Let no one doubt where the United States stands as a member of this proud organization. The United States condemns this assault on Haiti's democratically elected government and the violence committed against innocent Haitians. We demand the immediate restoration of President Aristide's constitutional rule. We have suspended all foreign assistance to Haiti. We do not and we will not recognize this outlaw regime.

My government also calls on all the people of Haiti—in uniform or in civilian life, regardless of political persuasion—to desist from all violent actions. Surely this week's events show that violence only begets more violence, and the way to justice lies in the rule of law, not in recourse to violence.

Now is the time for us to act. There are a number of draft resolutions in circulation. We urge the drafting committee to take the best elements in each to produce the strongest possible draft. We must not settle for the lowest common denominator if we are to keep faith with the people of Haiti. By sending a mission from this body to Haiti, led by the Secretary General, we will send an important message to those who have taken power in Haiti and to the Haitian people: This junta is illegitimate. It has no standing in the democratic community. Until President Aristide's government is restored, this junta will be treated as a pariah throughout this hemisphere—without assistance, without friends, and without a future.

Multilateral assistance must also be suspended to reinforce the message already sent by the United States, Canada, Venezuela, France, and the European Community. And this meeting must remain open in order to show that this hemisphere will not lose interest or forget the suffering of Haiti's people.

If these steps do not succeed, we must consider additional steps. Those who pretend to govern Haiti should know: The path they have chosen leads nowhere. But once democracy is restored, Haiti will again receive the generous cooperation of the international community in promoting development and alleviating poverty.

My colleagues, our immediate purpose today is to defend the rights and noble aspirations of the people of Haiti, but our interests do not stop there. This is the hemisphere that stands poised to achieve what the world has never seen before: the fulfillment of democratic rights across two continents. This is the hemisphere that is building a future of free trade from Alaska to Argentina. This is the hemisphere whose nations are cooperating to eliminate weapons of mass destruction. We are fulfilling the promise of the New World, enshrined in the OAS Charter, "to offer to man a land of liberty." That is the future we are defending, and the people of Haiti are and must continue to be part of that community. This is a moment of darkness, but this coup must not and will not succeed. I believe the people of Haiti will regain their liberty. I believe this hemisphere will meet its test.

This Organization of American States must not and will not rest until the people of Haiti regain their democracy.

Mr. KERRY. Mr. President, it is sad to see so many of our colleagues now coming to the floor with a totally different policy than the policy they supported under President Bush and suggesting to the American people that now we ought to have a whole different set of standards applied to Haiti.

It is even more incredible to listen to the new policy. We heard it from the Senator from Indiana, who came to the floor quoting somebody from Haiti, and saying that we ought to lift the embargo, not worry about the democratic issue, not worry about the military junta that has taken over because no American lives are being threatened.

That is so contrary to what President Bush and Jim Baker established as policy and to what they supported.

It takes us right back to the crime bill, Mr. President, where they voted for a crime bill that had a certain amount of money in it, more than the crime bill that came back, and then they voted against a crime bill that has less money than the crime bill they voted for with more money, and argue against the amount of money in the crime bill that they are voting. If ever George Orwell was going to be alive and well and happy with doublespeak, it is in what comes out of Washington.

Mr. President, I repeat again, I hope we do not have to go into Haiti. But people ought to think about what the policy is that follows through with what George Bush and Jim Baker said. If you lift the embargo and simply do not pay any attention and do not worry about their democratic election, what is the message to any country that aspires to a democratic election? And, more importantly, what is the message to the despots and thugs willing to challenge those elections? That our words are only words? That nothing means anything? That you can risk lives? That you can listen to the United States talk tough about human rights and about the rights of people to have a democratic process, but when push comes to shove we are willing to be shoved?

I am not advocating that you ought to run around the world and intervene everywhere. I am not advocating that even in this hemisphere the circumstances in every situation are the same.

We have heard comparisons with Panama and comparisons with Grenada, and we will hear them. Frankly, we should make a judgment solely on the issue of Haiti. Because each and every country will not present us with the exact same set of circumstances.

But I would ask my colleagues to measure whether or not the circumstances in Grenada in their totality cannot be compared with the totality of the circumstances in Haiti? I would not point to one particular concern in Haiti as sufficient to demand that we hold out military force as a legitimate threat. But when you take the conglomerate of what has happened in Haiti, I believe you have a very different situation.

Mr. President, since ousting Haiti's first democratically elected leader in September, we have been engaged in a test of wills between the thugs who threw out President Aristide and stole the democracy and the international community.

If my colleagues want to be fair about analyzing our options here, they should make a judgment about all of the efforts that we have made to try to get them to step down. For over 3 years now, we have been engaged in a dialog. They even acknowledged their illegitimacy by agreeing in New York at Governor's Island that they ought to step down, and then they went back on that agreement. Notwithstanding that, we have continued to be patient and give them an opportunity to come to their senses. But they have not. They have, in fact, dug in deeper and consolidated their power.

Mr. President, I ask how much time is remaining?

The PRESIDING OFFICER (Mr. AKAKA). The Senator has 9 minutes remaining.

Mr. KERRY. Am I entitled, under the rules, to ask for or to be yielded additional time?

The PRESIDING OFFICER. I advise the Senator that it would take a unanimous-consent request to extend your time.

Mr. KERRY. I ask unanimous consent that I be permitted to extend my time by 10 minutes, if possible.

The PRESIDING OFFICER. Is there objection?

Mr. BENNETT. Mr. President, reserving the right to object, it is my understanding that the procedure that we are following is that, at the conclusion of the statement by the Senator from Massachusetts, another Democrat would then be recognized, and I am told it would probably be the Senator from Florida, Mr. GRAHAM, after which, the time would then come back to this side and I would be recognized.

Is that the correct procedure?

The PRESIDING OFFICER. The Chair would advise the Senator from Utah that the next speaker will be from your side.

Mr. BENNETT. It will not be from the Democratic side?

The PRESIDING OFFICER. It will be from your side. And it will probably be Senator BENNETT.

Mr. BENNETT. I understand.

Well, in that case, Mr. President, I do not object.

Mr. KERRY. I thank the Senator.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. I thank the Chair.

Mr. President, I am reminded of the debate that we had over Iraq, during which time we were consistently told by Republicans that any kind of dissent somehow strengthened the hand of Saddam Hussein and weakened the ability of the President of the United States to be able to work his will.

There are countless quotes from that debate on the floor. Among them, I remember Dick Cheney telling us he did not believe the President required any additional authorization from Congress. Jim Baker said to us, in December 1990, "If we are to have any chance of success, I must go to Baghdad with the full support of the Congress and the American people behind the message of the international community."

The minority leader said that, "The success of Saddam's agreeing to release all foreign hostages came despite attempts by many in Congress to 'tie the President's hand behind his back.'"

He also said, "No doubt about it. The President's policy is working. The last thing we need are more timid signals from Congress."

So we all understand there is a relationship between our debates and the message we send.

Regrettably lacking from our colleagues on the other side in this debate on Haiti is a condemnation of the military junta. Regrettably lacking is a condemnation of the human rights abuses. Regrettably lacking is the condemnation of the usurpation of democracy.

So the message that goes to Gen. Raoul Cedras and company is that they can find a sense of safety because

Americans are not somehow committed to their removal.

Now, Americans are rightfully, absolutely, appropriately asking: What are our interests in Haiti? Why should we be concerned about this? What is it we have to do? What interests does the United States have in risking anybody in any kind of operation in Haiti? And I think it is essential that those questions be answered, not only for the public but obviously for those involved in this operation on the ground.

You have to review a small amount of what happened in Haiti through the years to understand why there is an interest, Mr. President. Haiti, in many respects, is the orphan of this hemisphere. Unlike a lot of other nations in the region, it is not Hispanic in origin. Its people are predominantly poor, largely uneducated, and they are of African origin. Throughout the history of Haiti, they have been brutally repressed by a small, wealthy ruling elite. There are deep-seated hatreds between that ruling elite and the masses. And those hatreds have given birth to a whole culture of violence and a politics of instability. Indeed, their history is filled with coups and civil wars and with brutal dictators like the Duvaliers who have used people like the Ton-Ton Macoutes, their thugs in arms, to keep people in check. And now you have the so-called "attaches," who serve the same function in the present regime—to repress Haiti's people.

The fact is, despite this incredible oppression, the Haitian people said that they were willing to take the risk to have an election. And 4 years ago, in December 1990, they did so and for the first time since independence in 1804 they were allowed to participate in a free and fair election. For the first time in the history of Haiti the power of the people really did prevail.

We all know the outcome of that and we know where we find ourselves today. But we cannot turn our back on the fact that what happened, happened under the watchful eye and with the participation of, the international community. The United Nations, the Organization of American States, and individual nations, including ours, all provided observers. And that experiment came to a sudden halt only when the promise of reform became too real for some of the military thugs to tolerate. So they took power.

Since then, those who sought democracy have been murdered and beaten, arbitrarily arrested, detained and tortured. Many have disappeared without a trace. Women have been raped as a matter of intimidation and policy. Children have been kidnapped from their homes and impressed into forced labor. In recent months the campaign of intimidation has taken on new levels, astonishing even by Haitian standards.

Murder and mutilation have become commonplace. Bodies without heads or faces have been left in the street to rot, and sometimes those who have gone out into the street to try to retrieve them have been killed, cut down in broad daylight to lie there and become another rotting corpse for people to see and be intimidated by.

We know the litany of the high profile assassinations calculated to intimidate: Reverend Jean-Marie Vincent shot most recently, last month; Antoine Izmery, a pro-Aristide activist, killed during a church service last year; respected lawyer and Minister of Justice, Guy Malary, assassinated in broad daylight just before Haitian thugs rioted against the docking of the U.S.S. *Harlan County* last October.

Mr. President, despite each of these instances, I wonder if my colleagues really understand the full measure of suffering of our neighbors, the Haitians. International human rights monitors and the State Department have documented dozens upon dozens of cases of politically motivated rape. Last October the U.N.-OAS human rights monitoring mission documented the rape of a 13-year-old girl in June by military personnel, the rape of the wife of a City Soleil activist by uniformed men in July, and the rape of a 16-year-old girl by a soldier. According to Human Rights Watch, a woman north of Port-au-Prince bled to death after being raped by soldiers in late December.

Human Rights Watch has also documented a case that took place on February 7 of this year, when two of Haiti's paramilitary thugs invaded the home of a family that had been denounced as Aristide supporters by an unidentified detractor. The husband was tied up and forced to watch as his wife was raped on the front porch.

A recent Washington Post article quoted a young Haitian woman named Florence who was raped by 3 thugs seeking her boyfriend. She said: They looked for him everywhere, under the bed, the table, then they beat my mother and father and told me to lie on the floor, and then they raped me.

That is only one of the tools of these tyrants.

The most helpless members of Haitian society, orphan children, are targets of the military's heinous campaign of repression. Children have been forced to sleep in the weeds because there is no shelter, and they are afraid to stay on the streets. A recent New York Times article quoted a Haitian who runs an orphanage saying that children disappear and their bodies are found later, often with their hands bound, in the streets. In the words of one young Haitian boy quoted in the same article, "They do not know that if they kill us they help us. I do not care if the Macoutes kill me because it only brings an end to my suffering."

Perhaps the best example of the disregard that this regime has for human life is the story of a gentleman—if you can call him that—called Norelus Mandelus, a military commander who has dubbed himself the Saddam Hussein of Haiti. Among the many atrocities he has committed was the cutting off of a victim's ear during a vicious beating and forcing the victim to eat his own ear, and then carving his initials in the victim's flesh. Mandelus received a mere reprimand when later it was learned, through priests, that the person victimized, or one of the people victimized, was related to an officer who was senior to him.

In this atmosphere of terror, it is little wonder that thousands of Haitians have taken to the seas. And if we do nothing, then thousands of other Haitians will take to the boats and continue to flood the shores of this country, providing the international community with the spectacle of desperation on the high seas.

After fits and starts we finally adopted a policy for safe haven. But that does not offer them a future, Mr. President.

For the poor masses, political retribution is the most frightening, but it is not the only problem. Economic mismanagement and sanctions have ground the economy to a halt. Businesses are closed. Unemployment stands at 80 percent. And inflation is out of sight. We understand what this embargo is doing and we understand that there are limits to how long that should go on.

While the majority of Haitians have been struggling to survive, the military strongmen have been making money selling fuel, smuggled in, in defiance of the embargo, and running the drug trade in Haiti for the Colombian kingpins. As chairman of the Narcotics and Terrorism Subcommittee, I can say to my colleagues in the Senate without any doubt that the linkages of the Haitian kingpins to the Cali cartel and to drug running are beyond dispute, provable beyond a reasonable doubt. In fact, they kicked out a DEA agent last year because he was getting too close to information, and they threatened his family. Is that not a threat to an American citizen? Is this not a threat to American interests, that drug kingpins are permitted to continue to help and assist in the flow of narcotics into the streets of America? No, the drug trade through Haiti is not as big as Mexico. No, it is not as big as Colombia. But it is one of the links in a long network, and the question ought to be legitimately asked whether we ought to turn around, lift the embargo, congratulate them for their ability to avoid all international sanction, and allow them to continue to fill the streets of America with these illegal substances?

When do we come to our common senses? One of the reasons we removed Noriega was drugs. One of the reasons

we went to Somalia was starvation. One of the reasons we went to Grenada was chaos. And in Haiti you have all of them. But, suddenly the principles are different. Suddenly the standards are different. And one has to be left asking if it is not because the cultural ties to Haiti are not perceived by so many Americans as being as strong.

Mr. President, I am not going to dwell on the issue of drugs or each of these individual interests because my time is going to run out. That Haiti's leaders are involved in the drug trade is beyond question. We estimate that there is a sum of approximately $100 million a year they put away into bank accounts as a consequence of the fruits of their illicit traffic in this country.

Drugs are an important source of income for their leaders—although cut back now, obviously, because of the situation. But I assure you if we follow the advice of some of our colleagues who just want to lift the embargo and not worry about democracy, they will be empowered to do a lot more.

Many of my colleagues on the other side of the aisle have argued that United States interests in Haiti simply do not warrant the use of force. I say to them: You have a choice. You have a fundamental choice here.

You can give meaning to the words of Secretary Baker and President Bush, to all of our efforts to encourage democracy and to try to encourage the Haitians to be able to make it on their own. Or you can abandon them. Because that is the alternative policy. And in abandoning them we will abandon a host of other interests that we have in the world.

Mr. President, believe me I understand it is not easy to ever ask any young American to put his or her life at risk in any circumstance. But we are duty-bound to ask ourselves whether or not our interests in Haiti are not equal to or greater than the interests we have in a host of other places where young American military personnel are at risk today? We have Americans risking their life and limbs to protect the Iraqi Kurds.

We have Americans who risked their lives to prevent a coup against President Aquino in the Philippines. We have Americans who have risked their lives, and are continuing to do so, in Rwanda for humanitarian purposes. We have Americans who are risking their lives in order to enforce safe zones in Bosnia. Yet, here we have Haiti, this tiny country close to our own Nation, affecting our own Nation with would-be refugees coming to our shores seeking asylum, running away from a tiny group of dictators whose illegitimate rulers are empowered by the unwillingness of some in this Nation to assume our responsibility to lead and confront them.

I respectfully suggest to my colleagues that there are times when withholding the threat of force because of the possibility that you may have to use that force, causes you to lose the capacity to achieve the goals that you have set out for yourself as a nation.

Earlier, I heard my colleague from Connecticut talk about the tradition of this country. We have an extraordinary tradition. We are, indeed, every bit the great Nation that we talk about. And many people over the course of history have given their lives in an effort to try to bring to other people what some people lost their lives in bringing to us. We should not forget that our own country did not just emerge completely on its own without help from other people who were willing to assist us, and that was in a revolution. That is not what we are even talking about in this situation.

Mr. President, I believe that we have an obligation under the United Nations, under the Organization of American States, under our own history, to try to keep faith with what we have set out to do in Haiti—to restore democracy. While I do not advocate that we run around the world doing this, that we engage in this enterprise helter-skelter and willy-nilly in parts of Central America, Latin America, or elsewhere, I believe that the circumstances arising in Haiti are sufficiently exigent to permit us to hold out this potential use of force at this moment in time with the hope, obviously, that in the final analysis we will not be called on to use it.

Mr. President, I will have more to say at some later time on this subject. My colleague has graciously allowed me a little extra time. I know I have not used it all. I want to express my gratitude to him for allowing me to do so.

I reserve the balance of whatever time I do have.

The PRESIDING OFFICER. Who yields time?

Mr. COHEN. I yield 15 minutes to Senator BENNETT.

Mr. BENNETT. Mr. President, I understand we have come back to the order that was previously there. I was willing to accommodate, but I am told I probably should not, so I apologize to my colleague from Florida, given these instructions and procedures.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah for 15 minutes.

Mr. BENNETT. Thank you. Mr. President, I do not want to multiply all of the arguments that have been made here as to the wisdom or ill wisdom of the invasion. But I do have some points that I think are valid and that we may be losing sight of here.

I will confine those quotations that I make to sources that are not considered Republican sources because we have had a lot of quotation back and forth. I want to quote from people who normally are expected to side with the President and with the Democrats.

I start, if you will, with the New York Times. The New York Times is not known as a particularly friendly journal, as far as the Republicans are concerned. The New York Times ran this editorial this week which was headed: "Congress Must Vote on Haiti," and began with this paragraph:

> To invade Haiti without prior congressional approval would short circuit the United States Constitution. It would also leave the President with sole political responsibility if the operation turns sour. Yet that is just what the Clinton administration now suggests it might do.

It goes on to say later in the editorial:

> In 1991, Democrats in both Houses insisted that President Bush get prior congressional approval for Operation Desert Storm. Now, misplaced fealty drives many of those same Democrats to relieve President Clinton of the same responsibility. That is poor Government and poor partisanship, too. Democrats would do better to protect Mr. Clinton from enmeshing himself in a military action where most Americans see no compelling national interest at stake and in which the first casualties are likely to bring bitter recrimination.

This, again, I remind you, Mr. President, is from the New York Times.

There has been much made on the floor here today about the fact that as Commander in Chief, President Bush put our troops in harm's way in Saudi Arabia without any objection from this body, long prior to the time when we debated and voted.

I would like to comment my reaction to that. I was not a Member of the body at the time that happened, but like all citizens, I watched very closely. I think the Commander in Chief, when invited by a friendly power, as Saudi Arabia is, to place our troops on their soil, has the constitutional power to respond to that invitation without coming to Congress for any formal declaration.

But to take those troops, once they are in place in that friendly power, and then order them to cross an international border in an invasion against a hostile power does, in my view, require clear constitutional authority from the Congress. I know there were some in the Republican Party who said in support of their President, "No, the Congress is not required to vote in this fashion." I know there were some in the Bush administration who argued thus. And we have had them all quoted on the floor today. I do not agree, and I did not prior to coming to the Senate.

If I may be personal for just a moment, my opponent in the 1992 race was then a Member of Congress. He filed a suit against the President saying the President could not proceed in Iraq without getting congressional approval first. And many of my supporters in Utah said, "This is a great political issue. You can attack him for having attacked Bush on this very popular war."

I said, "I will not raise it in the campaign, because I think he was right."

President Bush had no right, in my view, to invade Iraq without congressional authority, and I was delighted that President Bush took the step to seek that authority before proceeding.

On that comment, I would turn to another source, not usually thought of as a Republican journal, the Washington Post, in their editorial today. They make this comment about the wisdom of going into Haiti. They are not involved politically or in a partisan fashion, the comment that I wish I had written myself, one of those lines that I could not do better than. They say:

> The national security/national interest case for the evidently planned action seems to us to hover somewhere between exceedingly thin and preposterous. If there is a better case than that, the administration should be willing to make it to the public and to Congress. It should be willing to seek consensus and consent for spending the money and taking the chances with American lives no matter how pitiable the Haitian's military resources or how good the odds of succeeding may seem to the planners. A Government that calls up reserves for military action has an obligation to do these things.

Mr. President, I will not pursue the question of whether or not going into Haiti is a good or a bad idea. I do want to come down hard on the issue of whether or not the President of the United States has the right to invade a sovereign country that has not attacked us, that has not put any of our forces under any military threat, and where there is no emergency circumstance of American citizens at danger—as was, in my view, the case in Grenada—cold-bloodedly, after careful calculation, without coming to the Congress for approval.

In my view, the Constitution is clear and the President of the United States, be he a Republican or a Democrat, does not have that constitutional authority. I think it very, very clear.

Going back to the Washington Post on that issue, the same editorial, I quote:

> President Clinton insists he won't ask Congress for authorization to invade Haiti. The shortcut spares him the possibility of repudiation for a venture that appears more dubious and unpopular by the day. But it cheats on the separation of powers as defined in the Constitution. It threatens to undercut not just the quick operation planned against the thugs in Port-au-Prince but the prolonged occupation meant to follow on its promises to bring a political disaster upon the administration for misreading the popular mood on the process as well as the substance of its policy.

The New York Times, quoting the Constitution, saying the President should not proceed without getting congressional approval.

The Washington Post, quoting the Constitution, saying the President should not proceed without getting authority. As I say, I agree with them, and I would agree with them if the President were a Republican, and I did agree with them when the President was a Republican even though I did not have this forum in which to make that point.

Now we have heard from the Senator from Connecticut about Jim Baker, the Senator from Massachusetts has repeated that quote, and I am perfectly willing to grant them that Secretary Baker made statements which would logically lead to the conclusion of military action at some point if he were not satisfied with what eventually happened. But I do not believe that Secretary Baker made statements that ruled out coming to Congress for constitutional authority if invasion was the final decision. And, indeed, if President Bush had been elected and Secretary Baker were now saying it is time to invade Haiti but we do not need to get congressional approval for that, I would be standing on this floor, I believe, complaining that the Secretary of State and the President were ignoring the Constitution.

As I say, I have the record of having taken that position with respect to President Bush and the debate that occurred during my campaign. I feel very strongly about this issue. I think the Constitution is very clear. And I ask the rhetorical question, what is the hurry? We are being told, well, we will not have time because the invasion is coming, the invasion is probably going to take place this weekend and the Senate will not have a chance to vote prior to the time that the troops are in Haiti.

I do not know that there is any more urgency to invade Haiti this weekend than next weekend. I think the President has the clear constitutional obligation to come here, and I call on him to say to the ships at sea, say to the people who are in motion, the Constitution is clear, if we are going to invade a sovereign country in a cold, calculated, deliberate fashion, not in the heat of reacting to bullets that are flying, not in the emergency, but after a careful, calculated buildup that has been going on for months, if we are now going to invade another sovereign nation for whatever reason, however valuable, under the Constitution we need to get congressional authority, just as we did prior to the invasion of Iraq.

In my opinion—having not been here I can say this—I think we should have done it prior to the action that was taking place in Panama. I think this is a very clear constitutional issue that we cannot ignore.

Finally, Mr. President, I make this comment. We have consulted with the United Nations and achieved a formal resolution endorsing this kind of action. We are being told that. We have consulted, we being the administration, with the OAS and gotten their approval. If the President of the United States can find the time to get formal approval and resolution from the United Nations, if he can find the time to get formal approval and resolution from the Organization of American States, why can he not find the time to get formal approval from the Congress of the United States, as, in my opinion, he has the clear constitutional obligation to do?

So I conclude, Mr. President, as I began. In my opinion, the Washington Post described this circumstance as well as anybody can when they say the arguments in favor of it, and I quote again, "hover somewhere between exceedingly thin and preposterous."

But even if the arguments are stronger than that, indeed, more particularly if the arguments are stronger than that, the President has the obligation to make those arguments in the constitutionally established forum, and the people of the United States, as the Founding Fathers set up, have the check and balance to respond to those arguments through congressional action as we did in the case of going beyond the defensive action in Saudi Arabia to the formal invasion in Iraq. We have the obligation to do the same thing in this circumstance, and I urge the President to delay the invasion in Haiti for at least 1 week until he takes advantage of that opportunity that the delay would give him and complies with what is to me a very clear requirement in the Constitution of the United States.

I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER (Mr. SIMON). The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I yield such time, I guess within the 30-minute time frame, as the distinguished Senator from West Virginia so desires.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for up to 30 minutes.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Connecticut [Mr. DODD] for his courtesy in yielding me this time.

Mr. President, the Senate is in executive session, is it not?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. And pending before the Senate is the nomination of Adm. Henry H. Mauz, Jr., U.S. Navy, to be admiral, with the pending question immediately before the Senate an amendment in the second degree to an amendment in the first degree, both of which amendments deal with the Haitian situation?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. As I understand it, both of these amendments are sense-of-the-Senate amendments. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Mr. President, let me direct my comments initially to the parliamentary situation.

I am concerned very much that we may be about to go down a very slippery slope because of the procedure that is being utilized here to attach, or to attempt to attach a legislative amendment, namely, an amendment dealing with a possible invasion of Haiti—both amendments being sense-of-the-Senate amendments—the attempt to attach legislative amendments to an executive matter, the matter in this case being a nomination.

Mr. President, from the beginning of the Republic, as far as I can recall, there has never been a legislative amendment added to a nomination. From the very beginning, the Senate rules have kept legislation, on the one hand, and executive business—in other words, treaties and/or nominations—on the other hand, separate. There has always been that wall between the two.

Mr. President, the Senate rules were adopted in April of 1789. There were 19 rules adopted in April 1789, and the next day or the day after, there was a 20th rule adopted. But before the Senate rules were adopted—and even they were taken in great measure from the rules under which the First and Second Continental Congresses acted, and the Congress of the Confederation as well.

Before the Senate rules were adopted by which we operate today, the Constitution of the United States was adopted. The Constitution of the United States preceded the U.S. Senate, of course, preceded the Presidency, the executive branch, and preceded the judiciary.

The Constitution itself established this wall between legislative business on the one hand and executive business on the other. Senators only need to read the Constitution to understand that. If Senators will examine section 5 of article I of the Constitution, in the first paragraph, they will read as follows:

Each House shall be the judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business;

The Constitution is saying there that a majority of each House shall constitute a quorum to do business. It is thereby saying that a majority of each House may pass legislation, because to do business is, in large measure, as far as these two bodies are concerned, to pass legislation—to debate, to amend, and to pass or to reject legislation.

So the Constitution, article I, section 5, states clearly that a majority of each House shall constitute a quorum to do business. Therefore, a majority of each House can enact legislation.

Now, I urge Senators to look at section 2 of article II of the Constitution. I read therefrom:

He—

Meaning the President of the United States.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he—

Meaning the President.

shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.

On the one hand the Constitution is saying legislation can be enacted by a majority vote, but approval of the resolution of ratification of treaties will require two-thirds.

Also, the language that I have read, article II, section 2, confines the advice and consent powers with respect to treaties and nominations to the Senate. The other body is not given a voice in either the approval of the resolution of ratification of treaties or the confirmation of nominations.

So, this Constitution of the United States—created before this Senate existed, and by which the Senate came into being—established the wall between legislation on the one hand and executive business on the other. The wall is created by the Constitution. And the Senate, from time immemorial, has recognized and respected that constitutional wall of separation between executive business and legislative business.

The Senate prints a "Calendar of Business." On that Calendar of Business are legislative matters. On a separate calendar is found the title "Executive Calendar." And in that calendar are to be found treaties and nominations. For example, there are two treaties to be found on page 2 of the Executive Calendar for today. Then beginning on page 3, there are nominations. So treaties and nominations are kept separate.

Mr. President, I hope that Senators who are listening will pay careful attention to what I am saying. I hope that those who are not listening will perchance read the RECORD before we have any vote with regard to any point of order that may be made in respect to the pending amendments.

This is a slippery slope that we are on. Prometheus stole fire from the heavens and gave it to the sons of men. Zeus punished Prometheus, and gave to Pandora, the wife of Epimetheus the brother of Prometheus, a box in which all of the evils of mankind were enclosed and warned that the box not be opened. Pandora opened the box out of curiosity, and all of the evils escaped. Only hope remained.

We are opening up Pandora's box if we go down this slippery slope.

Let us say for a moment that a point of order is made against these legislative amendments because it is not in order to offer them to a motion to recommit, with instructions, an executive nomination. And the Chair, let us say, rules that the point of order is well taken. The Senate by a simple majority vote can appeal and overrule the Chair. Where are we then? Pandora's box will have been opened. If we ever set that precedent here, we will rue the day. If the Senate decides that a legislative matter may be attached to a nomination—the Constitution provides that only the Senate will act to confirm nominees—where does that leave the House? The House is given no part, under the Constitution, in the confirmation of the nominees. But if legislation is attached in the Senate, where does that leave the House? The House expects to be a party, under the Constitution, to the enactment of legislation.

Mr. COHEN. Will the Senator yield for a question?

Mr. BYRD. No, not yet, thanks. But I will yield.

The House is not a party to the confirmation of nominees.

Suppose the Senate decides that a legislative matter may be attached to a treaty. So let us attach the health bill or the crime bill, or whatever. A treaty requires a two-thirds vote for passage. Amendments to a treaty only require a majority vote. So we could attach the crime bill. The Senate could attach campaign finance reform. Where does that leave the House? It has a voice, according to the Constitution, in the enactment of legislation. But it has no voice in the approval of the resolutions of ratification of treaties, which require a two-thirds vote. So we open all kinds of constitutional Pandora's boxes.

Let us say that the Senate decides that we can attach a legislative amendment. If the Senate so decides, what is to keep a Senate committee from doing the same thing? We will have taken a step in that direction, and the next step will be for a legislative committee that has jurisdiction over a nomination to do the same thing. Various and sundry committees have jurisdiction over nominees, depending upon what committee has jurisdiction over the legislation creating the office to which an individual is being appointed. If the Senate adopts such a procedure, who can say that the next step will not be that the Committee on Armed Services, or the Committee on Commerce, or the Committee on the Judiciary will decide that on the next nomination that the committee reports out, a piece of legislation will be attached that the leader has had difficulty in bringing up in the Senate. If the majority on that committee has the votes and can attach that legislation to that nomination, the nomination will be reported to the Senate and the nomination will go on the Executive Calendar.

I do not know whether Senators are aware of it—I assume most of them are—but a motion to go to the Executive Calendar is not debatable. Many Senators may not be aware of the fact

that I was a Senate leader when the precedent was established that a motion could be made to go to any specific item on the Executive Calendar. Therefore, Mr. President, I could stand on my feet and say: Mr. President, I move that the Senate go into executive session to consider the nomination of John Doe on the Executive Calendar, No. 123, or whatever it is, and that would not be nondebatable. I established that precedent, that a motion was in order to go to any particular item on the calendar. Before I established that precedent, when the Senate went into executive session, it had to go to the top item on the calendar and work itself down, unless unanimous consent were given to do otherwise. But the precedent has long been set, and a nondebatable motion is in order to go to any item on that executive calendar.

Should the wall of separation be breached, if a committee having jurisdiction over a nomination wishes to attach legislation to the nomination and has the votes to do it, then that nomination will be reported to the Senate, and put on the calendar. When that nomination is called up—and it can be called up without debate—that piece of legislation will be before the Senate. The majority leader has been fussing and fuming, with some justification, about the need to be able to take up a matter in the Senate without debate or with only a brief time for debate, 1 or 2 hours, whatever.

At the present time, a motion to proceed to legislative business is debatable and subject to a filibuster. But, if the Senate approves a precedent here of allowing legislative matters to be attached to executive business, then, of course, vice versa, the converse will ultimately also become the rule. Nominations and treaties will be attached to legislation. One would expect that development to flow in time's due course.

Let us take this step down that slippery slope now and the stage will have been set for the next step for committees to start reporting out nominations and attaching legislation. The majority leader will then have his nondebatable motion to proceed to take up legislation. He will only need to make the nondebatable motion to go to that particular item on the Executive Calendar and he will have his legislation as a part of that nondebatable motion.

Our friends on the other side in the minority surely do not want that. Senators already have great flexibility in the Senate in offering amendments. There is no rule of germaneness in the Senate. You can call up any amendment you want to. It does not have to be germane. There is a little reference to germaneness in Rule XVI dealing with appropriations bills, but it is only a majority point of order, and nobody pays much attention to it. Otherwise, there is no rule of germaneness in the Senate. Senators already have all kinds of leeway to offer amendments to bills. Surely we do not want to take down that wall of separation between executive business and legislative business in order to offer an amendment. We ought not do it. That will create very difficult far reaching problems.

So let us not breach this wall of separation. I hope that if a vote comes on such point of order, Senators will uphold the Chair if it comes to that, because the Chair will surely rule that the pending legislative amendments are not in order. And in the interest of the Senate as an institution, and in support of the Constitution, Mr. President, I hope that Senators will at least weigh what I have said and, hopefully,, they will agree that this is not the thing to do. We would be cutting off our nose to spite our face.

Briefly, as to the resolutions themselves, I believe that Members will agree that I am very zealous in my defense of the prerogatives of this institution.

I believe most of them will agree that I also try to be just as zealous in upholding the Constitution.

In this situation, I think that the President should have the approval of this body before he launches an invasion of Haiti under the current circumstances. I think he has the inherent authority to take such action in an emergency. He has to have that authority, because if Congress is not in town and this country is invaded or the lives of Americans or American fighting men and women are put in jeopardy, the President would have to act. He has the implied constitutional authority to take action without prior congressional approval and to use the military forces of this country in an imminent emergency, but after such action is taken, there will come a time when the Congress will have a voice. It can by its actions authorize, explicitly or implicitly, his use of the military. It can cut off funds.

I hope that Senators will remember that it was I who took the lead in dealing with Somalia by legislation that set a deadline—I believe it was March 31—and required that, if the President felt he needed an extension beyond that time, he had to come back and make his case here, and that, regardless of any other act, no funds would be available in that operation after that deadline, set as March 31, no funds.

There is the real bite, the money, the power of the purse. I have stood on my feet scores of times in this Senate and defended the legislative control over the purse.

That is what means business. Money is what talks, and the Congress can cut off the funds. Then all of the President's lawyers can argue all they wish. He has to have money to keep a war going, to keep the police action going. He has to have money, and only the Congress can appropriate, in accordance with the Constitution. I have argued that time and time again. So I do not need to go over it again here today.

But let nobody kid themselves that either of these sense-of-the-Senate amendments is going to stop the President. Sense-of-the-Senate amendments just express the sense of the Senate. That is it, period. They have no teeth. They do not cut off any money. They do not have the effect of law. Let us not kid ourselves that either of these amendments is going to stop the President if, in his judgment, he decides that it is in the best interests of this country—no matter how much I may disagree with him—that he has to take action to invade, he will invade.

There will come a time, however, when Congress will have its bite at the apple, and it can lay down the limit, as we did in the legislation on Somalia—go this far, but no farther. If you want to go farther, come back to the Congress for further authorization and funds. And no funds may be spent after that date regardless of any other act.

Congress has, in the final analysis, the hammer. Do not kid yourself. That is why I have stood on my feet many times and opposed efforts to shift power of the purse to the executive branch. I will always defend Congress' control over the power of the purse. It is a mighty power. I will not cede it to any Executive by line-item veto or enhanced rescissions or anything else. There is where the buck counts and there is where it stops. Congress can draw that line and say no more money. That is the end of it.

Senators, do not kid yourselves that either of these amendments is going to stop the President if he decides to invade Haiti. By the way, on previous occasions I have voted against the same amendment that Mr. MITCHELL and Mr. NUNN offered today. I voted against it on June 29, 1994. As Mr. MITCHELL stated earlier today there were four votes against it. I was the only Democrat. There were three Republicans and one Democrat, and mine was the Democratic vote, who voted against it.

And on June 29, 1994, when that vote occurred, Mr. MITCHELL said that that amendment was identical "in form and substance to an amendment adopted by the Senate by a vote of 98 to 2 a few months ago."

I ask unanimous consent that I may proceed for an additional 5 minutes.

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

Mr. BYRD. The vote of 98 to 2 to which the majority leader referred occurred on October 21, 1993. And of the two votes cast against that amendment at that time, mine was one of the votes.

Those were sense-of-the-Senate amendments. They will not amount to anything. I voted against both of them, partly because they would not amount

to anything. And there were other reasons which I explained at the time. I will vote against the pending Mitchell amendment, and I will vote against the amendment by Mr. MCCAIN if it comes to a vote. They do not amount to anything. When we pass something, let us pass something that means something. Neither of these Senate amendments is binding.

This debate, as I have listened to it, has not been altogether constructive. A lot of it amounts to second guessing. I do not know that we are going to invade Haiti. I do not know that the President intends to invade this week or next week or the next one. I do not know.

But there may be some very delicate negotiations going on. I do not know that they are not going on. I have every right to assume that negotiations are going on or that they will perhaps be going on, who knows, maybe even now, perhaps tomorrow, perhaps Friday, perhaps Saturday. I hope we are not giving aid and comfort to Cedras and his thugs by what we are saying here today.

When Senators want to say that the President should have approval, under the present circumstances, before he invades Haiti, count me in. I, too, say he requires congressional approval. But these sense-of-the-Senate amendments are not going to stop him. If the President of the United States, in his judgment, feels we should invade, he will do it, and a sense-of-the-Senate amendment will not stop him.

I think there is the larger issue. I hope the American people who are listening do not believe that the pending amendments are going to be a real effort to stay the President's hand. I have never thought much of sense-of-the-Senate amendments. They usually serve no purpose with regard to reality except a political purpose but only to put people on the record. They will look good on 30-second TV spots.

They are not worth a hill of beans when it comes to reality.

I think the President should get the approval of Congress before acting to invade in the current situation. I certainly do not blame any Senator for standing up here and expressing his opposition to any invasion of Haiti without congressional approval. But, the larger issue, as I see it, is the ability of this President, or any President, to use the threat of an invasion.

By the way, I think there has been entirely too much of that already. I think we have threatened and threatened to the point that the argument is now being used that we have to go into Haiti, or else the credibility of our country will suffer.

But I think the President has to have the use of a threat of an invasion as a tool of foreign policy and as a tool of negotiation. If he is trying to negotiate, he may want to hold over the heads of the other side the likelihood of an invasion. It is a legitimate tool in his negotiation arsenal.

Do we want to pull the rug out from under an effort to remove the offensive Haitian regime through any other means but an invasion? That may be the result of what we are unwittingly doing here today.

The President will speak to the Nation Thursday night. Let us hear him out. Let us hear him out and see what he has to say. And he can get a clear understanding from reading this RECORD that if an invasion is ordered, nothing precludes this body—nothing will preclude this Senator, if I am living and able to stand on my feet, nothing will prevent me or any other Senator from offering legislation to draw a line in the sand. I did it in the case of Somalia. Who did it then? Most everybody else was silent. I did it. What is going to keep me from doing it again? I am going to protect the prerogatives of this institution under the Constitution.

If an invasion is ordered, then nothing precludes this body from passing binding legislation to curtail the length of such an invasion and to define its mission and to cut off the funds after a certain date. Let the lawyers in the executive branch contemplate that this Congress will have a voice, and I will probably be one who will be lending my voice to whatever action appears to be appropriate at that time.

But let us hear the President out. Let us see what he has to say. Do not tie his hands here with this kind of a debate on amendments that are meaningless, except for political purposes to put somebody on record. This is not to question the integrity or the good faith of any Member. I can understand why Members want to stand up here and go on record. But let us exercise a little caution. We may be hurting our own cause by engaging in so much debate on meaningless amendments at this point. Let us first hear what the President has to say to the people of the Nation tomorrow.

Mr. President, I had offered to yield to my friend from Maine and I am out of time, but if he wishes me to yield.

Mr. COHEN. I think at a later time. I thank the Senator.

Mr. BYRD. I thank the Senator.

Mr. President, I thank the Chair and I thank all Senators.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. I now yield to the Senator from Georgia such time as he may consume, up to 30 minutes.

The PRESIDING OFFICER. The Senator from Georgia is recognized for up to 30 minutes.

Mr. COVERDELL. Thank you, Mr. President.

The Senate has not resolved this constitutional question as posed by the eloquent Senator from West Virginia.

I will proceed to discuss the procedures and amendments that are before us.

Before I begin my discussion, though, I would like to clarify very strongly the suggestions that were made a little earlier on the floor by the Senator from Massachusetts [Mr. KERRY], who was suggesting that there was linkage between the former administration and the former President in the conduct of the affairs of an invasion.

Former Secretary Baker and former President Bush, I did not hear all the quotations, were cited as somehow being the beginning of this process. And this simply is not accurate.

I have in my possession a personal letter from the former President. I will read only one paragraph of it, but I want to make it absolutely clear that the former President is not in support of the policy of an invasion of Haiti. You cannot make linkage from the timeframe in which the former President and his Cabinet were engaged with Mr. Aristide and others to this moment. I will read this and then I will set this aside.

> I remain unalterably opposed to the use of U.S. force in Haiti. It would be disastrous for our relations with the rest of this hemisphere and there is no guarantee at all that military intervention will bring peace and stability to Haiti for long.

That is a direct quote from former President George Bush, dated July 28, 1994. And so I hope that whatever is trying to be characterized as an extension of the policy of that administration to be in support of the concept of an invasion be put aside and be made clear for all people and this Senate.

Mr. President, throughout the course of the debate, we have heard, almost without precedent, linkage of precedents: What about Grenada? What about Panama? What about the Persian Gulf?

I do not choose to engage in the constitutional arguments related to that, nor to the relation of one to the other. I am not sure that can be accomplished.

But, because of the unique nature of this crisis in our hemisphere, this problem in our hemisphere, the issue of whether or not we should use force in Haiti is one of broad public knowledge now. This is not something that occurred over the weekend or in the middle of the night; something that was not expected. All America has been engaged in this debate. It is a subject, due to our modern communications, for which most Americans are reasonably knowledgeable.

There is an understanding of the dilemma: The problems that are being suffered by the people of Haiti; the fact that this is a country in our own hemisphere; that refugees are impacting the United States.

They are really not very many secrets about this issue. It is one of those

issues for which a broad population has a reasoned and knowledgeable feel for the subject. We have been debating it for months. And somewhere between 6 to 8 out of 10 Americans have come to a conclusion that the circumstances in Haiti are not reason enough to put an American son or daughter in harm's way.

And I am puzzled. I am puzzled in light of the overwhelming view of our people that we would each day inch closer to an invasion —inch closer to putting Americans in harm's way even in the face of overwhelming public, not just opinion, but knowledge.

Here is a question. I have not heard much said about the fact that we have 3,000 Americans in Haiti right now. Over half of this population are under 18 years of age. Here is the question. Are they safer if we begin hostilities in Haiti and land thousands of troops and engage in a firefight? Or are they less safe? If you were going to engage in a firefight in this situation, should they have been left there or removed, ordered to be removed?

I contend that no rational person could conclude that the inauguration of hostile activities, military activities, could do anything but put those lives in more jeopardy than they are today. Nothing could make you rationally believe they will be safer.

Another question. What is this Clinton doctrine that we are establishing by this act, if it were to be carried out? What is the message that we are sending to the hemisphere? These kinds of activities establish precedents. We are in a new era. We are in a defining era. We are defining our relations around the world. So what are we saying? Are we saying to the hemisphere—and maybe even the world—that every time there is a domestic crisis, that a democracy falls because of a military action confined to a given country, that the U.S. Marines will be sent in to reestablish democracy? Is that what we are going to do?

You do not have to reflect long that over the last 25 years this circumstance has happened almost 10 different times. If you were just visiting this country and you read the criteria that were being enumerated as the rationale for this invasion and you had been subject to no other facts and you were asked what is it we are about to do, the probable answer would be you are about to invade Cuba—where there is a dictatorship, where human rights violations have occurred for decades, where there is oppression, where there is destabilization in the hemisphere and even of our own policy. What doctrine do we establish by the enumeration of the criteria we have been given to date? Maybe there will be a revelation that we see Thursday evening, but the criteria that we have been given to date would suggest that a domestic crisis in our hemisphere is grounds for military intervention.

In one of the discussions that I had with a very distinguished member of this administration I was assured that if intervention ever did occur, it would be comforted by broad hemispheric support; that it would be an international force. America simply cannot accept the fact that you have 12,000 to 20,000 U.S. armed personnel and 266 police officers from Belize or the Bahamas as justification of the accumulation of an international force. It would almost be better if that were left aside—alone.

It is reported that this invasion would cost in the range of one-half billion. I do not know what happened to the America first concept, but we would be spending in the range of one-half billion dollars to accomplish the initial phases of this activity. Who is to know what the costs would be of nation building? These things have real effects. I read a little-noted column that appeared in one of my periodicals as to the effect on Fort Benning: The budget cuts to meet the Department of Defense mandate could delay repairs of the air-conditioning system in the infantry hall; force layoffs of some of the post's 113 temporary employees—a hiring freeze; will cut off locally funded training of civilians, in many cases halt paying soldiers to go elsewhere on temporary active duty assignments.

These things have consequences right here at home, in my State, in all of your States. These are enormous sums of money. They have to come from somewhere. This is where they come from. Employees lose their jobs. People do not get hired. Construction does not take place. Training does not take place.

These are the consequences, the costs of pursuing an activity that the Nation says, "Don't do, Mr. President." This is probably the reason they do not want him to do it, because they know we have been paying an inordinate burden and they know that costs us here at home.

I am not going to be long. There has been so much said about this. But I will say that the idea that has been alluded to—I am going to say it briefly—the idea that we would go to the United Nations in search of confirmation for what we are doing and not come to the Congress I do not believe is a rational process nor do I believe the American people will find that comforting.

So I am anxious, as the Senator from West Virginia said, to hear the President tell us. But I just hope and pray we do not have to pay the price of the loss of any American son or daughter over the crisis as it exists today. I do not believe you can substantiate a national risk. I do not believe there are American citizens at risk. I do not believe this meets longstanding criteria for the use of military force.

Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I am about to yield to my colleague from Alabama. I just point out briefly, if I can, the statements being made—and I certainly do not disagree at all, I have said as much—about the congressional approval before the prior use of force except in absolute emergency situations. I remind my colleagues—you can go back through the RECORD. Unfortunately, you find here a great deal of inconsistency in terms of some of these remarks and positions people have taken regarding what action Congress should have taken before the President of the United States should use force. Again, I do not disagree here. I think, frankly—we voted twice here almost unanimously. I agree with Senator BYRD the sense-of-the-Senate resolutions lack the kind of teeth that an appropriation decision can have regarding any President's ability to act. But nonetheless I think it is pretty much universally held here that we would like the opportunity to vote on these matters.

But if you go back through the RECORD, and there are some 30 different examples in the last 20 years, you are going to find Members running into their own remarks about when they thought it was appropriate to have prior congressional approval and when it was not. It is usually based on whether or not you thought the particular fact situation was an appropriate one or not.

Having said that, Mr. President, let me yield whatever time the distinguished Senator from Alabama wishes, within the confines of the 30 minutes.

May I inquire, by the way, Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The Senator has approximately 1 hour and 13 minutes.

Mr. DODD. And on the other side?

The PRESIDING OFFICER. One hour and fifty minutes.

Mr. DODD. Fifty?

The PRESIDING OFFICER. 5–0.

Mr. DODD. How much time does my colleague desire?

Mr. HEFLIN. Ten minutes.

Mr. DODD. I yield up to 10 minutes to the distinguished Senator from Alabama.

The PRESIDING OFFICER (Mr. FORD). The Senator from Alabama.

Mr. HEFLIN. Mr. President, the ongoing debate over the threatened military invasion of Haiti has come down largely to an either-or proposition. Those who support military intervention emphasize political and humanitarian concerns, and believe that economic sanctions will not work and will continue to place unacceptable burdens on Haiti's poverty-stricken population.

They stress the need for the United States to maintain—or regain—international and regional leadership as a

trustworthy supporter of democracy, which they equate with the return of President Aristide. They note that the Haitian military is small, poorly trained and equipped, and unable to oppose American forces. Their view is of a short-term military operation, with a longer nation-building period to establish a new government infrastructure.

Most proponents recommend that the United States seek international participation in any military actions, and act with the authority of the United States or the Organization of American States, or the United Nations.

Those who oppose a military invasion of Haiti at this time have grave concerns about proposals for direct military action. They cite the reluctance of our allies to participate; stretched resources; and the possibility of a nation-building project with no foreseeable end. Our experience in Somalia has no doubt contributed to this cautious approach. Indeed, our previous involvement in Haiti from 1915 through 1934 showed the futility of establishing a lasting, stable, and democratic government there.

The arguments against an invasion of Haiti are persuasive and I am opposed to a military land invasion. When we hear talk of restoring democracy in Haiti, we are really hearing an oxymoron: This poor island nation has never had any democracy to be restored. It is important to distinguish between the democratic methods by which officials like President Aristide come to power from an actual democratic form of government. One is a process, an election method; the other is a way of life. Haiti did finally enjoy the process, but certainly not the way of life, and it is questionable if it ever would have, even if President Aristide had remained in power.

Additionally, whenever we contemplate military action, we must take into account each and every member of the Armed Forces who would be required to put their lives on the line. American casualties must be anticipated, whether through hostile action or by accident. While significant casualties through actual combat during a landing would likely be minimal, the characteristics of such an invasion would, nevertheless, make them almost inevitable. This would be a particular threat if the Haitian military were to blend into the general population and continue sporadic attacks on American Forces. U.S. Forces might also have to contend with terrorists still loyal to "Baby Doc" Duvalier, who have recently enjoyed a resurgence. While at odds with the present Haitian military, his terrorist organization has a strong dislike for President Aristide.

Haitian casualties would also increase if President Aristide's supporters began to exact retribution upon supporters of the current regime, placing Americans squarely in the middle. Although the possibility of extended and substantial Haitian resistance is considered slim, sporadic harassment, sniping, and sabotage would require a significant commitment of forces to quell and would necessarily delay the establishment of a fully democratic civil regime.

In my judgment, many of the concerns on both sides of the argument are valid. I do not believe, however, that an either-or debate addresses the real issues in Haiti nor the real reasons used to justify an invasion. Instead, there are concrete steps that we can take which will ultimately garner the desired results—the removal of Haiti's illegitimate military dictators and a resolution to the refugee problem. While they may take longer to accomplish than with a military land invasion, these steps would be acceptable to the American people. Conversely, no one in this Chamber would argue that an invasion—land invasion—has the support of the public at this time, since it is not clear, beyond the immigration issue, what our national interests there are.

First, we must make the current economic embargo more enforceable. An effective naval blockade and a multinational military force along the border with the Dominican Republic would virtually cut off what little imports are getting through to Haiti now. The Dominican Republic has made efforts to cooperate with such efforts. This needs to be substantially beefed up.

There are not a great number of roads that go from the Dominican Republic into Haiti. They are limited. These can be substantially blocked. You look also at the fact that you have to transport supplies through vehicles and other things to make some substantial impact, and I believe that a much-beefed-up Border Patrol there, using troops from many nations, can substantially enforce the embargo.

A naval blockade which operates near the shore can effectively stop small boat traffic between Haiti and the Dominican Republic with little danger to the lives of American service members. Frigates and the modern versions of PT boats can be effectively used. Our aircraft carriers and their support forces are uniquely well qualified to help in such an operation. Air fields that could be used in the Dominican Republic and other surrounding islands could be effectively used for an airport in regard to patrolling. The embargo should be given time to work effectively. No arbitrary timetable should force us to invade and abandon the measures we already have in place.

Second, we must institute immediate and comprehensive immigration reform. The United States cannot take into its borders each and every refugee and immigrant, even if they are from within our hemisphere. Immigration reform is long overdue.

Third, we can work with our allies in Latin American countries to help resolve the refugee problem, which is largely driving our Haiti policy. Latin America benefits tremendously from our Caribbean Basin initiative, these nations should accept a certain number of these refugees, and when you divide it out among all of the more than 20 Caribbean Basin initiative countries, you can find that they could take a large number of these refugees. Countries who refuse to cooperate could see certain trade incentives granted through the Caribbean Basin initiative withdrawn. We have provided great incentives for Latin American nations to cooperate with the United States. I think, however, they should be reminded of these incentives rather than being threatened with their withdrawal.

This three-pronged strategy would make the current regime in Haiti understand that we are serious about their departure, while at the same time safeguarding the lives of our young men and women in uniform. These are all credible alternatives to a military invasion, which if pursued in conjunction with each other would ultimately succeed, in my judgment. For those calling for an immediate invasion, I ask, what is the urgency? Can we not effect a change in Haiti without hastily risking American lives?

I want to take a moment to remind my colleagues of an amendment to the Foreign Operations appropriations bill for 1995 that passed this body by a vote of 93 to 5. It expresses the sense of the Senate that no funds appropriated under the act or any other act should be expended in Haiti unless: First, authorized by Congress; second, is necessary to protect or evacuate United States citizens from a situation of imminent danger; or third, the deployment is vital to United States national security interests.

This sense of the Senate amendment sets forth more conditions under which military action may be taken, but based only on these three provisions, it is clear that a military invasion of Haiti should not occur.

It has been said over and over again, but bears repeating: The United States cannot and should not serve as the world's police force. Certainly, we should be a supporter, encourager, and, where possible, promoter or democracy around the world. But we should not and cannot be its enforcer throughout the world, even if the place in question is in our back yard.

The fundamental bottom line of the use of American military land forces, any where in the world, must be in our own national interest. Again, what is our national interest in Haiti beyond solving the refugee problem—a problem that can be addressed through immigration reform and the cooperation of our Latin American allies? Let us give

a 100-percent effort toward enforcing the embargo rather than risking American lives. At the minimum, we should fully debate the issue in Congress, and every supporter of an invasion be put on record as explaining why an invasion of Haiti is in our interests, or why, on the other hand, they oppose such an invasion.

Mr. President, I yield the floor.

Mr. COHEN. Mr. President, I yield to the Senator from Kentucky as much time as he may consume up to 30 minutes.

The PRESIDING OFFICER (Mr. FORD). The Senator from Kentucky.

Mr. MCCONNELL. I thank the Senator from Maine.

Mr. President, the reason the public is so strongly opposed to an invasion is there are far more questions than answers about the step that the administration is planning to take.

Like other members, I have been informed of the President's decision to carry out a military invasion of Haiti. When this mistake will be made remains somewhat unclear, but the fact that it is a mistake to invade without answering some very basic questions is absolutely clear.

In the past, I have been a stalwart supporter of Presidential prerogative in the conduct of foreign affairs, in fact have repeatedly voted to guarantee the President maximum flexibility in Somalia, Bosnia, as well as Haiti.

But I was so troubled by the administration's inability to answer some fundamental questions about this imminent action that I cannot in good conscience support the President's determination to move forward.

Let me review the questions that I believe must be resolved prior to any serious consideration of an invasion.

First, why are we going in?

Deputy Secretary Talbott tells me there are five reasons: democracy, human rights, refugees, the post-cold-war order, and American credibility.

Given those criteria, I asked him why we were not invading Cuba. He had two answers. First, in Haiti we were protecting the outcome of an election—there was a principle at stake. Well, I believe democracy is as important as every Member of this Chamber, but we start down a slippery slope if we are engaging in military action to defend the outcome of elections rather than our national security interests. It is a very short step from defending Mr. Aristide's right to office, to intervening if we feel a nation's elections have not been free and fair. Do we really want to change this Nation's image from that of election monitors to election mercenaries?

Mr. Talbott's second reason why Haiti and Cuba differed involved a so-called risk-benefit analysis. He pointed out Cuba had a standing army of 170,000 men—Haiti has only 7,000. I am not sure about the accuracy of his Cuban Army figure, but I find it shocking that we only consider invading weaker nations. This is a dangerous mind set sending a signal around the world which compromises the credibility of the threat of force and our ability to secure vital national interests.

As to the legitimacy of the remaining arguments about the need to establish guidelines for conduct in the post-cold-war world and demonstrating American leadership, I am not sure Haiti should serve as a proving ground. If there are doubts about American credibility, they are certainly of the Administration's making. Who can forget the tragic events surrounding the arrival of the U.S.S. *Harlan?* The image of an American ship turned back by a small band of thugs armed with sticks was truly a low point in American history.

I do not think we should risk lives in a misguided effort to recover from the Administration's self-inflicted wounds and sagging international reputation.

I find myself not only questioning the five reasons offered as the very premise for this invasion, I am deeply worried about the plans and tactics as they have been briefed to me. Let me turn to other questions that remain unanswered on the eve of invasion.

What are our immediate invasion objectives? Ambassador Albright has said the military junta must leave office and the island. She is publicly contradicted by Secretary Christopher who has said this past weekend that they only need to leave office.

There is an obvious follow-on question: after we figure out what we do with Army Commander General Cedras, his Chief of Staff, General Biamby, and police commander, Colonel Francois, are there other members of the military who we are interested in ousting? In our conversation, Deputy Secretary Talbott often referred to the "bad guys"—I guess I am still unclear who all the bad guys are. Here again, I think this is a question that should be answered before, not after, an invasion.

Not only can the administration not agree on the limited initial objectives, it is unclear who will be in charge of executing the invasion.

We know that the President went to the United Nations to approve using all necessary means to facilitate the departure of the military junta in keeping with the Governor's Island accords. I was told that this was indeed a United Nations operation for which the United States will provide the overwhelming element of force. But I am haunted by the shadow of Somalia and Bosnia where fuzzy command and control lines between United States troops and U.N. commanders complicated the task and cost American lives. When the Secretary welcomes the participation of 17 nations, without defining their roles or missions, I see the potential for chaos. I find myself questioning whether this is a political coalition or a serious military force.

The basic question of who is in charge should be answered before we go into Haiti, not after. Our soldiers should not be the sorry victims of another on-the-job U.N. learning experience.

So, proceeding along the time-line of invasion, let us assume 20,000 Americans have now landed in Haiti. As soon as the situation stabilizes, I have been told we will turn over security to a local police force supervised by 500 international observers or monitors. Well, we all know from Somalia that stabilizing a situation sometimes takes longer than a day or two.

Questions bearing on the security of our soldiers must be addressed before we go into Haiti, not after. It is likely that 20,000 young men and women will be asked to restore and maintain security in a hostile environment. While I do not overestimate the military threat posed by the Haitian military, I am troubled by the prospect of Americans patrolling the violent slums of Port-au-Prince. Who is the enemy? When can they open fire? What are the rules of engagement?

Our Nation was shocked to learn American marines were unarmed in Beirut. We could not believe the U.S.S. *Harlan* had to withdraw because our soldiers were not armed or equipped to handle any kind of security crisis. Families and friends deserve to know before we send in soldiers that they are well equipped, well prepared and fully capable of protecting themselves from hostile fire. Again, we need to know the terms of engagement in advance, not once the invasion is underway.

I hope we will quickly reach the point where we can turn over security to a local police force supervised by international monitors. So, the obvious question needing an answer is who will make up both the local and international contingents.

The first answer I got was horrifying. The administration intends to draw some police from the ranks of the refugees at Guantanamo. If indeed these refugees are the legitimate victims of political persecution and possible torture, they strike me as precisely the wrong people to be recruiting. At a minimum, they are justifiably angry about the circumstances which forced them to flee Haiti, and I would not be the least surprised if revenge was very much on their collective mind.

Turning Haitians from Guantanamo into a professional constabulary is like arming the Crips and the Bloods to patrol the streets of Los Angeles.

As to the international police monitors, I have heard that the Israelis may contribute 30 men, but otherwise no one has specifically offered to accept these responsibilities. We know we

need 500 police monitors; the administration just does not know who is willing to perform those duties.

I hope we are not anticipating an extended, risky peacemaking role for American men and women. But if the administration cannot answer who will volunteer to become peace enforcement officers, I fear the burden will fall to the United States. As with all my other questions, I think the administration should answer this question before we invade, not after.

Mr. President, I would like to tell my constituents that the administration has exhausted every policy option and it is in America's interests to join forces with an international coalition to restore democracy in our back yard.

I want to offer that assurance to a confused and deeply divided public. But I cannot.

As we anticipate a major invasion and use of American military force, too many vital questions remain unanswered: Who will command and control the lives of American soldiers in this U.N. operation? Once we land in Haiti, who is the enemy and what are the terms of engagement? Will we end up in yet another misguided nation building, peace enforcement mission in the name of restoring Aristide to office?

In January 1991, President Bush asked Congress for approval to use force to compel Iraq's withdrawal from Kuwait. By any measure it was one of the most illuminating and remarkable debates I have experienced in my years in the U.S. Senate—a difficult decision for all of us.

I would like to call my colleagues' attention to some of the concerns raised at that time by Members on the other side of the aisle. Some of my colleagues understandably questioned the strength and stability of the coalition when it actually came under fire.

Senator BIDEN declared,

> The truth is that the alleged coalition consists, at least at this point, of little more than a few self interested . . . governments who are all too ready to see American forces committed to battle for reasons which have absolutely nothing to do with the new world order about which we hear so much.

His comments were echoed by Senator KENNEDY, who commented,

> We have arrayed an impressive military coalition . . . but when the bullets start flying, 90 percent of the casualties will be American. It is hardly a surprise that so many other nations are willing to fight to the last American to achieve the goals of the United Nations. It is not their sons and daughters that will do the dying.

Fortunately, casualties were low. With clear U.S. leadership, the coalition worked together effectively. This time, as the invasion date looms, who is participating, the actual number of troops they will commit, their mandate and mission all remain unresolved? Perhaps, we should heed the early warnings of Senators KENNEDY and BIDEN.

In addition to the strength of the coalition, there appeared to be near unanimous concern about the wisdom of taking a nation to war when the country was divided.

Senator HARKIN noted, "If the country is divided on this issue, it is because the President has not made his case to the American people."

Senator BRADLEY said, "I can tell you the country is deeply divided. When a country is not totally united, it is not a good time to go to war."

My colleague, Senator LEAHY, chairman of the Foreign Operations Subcommittee warned us that, "Politically, morally, and even militarily, we must not go to war if it is not supported by the American people. Vietnam proved that truth."

Senator KENNEDY agreed telling us that President Bush had missed the tragic lesson of Vietnam and "that it is a grave mistake to take a divided America to war. Unless and until the American people support a war the Congress has no business authorizing war."

Many Members have already pointed out that recent polls reflect that 73 percent of Americans oppose this invasion, and virtually everyone is confused as to the President's purpose. We all hope he will clarify his agenda and unite this Nation in his address to the Nation.

But whether he is able to or not, I believe it is in the interests of this President and the Presidency to seek and support a full debate in the Congress of his intention to use force to reinstate President Aristide and restore democracy to Haiti. I deeply respect the Constitution and Presidential prerogative and do not wish to encroach on the constitutional powers of the Executive Office.

I share the frustration of a majority of my colleagues who believe we are being denied an opportunity to debate and vote on a matter affecting the lives of 20,000 American men and women.

Let me close with an eloquent statement made by a colleague during the debate over the Persian Gulf:

> The issue of the President's willingness to comply not just with what Congress decides but with the Constitution itself has been the source of serious and unnecessary confusion and has complicated the country's ability to come to grips with this crisis. The plain sense of our Constitution, supported by the full weight of history and jurisprudence, says that the President was never meant to have the power to order this Nation to war: that this power was vested in Congress after the most careful deliberation by our Founders for reasons that are absolutely as valid now as they were then.

This was advice offered in 1991 by then-Senator GORE.

Whether one agrees with this constitutional division of power, President Bush understood that it was important to secure the support of the public and their representatives in Congress prior to engaging in war in the gulf.

President Bush drew a distinction between the events precipitating intervention in Grenada and Panama and those surrounding the decision to deploy force in the Persian Gulf. In Grenada and Panama crises erupted and military action was in response to urgent threats to American citizens and interests. In Grenada, 53 days elapsed from the time we launched Operation Urgent Fury to the withdrawal of troops. In Panama, Just Cause troops were in and out in 58 days.

Haiti has been in crisis for decades, the most recent cycle beginning in September 1991. After working this problem for 18 months, the current administration plans will leave several thousand troops in Haiti through 1996. In Haiti, there has not been and there is not now an immediate emergency that could arguably stand in the way of the Senate's careful and serious consideration of this issue.

I think it would be tragic if we were denied the opportunity to vote prior to the President committing Americans to another U.S. operation.

Whether we are denied the chance to express our views and judgment with a vote, we still have an obligation to the 20,000 Americans who will be deployed in harm's way—we have a responsibility to their friends and families—to make sure questions are asked and answered, we must challenge the administration's plans, and guarantee that they are thinking as clearly about the security of American soldiers as they are about their perception of American political leadership and credibility.

Mr. President, in summary there are basic questions which must be answered before an invasion of Haiti would seem to make any sense whatsoever. I, like many of us, have had a conversation with Secretary Talbot in the last 24 hours. Actually, it was a conversation at some length. We went over the questions that seem to this Senator—and I think to most Senators—to be appropriate for discussion. The questions which the administration has not answered it seems to me, at the very least are the following:

First, why are we invading? Mr. Talbot says democracy, human rights, refugees, the post-cold-war world, and U.S. credibility. Democracy, human rights, refugees, the post-cold-war world and U.S. credibility. That is why, Secretary Talbott says, we are invading.

Now, these are far too generic criteria, far too generic. Actually, they apply to Cuba, which raises the obvious: Why are we not invading Cuba? The same criteria apply to that other Caribbean nation nearby.

We also need to know what are our immediate invasion objectives? Ambassador Albright says the junta must leave office and the island—and the island. Secretary Christopher says that they just have to leave office.

Now, once we decide the immediate objectives, we need to have a better understanding of who is in charge. This is a U.N. operation, Mr. President. We all know the price of committing U.S. soldiers to U.N. command. The administration has not yet established clear lines of command and control.

Now, of course, they would say 17 nations have signed up to participate, but we obviously need to know before we invade what their roles and missions are. If the 17 nations are going to have troops there, what are they going to do? Well, we are told that once the situation is stabilized, we will turn over security to a local police force monitored by 500 international observers. We need to know before we invade what are the rules of engagement for American troops as they try to establish a stable situation. We need to be sure that we are not once again engaging in peace enforcing without a full understanding of the consequences.

We need to know whether anyone has committed to monitor the police. Has anyone agreed to serve in the police force?

Well, the questions could go on and on. A number of them have obviously been asked here today. What is particularly troubling, Mr. President, is that we are on the eve of an invasion and we have few answers, very few answers. And so it is not surprising that the public is so confused.

In the wake of this absence of explanation, I suppose it is not surprising that 73 percent of the American public oppose the invasion. I do not want to make the argument, Mr. President, I will not make the argument, that just because the public at the outset is opposed to the invasion it still might not be in America's best interest. That argument was made by some with regard to the Persian Gulf war to justify their opposition to that war. But certainly, when 73 percent are opposed, at the very least the President should give us and give the American public—and hopefully he will do that tomorrow night—some clear indication of how our national security interests are involved in invading Haiti.

I, for one, am willing to listen, but I must tell you, Mr. President and my colleagues, it seems to me, as others have probably said, it is not worth a single life, not worth a single life of any American soldier unless the President can make a national security argument.

It is too bad we are not having this debate in the context of some kind of resolution of approval. In my view—and I think any careful student of this would reach the same conclusion—the fact situation does not fit the pattern in Grenada. It does not fit the pattern in Panama, where there was an urgent crisis that involved the use of American troops.

We have been discussing this for 18 months, Mr. President. This is a thoroughly premeditated invasion. There is apparently an absence of any Americans in Haiti in distress. There is no rational basis upon which the President could not conclude that this premeditated invasion, discussed for over 18 months, should not be submitted to the Congress for some kind of approval resolution.

Where is the emergency? Where is the national security interest of the United States? In the absence of an emergency, in the absence of a security interest, or a national security interest on the part of the United States, why are we sending American troops into harm's way? A very, very important question.

I, for one, would be open to listening to the President make a national security interest argument. I asked Secretary Talbot for that argument yesterday. It is clear the administration cannot make such an argument because it is perfectly obvious to any, even most casual observer of international affairs that our national security interests do not lie in Haiti.

I wonder about the propriety of establishing the principle that we should go about the world restoring deposed regimes as a matter of American foreign policy.

My goodness. If our goal is to restore deposed regimes, I suspect there will be a long list. Who is going to be in charge of the Government in Haiti, it seems to me, is a question for the Haitians, which is not an endorsement of deposing any particular regime. But the question clearly remains, is it in America's national security interest to restore deposed regimes in countries that have no bearing on America's national security interest? That is what is before us.

So, Mr. President, even though President Clinton believes, I suppose, that this will be a largely successful adventure, hopefully involving no loss of life on our side, you still have to ask the question: At what expense do we engage in this kind of activity? I do not have before me the cost of this to date. But it is substantial already. There seems to be no constituency for it in the United States outside of possibly a very narrow constituency with a rather provincial concern in this particular country; no broad American interest in this.

So, Mr. President, I think it is particularly ill advised. I think the American public will resent that the American Congress, elected by them, has not been asked for approval of this deployment of American troops.

So it is too bad that we have come to this point. I wish the President had chosen to do the otherwise. But this is where we are.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Florida [Mr. GRAHAM].

Mr. GRAHAM. Mr. President, I at this late hour will limit myself to discussing two questions in this debate expecting that we will have opportunities in the next few days or weeks to discuss the other aspects of our relationship to the circumstances in Haiti.

But I would like to talk first about what are the United States national interests in Haiti which justify our participation in an international use of force; second, is this in fact a political military adventure which is related to the special circumstances of the current administration?

Before I discuss the first question, I would like to try to put this in some context. For the last almost half century, the United States has had a foreign policy which was driven by the nature of our enemies—during World War II, the Axis Powers; and since the end of World War II, the Soviet Union. Our foreign policy essentially was a policy of asking the question: Who are our friends and who are our enemies? We supported our friends and we opposed our enemies. We also had a policy that was based on the concept of containment of the Soviet Union, to avoid the Soviet Union extending its reach beyond the borders that were established at the end of World War II.

The Soviet Union now has collapsed. America no longer has the easy touchstone to determine what its foreign policy objectives are going to be—questions such as: Does this nation support our enemy; does this nation have hostile military capabilities and intentions directed towards the United States? These no longer can be the sole criteria by which the United States judges what its foreign policy objectives in this new era should be.

Let me suggest what I think should be at least two of our guiding principles. One of those principles is that we have a very significant national interest in the deepening, nurturing, and maturing of democratic institutions. We know that democratic institutions, states which are elected and given legitimacy by their people, are very unlikely to enter into hostile combat with other democratic states that have a similar legitimacy. We also know that states that have democratic governments tend to be stable and predictable, and that they are the governments that are most likely to respect the rights of their own people and provide political and economic systems that will give to their people the greatest breadth of opportunity. Those are the kinds of nations that the United States has a very strong national interest in promoting and protecting.

Second, in this new cold-war era, I believe in the principle that there will be an assumption of special responsibility based on geographic proximity. One of the reasons that I have been

reticent for the United States to become overly involved in Bosnia is because I think Bosnia is primarily a European issue. I believe that European democracies should shoulder the first line of responsibility as it relates to the world's concern about the conditions and incidents that are occurring in that beleaguered country.

Just as I believe that it is appropriate that we look to countries such as England and France to have the primary responsibility in Bosnia, I believe that it is to the United States that the world appropriately looks for leadership within the Western hemisphere. This has historically been an area of special concern to the United States. The Monroe Doctrine was one of the first principles of American foreign policy. It is an area in which we have a special knowledge, affinity, and a mutuality of future interests.

We spent much of last year debating the North American Free Trade Agreement. In my judgment, that agreement is but a harbinger of what is likely to follow, and that is a closer economic integration among the nations of the Western Hemisphere. For that goal to be realized, it is in our interest that we have democratic countries within the Western Hemisphere with which we can deal.

So those two principles—the United States has a fundamental national interest in the protection and advancement of the concept of democracy, and that we have a special role and responsibility in terms of the democracies of the Western Hemisphere—form the backdrop for the discussion as to what are the particular United States interests in Haiti. I would suggest, Mr. President, that those interests, interests which in my judgment equate to a sufficient U.S. national interest to justify our participation in an international force to restore democracy to Haiti, include the following:

The protection of a democratic government. Haiti has had a very sad, stressful 200-year history. It was not until 1990 that there was an internationally recognized free and fair election held in that country. That election took place after some three decades of despotic rule. That newly elected government, which received the international stamp of legitimacy, resulted in one candidate receiving over two-thirds of the vote. That candidate, President Aristide, assumed his elected office in February 1991. He served for less than 8 months. It was this month of September in 1991 when he was deposed by an old-style military coup d'etat.

I believe that Haiti stands for more than just an individual, elected President Aristide, and it stands for more than just the democracy of that one nation. It stands for our commitment to the protection of democracies within this hemisphere.

The United States is a member of the Organization of American States which, just a few weeks before this military coup, had adopted a resolution in which all of the nations of the Western Hemisphere, all of the democracies of the Western Hemisphere, had jointly committed themselves to the protection of the concept of democracy among the member States.

I believe that there is a very serious message to be sent if the United States abandons that commitment. That message is that other democracies are likely to find little beyond rhetorical support if they become threatened. We have in this hemisphere many democracies which are relatively new and fragile. In fact, 25 years ago, if you had counted the number of democracies in the Western Hemisphere, you could have done so on the fingers of your hand.

Today, all of the nations of the Western Hemisphere are democracies, with the exception of two—Cuba and Haiti. But in those new democracies, there are many sons and grandsons of the former military dictators who are waiting in the barracks for their opportunity to assume what they often consider to be their rightful national leadership. Haiti will be a test of whether there is a resolve to protect these fragile democracies against a potential domino of efforts and military coups.

It is significant, Mr. President, that since Haiti, there have been three attempts to depose democracies within the Western Hemisphere. Fortunately, two of those failed, and a third is being reborn. Those are just indicators of what would happen if Haiti were to be allowed to become permanently under the rule of a military dictator.

A second issue which I believe makes this important to the United States is the tremendous rise in human rights abuses in Haiti. Haiti is a country which, unfortunately, has had a history of human rights abuses. But never in that long two centuries history have the abuses reached the level that they have in the last 3 years.

The United States State Department has, this week, released a report on human rights abuses in Haiti. It is significant that the report was issued by the United States State Department and not by the U.N. Human Rights Commission, which had been the agency that had been observing and reporting on human rights abuses in Haiti. The reason that the United Nations is no longer issuing the reports is because this dictatorial regime has kicked out U.N. human rights observers. They have denied to the world the opportunity to personally see, understand, and report on what is happening to the people of Haiti.

The report issued by the State Department gives some of the following information that illustrates what is occurring in that country: Over 3,000 Haitian civilians, including many who were political supporters of President Aristide, have been killed during this 3-year reign of terror; over 300,000 persons have been driven into hiding; military and paramilitary forces have used politically motivated rape, aimed at terrorizing opponents of the regime as well as of the general population.

Though the democratically approved constitution of 1987 calls for the establishment of a police force separate from and independent of the military, the armed forces have retained control of the police function. They have effectively turned a security institution into an institution of terror.

The consequences of the loss of democracy, the consequences of human rights abuses in Haiti are not restricted to that island. We in the United States, Mr. President, are feeling some of the resonance of those evil deeds. We have seen a surge in refugees from Haiti. We have, today, at our naval station in Guantanamo, Cuba, over 14,000 Haitians who have left their country and have sought safe haven at our naval base. We are opening bases throughout the Caribbean for the refugees who have left the tyrannies of Cuba and Haiti. This immigration crisis has had a direct impact on the United States, and as long as this regime stays in power, it will constitute a continuing threat to the United States.

A second area of consequence to the United States is the fact that Haiti has become a significant transshipment point for drugs. Essentially, the military dictators have sold the sovereignty of Haiti to the drug cartels of Latin America, so that that country can be used for the purposes of refueling, storage, and other important steps that facilitate the transport of drugs into the United States.

Mr. President, American credibility is on the line in terms of our actions in Haiti. We have tried for the better part of 3 years through negotiations, through diplomacy, through international intervention, through economic sanctions and embargoes to create a condition in which the military coup leaders would voluntarily cede power to President Aristide. After almost 36 months, none of those have worked, and none of them show any reasonable prospect of working in the future.

In my judgment, that brings us to a fork in our national credibility road. One of those forks leads to acquiescence, to accommodation, essentially to capitulation and surrender to the coup in Port-au-Prince. The other is to put behind our words the strength of the international community with a credible threat and a willingness to use force. By not following through on our commitments to restore democracy to Haiti, the United States would be abandoning its efforts to oust the illegitimate, sadist regime and would be

capitulating on its commitment to the restoration of democracy.

The consequences of this policy of inaction are a continued and tragic escalation in human rights abuses, renewed immigration crises, the expansion of the renegade regime's use of state powers, drug trafficking, and other illegal activities.

Mr. President, I recognize that it is a matter of judgment, particularly when we are without the kind of easy standards to direct our international behavior that we had prior to the fall of the Soviet Union. It is a matter of judgment as to whether those factors equal a sufficient United States national interest to warrant the use of the United States military force in a multinational effort to restore democracy to Haiti. My judgment tells me that that test has been met.

Mr. President, let me turn to the second question, and that is, is this national interest being manipulated by the current administration for its own purposes?

The fact is that many in Congress have attempted to paint America's foreign policy toward Haiti as the Clinton policy, initiated and developed solely by the current administration.

Mr. President, history will not support that characterization. The American policy toward Haiti was not born with the Clinton administration. It is a bipartisan response to a September 1991 coup developed during the Bush administration and continued by the Clinton administration. President Bush made clear from the outset that the restoration of the Aristide government is an important goal of United States foreign policy.

In the month after the coup, President Bush made the following statement:

> Grave events in Haiti that are continuing to disrupt the legitimate exercise of power by the democratically elected government * * * continue to constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

Those are not the words of Bill Clinton. Those are the words of George Bush.

The President, however, was not alone in stating the United States interests in Haiti.

On October 2, 1991, the then Secretary of State James Baker addressed the Organization of American States. Our colleague, Senator KERRY of Massachusetts, has placed in the RECORD the full statement by the Secretary of State on that occasion. Therefore, I will not repeat but a portion of that statement. The Secretary of State stated:

> This junta is illegitimate. It has no standing in the democratic community. Until President Aristide's government is restored, this junta will be treated as a pariah throughout this hemisphere—without assistance, without friends, and without a future.

The Secretary of State continued:

> If these steps—

The steps that the Organization of American States was committed to take—

> do not succeed, we must consider additional steps. Those who pretend to govern Haiti should know: The path they have chosen leads nowhere.

Mr. President, this is a policy which has had strong support, both with a Republican administration, which presided over the Haitian crisis for the better part of 16 months, and now a Democratic administration, which has presided over this for an additional 20 months.

Mr. President, there is only one group that will take heart by a vacillation in the United States resolve to restore democracy to Haiti, and that one group are the people who stole democracy in Haiti.

I submit to the Senate what I consider to be some words of wisdom that were uttered on January 12, 1991, at another time when American resolve was being tested, and this was the question of whether the United States would authorize the President to use force in repelling the invasion of Kuwait and occupation of that country by Iraq. One of our colleagues made the following statement:

> Mr. President, I am prayerfully hopeful that, if we act affirmatively today in supporting the President, we can yet have a peaceful solution in the Middle East. I believe there is only one thing that we can do that might bring Saddam Hussein to his senses, and that is to use our vote today to affirm the leadership of our President, to assure that America speaks with one clear voice for peace. * * * Now is not the time at this late hour, at this critical moment, to change the position of the United States of America. Now, more than ever, we must speak with one clear voice, and ultimately, that is the voice of the President.

I commend my colleague, the senior Senator from Texas, for his wisdom on January 12, 1991, and I submit that wisdom is valid today.

If we have any hope of resolving this crisis without the use of force, it is to convince the military leaders in Haiti that we are prepared to use force. If they believe that their choices are limited to a voluntary exit from Haiti or an involuntary exit from Haiti, I believe there is some chance that we might be able to end this crisis without the use of force.

That was the theory that was advanced by the Senator from Texas as it related to Saddam Hussein. Unfortunately, the theory did not work in Iraq. I believe that it might work in Haiti but only if we show that resolve.

So, Mr. President, I believe that this is not a Clinton initiative. It is not a Bush initiative. It is not a Republican or Democratic initiative. It is an American commitment to some principles that are going to be critically important in this country in the post-cold-war era. How this crisis is resolved will set the stage for how many other crises are resolved. How this crisis is resolved will underscore how America's credibility will be seen in the years ahead, whether we will have the opportunity to live in the world and particularly in a hemisphere of democracies, peace, economic growth, and prosperity. A sense of common purpose will in significant part be determined by the actions that we are taking on this issue in that small, distressed nation of Haiti.

I urge that we show a resolve and a recognition of the significance of the decision that we are making, and that we support the President in the actions that he has taken; that we support this Nation in terms of the defense of our national interest represented in Haiti, and the symbol that it will be for the future of democracy in the Western Hemisphere.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I yield such time as he may consume to the Senator from Virginia, not to exceed 30 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized for up to 30 minutes.

Mr. WARNER. Mr. President, I thank the Chair and I thank my distinguished colleague from Maine.

Mr. President, I wish to commend my distinguished colleague from Florida. Senator GRAHAM and I have worked together and collaborated on many issues. We serve together on the Intelligence Committee.

Just yesterday, the Senate adopted a resolution with respect to the former Yugoslavia, primarily relating to the situation in the conflict between the Moslems and the Serbs, and we worked hand in hand together on that.

It is interesting how I will now speak to a goal which is quite opposite from that of my good friend from Florida, but I wish to say to him I respect his position, as I hope he will respect the one that I take.

I think the fact that the two of us have worked together and our work product was adopted yesterday exemplifies the fact that this Chamber is divided on this issue. It is not along partisan lines, as my colleague said. It is along the lines of each individual drawing on the respective experiences we have had.

Mr. President, I just want to pick up on a line from my distinguished colleague from Florida about the future and how this action, should it be undertaken in the form of a military invasion using primarily U.S. forces, will have very long-range implications for our country.

My colleague from Florida says it establishes U.S. credibility. That is a point on which I respectfully differ. I

think the United States has credibility second to none in the world as of this very moment.

My concern is that it establishes a precedent—and I see my distinguished friend from Connecticut here—a precedent in that hemisphere of which he has extensive knowledge. We have traveled together in that hemisphere of Central America, the Caribbean, South America. Are we saying to those countries we, the United States, must make the judgments in relation to their governments?

I have listened carefully to my distinguished friend from Connecticut on this very subject many times, and I am deeply concerned that this will have negative long-range implications, rather than positive, to our diplomacy and relationships to those countries.

Mr. President, I have supported the President on a number of his foreign policy decisions, and I support what he is undertaking right this minute in terms of resolving this problem as it relates to diplomacy and other means. I acknowledge and I express my respect for the President and his principal advisers for the manner in which they have kept this Senator fully informed on a daily basis.

The Senate Intelligence Committee, of which I am privileged to serve as vice chairman, is at this very moment conducting a lengthy hearing on the implications of a military force from the United States being utilized to solve the problems in Haiti and what the ramifications would be.

Fortunately, there were several Senators present and, indeed, I think the knowledge of the consequences of this are now becoming widespread within the Senate. I urge all Senators to try to avail themselves of this information.

Therefore, I conclude by saying I express appreciation to the administration for keeping me fully informed in my capacity as vice chairman of the Intelligence Committee.

Nevertheless, I have at each opportunity expressed my nonconcurrence in the use of United States military forces at this point in time, given the facts of the situation, to try to remove the three principal persons down there, Cedras and two others, who are the ostensible leaders at this time in Haiti. I think it is unwise, and I give the following reasons.

All of us are moved by the tragedies in Haiti. Indeed, the President, as reported on this evening's news, was given pictures of the tragedies that are taking place. We recognize that. We have compassion for the people in that tragic land. But, nevertheless, there are many places in the world where similar human rights violations are taking place and, indeed, in a more widespread manner. So that is not sufficient reason of itself.

We must have, as a nation, a clear and convincing national security interest. And how many times have we heard that statement here in the past months and years in this Chamber? It has become the very foundation of the policy that this Chamber has tried to explain to our constituents.

I feel that the administration has made an effort but, thus far, they have not succeeded in establishing, to my satisfaction and to many of my constituents, a case where U.S. national interest is in jeopardy—in jeopardy to the extent that we should utilize our military forces.

During briefings to the Congress, administration officials have said that the United States has an interest in restoring democracy in Haiti. Why, of course, we have that interest. We would like to see democracy spread through many places on our globe. But that alone, or in conjunction with the human rights violations, is not sufficient justification for the use of United States military force at this time.

The administration has also stated that we must have an interest in the stability in the Caribbean. We concur in that. But this Senator fails to see how that situation in Haiti is contributing to a degree of instability that would justify the use of our military forces at this time.

I draw the attention of my colleagues to the fact that the contiguous nation, the Dominican Republic, just this spring had a free and open election at the same time that much of the insurrection and human rights violations were taking place in Haiti. So far as we know, that election was not contested in the sense that it was fraudulent or affected by what was taking place in Haiti. And, therefore, that is an example of how in this region, in my judgment, there has not been that degree of instability that would justify the use of military force at this time.

I have always believed in and I strongly defend a President's constitutional right to employ the Armed Forces of the United States as he sees fit in pursuing the security interests of this country. That is clearly laid down in the Constitution. I have participated, with many others, through the years in the debates on the War Powers Act and many other debates. So in no way do I interpret the resolution by the distinguished Senator from Arizona, Senator MCCAIN, Senator COHEN and others as in any way infringing on the President's power and right.

It is, rather, an effort to say, "Mr. President, given the facts as they exist at this moment, there is every reason to involve the Congress of the United States and most particularly the U.S. Senate, given our own special constitutional powers, in trying to assess along with you, Mr. President, whether or not we should have at this time a justification to utilize our military forces."

Indeed, the leaders of this Chamber, the distinguished Senator from Maine and the distinguished Senator from Kansas, Senator DOLE, the minority leader, have each said that it is in the interest of this country that the Congress be given an opportunity. And I regret that this was not more fully made available to the Senate today to reach some point where we could have had a vote on this question.

I clearly hope that any President, absent situations where timing is so critical and consultation cannot precede execution of military operations, would seek prior congressional expression on the use of military force. It may not have to be specific authorization, but at least the opportunity for a congressional expression. Certainly in this case, at this point in time, at this very moment, there is not the urgency that requires the President to act without an expression by the Congress.

Pollings should not conduct our foreign policy. Nevertheless, those of us privileged to serve our constituents must take into account their viewpoints. The polls indicate very strongly that the American people do not support at this time, given the facts, any use of United States military force in the form of an invasion of Haiti. It is essential, therefore, that an informed debate continue. And we have had debate. But we must continue that debate in the Congress, most particularly in the Senate, to indicate the position that we should take as a body, given the facts as they exist at this time. I personally do not agree with the goals to be achieved through the use of military action at this point in time.

Mr. President, we should not forget the history of United States military involvement in Haiti as we contemplate a possible use of our forces.

In 1915, the United States became involved in Haiti when the President of Haiti executed 167 political prisoners, provoking citizen outrage in that island nation. Angry Haitians attacked their President, dismembered him, and paraded parts of his body through the streets—again, the long history of the Haitian people inflicting incredible violence on one another. The United States intervened to restore justice within 6 weeks, and we were literally running the country in 1915.

The United States occupied and indeed ran the country for 19 years. In 1934, a commission President Hoover appointed to look into the situation found that after the 19 years, and I quote from that commission report, "The social forces that created instability still remain—poverty, ignorance, and the lack of tradition and desire for orderly, free government."

Mr. President, history has a way of repeating itself. It is still that situation today.

Mr. President, I have worked with the distinguished chairman of the Armed Services Committee and other members in assessing the situation

that took place in Somalia. Indeed, I accompanied the Senator from Michigan [Mr. LEVIN], to Somalia as a part of the responsibilities of the committee to write a report, which report will soon be completed.

But I bring to the attention of the Senate that last year, on October 3, United States Army Rangers found themselves fighting for their lives in the dusty streets of Mogadishu—in an operation that had begun months earlier, with the best of intentions, primarily to feed those impoverished people. That operation initially had the support of the American people and the Congress. But, over time—and we will spell this out in the Armed Services Committee report—United States policies became less and less clear, and suddenly we ended up with 18 U.S. Army Rangers killed and 83 wounded in a battle that raged on for 2 days, October 3 and 4. How well all of us remember that.

Congress, almost immediately, insisted that our troops be withdrawn. Congress questioned the right of our President to exercise his constitutional authority with respect to the deployment of our troops in that country.

And only by the narrowest of margins—and I was with the majority in supporting the President, the right of the President to make the determination and to set the timetable for withdrawal, which was March 1994, that is this year, rather than an earlier date sought by many of our colleagues, which was December of 1993. I felt that would be an abrogation of the President's constitutional authority, and I supported our President in his right to set the timetable in that situation to withdraw our troops.

Mr. President, I hope we have not already forgotten those lessons in Somalia. Certainly this Senator has not. Last May, specifically May 12, the Armed Services Committee held hearings on the raid of October 3 and 4. The father of one of the young rangers who gave his life in that battle in open testimony to our committee made a very moving statement which I shall never forget. I would like to quote directly from the record of the statements made by that father, Lt. Col. Larry Joyce, U.S. Army, retired, a man who had been a careerist himself. He was the father of Sgt. James Casey Joyce. Colonel Joyce said as follows, and I quote him:

> Our purpose here should be to tell every American who and what contributed to this tragic episode. No matter how much the President and his advisers would like us to forget it, along with the heroes who gave their lives in Mogadishu last October, we should also let everyone, especially the policymakers, know the consequences of foreign policy that is developed haphazardly and implemented by amateurs. Too frequently, policymakers are insulated from the misery they create. If they could be with the chaplain who rings a doorbell at 6:20 in the morning to tell a 20-year-old woman she is now a widow, they would develop their policies more carefully.

Other parents testified that day about the loss of their loved ones. It was not testimony given in acrimony. It was testimony given by parents who, for generations, have sent their sons and daughters forward in the uniform of our country in the cause of peace. They simply ask, Mr. President, of the Congress, their elected leaders, of their President, and of the policymakers, to think very, very carefully each time before we send from our shores the men and women in the Armed Forces to assume risks which could well involve loss of life or serious injury.

That is precisely why we are gathered here in this Chamber tonight. That is why earlier today it was hoped that the Senate could make some formal expression on this issue, but that, for reasons that have been explained, was denied us.

We must not forget the lessons of Somalia. Before we commit our young men and women to battle, we must assure the objectives are vital to our national security interests, that they are attainable with military force, and that we know how we will get our forces out. That is all important. Just remember, 1915 to 1934, the last time we endeavored this mission.

Perhaps there are reasons which the administration has which might make the invasion of Haiti acceptable to the Congress and the American people. We will learn, hopefully, tomorrow night perhaps facts that are not known to us in this Chamber as of this time. But thus far, I say most respectfully to our President of the United States, that the administration has not made their case on this point.

I recall, as I am sure all of us do, the debate we had before the utilization in a combat status of our forces in the Persian Gulf. The distinguished Senator from Georgia, the chairman of the Armed Services Committee, and I led that debate on our respective sides. I supported the President, drafted the resolution which was eventually adopted by only five votes in this Chamber, and my good friend from Georgia, the chairman of the Armed Services Committee, opposed very vigorously, and for credible reasons, the use of force in the gulf.

But this Chamber reverberated for those several days in a very fine debate, perhaps one of the finest that we have had in recent memory, and we spoke as a body. We supported our President and, as we know, that military action in the minds of most Americans was justified and was successful.

I only hope that we would proceed along much the same lines in this case.

I listened this morning, almost painfully, as the President's Chief of Staff tried to draw a parallel—distinction first and then a parallel and then a distinction—between what took place in the Persian Gulf operation and what might take place in Haiti.

I most respectfully disagree with the Chief of Staff when he said you cannot use the procedure followed in the gulf as a precedent for this, and he tried to justify it on the basis of the relative small military force under the control of the three principals that the whole world wants out of Haiti.

We have covered in great detail that military force in the Intelligence Committee in the past hour. It is well known to all of us. It is not highly classified. It is relatively small. And their weaponry is somewhat archaic, their training in the past few years has been sporadic. But we cannot justify this military action simply because we may only experience several casualties. One casualty—one casualty—is vital to one family, it is vital to this Senator, it is vital to all of us. We cannot justify this military action simply because the poorly trained force and the poorly equipped force in Haiti might not inflict the casualties we experienced in the gulf operation. That is no basis whatsoever for rationalizing a justification for this invasion.

I hope the Chief of Staff reconsiders the statements that he made publicly earlier today on that.

So I conclude, Mr. President, that this is a very troubled world that we are in today. Several months ago, I spoke on the floor and showed a chart where today there are 64 areas in which there are very substantial human rights violations, in which there is conflict, in which Armed Forces are involved in this world, that 64 as compared to perhaps half that number a mere 5 to 6 years ago. But the United States cannot, nor should it, assume the responsibility we can resolve all those problems.

The simple fact that this nation, Haiti, so troubled, so tragically suffering at this moment, is nearer to our shores than Rwanda, than parts of the former Yugoslavia, some of the troubled areas in Southeast Asia, that alone is not justification. The fact that it is in this hemisphere—we have been suffering since the adoption of the Monroe Doctrine of the Big Brother attitude toward the smaller countries in this hemisphere. We cannot do that.

So, therefore, there are many reasons—many reasons—why we should not undertake the use of military force at this time. And until the President of the United States can put forth a clear and convincing case that it is in our national security interest, not just to save democracy, not just to stem the flow of a tragic immigration to our shores, but in the security interests, then and only then can we undertake the responsibility that we have to look our constituents squarely in the eye, and particularly those who may suffer a loss occasioned by a casualty, then

and only then can our forces be deployed.

Mr. President, I yield the floor.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER (Ms. MOSELEY-BRAUN). The Senator from Tennessee.

Mr. SASSER. Madam President, tomorrow evening the President of the United States goes before the American people to present his case for the military invasion of Haiti. And perhaps, given the President's considerable persuasive powers, he can justify a very grave action for which, frankly, there is no present consensus among the American people. It is not going to be an easy case to make. The American people justly demand an unambiguous statement of our policy before risking the lives of American troops, and I demand that statement also. I believe strongly that we must bring to this potential military action the same standards of national security interest, constitutional conformity, and public support that we have demanded on prior occasions.

Like most Americans, I will listen tomorrow night to the President with an open mind. But I feel compelled to state that at this time I vigorously oppose this invasion of Haiti. Like most Americans, I am deeply skeptical about the need to put our troops in harm's way in Haiti or the wisdom of forcibly imposing democracy on a complex culture that has little or no history of democratic principle.

Before we invade, there must be a clear statement from the President on our reasons for going in and, most importantly, our plan for getting out. Without a unified sense of national purpose, we get the ambiguity that leads to disasters like those we experienced in Beirut. Without a strong sense of purpose and a plan for extricating ourselves, we have muddles like what occurred in Somalia. Without clear guidelines before us, we are on the verge of committing our Nation's blood and treasure, and I do not think that is a wise policy to follow.

Now, since the early 1980's, we have tried to design rules of thumb that could be used to determine whether the use of military force is justified and whether it is in our national interest. There is general agreement on four of these rules.

First, military force should only be used as a last resort. And diplomatic and economic solutions should be fully exhausted before we ask our men and women to risk their lives.

Second, military force should be used only when there is a clear-cut military objective. We should not send military forces to achieve vague political goals. We learned our lesson on that, I hope, in the late 1960's and early 1970's.

Third, military force should be used only when we can determine the point at which our military objective has been achieved. In other words, we need to know when we can bring our troops home.

Fourth, military force should be used only in an overwhelming fashion. We should get it done quickly with as little loss of life as possible.

And, finally and perhaps as important as all of the rest, there must be popular support behind the military operation.

Now, based on these criteria, it appears that the operation in Haiti as currently planned by the administration only meets one of these five tests, and that is No. 4, the use of overwhelming force.

At present, the administration has failed to muster, in my view, a cogent case on the other four.

First, it is far from clear that we have exhausted all of our diplomatic and economic options, and the question comes: Has patience, strength, and the international isolation of the thugs in Port-au-Prince truly failed, or have we simply grown weary of waiting for pressure and diplomacy to achieve its desired end?

Second, I think, most importantly, the administration's objective, at least to this Senator at this point, for this use of force is, to say the least, fuzzy.

Are we sending troops simply to oust General Cedras, or are we sending troops to restore democracy in Haiti? Is this a vital interest, or merely an important concern?

Do we truly believe that the military dictatorship in Haiti presents a threat to this country's security? I think not.

Third, achieving any goal larger than capturing General Cedras or forcing Cedras and all of his hooligan comrades out, we must understand, is going to take years.

Do we really have full confidence in President Aristide's ability to lay the foundation for democratic institutions and to build on that? I do not think we do. Or are we in fact writing a blank check for perpetual military occupation by American troops in Haiti? It appears to me it would be difficult to decide when, if ever, our forces will have accomplished their objective, if, indeed, their objective is to establish democracy.

I remind my colleagues, as they have been reminded before—most recently by my friend and colleague, the distinguished Senator from Virginia—the last time we intervened, in 1915, it took 19 years to extricate the marines from Haiti.

Now, the world has changed a lot since those days of musketry and campfires. That was 80 years ago. But the cultural cross-currents in Haiti—bred from years of dictatorship and poverty—are maybe more pronounced and more perplexing today than they were in 1915.

On September 13, the New York Times wrote an editorial which I think summed up the other side of the problem. The editorial said this:

> A century of Latin intervention should have taught Washington you cannot enforce democracy at gunpoint.

Continuing, the editorial said:

> Haitians elected Father Aristide and still support him, but even his legitimacy may not survive being installed by foreign troops.

In other words, a military effort to impose democracy might actually strengthen the forces of chaos and tyranny. We have seen it happen before.

Now, Madam President, I come from a State where patriotism runs deep. It is called the Volunteer State because of the great number of young men who volunteered in service to their country, beginning first in the early 19th century and continuing to today. I come from a State where love of country is a value that is treasured from the barracks of the Army base of the 101st Airborne Division at Fort Campbell to a schoolhouse in the mountains of east Tennessee.

Our young men and women have answered their country's call without reservation. They are not complainers. And our military cemeteries bear witness to their loyalties to our Nation. But I do not think they see the reason for this particular action.

According to reports, there are plans for invasion with about 20,000 U.S. military personnel to be involved along with 260 personnel from the Caribbean nations. They say, according to the administration, that Belgium, the Dutch, France, Britain, and Israel have all indicated a willingness to play a part in the postinvasion policing. But here again, I think in the final analysis this appears to be solely an operation by the U.S. Government.

President Eisenhower once said at a press conference, so the syntax is not totally perfect:

> If we ever come to a place that I feel that a step of war is necessary, it is going to be brought about not by any impulsive individualistic act of my own. But I am going before the Congress in the constitutional method set up in this country and lay the problem before them, with my recommendation as to whatever it may be.

I think President Eisenhower was quite right in that statement. The Constitution and the War Powers Resolution are clear when it comes to consulting Congress before introducing American Armed Forces into hostilities or imminent hostilities.

Many of us stood on this floor and debated that President Bush do the same before he put American forces in harm's way in the Persian Gulf region. I think we can ask no less of President Clinton in this instance.

We cannot abdicate our responsibility to the American people. They are trusting in our leadership and our ability to exercise good governance here. They are praying that we will watch over their sons and daughters and their

husbands and wives who might be called upon to put their lives on the line.

So, Madam President, I would sum up my statement simply by saying this: I oppose this invasion. The burden of proof, a very heavy burden of proof indeed, will be on the President next evening to convince the American people and this Senator that it is in our national interest to do so at this time.

Second, I urge the President to bring this matter before the Congress of the United States and let the elected representatives of the people here in the Senate have some input before putting our troops in harm's way and launching what I think is an ill-advised military expedition.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Madam President, it has been a very long day, as the Chair knows better than anyone. I remember this morning, when we were debating another subject, the current Presiding Officer was then in the chair and is winding up there tonight after a long day. But there are important matters that I think must be discussed tonight.

The Senator from Tennessee noted that the President would be making a very important speech tomorrow night. The President will have a considerable burden in terms of expressing clearly to the American people what our national interest and our national goals are in Haiti. And he particularly has the obligation to explain this to the military people and the families that are directly involved, or soon may be involved.

Madam President, as significant American preparations are under way for an invasion of Haiti, and as the wisdom of the administration's policy is the subject of heated debate here in the Senate and elsewhere, I think we need to step back and consider carefully the implications of the present course.

Although I do not expect the administration to change that course now—and I think the people in Haiti, leaders in Haiti, need to understand that—I also suggest it is not too late to consider whether there exists a reasonable and viable alternative that could bring relief to the people of Haiti without launching a military invasion.

While it is still possible that Haiti's military leaders will depart the country—and I hope that will happen—thereby obviating the necessity or the perceived necessity for an invasion on the part of the administration, the likelihood of an invasion grows with each passing day, and leaders in Haiti need to understand that. This invasion would mark the first time in many years that we have utilized large numbers of American troops at considerable cost and some risk to restore democracy in a failed state.

This invasion also would raise again an important issue of democracy here at home; that is, the relationship between the constitutional power of the President as Commander in Chief and the constitutional power of the Congress to declare war. That clash has been taking place for all of our history and is likely to continue for a long time to come.

But these two issues—restoring democracy in Haiti, which is the announced goal, and the way we go about deciding whether to use U.S. forces for that goal—are intertwined in my own mind. Building democracy in Haiti is going to be a lengthy, expensive proposition. It clearly will cost hundreds of millions of dollars, if not several billion dollars. It will take years, if not decades, to develop a soundly rooted democracy in Haiti. The process will be tenuous long after our invasion force has been withdrawn.

Of course, we will prevail militarily if we invade. We will prevail quickly and at relatively low risk. While we do not have strategic surprise—there has been entirely too much conversation about intent for that to still be a possibility—there are reasons for such conversation, which relate to the hope of getting the illegitimate Haitian military leaders out of there without invading. I know that is the administration's hope. So we do not have strategic surprise, but we have not lost tactical surprise, which is enormously important. And we must do all we can to ensure that we achieve that tactical advantage which can save American lives.

Madam President, I have complete confidence in our military leaders, their planning, and the skills of our superb troops. There is no doubt about the military outcome. It would be quick; it would be decisive; it would be overwhelming.

However if, as the administration states, establishing democracy in Haiti is its principal goal, this will require the long-term support of the American people, as well as the United States Congress. The American people must clearly understand in advance our national interest and our national goals regarding Haiti. The President, before he takes military action, clearly must establish our national interest. He must clearly explain our goals. He must clearly explain what we would define as success, and thereby explain our exit strategy, when we are going to get out. But not by date; I think trying to predict when we will leave a military engagement by date is always a mistake. But at least by a definition of what we would consider success. These ingredients are necessary.

Madam President, while our risk militarily is low—the Haitian military is not very capable, and in my view it is not likely there would be any organized resistance for any long period of time. I say "organized"—there certainly could be sporadic resistance, and certainly no one can assure there will not be casualties. Casualties in any kind of operation of this size are almost inevitable. Certainly, I hope and pray that if an invasion occurs, it would bring minimal harm to our own military personnel.

But the bottom line is that the President, as the Commander in Chief, must explain clearly to the Nation, and particularly to our military personnel and their families, what our national stake is, what our national interests are, and clearly what our goal is. I have long felt and have said publicly on numerous occasions that the administration's goals in Haiti and my goals differ somewhat. In fact, my goals differ in rather important ways from the goals that have been articulated by the Clinton administration.

I believe that our goals should be, first, to alleviate the suffering of the Haitian people, which is considerable and growing; second, to prevent uncontrolled Haitian immigration to the United States; and, third, to shift our near-term policy focus away from restoring democracy solely through President Aristide's return, to building democracy by vitalizing political and economic structures in Haiti, with President Aristide's return deferred until that process takes hold.

If our national goal is to build democracy in Haiti, our focus should be on the establishment of a democratic process as specified in the Haitian Constitution. They have a constitution. It was adopted in 1987. It specifies the way their own people envision their democracy. That Constitution is important. Certainly, it is important if what we are restoring is real democracy.

I have felt that our options to achieve these goals—these are my goals, the ones I have stated on many occasions publicly and privately—came down to three various options in broad terms: First, to return President Aristide on the shoulders of United States military power, which appears to be the administration's present course of action or present intent; second, to continue the status quo by tightening sanctions and increasing pressure on General Cedras and his colleagues, which until just a few weeks ago was the administration's policy; and third, to defer President Aristide's return pending development of a political consensus in Haiti, which we would help foster with the help of the international community, that could begin to build democracy and allow President Aristide to return without United States military intervention and without long-term United States military protection.

Obviously, Madam President, from what I have already said, the third course of action is my preference, but that would require more patience on the part of the Aristide supporters in this country, more patience on the part

of Aristide and his supporters in Haiti, and more patience than has been displayed in the last week or so by the Clinton administration.

Given the administration's current position, which is clearly moving toward military intervention, the issue of the role of Congress—which has been debated today—in approving an invasion must be addressed.

In terms of the President's power under the Constitution, I regard an invasion of Haiti as somewhere between the Persian Gulf war, for which congressional approval was sought, and the military operations in Grenada and Panama, for which congressional approval was not sought.

A Haitian invasion will not require major war, which was the case when we attacked Iraqi forces in the Persian Gulf in 1991. So that is the difference between this anticipated action and the Persian Gulf war. This is not going to be a major war. It may be a major challenge after the initial stage, but the initial military action, even though it certainly has some risk and unfortunately is likely to entail some casualties, it is not what I think anyone would define as a "major" war. Yet, it resembles the Persian Gulf situation in that a threat requiring immediate action is not involved. It also resembles the Persian Gulf in that the initiative is in our hands, as far as military action is concerned, and there is ample time for planning, for a debate, and for congressional action. That is where the similarity is with the Persian Gulf war, in my mind. The situations in Grenada in 1983, and in Panama in 1989, did involve threats which the administration at that time clearly felt and stated to the American people were emergencies that required quick responses. Grenada and Panama were similar to the current situation in Haiti, in that these operations entailed relatively low-risk military operations and could not be defined properly, in my view, as full-scale war, although certainly casualties were likely to and indeed did occur.

Madam President, should the President seek the approval of Congress for United States military force in Haiti? My answer is yes. Legal scholars can debate the constitutional issue, and like other military interventions that have not had congressional approval, the matter probably will be debated, if it occurs, without clear result for a long period of time.

As a practical matter, however, I believe the President should obtain the support of Congress for a United States-led invasion of Haiti. The problems in Haiti defy short-term solutions. They will not be resolved in days or even in months. The invasion will set an important precedent regarding the use of United States military force to instill democracy in a failed state. At least it will be a modern-day precedent.

Haiti has virtually no democratic tradition. President Aristide is only the second popularly elected Haitian chief of state. The first elected chief of state was "Papa Doc" Duvalier. The Haitian economy is in ruins, and the basic welfare of its people is in peril. Without Congressional support for building democracy for an extended time, certainly long after our invasion force has been withdrawn, without that continued support by the Congress and the American people, this goal of restoring democracy is unlikely to be achieved. A short-term American response will increase the likelihood of Haitian domestic violence, political turmoil, and the return of uncontrolled Haitian emigration to the United States. A short-term approach and a goal to restore democracy, in my view, are incompatible.

I do not, however, believe Congress should attempt to prohibit by law an invasion of Haiti. I have supported a sense-of-the-Senate resolution which said that the President should come forward for congressional approval. I will continue to support that next week—the pending resolution that the majority leader put down, the one we have already passed, which had some 94 votes. But clearly the Senator from Arizona [Mr. MCCAIN], and the Senator from Kansas [Mr. DOLE], and others, voted for that resolution, and I believe Senator MCCAIN, who has been on the floor today giving his, I am sure, heartfelt views on this situation, made the statement very emphatically, and I think correctly, that to bar in law a President from invading Haiti is a very bad precedent and should not be done. He argued against that, as did I. The majority of the Senate on two occasions, I believe, agreed we should not bar in law that activity from occurring.

There are a couple of reasons for that, Madam President. First, as a practical matter, if Congress were to pass prohibitive legislation by law, as opposed to a sense-of-the-Senate resolution, the President could always veto such legislation, and he would probably do so. Second, a law prohibiting an invasion of Haiti—and if one is proposed next week, I will not support it—by singling out one country would treat Haiti differently from every other country in the world and would badly undermine whatever remaining credibility there is in the War Powers Resolution. Such action would certainly undermine the Clinton administration for the remainder of its term in office. It would badly undermine U.S. foreign policy.

This would establish a dangerous precedent, and it would have repercussions far beyond Haiti. It could have perceptions in places far more dangerous to our security and to military personnel, like North Korea. I will not favor barring by law this kind of action, in spite of my words of caution and my words of reservation here this evening—and indeed my specific words that the President should seek approval before he undertakes this activity, if he does.

Madam President, in effect, if we tried to bar by law an invasion of Haiti at this point in time, what we would be saying is that the President can invade any other country in the world. He could invade Russia, China, Iran, or Mexico, and he could do them simultaneously, and there would be no bar to that, as long as he complied, of course, with the War Powers Resolution. But that resolution does not bar initial deployments. We would be saying that there is one country in the world in which the President cannot take military action. It would be a sign of weakness on our part that would haunt us in many areas of the globe and could very well cost far more American lives than would be at stake in an invasion of Haiti. So I do not choose that course, and I hope we will not favor that course when we start voting next week.

If an invasion occurs, we still must face the reality—and I hope the administration will think carefully about this, as I do not believe that enough attention has been given to this aspect of the situation—we must face the reality that the return of President Aristide, while desirable in itself, is not synonymous with the establishment of democracy. A democracy is more than one individual, even an individual elected by a majority of the people. Democracy rests on institutions, not on an individual office holder.

The Haitian Constitution, overwhelmingly approved by the Haitian people in 1987, requires that all of the Chamber of Deputies and one-third of the Senate in Haiti be elected not later than December of 1994. That is this year. There is a mandated election in the Haitian Constitution for no later than December of this year.

That is an important point. The Congress of the United States and other parliamentary bodies are not very popular. We know that. But what kind of democracy can we have with no Congress? Would anyone in this country, despite the low esteem in which the polls show Congress is held, want to turn all the Government of the United States and its powers over to the President, any President, whether it is President Clinton, President Reagan, President Bush, President Carter, President Ford, or Presidents further back in history?

Madam President, you cannot have a democracy without a parliament. That is the key. That is the key, much more than one individual. The parliament is a much more permanent body. Something can happen to one individual, either health, tragedy, assassination. It can happen overnight. There has been too much focus on one Haitian official,

President Aristide, as important as his return is. And I do think his return is important at the appropriate point, and I will speak a little more to that in a moment.

Madam President, if the administration proceeds with military intervention, it must first obtain a clear, firm commitment from President Aristide, prior to any invasion, that he will abide fully by the Haitian Constitution and in particular will facilitate free and fair parliamentary elections by the end of 1994, as required by the Haitian Constitution itself.

The Haitian Constitution specifies that Parliament is an essential branch of the Haitian Government, and it prohibits the President from ruling by decree without parliamentary review.

This is the essence of democracy. If we are going there to restore democracy, this should be, in my view, the major, not secondary, but the major point of emphasis—the elections that are required by the Haitian Constitution.

Madam President, we also, I believe, must obtain before any kind of invasion occurs President Aristide's firm commitment regarding fair and equitable access to the Haitian news media for those participating in the parliamentary elections; appointment of a broadly acceptable government that is duly approved by parliament as specified by the Haitian Constitution; prevention of illegal reprisals against Aristide's political opponents and enemies, except under due course and due rule of law, under a justice system as called for in the Haitian Constitution; establishment of an independent judicial system as well as a professional police force.

These are the institutions that will tell whether Haiti has a democracy.

Madam President, I recognize that this approach may not satisfy President Aristide's supporters in the United States, including his supporters in the U.S. Congress. Let me assure them that I share their desire to restore President Aristide to his proper place in Haiti. He was elected. I believe, however, it is in everyone's best interests, including those of President Aristide, that he succeed as a democratic leader. It is in everyone's best interests that President Aristide work cooperatively with a freely elected, representative parliament, as a President who observes fully the letter and the spirit of the Constitution of his own country, which legitimizes his own rule.

Madam President, there is a strategy that to me would have been preferable to an all-out invasion, and even at this late date still would be preferable to invasion, in my view. Under this strategy, the United States would present the illegitimate military leaders in Haiti—Cedras, Francois and Biamby—with a final ultimatum requiring their agreement within a specific deadline.

The proposal would have three time-linked elements.

First, Cedras and associates would have to leave Haiti voluntarily.

Second, the United States and the international community would undertake to ensure that free, fair parliamentary elections take place in accord with the legitimate Constitution of Haiti.

Third, President Aristide would return to Haiti, but he would return after the parliamentary elections, not later than the end of this year.

This is not a perfect solution. Anyone looking for a perfect solution in Haiti I think is looking for something that does not exist. But neither is a full-scale, U.S.-led military invasion.

There are all sorts of problems with that option which we seem to be heading toward, not military problems, not problems in the very beginning, but problems the longer we are there, problems of Haitian-on-Haitian violence, problems that may involve the people who are not for Aristide if he is returned immediately on the backs of the U.S. military, feeling that they should become refugees so that they are not in danger of their lives. If we are not very careful, we may simply swap one set of people who are trying to escape Haiti with another set of refugees.

The step I am suggesting would not foreclose the option of President Clinton and the administration to undertake an invasion if the Haitian military leaders refuse to go along with this overall plan and if they refuse to leave, which they must. Based on the present, clear intent of the Clinton administration to invade, this proposal would be considered by Cedras and company against the certainty of military intervention if they refuse to agree. And if they do not believe an invasion is certain if they remain in Haiti, they certainly should. They must have begun by now to realize the consequences that are coming.

I believe that this step has important advantages as compared to a kick-the-door-down, invade-now approach.

First, this overall approach would recognize that democracy is a popularly approved process, based on a legitimate Constitution. That would be the first principle that we would make absolutely clear. Democracy, as I have said, involves more than one election of one President. This is the wisdom embodied in our own Constitution, framed to prevent domination by one man or one institution. This wisdom is also embodied in the Haitian Constitution of 1987 under which President Aristide was elected.

Second, this approach would facilitate the repatriation of the thousands of Haitian refugees currently detained, and increasingly restive, at our Guantanamo Bay Naval Base on Cuba, which I think could become a ticking time bomb if it has not already. It would also help avoid a new wave of Haitian refugees which would probably be made up of President Aristide's opponents, which could follow even a successful U.S. invasion. It might not happen in a week or a month, but if retribution starts being dished out to those who opposed Aristide, inevitably it will happen.

Third, it would enable President Aristide to rule democratically, in full accord with the Haitian Constitution. And it would provide before he started asserting his rule, which is clearly his right under the election that was held before he was removed from office—that there would be another election and the people would be able to speak. There would be assurance to both pro-Aristide and anti-Aristide groups there that they would have a full voice in who was going to exercise authority over them from the Parliament. It would establish a check and balance mechanism. If you do not have that check and balance device, there are very few examples in world history of any kind of successful democracy. This also would make clear to the Haitian people that the United States stands for broad democratic institutions and processes and not one-man rule.

Fourth, this approach would offer Cedras and his colleagues—if they chose to agree to this option, which I still hope they will—something they do not have now. It would offer them a departure scenario in which they could assert with accuracy that their supporters and those who fear and oppose Aristide, whether or not such attitudes are legitimate, will have an immediate chance to participate fully in Haiti's political and economic recovery.

Finally, in my view, this step could reduce the risk of loss of American and Haitian lives that an invasion inevitably will put at risk.

Madam President, in concluding, if we invade Haiti—and I do believe that an invasion is a virtual certainty, unless Haiti's present military rulers wake up to reality—I want to make it abundantly clear that in spite of my reservations, in spite of the fact that I have serious questions about whether we are on the right course, I will fully support our American military personnel who are at risk.

Those who are tonight preparing for possible military action should understand that at least this Senator will support them fully once they are committed. Once they are committed, the debate, as far as I am concerned, about the appropriate course of action is concluded, because our men and women will then be at risk.

I think it is up to all of us to support them, and up to the American people to support them. We do not have to support the policy to support the troops. But supporting the troops is absolutely essential, I think, for not only this contingency but for the broader

interests America has in the world. And we do have broader interests, we do have much more important interests, including, as we all know, the situation in Korea and the situation in other dangerous parts of the world.

Madam President, I am confident my colleagues in Congress and the American people will also support our troops, whatever they are called on to do, in the due course of their responsibilities.

If an invasion takes place, we must define democracy in Haiti in terms of the constitutional processes there. We must assure—and I think this has to be done before an invasion occurs, if it is going to—that President Aristide both agrees with and abides by the lawful processes set forth in the Haitian constitution.

Finally, we should convey to the Haitian people that the United States and the other friends of Haiti cannot by themselves resolve Haiti's domestic problems. In the final analysis, Madam President, whether there is democracy and prosperity in Haiti will depend on the Haitian people.

I thank the Chair and I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I thank the Chair.

Madam President, we have now begun a debate on a matter of great import. There are really two questions. One is the substance of the policy and the other is the process by which the policy decision will be made. It is important to consider not only the substance of policy but to recognize that the process you follow can give you a greater or lesser opportunity to explore the substance of a policy.

On Haiti, I do not think the case has been made for the substance of administration policy and I think that is the belief across the country. If the public support does not exist for the course of action which the President appears to be set upon.

There has not been a clear definition of what the rationale and strategy are: The reasons and conditions under which we are prepared to use force; the specific objectives that military action would be designed to accomplish; an evaluation of the potential costs of an invasion in both human and economic terms; the national interests that are at stake; the reasons why such a course of action is preferable over other alternatives; and the larger question of how we would declare that the mission has been accomplished and be able to disengage our forces. I point out that the last time the United States went into Haiti, we stayed there for 19 years.

Let me turn to the question whether the President should seek and receive congressional authorization; in other words, the question of whether the President—any President—acting alone, can commit 20,000, 25,000 or 30,000 American troops to the invasion of a country without coming to the Congress, to the elected representatives of the American people, and obtaining their judgment on that question.

This is not a matter of protocol. This is a basic matter of how decisions are to be made under our Constitution and in our democracy. It is also a matter of what is the best and wisest way to arrive at decisions and judgments? The checks and balances system so integral to our system of government was premised on the proposition that from the interaction required by checks and balances would come better policy.

If policy is made by only one individual, where is the independent questioning that may well be necessary in order to identify pitfalls or oversights in the policy? Our democracy has proceeded over the centuries on the premise that out of the interaction between independent branches of government better policy would emerge and errors would be avoided.

Only yesterday, the New York Times, in a powerful editorial, and again this morning, the Washington Post in another strong editorial addressed this issue. I ask unanimous consent that both of those editorials be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SARBANES. The Times, in the opening sentence of its editorial, said, "To invade Haiti without prior congressional approval would short-circuit the United States Constitution." It then went on to say, "Neither of the situations usually cited as justifying independent action by the Commander in Chief—military crisis or unexpected threat to national security—exists in this case. To the contrary, congressional deliberation is both practical and desirable, and there is plenty of time for it."

The Washington Post just this morning, commenting on the President saying that he will not ask Congress for authorization to invade Haiti went on to say that this shortcut "cheats on the separation of powers as defined in the Constitution."

The Constitution, of course, vests in the Congress the power to declare war. Yet the President, under the Constitution, is the Commander in Chief of the armed forces. From these two provisions and the overlap in responsibilities has come controversy of long duration as to their respective rules of the President and the Congress.

I encourage Members to ponder the question of whether the President, acting alone, should, in effect, be able to commit the Nation to hostilities?

I know efforts are made to draw a distinction between police actions and an all-out war, and there may be some merit to those distinctions. But where does the line lie along that scale? It seems to me that, the wiser course—and I have been consistent in arguing for this position previously on the floor—is that the Executive needs to come to the Congress and seek its authority in order to engage in these military operations.

A range of very probing, critical questions have been raised about the substance of the administration's policy. I share the concern which is expressed in that questioning, some of which were very articulately put just previously here on the floor by my colleagues, Senator SASSER from Tennessee and Senator NUNN from Georgia. Those questions have not been answered. The consultation with the Congress has not, thus far, brought about a clear and comprehensive statement of policy and the rationale for it.

The administration has, unfortunately, created self-imposed deadlines which enhance the pressure to move forward, even though such a course may well be ill-advised. We are told that they must go ahead and do this because they have asserted they will do it and if they fail to do so, it will reflect badly upon them. Well, of course, that sequence should have been carefully considered before the initial assertion was made.

A debate on the Haiti issue would be difficult, there is no question about it. But the issue is difficult and it is important. Many believe that we must continue to pursue a course of action that will enhance the international ostracism of the regime there. The U.N. monitors that are to be on the border between the Dominican Republic and Haiti in order to see that the embargo is being thoroughly enforced are not yet fully in place. Other possibilities for resolution short of military action have not been fully explored, as the Senator from Georgia indicated in the course of his statement to this body only a few moments ago.

There is a history of intervention in Latin America. It is not as though we are facing this issue for the first time. That intervention does not give you promising lessons in terms of the ability to bring about democracy at gunpoint. Obviously, we all have very strong reactions to the brutal conduct of Haiti's generals—the torture, killings and gross abuse they impose upon their own people. But the question of whether that should result in an American military intervention is of a different order of magnitude, and particularly when the question is whether it should be done by the Chief Executive acting alone, acting solely.

It is interesting that the administration went to the Security Council to seek its approval but has not come to the Congress to seek the Congress' approval. The case must be made by the

administration to the Congress and to the American people. Otherwise, we are transforming the nature of our constitutional democracy.

Obviously, there is the inclination to be supportive of the President. Obviously, if American troops in the end are involved, the American people will support our forces. But the questions need to be asked now ahead of any such involvement. After it takes place, one will rally in support of our men and women who have been placed in harm's way. So the questions need to be raised and they need to be debated now which, of course, the Senate is now in the course of doing.

So, Madam President, it is clearly in the best interest, in my view, of the President himself to come to the Congress to seek its authorization, and then to have a full debate here. Maybe in a clear comprehensive presentation, the administration can lay out a justifying rationale. As I have indicated, I have not seen that rationale to date. I do not think the consultations which have taken place have provided it. I think the assertions that have been made for the sweep of executive power are excessive and I, therefore, hope that the President and his advisers will take heed of the responses coming from the elected representatives of the American people in the Congress and from the people themselves with respect to this very grave and serious matter.

We have been through this before. We had an extended debate on Iraq. There was the insistence on the part of many of us that the President had to come to Congress for authority. Presidents—all Presidents apparently—constantly assert that this is not necessary; that they have a broad, sweeping power to commit forces as they choose. But in that instance, the President did come to the Congress and an extended debate took place here on the substance of the policy, the rationale was thoroughly debated and a vote was taken. And by a narrow margin, authorization was given for that action.

But that is how the constitutional system is supposed to work. That is what the checks and balances are all about. We did not establish a system of a single executive leader who would make all of these judgments solely of his own accord without interacting with the legislative body in order to obtain a broader judgment. This was, of course, debated at great length at our Constitutional Convention.

The fact that over the years Presidents have taken such solo actions does not invalidate the argument made here that this is not the arrangement that was intended by the Framers of the Constitution.

So I strongly urge the President to come to the Congress to seek its judgment on the policy he is proposing, to lay out his rationale. As I have indicated, it is my view that the rationale that has been put forth does not justify the actions he is proposing to take. That is a matter that ought to be decided in an interaction between the executive and the legislative branches of our government after a full debate in the Senate and the House of Representatives.

Clearly, there is not congressional agreement at this time or broad public support for the action that the President is proposing, and that, in and of itself, is a matter of serious and grave proportions.

Let me also make the observation that the projected operation is essentially an American one. Caribbean nations have committed 266 troops to join in the operation. They now are going through some quick training. The number of American troops that is being talked about now is 20,000, but the number changes from time to time. Obviously, we can overwhelm Haiti militarily, although as in all such actions, there are risks to our fighting men and women.

The next question becomes, then what? Will they continue to remain exposed in a dangerous situation?

Will the United States remain entangled and how, after having gone through all of this, will we ever be able to extricate our forces? Secondly, what precedent does it establish for similar actions elsewhere? What is the rationale that warrants going into Haiti that would not warrant going into a number of other countries that are experiencing similar abysmal and, indeed, terrorist conduct on the part of illegal holders of authority?

We understand situations in which it can be asserted that the national security interests of the United States are endangered or threatened, and obviously in those situations we have to respond with force if it is necessary in order to protect those interests. But no one is making that case here. Therefore, the question becomes how do you separate this action as a precedent from other similar actions which people could easily call upon us to make? What role is it that we will be assuming in the worldwide context on the basis of assuming this role in Haiti?

I close by quoting again from the editorials cited earlier in my statement and set out in full below. From the New York Times:

To invade Haiti without prior Congressional approval would short-circuit the United States Constitution.

And from the Washington Post:

It cheats on the separation of powers as defined in the Constitution.

EXHIBIT 1

[From the New York Times, Sept. 13, 1994]

CONGRESS MUST VOTE ON HAITI

To invade Haiti without prior Congressional approval would short-circuit the United States Constitution. It would also leave the President with sole political responsibility if the operation turns sour. Yet that is just what the Clinton Administration now suggests it might do.

Neither of the situations usually cited as justifying independent action by the Commander in Chief—military crisis or unexpected threat to national security—exists in this case. To the contrary, Congressional deliberation is both practical and desirable, and there is plenty of time for it.

The Constitution vests the power to declare war in Congress while giving the President command of the armed forces. Those overlapping responsibilities have fueled generations of controversy.

Beyond indulging a natural tendency to press against a vaguely defined constitutional boundary, recent Presidents have invoked practical arguments for bypassing Congress, like the need for speedy response or tactical surprise. Under the threat of a missile-launched nuclear Armageddon on 20 minutes' warning, the idea of protracted Congressional deliberation could be made to look like an absurd 18th-century anachronism.

Cold-war Presidents also argued that military actions taken under the authority of treaty commitments or U.N. resolutions are not really wars, but "police actions" or "troop redeployments," and thereby exempt from constitutional requirements.

For years Congress was happy to avoid responsibility. But Presidential excesses in Vietnam drove Congress to reclaim some of its authority in the War Powers Resolution of 1973. This required Presidents to get timely Congressional approval whenever they placed U.S. troops at risk. Since then, Presidents have disputed the resolution's authority but sometimes fulfilled its provisions.

In 1991, Democrats in both houses insisted that President Bush get prior Congressional approval for Operation Desert Storm. Now, misplaced fealty drives many of those same Democrats to relieve President Clinton of the same responsibility.

That is poor governance and poor partisanship too. Democrats would do better to protect Mr. Clinton from enmeshing himself in a military action where most Americans see no compelling national interests at stake and in which the first casualties are likely to bring better recrimination.

President Jean-Bertrand Aristide still represents Haiti's legitimate government. But sending the Marines to restore him to power makes no sense even if, as some military experts predict, that turns out to be an afternoon's work.

A century of Latin interventions should have taught Washington that it cannot enforce democracy at gunpoint. Haitians elected Father Aristide and still support him, but even his legitimacy may not survive being installed by foreign troops.

It is frustrating to watch Haiti's generals sneer at sanctions, play games with U.N. and systematically shoot down democratic leaders in cold blood. Their conduct warrants international ostracism and economic sanctions until they yield power, then generous and muscular support for the elected government that replaces them.

But the conditions that warrant an American invasion—conditions that include broad public support and Congressional agreement—are not in place at this time. Mr. Clinton should not abuse his powers and risk damage to his Presidency by plunging ahead.

[From the Washington Post, Sept. 14, 1994]

HAITI: CONSENSUS AND CONSENT

President Clinton insists he won't ask Congress for authorization to invade Haiti. The

shortcut spares him the possibility of repudiation for a venture that appears more dubious and unpopular by the day. But it cheats on the separation of powers as defined in the Constitution. It threatens to undercut not just the quick operation planned against the thugs in Port-au-Prince but the prolonged occupation meant to follow. And it promises to bring a political disaster upon the administration for misreading the popular mood on the process as well as the substance of its policy.

Administration spokesmen trot out justifications of presidential prerogative familiar—and stale—from decades of political usage. The constitutional scholars shred these claims. The basic point of law remains that the Founding Fathers plainly meant the legislature to have a meaningful say in military action beyond the immediately defensive. A succession of wary presidents has resisted imposition of rigid consultation under the Vietnam-era War Powers Resolution, and there is reason for this. But a succession of wise presidents has understood the advantage to the country—and to presidents—of voluntarily bringing Congress in on decisions entailing a recourse to force and an exposure of Americans to battlefield peril.

In this instance, the administration conveys the impression that it has adequately "consulted" Congress and informed the public by assorted briefings and statements. Our impression is that the presentation as well as the reception of administration policy has been piecemeal and cluttered. No single clear and comprehensive conception of policy exists of the sort you would expect in a formal presidential presentation. As a result, the administration heads toward an early self-imposed deadline in a public fog. It actually seems to be believed that its request for an enabling resolution in the U.N. Security Council moots the obligation or reason to seek the political company of the U.S. Congress, let alone the understanding and consent of a properly informed public. Imprudently, especially for a commander in chief short on military credentials or standing, it counts on the public to rally around if bullets begin to fly and the usual accidents of war occur.

The right precedent lies in President Bush's request of Congress to authorize force, by a majority vote in both houses, in the Persian Gulf in 1991. The issue was difficult and hot, and Mr. Bush—having resisted but been pushed into seeking that authority—took a real chance. It paid off in the impetus the vote gave his policy and standing and in the cover it offered if the operation had failed. Had Congress rebuffed him, meanwhile—and President Clinton cannot ignore this possibility—he could have laid off responsibility for the consequences. With a Democrat in the White House. Republicans are notably more eager, and Democrats less, to bring the legislation into the act. But the principle of shared accountability remains the same, and of course, the concept of a commander in chief's needing to be able to respond to military danger too speedily to countenance the delay has no relevance whatever in this instance.

The national security/national interest case for the evidently planned action seems to us to hover somewhat between exceedingly thin and preposterous. If there is a better case than that, the administration should be willing to make it to the public and to Congress. It should be willing to seek consensus and consent for spending the money and taking the chances with American lives, no matter how pitiable the Haitians' military resources or how good the odds of succeeding may seem to the planners. A government that calls up reserves for military action has an obligation to do these things.

Mr. SARBANES. Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MOSELEY-BRAUN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SARBANES). Without objection, it is so ordered.

The Chair recognizes the distinguished Senator from Illinois.

Ms. MOSELEY-BRAUN. I thank the Chair.

At the outset, I would like to thank the Senator for taking the Chair to give me a moment to speak on the issue of Haiti, one that has greatly concerned me and certainly the people of Illinois over the last year or so and one that certainly has been the subject of much debate in this Chamber today.

A lot of the debate, Mr. President, has been confusing because there is a lot of conversation from every possible aspect. The issue of where we are and what we should do has been considered by the Members of this body. But I think the issue we are facing now boils down to essentially two things: What, if anything, should we do and how to do it.

At the outset, I would note that in spite of all the conversation, our present policy is still one of negotiation. Our present policy is still one of diplomatic intervention. The President of the United States has not yet announced a change of that policy. The President of the United States has not yet ordered an invasion or military action.

In fact, Mr. President, we are in this debate assuming—and rightly so—that there will be such an announcement and that announcement will take place tomorrow, Thursday, but the fact is at this moment in time the policy has not been changed. An invasion may be imminent but it certainly has not been articulated by the President.

And so, taking for a moment the notion that we are looking at and expecting the President tomorrow night to announce his plan, or his proposal, to launch a military action against the dictatorship in Haiti, the question then becomes the propriety of that decision, what, if anything, should we do.

I have heard conversation today from a number of our colleagues suggesting that we do nothing. I am reminded of that old saw that the only thing necessary for evil to succeed is for good men, and I would add women, to fail to oppose it.

It seems to me, Mr. President, that there is little question that we are facing evil in the activities of the coup leaders in Haiti, evil in regard to human rights abuses that have occurred there, and the tragedy of what has happened to the Haitian people, and what we have seen, the spectacle of people at Guantanamo, coming across to escape persecution and the kind of issues, which I will speak to at length, discussed in the recently published human rights in Haiti publication by the U.S. State Department, in which they at great length talk about the actual situation on the ground, if you will, in Haiti. And again, I will get to that more specifically later on in my discussion this evening.

But there is no question in my mind, or, frankly, I suspect, in anyone else's, that what we are talking about is not a nice group of people who have taken over the leadership of Haiti.

No one on this floor today has been willing to stand up for the present dictator in Haiti. No one has spoken fondly of Mr. Cedras or his efforts on behalf of the Haitian people of his commitment to the blessings of liberty, of what a democrat he is. No one wants to say anything nice because there is nothing nice to say.

Our Members have not, frankly, ducked and have not wanted to talk about the dirty little secret in all of this—that our uncertainty and the uncertainty of the trumpet that is being blown here, if you will, gives no small amount of comfort and succor and protection to Cedras, Francois, and others. It seems to me, Mr. President, that we have an obligation to admit, to call it like we see it, and to face up to the fact that we really are facing a tragedy in Haiti and a tragedy that has been brought about by the actions of the military dictatorship there.

The major objection that I have heard on the floor in all of the conversations today has been that the United States does not have a defined national interest in Haiti. Where are our interests? We have heard time and time again the President has not adequately explained it. I will point out in the first instance that the President has not yet spoken on this issue. Frankly, part of the value of this debate is hopefully we will get a chance to hear all sides and to get the information and the American people will get a chance to evaluate and weigh the facts themselves. The American people, in my opinion, rightly do not want war. I mean none of us want war. Frankly, in Illinois, the invasion of Haiti is not a popular matter.

But, it seems to me, the issue before us is not what is popular as much as it is what is right. What is the right thing to do? What can we be proud of? What gives this great country honor? Those are the kinds of concerns that I think we need to face as we go forward in this debate.

I would like to suggest, Mr. President, that from my perspective I can see at least four very direct and specific interests of the United States in getting rid of this military dictatorship in Haiti, four specific interests that are identifiable to me. Those four interests are, just very briefly, the drug trade, immigration, democracy, and human rights. I would like to speak about each of those things.

In the first instance, with regard to the drug trade, there is a joke almost—I do not know if it is a joke to call it the right thing. But the kids on the street, the "boys in the hood," if you will, say things like "you cannot buy a Cuban cigar on the streets but you can buy cocaine."

The fact of the matter is that the Haitian dictatorship is making money, lots of it, from being a transshipment point for the drug trade. It was estimated that they have made in excess of $100 million in the last year alone pouring drugs into our communities that are killing our kids; that is, killing our kids, destroying our communities, and wrecking the very fiber of this Nation. It seems to me that threat, the threat of a continued drug trade, the deterioration of our communities that comes from that gives us a direct national interest in Haiti, and what happens there and the leadership there. Certainly, that was our interest, and that was the stated interest when we decided to go into Panama back in 1990. The whole idea was Manuel Noriega was directly involved in the drug trade, and that involvement was seen as a direct threat to the United States.

Here we have a situation that is no less obscure. In fact, it is probably more advisable than even Mr. Noriega's involvement. And the yet the whole issue of the drug trade has not really been talked about a whole lot on this floor. I think it has to be. I think it should be because we have a vital national interest in protecting our community from people profiteering over shipping poison across the shores into the United States.

The second has to do with immigration. Certainly, while there has been a temporary lull in the boat people, and certainly, if anything, we all saw people coming across and dying in droves trying to flee the repression and the human rights abuses and the economic deprivation in Haiti at the present time. The fact of the matter is that Guantanamo has become, if you will, a holding ground for the Haitians that have tried to escape and have not been able to.

We have not made a decision, quite frankly, as to whether to let those people in the country, making them immigrants fleeing from political persecution or encourage them to go back home. They certainly cannot go back home in the present circumstance.

So the question comes, what do we do? Are we going to let the dictators that have destroyed democracy in Haiti control our immigration policy and violate altogether our borders and set up a situation that puts us in an impossible situation that we cannot control, making American taxpayers, if you will, responsible for warehousing people for whom there is no obvious answer in terms of immigration policy?

That, it seems to me, is the second direct national interest that I would rather see the Attorney General of the United States control U.S. immigration policy than Mr. Cedras and Mr. Francois.

The third has to do with restoring Haitian democracy. The consideration has been accurate here about the fact that Haiti does not have the 200-year or 300-year experience with democracy as does this country. They are trying. They tried with the election of President Aristide to begin to develop a brandnew baby democracy, if you will, a fragile democracy, that democracy that was just getting itself off the ground.

President Aristide won the election in Haiti with better than 70 percent of the vote—and I would add parenthetically that the Presiding Officer did a little better than that last night in the Maryland primaries. But the fact is that 70 percent of the vote is considered a very healthy vote, indeed. The people of his country elected him president. He was kicked out by people by the end of a gun wielded by this military coup.

So the question becomes, do we have a direct interest in restoring democracy as high flown as that might sound? When it happens, to begin with, then-Secretary of State Jim Baker, and I quote, said:

This coup must not and will not succeed.

Here we are almost 2 years later, more than 2 years later, debating the coup that must not and would not succeed. It apparently has succeeded at least long enough, too long in my opinion, and it seems to me that if we are serious about protecting democracy, restoring democracy, giving democracy a chance in that tiny country right off our borders, we have an obligation to go in and to let the dictators know that they just cannot get away with having taken democracy hostage and having it shut down in Haiti.

Certainly, the Clinton administration shares the Bush administration's commitment to restore democracy in Haiti because the President knows that if the Haitian military coup is allowed to stand, the stability of other fledgling democracies in the region will be threatened.

So again, that is a third national interest that I think should be fairly clear to all involved.

Fourth, Mr. President, I believe that our country has a real interest in promoting human rights and in responding to the terrible rights abuses that have occurred so close to our shores.

I would like really to share with the Members of this body the report on human rights abuses in Haiti. It makes for terrible reading. But I really would like to have it introduced as part of the RECORD.

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

HUMAN RIGHTS IN HAITI, UNITED STATES DEPARTMENT OF STATE, SEPTEMBER 13, 1994

This is the third interim report on the condition of human rights in Haiti to be prepared by the Department of State in 1994. Since publication of the annual "Country Reports on Human Rights Practices in 1993" in February 1994, the Department prepared and released two reports on Haiti, in April and July of 1994. This third report is more detailed and comprehensive than its predecessors. It attempts to fill the void created by the compulsion in July of this year of the UN/OAS's jointly sponsored International Civilian Mission (ICM), which monitored human rights conditions throughout Haiti.

SUMMARY

The human rights situation in Haiti under the illegal Cedras regime is comparable to the notorious regime of Francois "Papa Doc" Duvalier. The military and the de facto government promote repression and terror, sanctioning widespread assassination, killing, torture, beating, mutilation and rape. The regime's actions openly defy the international community, which has repeatedly condemned these gross human rights violations.

The increasing repression and terrorism in Haiti is perpetrated at various levels by military, police and civilian groups reporting to the Cedras regime. The military controls the de facto government, the police, the police attaches, the Chefs de Section, and the nominally independent FRAPH, known variously as the Revolutionary Front for Advancement and Progress in Haiti, or the Armed Revolutionary Front of the Haitian People.

Though the democratically approved constitution of 1987 calls for the establishment of a police force separate from the military, the armed forces have retained control of policing functions. The police attaches are quasi-official agents of the security apparatus, who conduct low level surveillance of the populace, enforce repression, and organize vigilante action. The Chefs de Section constitute the rural branch of the military structure, and answer to the army's departmental commanders. The regime directs, encourages or permits these organizations and individuals to violate human rights with impunity.

The central authorities set the tone and provide general direction for official terrorism, but do not necessarily oversee each violent act. Repression is, in effect, decentralized with the result that the lower ranks of the security apparatus commonly regard their positions as private sinecures. They regularly exploit their authority to extort from the local populace, enhance their own social standing, and settle scores for themselves or their friends. This particular brand of Haitian terror, much used by Francois Duvalier in his time, gave rise to his creation of the notorious Tonton Macoutes. As the case of military commander Norelus Mandelus (see below) illustrates, the military is capable of controlling the violence, but encourages or permits it because it suits their purposes.

To monitor the human rights performance of the de facto government, the UN and the OAS co-sponsored the International Civilian Mission (ICM), which was first deployed in Haiti in 1993, and again in 1994. The ICM found considerable evidence of rampant human rights abuse in Haiti from the time of its arrival to July 1994, when the de facto government asserted that the ICM's presence in Haiti had not been legally authorized, and expelled it.

RECENT HUMAN RIGHTS REPORTING

Although the U.S. embassy has not been able to replicate the outstanding work of the nearly 90 full time ICM monitors who were resident throughout the country until July, it has significantly stepped up its human rights monitoring efforts since the ICM's departure. In addition to spot reporting, the embassy's interagency team reports weekly on the deteriorating human rights situation.

SINCE THE OUSTER OF PRESIDENT ARISTIDE

The Cédras regime came to power in September 1991 when it staged a violent coup against the eight-month-old, democratically-elected government of President Jean-Bertrand Aristide. In the immediate aftermath of the coup the new regime killed at least 300 to 500 people, targeting Aristide supporters specifically. As we approach the third anniversary of the coup against the Aristide government, the human rights situation has worsened. To maintain its rule, the regime has instilled a pervasive climate of fear through widespread assassination and other killings, torture, mutilation, rape, and steady harassment. According to the February 7, 1994 report of the UN Special Rapporteur for Haiti, as many as 3000 Haitian civilians, including many Aristide supporters, have been killed under the Cédras regime. Other reports indicate that at least several hundred more have been killed since then. Indeed, the present situation reflects a degree of terror comparable to that of the Duvalier regimes.

THE MOST RECENT HIGH PROFILE CASES

The August 28 assassination of President Aristide's colleague, the Rev. Jean-Marie Vincent, is the most recent demonstration of the de facto regime's determination to silence its opponents. The priest was shot to death by unidentified gunmen as he drove up to the gates of his order's compound in the Turgeau area of Port-au-Prince.

Several other political assassination attempts have failed in recent months. Former Senator Reynold Charles was wounded when shot by unidentified gunmen but escaped death. Gunmen attacked the home of Senator Clarck Parent and his sister (the Mayor of Petionville) but fled when the blind senator fired his pistol into the air. Rather than launch credible investigations into these events, the de facto government dismissed them as the acts of parties interested in discrediting the regime.

These assassinations and attempted assassinations are but the latest in a lengthy series of killings of high level opposition figures. In September of 1993 prominent pro-Aristide activist Antoine Izmery was killed when a band of armed men attacked him during a church service; on October 14, 1993, the respected Haitian lawyer and Minister of Justice Guy Malary was assassinated in downtown Port-au-Prince. The Cédras regime has shown scant interest in investigating these deaths.

On September 9, 1994, the New York Times reported specific instances of political terror being directed at orphans, many of whose parents were themselves victims of the de facto regime. These killings have reportedly been accompanied by persecution of the orphanage staffs, resulting in the closure of many orphanages.

THE RULE OF TERROR

The regime's human rights record demonstrates its intention not only to eliminate its opponents, but to subjugate the general populace and suppress and intimidate any potential opposition as well. A recent Human Rights Watch report estimates that as many as 300,000 persons have been driven into hiding. Widespread torture, rape, beatings, and the extortion of money from people arrested for no reason, serve to cow and demoralize the public.

The evidence of mass intimidation is ample and widely corroborated. A delegation from the Inter-American Commission for Human Rights (IACHR) that visited Haiti from May 16 to May 20, 1994 found that the human rights situation in Haiti had "deteriorated seriously" since their last visit in August 1993. The delegation was able to document 133 cases of extrajudicial killings between February and May of 1994 alone, and there is reason to believe there were many more beyond the scope of their investigations. It also found that the regime was leaving severely mutilated corpses on the street simply to terrorize the populace.

The IACHR delegation uncovered evidence that the wives and relatives of the regime's opponents were being raped and otherwise sexually abused. It identified numerous cases of arbitrary detention, disappearances, and torture. The delegation attributed full responsibility for the deteriorating situation to the de facto authorities.

In its press release of July 27, 1994, the IACHR characterized human rights abuse in Haiti as "flagrant and systematic" and attributed it to "the continuing unlawful exercise of power by the Haitian military and its appointees." It further pointed out the collapse of responsible governmental institutions, referring to "the total ineffectuality of the judiciary or other mechanisms to prevent or punish human rights violations," and noted that violators "act with outright impunity."

In July 1994, Human Rights Watch issued a report documenting dozens of cases of rape aimed at terrorizing not only the opponents of the regime, but the general populace as well. And the ICM, for its part, documented sixty-six cases of politically motivated rape by the military and para-military forces in the first five months of 1994 (before the ICM's expulsion from Haiti by the military).

A LITANY OF HUMAN RIGHTS ABUSES

A sampling of the mounting incidence of rape, torture, and mutilation illustrates the serious deterioration of the human rights situation over the past year:

On August 6, 1993, uniformed soldiers and police invaded the home of a suspected Aristide supporter, raping the wife and arresting the husband, whom they tortured and released.

On August 14, 1993, police, military, and attaches invaded the home of another suspected Aristide supporter. They killed a two-year-old child, molested two young women, and stole valuables.

In October 1993 the ICM report on human rights documented the rape of a 13-year-old girl by military personnel in Bayeux (near Cap Haitien in the north) in June; the wife of a Cite Soleil activist by uniformed men in July; and a 16-year-old girl by a soldier in Derec (near Ft. Liberte in the northeast).

On December 27, 1993, a fire in the Cite Soleil neighborhood of Port-au-Prince destroyed some 200 dwellings, killed four people and injured 61. There is evidence that FRAPH set the fire in retaliation for the killing of one of its members.

According to Human Rights Watch, on January 9, 1994 a woman from Cabaret (a coastal town north of Port-au-Prince) bled to death as a result of having been raped by soldiers in late December.

Amnesty International reports that on January 15, a 17-year-old boy was shot by the FRAPH because he was suspected of being connected to a children's home established by Aristide.

Human Rights Watch reports that on January 29 a pro-Aristide student activist was raped by two FAD'H attaches as she walked home.

On February 3, the military surrounded a house occupied by pro-Aristide activist youth and opened fire, killing eight or nine youths.

On the same day, the military fabricated an attack by Aristide supporters to justify terrorizing and beating residents near Les Cayes on the southern peninsula. One elderly man was beaten to death, and the military subsequently attacked those who attended his funeral.

Human Rights Watch reports that on the evening of February 7, 1994, two attaches invaded the home of a family that had been denounced by an unidentified detractor. They tied up the husband and raped his wife on the front porch.

On March 23, plainclothes military and FRAPH members harassed and physically abused five ICM monitors in the central plateau town of Hinche. The ICM reported increased lawlessness in the region, with FRAPH members and soldiers shooting up neighborhoods and committing burglary and extortion with impunity.

In late March, international monitors reported FRAPH members and soldiers shooting up neighborhoods and committing burglary and extortion with impunity. The U.S. embassy reported a general increase in violence, including rape, against the families of the regime's critics.

On April 18, soldiers opened fire on slum-dwellers in the pro-Aristide area of Raboteaux in Gonaives, killing roughly 30 people.

On May 23, a dozen right-wing gunmen—probably members of FRAPH— hunted down and brutally killed four Aristide supporters in Cite Soleil.

On June 14, soldiers and armed civilians raided a church office in Laborde, arresting and severely beating the director of the College of Notre Dame and his parents.

On June 21, an employee of the Petionville mayor's office was severely beaten and another imprisoned for unwittingly violating a new decree that the Haitian flag not be lowered until the "international oppression" of Haiti ends.

On June 24, an explosion in the house of a local representative of a labor organization killed two girls.

On June 30, the bodies of five men appeared on the streets of Port-au-Prince. All had been shot with their hands tied behind their backs. As with many killings, the exact motivation is unknown; the absence of effort by the military or police to prevent or investigate such killings lead us to assume that they and others took place with the approval or outright participation of the military and their allies.

The embassy also confirms that on August 18 the FAD'H arrested up to 40 people in the southern peninsula town of Cavaillon over an

incident involving the lowering of the Haitian flag. As of August 23, as many as 30 remained incarcerated.

Several prisoners are reported to have died in police custody in Les Cayes, and beatings and torture are common.

REPORTING FROM THE EMBASSY HUMAN RIGHTS TEAM SINCE JULY 1994

After the expulsion of the UN/OAS human rights monitors, the U.S. embassy stepped-up its own human rights reporting. Extensive coverage of the countryside by embassy reporting teams since July 1994 has found a dramatic increase in human rights violations.

The Central Province (near Hinche) had long been the home of popular movements until they were silenced by the brutal repression of the regime's local authority, Col. Gideon. After the Colonel was reassigned to the Southwest Province (around Les Cayes) repression in that area immediately increased. Indiscriminate searches and arbitrary arrests were commonplace. There have been reports that several people in the Les Cayes region have been arrested simply for listening to Voice of America broadcasts.

In Les Cayes, the summer saw the appearance in a southern coastal town of Norelus Mandelus, a military commander who characterized himself as the Saddam Hussein of Haiti. Among other atrocities, Norelus cut off a victim's ear during a vicious beating and forced him to eat it, and then carved his initials in the victim's flesh. Military authorities tolerated this behavior until a priest and seminarian who were among the victims of Norelus' indiscriminate beatings turned out to be relatives of a higher ranking officer. Norelus apparently received a minor reprimand before being reassigned.

In a flagrant example of an arbitrary arrest, authorities in Miragoane imprisoned Lavalas activist Gardy Leblanc, reportedly for ridiculing the new para-military civilian guard during their drills. The officer in command of the Miragoane police office refused embassy personnel access to Mr. Leblanc. The officer said that he was under orders not to talk to the embassy representatives and that Leblanc was being held pending orders from his commander. After repeated inquiries from the embassy, Leblanc was reportedly released.

Last month, the embassy reporting team found that low-level repression and terror is common in coastal Aquin, just east of Les Cayes. Many people were incarcerated and all were subject to harassment by the authorities. A local nun described to the embassy some of the injuries she had treated for prisoners tortured by their captors.

In the town of Gressiers, a short distance west of Port-au-Prince, several bodies of murder victims were found in a shallow grave. The bodies were partially exposed and were easily discovered.

On the morning of August 1, 1994, the police beat several persons who were awaiting the opening of the U.S. refugee processing center in Port-au-Prince. No evidence was found that the victims provoked the action.

FLOUTING INTERNATIONAL CONCERN

Ever since the time of the coup, the international community has repeatedly condemned Haiti's de facto regime. The de facto government's response has been to increasingly isolate itself from the international community. The regime reneged on the terms of the Governor's Island Agreement, and has subsequently rejected all efforts by the international community to bring about a peaceful resolution of this crisis. Just this month, the regime refused to meet the special representative of UN Secretary General Boutros Boutrous-Ghali. It has long been clear that they are the cause of the horrendous human rights situation in Haiti, and it is now becoming clearer that they have no intention of working with the international community to resolve this crisis.

The escalating human rights crisis in Haiti has received intense attention in the OAS, the UN, and other international fora. Most recently, the UN Security Council, recognizing that appropriate diplomatic channels had not resolved the crisis, approved Resolution 940 which authorizes the removal of the de facto government by all necessary means. From this authorization, the United States has worked to form an international coalition to implement Resolution 940.

Ms. MOSELEY-BRAUN. Mr. President, I would like to just read a little bit of the summary from the report. This report came about—it was a function of the International Civilian Mission as well as of the United Nations and the OAS sponsorship. This is a report by the State Department. They said:

The human rights situation in Haiti under the illegal Cedras regime is comparable to the notorious regime of Francois "Papa Doc" Duvalier. The military and the de facto government promote repression and terror, sanctioning widespread assassination, killing, torture, beating, mutilation and rape. The regime's actions openly defy the international community, which has repeatedly condemned these gross human rights violations.

The increasing repression and terrorism in Haiti is perpetrated at various levels by military, police and civilian groups reporting to the Cedras regime. The military controls the de facto government, the police, the police attaches, the Chefs de Section, and the nominally independent FRAPH, known variously as the Revolutionary Front for Advancement and Progress in Haiti, or the Armed Revolutionary Front of the Haitian People. And then it goes on to talk about something else. I want to read a little bit here:

The Cedras regime came to power in September 1991 when it staged a violent coup against the eight-month old democratically-elected government of President Jean-Bertrand Aristide. In the immediate aftermath of the coup, the new regime —

Meaning Cedras' group.

killed at least 300 to 500 people, targeting Aristide supporters specifically.

This is the third anniversary of the coup.

Then they go on to talk about some of the high-profile cases of the killings and tortures.

The August 28 assassination of President Aristide's colleague, the Reverend Jean-Marie Vincent, is the most recent demonstration of the de facto regime's determination to silence its opponents. The priest was shot to death by unidentified gunmen as he drove up to the gates of his order's compound in the Turgeau area of Port-au-Prince.

They are killing priests, Mr. President. It seems to me that you have to go a long way to want to stand by and be associated in any way with that kind of action.

In addition to killing priests, there was a litany of human rights abuses.

A sampling of the mounting incidence of rape, torture and mutilation illustrates the serious deterioration of the human rights situation over the past year:

On August 6, 1993, uniformed soldiers and police invaded the home of a suspected Aristide supporter, raping the wife and arresting the husband, whom they tortured and released.

On August 14, 1993, police, military, and attaches invaded the home of another Aristide supporter. They killed a 2-year-old child, molested two young women, and stole valuables.

In October 1993, the ICM report on human rights documented the rape of, one, a 13-year-old girl by military personnel in Bayeaux; two, the wife of a Cite Soleil activist by uniformed men in July; and three, a 16-year-old girl by a soldier in the Northeast.

On December 27, 1993, a fire destroyed some 200 dwellings. It was determined that the fire was set.

Amnesty International reports on January 15, a 17-year-old boy was shot to death by the FRAPH because he was suspected of being connected to a children's home established by Aristide.

Mr. President, this report goes on and on and on and gets just more and more gruesome as you go forward. I will not belabor the point, except to say that it seems to me that we have identifiable, specific national interests in seeing to it that these kinds of human rights abuses are not allowed to be continued under the leadership of this military dictatorship.

The question becomes what should we do about it, and the process. Certainly, I think you know I care a lot about process. I talk about it a lot. It is critically important because process, after all, is the foundation on which we maintain democratic institutions.

I want to talk for a moment about the fact that this administration—the President—has given peace a chance. The fact of the matter is, with the Governor's Island accord, with the appointment of former Congressman Gray, with Madeleine Albright's efforts, with the international efforts, with the conversations and constant deliberations with the United Nations, OAS, the Caribbean community, they have tried peace. Two resolutions have been passed by the U.N. Security Council of late. Resolution No. 917 authorized the use of sanctions. Resolution No. 940 authorized the use of force.

With regard to the sanctions specifically, Mr. President, I am making this speech now having all along said, "let us use sanctions, let us not use military intervention, let us resort to weapons as an absolute final, last-ditch thing we can do. Try every possible diplomatic means and economic means at our disposal."

The sanctions have been tried, and they have been put on, and they have been squeezed tight and enforced. Unfortunately, Mr. President, the reality is—and it is the decision that the

President is having to face—the sanctions really are cutting to the core of the social and economic fabric in Haiti. Poor people, people who cannot make it otherwise, are feeling the impact of the sanctions, while the very wealthy, the military elite, the dictators and their wives and their families, have been able to withstand the sanctions in large part because they can transfer money internationally, and they can fly to Miami to shop, and they can live their lives in their villas and compounds without real concerns. So the sanctions have not been as effective as they were, for example, in South Africa. I was very proud to have been part of the sanctions effort in South Africa, because I thought it would make a difference, and it did.

Here the sanctions really have had limited utility, because it is such a blunt instrument and unfortunate under the circumstances, since the military leadership feels they can wait us out, that we will blink first, and the effect has been, if you will, arguably counterproductive.

So, Mr. President, the President of the United States may well conclude that direct intervention is the course that we need to take. He has not said that yet, but it is likely that he will. And so the question becomes for all of us as Senators: What about the War Powers Act and what is our appropriate role in all of that?

Well, of course, Mr. President, I think it is altogether appropriate that, as Senators, we certainly want to protect our prerogatives under the Constitution. We certainly want to make certain that the law gets followed in this regard, that we do the right thing in terms of the constitutional separation of powers and the checks and balances.

But I would like at this point to associate myself with the remarks of the Senator from Georgia, when he pointed out we are not talking about a war. We are not talking about a war; we are talking about an action that is more like the action in Panama or Grenada than it is even the Persian Gulf.

So, in that regard, I believe that while the debate over the War Powers Act has continued for years, and will no doubt continue—and Congress is rightly concerned about our appropriate role under the Constitution—the fact is that this struggle in this debate, which is a very important one, should not be used to hamstring this President any more than it was allowed to hamstring previous Presidents who were faced with making very difficult decisions in equally difficult circumstances.

The reality of it is that none of us was elected President of the United States. We do not have the entire picture. We have the picture as we read it in the newspapers and as we get briefed by the State Department. And we, of course, have the benefit of our own logic and common sense and judgment. I do not in any way mean to suggest that this debate should not happen and the debate around our prerogatives and rightful role should not happen. I think it is an important and healthy debate.

Mr. President, I say at this time that until the President of the United States decides what to do, the most important thing that we can do in this body is to say very clearly that our foreign policy will follow our values, that we will act as a nation when human lives are at stake, as surely as we will act when oil or our economic interests are at stake; that the most important thing we can do is to sound a sure trumpet, to be very clear, to let the military dictators know—who, hopefully, are watching C-SPAN or CNN and hearing some parts of this—that we will not let them pull the chain of the greatest country on the Earth on behalf of something that is so clearly wrong; that we will not allow them to set an example for Korea or any other place on this planet where dictatorship will overwhelm democracy, where the few will make life miserable and take advantage of and commit human rights abuses against the many; where the dictators and their ilk will rape a country, will take the lifeblood out of a country in order to further their own personal pecuniary financial gain. That is what we have here.

So I think, Mr. President, it is important that the Congress not send the signal—and those are so important—that we not send the signal out there, whether it is to our domestic media or to the military in Haiti, or frankly anywhere else in the world, that we are confused about what our values are, that we are confused about what our national interest is, or that we are confused in our support for this President doing the best job he can to conduct our foreign policy, because that is the job that under the Constitution he is charged with doing.

So, Mr. President, again, in conclusion, I would say that I am looking forward, as we all are, to the President's speech tomorrow night. This is a very tough, tough issue. No one likes to be involved in this. I mean, of all the issues that we get to deal with here in the U.S. Senate, I daresay these kinds of issues having to do with war and peace are the toughest. I have a 17-year-old son. I am not at all anxious ever to want to commit American forces to do something that will require being around things that will kill people.

These are very grave and serious matters. But at the same time, it seems to me that if our Nation is to stand for anything and if my 17-year-old son's life and my life and our lives as Americans are to have meaning, they have to have meaning with honor. We have to stand for something, and we have to let the world know that when we say something, we give our word, when we make speeches and make pronouncements about the lofty principles that we hold dear, that they are not just conversation, that those principles have real meaning to us; that we really do believe that democracy has a value; we really do believe that human rights have a value; we really do want to make certain that the drug trade is stopped; we really do want to see to it that people can stay in their own homes.

We have values in this country, and those values form the bedrock foundation of our policy both domestic and foreign.

So, Mr. President, in conclusion, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. DODD. Madam President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 9:34 p.m., recessed until 10:55 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. DODD).

MORNING BUSINESS

SENATE ANNOTATED EDITION OF THE CONSTITUTION

Mr. MITCHELL. Mr. President, 207 years ago this Saturday, on September 17, 1787, at Independence Hall in Philadelphia, 39 delegates from 12 States signed the Constitution of the United States of America. Ratified in 1788 and placed in operation in 1789, the U.S. Constitution is the world's longest-surviving written charter of government. Its first three words—"We The People"—affirm that the government of the United States exists to serve its citizens. The supremacy of the people, through their elected representatives, is recognized in article I, which creates a Congress consisting of a Senate and a House of Representatives. The positioning of Congress at the beginning of the Constitution reaffirms the status of this institution as the first branch of the Federal Government.

It is essential that all Americans have the opportunity to read and understand this supremely important

document. To assist in meeting that objective, the Office of the Secretary of the Senate, with the support of the Library of Congress, has prepared a specially annotated 46-page edition of the Constitution for distribution through Members' offices to Senate visitors. For each of the Constitution's sections, this edition includes a brief explanation written in a style designed to be accessible to the widest possible audience. On this September 17, we would all do well to set aside some time to become reacquainted with our Constitution.

STATMENT ON THE NOMINATION OF JUDGE H. LEE SAROKIN

Mr. BRADLEY. Mr. President, President Clinton has nominated Judge H. Lee Sarokin, a distinguished jurist on the U.S. District Court for the District of New Jersey, to become a judge on the U.S. Court of Appeals for the Third Circuit. Judge Sarokin has received a unanimous well-qualified rating from the American Bar Association [ABA], the highest rating possible. He has been an extremely effective jurist on the district court. His decisions have yielded a body of caselaw that is based on adherence to the Constitution and the rule of law. For example, of the over 2,000 written opinions issued by Judge Sarokin, approximately 50, or less than 3 percent, have been reversed or vacated on appeal. At least two of the reversals occurred when legislation was subsequently changed as a result of his rulings. In addition, two of the reversals were themselves reversed by the U.S. Supreme Court.

The New Jersey law enforcement community supports Judge Sarokin's nomination to the third circuit. Frank Ginesi, president of the New Jersey State Policeman's Benevolent Association, the largest police organization in New Jersey representing over 30,000 police officers, supports Judge Sarokin's confirmation to the third circuit. Also, David Blaker and Thomas Little, presidents of the State Troopers Non-Commissioned Officers Association and Local 105 of the New Jersey State Policeman's Benevolent Association—representing over 5,000 correctional officers—respectively, have endorsed Judge Sarokin. In addition, the Bergen County Police Conference, the State Troopers Fraternal Association of New Jersey and the Police Foundation have expressed their support for Judge Sarokin's elevation to the third circuit.

Moreover, prosecutors who have worked with Judge Sarokin every day for years are supportive of the nomination. Four former U.S. attorneys for the District of New Jersey—William Robertson, W. Hunt Dumont, Michael Chertoff, and Herbert Stern—have endorsed the nomination. William Robertson served as the U.S. attorney under the Carter administration, while Herbert Stern, Hunt Dumont, and Michael Chertoff served under the Nixon, Reagan and Bush administrations, respectively. Michael Chertoff, who recently served as the special minority counsel in the Whitewater hearing, states that "[b]y intellect, temperament and experience, H. Lee Sarokin is highly qualified to sit on the United States Court of Appeals."

A broad cross-section of the leaders of the New Jersey legal community have endorsed Judge Sarokin's nomination with enthusiasm. William McGuire, president of the New Jersey Bar Association, and Thomas Curtin, the immediate past president of the New Jersey Bar Association, have proclaimed their support for Judge Sarokin. Also, Gerald Eisenstat, a past president of the New Jersey Bar Association, and Vincent Apruzzese, another past president of the New Jersey Bar and a former member of the board of governors of the American Bar Association, have endorsed the nomination of Judge Sarokin.

Judge Sarokin is held in high regard by his fellow judges in the third circuit. According to Judge Leonard Garth, a Nixon appointee and a senior judge on the third circuit who has known Judge Sarokin for over 14 years, Judge Sarokin has throughout his career "exhibited the compassion, the resourcefulness, the intelligence, the 'heart' and the fairness that are hallmarks of an outstanding jurist." In addition, every living former chief judge of the third circuit—Judge Ruggero J. Aldisert, Judge John Gibbons, and Judge Leon Higginbotham—has praised the exceptional judicial performance of Judge Sarokin.

Former Chief Judge Aldisert has written that Judge Sarokin is "one of the most outstanding district judges in the third judicial circuit—[a] true scholar, but at the same time a genuine humanitarian, constantly in the quest for justice for the parties who appear before him." Former Chief Judge Gibbons, a Nixon appointee who is presently a professor of law at Seton Hall Law School, stated that Judge Sarokin "would bring both intellectual strength and needed ideological balance" to the court of appeals. In addition, former Chief Judge Higginbotham notes that Judge Sarokin is "thoughtful, fair and impressive."

Many highly respected members of the academic community support Judge Sarokin's elevation. Prof. George Priest of Yale Law School, who testified in support of former Judge Robert Bork during his confirmation hearing, states that "Judge Sarokin is among the very first rank of federal judges [whose] most important quality is what I would call a deep judiciousness, consisting of a combination of seriousness, a commitment to making sense of the law, and a devotion above all else to fair treatment of the parties to the litigation." Prof. Owen Fiss of Yale Law School echoes the sentiment of his colleague by noting that "Judge Sarokin's courtroom has become one of the temples of justice of this Nation." Moreover, Prof. Harold Koh of Yale Law School writes that Judge Sarokin is "extraordinarily well-qualified" for elevation to the third circuit.

Before being named to the Federal district court by President Jimmy Carter, Judge Sarokin was a partner and trial counsel in the firm of Lasser, Lasser, Sarokin & Hochman, which he joined in 1954. From 1959 to 1965, Judge Sarokin serviced part-time as Assistant Union County Counsel. Judge Sarokin has taught real estate law at Rutgers Law School and is a frequent lecturer at Harvard, Yale, and other law schools. A graduate of Dartmouth College and Harvard Law School and the author of numerous scholarly legal articles, Judge Sarokin is known as one of the brightest judges on the Federal District Court for the District of New Jersey.

I have known Judge Sarokin for over 20 years, and I agree with Professor Priest that Judge Sarokin's nomination "will prove to be among this country's most distinguished judicial appointments of many decades."

In recent days, questions have been raised about Judge Sarokin's record with specific reference to several cases. I submit for the RECORD sections of a memorandum prepared by the Department of Justice about several of these cases.

THE TOBACCO LITIGATION: CIPOLLONE VERSUS LIGGETT GROUP, INC.; HAINES VERSUS LIGGETT GROUP, INC.

Judge Sarokin presided over a jury trail in which cigarette manufacturer Liggett Group was found liable in the death of a smoker. The jury awarded the family $400,000 in damages. This was the first suit of its kind lost by a cigarette manufacturer. The jury found that the manufacturer had failed to warn the pubic of the health risks form smoking. The litigation was marked by a number of highly contested disputes between the parties over discovery and the production of documents.

In two actions six years apart, the Third Circuit Court of Appeals disagreed with Judge Sarokin's decisions in such discovery disputes, and issued writs of mandamus to reverse his judgments. In the second action, the Third Circuit was also asked to exercise its supervisory powers to reassign Judge Sarokin because the tobacco companies, felt he had evidenced prejudice in the language of one of his orders. The Court said that while it did "not agree that [Judge Sarokin] was incapable of discharging judicial duties free from bias and prejudice," it would reassign the case in order to preserve "the appearance of impartiality."*Haines* v. *Liggett Group Inc.*, 975 F.2d 81, 98 (3d Cir. 1992).

ANALYSIS

Writs of Mandamus. Issuing a writ of mandamus, although not an everyday occurrence, is far from an earth—shattering event. The cigarette manufacturers asked the Court of Appeals to issue writs of mandamus on the discovery orders because such orders are not

appealable through the normal process. During the fifteen years that Judge Sarokin has been on the bench, the Third Circuit issued 31 writs of mandamus to district Court judges. Even if Judge Sarokin was wrong on the law—on these two motions out of hundreds decided during the extremely complex tobacco litigation—his actions and the writs of mandamus issued by the Court to Appeals were "typical of trial court error common in the day-to-day supervisory experience of an appellate court." (N.J. Law Journal, 10/5/92)

Reassignment is much less common, to be sure. But the same year the Third Circuit took action against Judge Sarokin, it also reassigned Reagan appointee Judge Robert Kelly (E.D. Pa.) from asbestos litigation.

Issues of Law. Judge Sarokin's critics have distorted the language of the Third Circuit's opinions. The actual discussions of Judge Sarokin's actions turn on close questions of law. Both rulings involved relatively technical questions of the standards and methods of review of magistrates' decisions on discovery motions in particular settings. In the first ruling, involving a protective order against public disclosure of documents, Judge Sarokin has interpreted a Supreme Court decision to require an expansive standard of review because constitutional guarantees of free speech were implicated. At least two Courts of Appeals had reached the same conclusion. The Third Circuit, in a decision in another case announced two months after Judge Sarokin's decision, reached the opposite conclusion. Thus the Third Circuit law Judge Sarokin is alleged by some critics to have ignored did not exist at the time of this decision.

In the second ruling, Judge Sarokin had, in reviewing the magistrate's decision, considered evidence from a related case. Although the Third Circuit, apparently addressing the question for the first time, disagreed with Judge Sarokin's approach, Judge B. Weinstein (E.D.N.Y.) endorsed it (Brooklyn Law Review, 1993). Contrary to the allegations of Judge Sarokin's critics, this was a close question.

Judge Sarokin's Reassignment. Judge Sarokin was not reassigned because of his rulings of law, on which reasonable judges can and have disagreed, but because of his strong critique of the tobacco industry's litigating strategy. In fact, in announcing its "most agonizing" decision to re-assign Judge Sarokin, the Third Circuit stated unequivocally that he "is well known and respected for magnificent abilities and outstanding jurisprudential and judicial temperaments." *Haines v. Liggett Group Inc., supra*, 975 F.2d at 98.

The Court of Appeals did not hold that Judge Sarokin abandoned "even the appearance of impartiality," as Judge Sarokin's critics have chosen to twist the opinion to say. The Court stated outright that Sarokin could be fair in fact and the only the appearance of impartiality was implicated by his remarks. *Ibid.*

In the action under review, Judge Sarokin had to decide a technical question of attorney-client privilege, the so-called crime-fraud exception. He was asked to determine whether documents otherwise protected by the privilege had been generated as part of an effort to conceal facts about tobacco from the public. Therefore, Judge Sarokin addressed the degree of deceptiveness of the tobacco companies, since it was directly relevant to the question presented, even though it was also inevitably related to the issues to be decided at trial.

Judge Sarokin remarks came after years of reviewing evidence in the tobacco litigation. No one alleged that his views came from anything but the evidence, a fact that calls into question the correctness of the Third Circuit's disqualification order. Five of the six Circuit Courts that had considered the question—including the Third Circuit, see *Johnson* v. *Trueblood*, 629 F.2d 287 (1980)—had clearly held that appearances of judicial bias originating in judicial proceedings should not result in removal. These courts recognized that in order to issues rulings, a judge must develop views based upon the weight of the evidence presented.

In fact, the United States Supreme Court has recognized the distinction between the appearance of bias originating in judicial proceedings and bias that arises from extra-judicial sources. Earlier this year, in *Liteky* v. *United States*, 114 S.Ct. 1147 (1994), the Court sided with the majority of Circuit Courts, holding that although a judge may often appear biased because of views developed from hearing the evidence in judicial proceedings, removal is required only when the judge "display[s] a deep-seated favoritism or antagonism that would make fair judgment impossible." 114 S.Ct. at 1157. Since the Third Circuit explicitly stated that it did not doubt Judge Sarokin's actual ability to adjudicate the case impartially, its decision in *Haines* v. *Liggett* most likely could not survive the Supreme Court's decision in *Liteky*.

CONCLUSION

With respect to Judge Sarokin's removal in the cigarette litigation, it should be noted that former Chief Judge Aldisert, who wrote the decision to remove Judge Sarokin, has stated that "[t]he addition of Judge Sarokin [to the Third Circuit] will bring a high degree of judicial strength because of the respect he has earned among his peers, his warmth and wisdom, and the solid contributions he will make because of his magnificent and profound experience." In addition, former Chief Judge Gibbons has stated the following with respect to Judge Sarokin's performance in the cigarette litigation:

"That industry [the tobacco industry] has pursued a "take no prisoners" approach to product liability litigation. My review of Judge Sarokin's work in connection with the litigation in question has left me convinced, however, that he acted with complete propriety throughout the litigation."

Kreimer versus Bureau of Police for the Town of Morristown

THE FACTS

A homeless man challenged the Morristown public library's regulations prohibiting those with poor hygiene and those who annoy others patrons from using the library. Judge Sarokin ruled that the library's policy infringed upon established First Amendment rights and was unconstitutionally vague. 765 F. Supp. 181 (D.N.J. 1991).

ANALYSIS

Contrary to the allegations of his critics, Judge Sarokin did not "invent" a new right. The third Circuit agreed fully with Judge Sarokin that the First Amendment guarantees all citizens not only the right to express their ideas to others, but also "the right to receive information and ideas" from others. The Third Circuit described a long line of Supreme Court cases supporting this right as essential to a democratic society. It called the public library "the quintessential locus of the receipt of information," affirming Judge Sarokin's determination that citizens enjoy a right of access to the public library. *Kreimer* v. *Bureau of Police for the Town of Morristown*, 958 F.2d 1242, 1256 (3d Cir. 1992).

Furthermore, the Court of Appeals agreed with Judge Sarokin that the strictest scrutiny would apply to the library's hygiene regulation, because it effectively prevented some individuals from enjoying their First Amendment rights. While it did disagree with Judge Sarokin's holding that the regulation did not survive constitutional "strict scrutiny" (a test that is rarely passed), its painstaking analysis reveals how close a question this was.

Judge Sarokin also found the library's regulations unconstitutionally vague. He did not rule that the library couldn't regulate access to its facilities, but rather that because the regulations were so open-ended, they would allow library officials to discriminate arbitrarily. He believed that the prohibitions against poor hygiene and against "annoying" behavior gave too much discretion to library officials, allowing them to use the regulations as a justification to expel those of whom they did not approve.

While the Court of Appeals did not agree that the regulation were unconstitutionally vague, one commentator, Jeremy Rabkin of Cornell University, has said the Court of Appeals decision went "against the trend." He points out that the Supreme Court has struck down traditional vagrancy laws as excessively vague and threatening to the First Amendment right of assembly (William and Mary Law Review, 1992).

BLUM V. WITCO CHEMICAL CORPORATION

THE FACTS

After a long jury trial, a jury found that the defendant had discriminated against several of its employees in violation of the Age Discrimination in Employment Act. The jury awarded plaintiffs a total of $75,000 in lost pension benefits as front pay under the ADEA and $15,000 in pain and suffering. Pursuant to a federal statute providing for attorney's fees, Judge Sarokin awarded fees to plaintiff's counsel, which included an upward adjustment, called an "enhancement" under the statute. 702 F. Supp. 493 (D.N.J. 1988).

ANALYSIS

The Third Circuit upheld the jury verdict for front pay, but set aside the award for pain and suffering. The Third Circuit also reversed and remanded the issue of attorney's fees to the District Court for recalculation in light of an intervening Supreme Court decision in *Pennsylvania* v. *Delaware Valley Citizen's Council for Clean Air*, 483 U.S. 711 (1987), which set forth new guidelines concerning the proper application of contingency multipliers in the calculation of fees.

On remand, Judge Sarokin applied the Supreme Court's analysis and awarded an enhancement to the attorneys for the prevailing party for (i) delay in payment of fees and (ii) the risk involved in taking the case, where attorney's fees are awarded only if the plaintiff prevails. The Third Circuit fully affirmed the enhancement ordered by Judge Sarokin for delay in payment. *Blum* v. *Witco Chemical Corp.*, 888 F.2d 975, 984–85 (3d Cir. 1989). In addition, the Third Circuit acknowledged that the Supreme Court has specifically provided for enhancement based upon the risk of nonpayment; it disagreed, however, with Judge Sarokin's finding that plaintiffs had made an adequate factual showing to support enhancement on this basis. *Id.* at 984.

The Third Circuit recognized that the issues confronted by Judge Sarokin were very complex, and observed that drawing conclusions from Delaware Valley was an "elusive task" because "[t]o date, the Supreme Court has been unable to produce a majority opinion on this issue." Id. at 977. Delaware Valley

was a plurality opinion delivered by a sharply divided Supreme Court, 4-1-4. The Court of Appeals acknowledged the "awkwardness" of following Justice O'Connor's decisive opinion, which commanded only her vote. Id. at 981.

Contrary to the pronouncements of his critics, Judge Sarokin adhered to the Supreme Court's framework in analyzing the issue of the award of attorney's fees. Judge Sarokin interpreted that opinion as requiring the plaintiffs to show (i) that lawyers in the relevant market regularly receive a premium for contingency cases and (ii) that for discrimination cases, enhancement is economically necessary to draw competent counsel, due to the risk that the plaintiff will not prevail and fees will not be awarded. The Third Circuit questioned neither the basic legal framework used by Judge Sarokin nor the fact that the Supreme Court's decision permitted enhancement in the action; it simply found, after clarifying the complex economic analysis required, that plaintiffs had not yet provided enough concrete factual evidence to justify the market-based quantitative finding necessary for enhancement.

VULCAN PIONEERS VERSUS N.J. DEPARTMENT OF CIVIL SERVICE

THE FACTS

This complex employment discrimination class action was brought by the Department of Justice to correct hiring practices in heavily segregated fire departments in several large New Jersey cities. The cities agreed to affirmative action plans, including minority hiring goals and reform of standardized employments tests to prevent racial bias.

Judge Sarokin's decisions in this case addressed whether, in determining which workers would suffer the effects of lay-offs, the affirmative action plan took precedence over the seniority system established in collective bargaining agreements. While lay-offs according to seniority jeopardized much of the operation of the affirmative action plan, Judge Sarokin was profoundly troubled by the conflict between fully remedying past discrimination and singling out innocent workers for dismissal. Because of his deep concern over the potential for innocent victims to be harmed by enforcement of the affirmative action plans, Judge Sarokin initially ruled that while layoffs could not be conducted solely on the basis of seniority, any senior white workers who suffered layoffs should be compensated by the federal government. 588 F. Supp. 716 (D.N.J. 1984)

ANALYSIS

At the beginning of his opinion, Judge Sarokin emphasized his extreme regret that carrying out the goals of the consent decree would necessarily work an unfairness upon those who had long faithfully served as firefighters. He wrote: "Though not themselves the perpetrators of wrongs inflicted upon minorities over the years, these senior firefighters are being singled out to suffer the consequences. In effect, they are being required to hand over their jobs and paychecks to someone else. It is inconceivable that they can be asked to do this in the name of the public good, and yet not have the public assume the responsibility therefor. 588 F. Supp. at 718."

As a result, Judge Sarokin refused to simply hold that seniority systems must yield to the affirmative action plan; rather, he held that those who lost their jobs must be compensated with payments from the federal government, which had initiated the lawsuit. Furthermore, he held that, as much as possible, seniority would be respected when deciding who would be laid off. Also, he ordered that some newly hired minorities be laid off, so that the proportion of minority representation already accomplished would only be maintained, not increased.

At the time Judge Sarokin issued his opinion, the Supreme Court had clearly held in *Franks* v. *Bowman*, 424 U.S. 747 (1976), that while Title VII of the Civil Rights Act of 1964 explicitly states that differential treatment of employees based upon a good faith seniority system is not an unlawful employment practice, court orders must often alter seniority systems in order to remedy past discrimination. Furthermore, the Third Circuit had confirmed a challenged consent decree containing an "affirmative action override." In that case, the Court of Appeals had held that classwide relief should be available to all covered by a consent decree remedying a discriminatory practice, even though the individual plaintiffs had not demonstrated that they themselves were the direct victims of the discrimination. *E.E.O.C.* v. *American Telephone & Telegraph Co.*, 566 F.2d 167 (3d Cir. 1977).

Thus, at the time of his decision, Judge Sarokin was following settled precedent in this area. The Supreme Court subsequently held that alteration of seniority systems was only appropriate upon proof that the beneficiaries of such alteration were the direct victims of the discrimination. *Firefighters* v. *Stotts*, 467 U.S. 561 (1984). As a result, Judge Sarokin immediately vacated his earlier decision. 588 F. Supp. 732 (D.N.J. 1984).

Judge Sarokin's opinions on affirmative action demonstrate careful efforts to balance the need to address the inequalities wrought by past discrimination with potential inequities imposed on those who did not personally engage in discrimination, within the bounds of established precedent.

IN MEMORY OF RAYMOND LIONEL DEXTRADEUR

Mr. FORD. Mr. President, after a successful career in the U.S. Air Force, Raymond Lionel Dextradeur applied to the Capitol Police for the position of police officer. Mr. Dextradeur was accepted as an officer on the force by the Hon. Robert G. Dunphy, Sergeant-At-Arms of the Senate, on October 5, 1970. Officer Dextradeur's service to the U.S. Senate and the congressional community as a whole continued with distinction until his retirement on October 31, 1992.

During his first 5 years on the force, officer Dextradeur, affectionately known as Dex, was assigned to the U.S. Senate Lobby where he quickly became known as a friend who could get things done, particularly when it came to the Senate pages. Dex was the officer who kept some of our budding future politicians in line when things went a little far afield in youthful anticipation of a pending Senatorial recess. His strong, gentle, and caring personality often subbed as a surrogate father for the youngest members of the Senate.

After 5 years in the Senate Lobby, Dex requested and receive a transfer to the Capitol Senate Subway where he stayed for the remainder of his career. Officer Dextradeur quickly was befriended by Senators on their travels to and from the floor, always beaming a smile and dashing to hold a subway car to accommodate their passage. Dex was notorious for his inside knowledge of the Capitol and was sometimes called upon by new Senators to help them get through the maze of the Senate basement and corridors. Dex is referred to in Senator Cohen's book, "Murder in the Senate" as a source and reviewer. Senators enroute to the floor could count on him to know the floor agenda and have that all important stash of breath mints or candy stored secretly away in his file cabinet. In recent years, the art work, plants, and lighting effects that decorate the Senate Capitol Subway are a direct result of Dex's persistence in requesting, and maybe nagging, both offices of the Architect and Senate Curator to improve his domain. Dex was the Senate Subway.

Towards his latter years, Dex was called on several times to give tours to high profile visitors in French, a language he loved and spoke fluently. Besides being bilingual, Dex was our resident numismatist, trading coins with Senators and staff, and helping them complete their collections.

Officer Raymond L. Dextradeur passed from this Earth on August 29, 1994. However, he continues to serve the Senate and the Capitol Police force through his daughter, officer Diane M. Schmidt, and his son-in-law, officer Michael A. Schmidt. Dex touched the lives of so many of us who passed hurriedly through his subway, making our moments there relaxed and enjoyable.

A TRIBUTE TO SHANE CHADWICK

Mr. BURNS. Mr. President, I rise today to pay tribute to a brave and devoted city police officer who gave his life in the line of duty last week during what was thought to be a routine police call.

Officer Shane Chadwick—beloved son of Virgil and Helen Chadwick, devoted husband of Terry Chadwick, and loving father to 4-year old Justin Dean Eckhardt—died on September 7, 1994, while responding to a noise complaint in Great Falls, MT.

When a man or woman chooses the life of a law enforcement officer, they know that one day they may have to put their life on the line to uphold the law they have sworn to protect and preserve. Their loved ones know the risks. Their friends and neighbors know the risks. But knowing the risks does not make it any easier.

I cannot begin to express the loss we all feel as result of Shane's death. In Montana, we are a community. We are 800,000 people. And we are fortunate because we have not been witness to the violence that has touched the lives of so many in other states. But this senseless act of taking the life of a young

man whose whole future still lay ahead of him has sent shock waves through every single community in Montana.

Shane was a good man. He was only 29, but to the people in his home town of Chester, MT, population of 950, he was and is someone special.

He enjoyed life to the fullest and opened his heart to those around him. He was a football star and a math scholar in high school. He loved the outdoors, and enjoyed hunting, fishing, camping, swimming, and anything else he could do under the wide open, blue skies.

He got his undergraduate degree in biological science from Montana State University in 1990, and wanted to become a game warden. But he soon turned his sights to law enforcement, and became a role model for many of his fellow officers. He even tried his hand at teaching at the Montana Law Enforcement Academy, and earned tremendous respect for his approach and dedication of his profession.

Shane Chadwick was a dedicated officer and a true American hero. His loss touches us all. In fact, his loss is a reminder to all of us of the sacrifice every single police officer in America is prepared to make to keep our towns, neighborhoods, schools, and workplaces safe.

This weekend the residents of Shane's hometown of Chester will pay tribute to Shane and express their support for his parents, wife, and son. From 6 p.m. on Friday, September 16 through 8 a.m. Sunday, September 17, they will fly flags, light their homes, and wear flag pins to commemorate the life of officer Chadwick.

Mr. President, I call upon all Montanans, and all of this Nation's citizens, to honor the memory of officer Shane Chadwick and all the other men and women who have given their lives in the line of duty to keep America's streets safe. Leave your porch and yard lights on throughout the weekend. Fly your American, Montana or State flags, and wear flag pins on your lapels.

Let us remember Shane so we will not forget the dedication and love he shared with all the people he touched in his lifetime. He may be gone, but he will never be forgotten.

H.R. 3841, THE INTERSTATE BANKING EFFICIENCY ACT

Mr. BOND. Mr. President, I commend Chairman RIEGLE and Senator D'AMATO, the ranking member of the Senate Banking Committee, for their hard work and contribution to the passage of H.R. 3841, the Interstate Banking Efficiency Act. Interstate banking and branching are important issues to the continued growth and economic health of the banking industry.

This legislation has been before the Congress in various forms and configurations over the last several sessions and I am gratified that we have finally been able to complete action on an interstate banking and branching bill to present to the President.

This legislation provides, with certain limitations on deposits and assets, for nationwide interstate banking by bank holding companies 1 year after enactment. It also authorizes, beginning on June 1, 1997, bank holding companies with subsidiary banks located in more than one State to combine these banks into a single bank with interstate branches, unless a state opts out before this date. This bill also authorizes states to permit the acquisition of a branch of an insured bank without the acquisition of the entire bank. Under these circumstances, the state must opt-in to this de novo branching.

In conclusion, the Interstate Banking Efficiency Act respects the rights and concerns of individual states with regard to the activities and operations of banks within their jurisdictions. At the same time, it recognizes the importance of interstate banking and branching to the economic well-being of the banking industry.

IRA CEASEFIRE ANNOUNCEMENT

Mr. PELL. Mr. President, while the Congress was in recess, there was important and welcome news from Belfast. On August 31, the Irish Republican Army announced an end to its military operations, creating hope that the violent cycle which has touched so many people on all sides during the last 25 years will finally be broken.

For peace to take hold, however, all parties responsible for violence in the region must declare a final end to the fighting. While some moderate Protestant leaders appear to be open to advancing the peace process, extremist groups continue to wage their own terrorist campaign.

There has been a flurry of activity during the past 2 weeks, with most agreeing that the IRA announcement creates a positive atmosphere in which to pursue the peace process launched by last December's Joint Irish-British Declaration, the so-called Downing Street Declaration.

In the days following the cease-fire announcement, Sinn Fein leader Jerry Adams met with the Irish Prime Minister Albert Reynolds and John Hume, the leader of the Social Democratic and Labour Party, Northern Ireland's mainstream Catholic party, to discuss the next step toward a settlement in Northern Ireland. These three men deserve great credit for their courageous efforts to stem the violence in Northern Ireland.

In particular, I would like to express my high personal regard for John Hume, a strong proponent of nonviolence who has worked tirelessly to bring Northern Ireland's two communities together. Press reports indicate that both Mr. Hume and Mr. Adams may visit the United States in the near future, which would provide us with an opportunity to commend and bolster their peace efforts.

President Clinton too, should be recognized for his leadership in advancing the cause of peace in Northern Ireland. He is personally engaged in the issue, and continues to play a pivotal role in fostering an atmosphere of dialog among the various parties. For example, his decision earlier this year to grant Jerry Adams a visa to visit the United States, helped to shore up Mr. Adams' credibility among the Sinn Fein hardliners, thus helping to pave the way for the cease-fire.

Years of violence have taken their toll, however, and the British Government is still skeptical about the recent developments. It has yet to recognize the IRA statement as a commitment to a "permanent" cease-fire, which British Prime Minister Major insists is a precondition for negotiating with Sinn Fein. Signaling that it trusts the IRA's veracity on some level, however, the British Government has instructed its troops in Northern Ireland to shed their combat helmets in favor of berets.

I am hopeful that the cessation of hostilities will indeed be permanent and that the parties will move forward under the auspices of the Downing Street Declaration. The issues separating the people of Northern Ireland are difficult ones that will take a great deal of courage and creativity to overcome. I believe, however, that the Joint Declaration process provides the best hope of resolving those differences peacefully.

DOD AUTHORIZATION BILL, FISCAL YEAR 1995

Mr. LAUTENBERG. Mr. President, the Senate recently approved the conference agreement on the DOD authorization bill for fiscal year 1995. I am pleased the conference agreement includes a burden-sharing provision I offered during State debate on the bill.

The burden-sharing provision I supported as part of this bill could save the American taxpayers between $1 and $2.7 billion in the upcoming years. The provision relates to an aspect of burden sharing that sounds technical, but is very tangible. It's called residual value payments. That isn't a household word, but it will save U.S. households money. Because these residual-value payments should result in the American people getting the cash that our allies—mostly the German Government—owe us.

Residual-value payments refer to the money the United States is supposed to get from the German Government and other European Allies in exchange for the infrastructure we leave behind in Europe as we withdraw our troops and

turn our bases over to their governments. It refers to the billions of dollars they owe the American taxpayers in return for the capital we invested in military bases in Europe.

Throughout the cold war, we stationed one-half million American troops in Europe. In order to make sure that their military and human requirements were met, we spent billions of dollars on physical necessities: sewers, roads, housing, school buildings, and so on.

It was a necessary investment, one that the American people supported and paid for. But now, as we withdraw our troops, we are leaving those facilities behind. The sewers and roads and houses we built for American troops will be there for German or French or Spanish or British citizens to use.

We are not talking about nickles and dimes here, Mr. President. The United States invested $6.5 billion on infrastructure in NATO countries. But as tensions ease, our deployment has been reduced. We plan to cut U.S. troop strength in Europe from 323,432 in 1987 to 100,000 by the end of 1996. As a consequence, we plan to close or reduce our presence at 867 military sites overseas. Most of those sites are in Europe, where America has already closed 434 military sites.

Ever since this drawdown started, we have been trying to get our allies to pay for the physical structures we are leaving behind.

We have not been very successful in that effort.

Despite an investment of $6.5 billion, we have recouped only $33.3 million in cash, and most of that was recovered in 1989.

Although we have already turned over 60 percent of the military sites scheduled for closure in Germany to that Government, and although the value of those sites is estimated to be approximately $2.7 billion, the German Government has only budgeted $25 million this year to compensate the United States for its investment.

Equally distressing is the fact that there has been a tendency for our allies to try to discharge their debt by offering us in-kind contributions rather than cash. In this context, an in-kind contribution means that our allies build something—at their expense—that otherwise the Pentagon would have built—at our expense—as part of our overall security planning. In-kind contributions, while appreciated, do not meet our needs as well as cash. We can use cash payments to cut defense spending, reduce the deficit, or to lower taxes.

It's a little more complicated to do that with in-kind contributions.

What we need to do is turn these in-kind contributions into cash. I'm confident we can do that if we ensure they will be used, instead of tax dollars, for projects the Department of Defense has identified through the budget process as priorities.

In-kind contributions will help reduce the deficit if they result in reductions in the defense budget. They will help reduce the budget if we can get the allies to build a project for free that we would otherwise ask the taxpayers to build.

But under the current system, we don't know if the projects we accept through in-kind contributions are our highest budget priorities. We don't know that they are being used to offset costs that the taxpayers would otherwise be asked to incur by the Pentagon. They may benefit the host nation as much or more than they benefit us. Rather than being used to reduce the amount of money the U.S. Government needs to spend, in-kind projects are built in addition to those the American people have been asked to fund through the budget process.

That, Mr. President, is the problem. The amendment I offered during Senate debate and which has been included in the conference agreement would help turn these in-kind contributions into tangible savings.

Mr. President, the new law has three goals. First, it emphasizes that the United States is interested in a more significant cash contribution from the allies. In other words, we want them to pay what they owe the American taxpayer and to do it in cash.

Second, if part of the burden-sharing responsibility is to be met by in-kind contributions, it would require that these offers of assistance be used in relation to projects specifically identified as priorities in the defense budget. This would relieve pressure on the Pentagon budget and the American taxpayer.

Third, it would guard against potential wasteful spending by requiring that only projects approved by Congress can receive in-kind contributions.

Let's look at the first goal: getting more cash.

Mr. President, I am aware that residual-value negotiations are difficult. But I also believe the Department of Defense has been too willing to abandon negotiations for cash in favor of in-kind contributions. I am particularly concerned that the administration will too easily accept in-kind contributions from Germany, where the DOD now says our investment on facilities to be turned over is $2.7 billion.

Germany clearly prefers in-kind contributions. Why wouldn't they? In-kind contributions create a public works program in Germany, creating jobs for their citizens.

The United States, though, should prefer cash payments. It is important to get our deficit down and provide relief to the Nation's taxpayers. Cash payments would help bring spending down, reduce the deficit, strengthen the economy, and help create jobs at home.

It is important to keep the Western Alliance strong and in tact, but our allies must assume more of the burden for the collective defense. While our economy has lagged, and unemployment claims have taken their toll on the American people, our allies have been given a free ride by our negotiators at the expense of the American people. While we continue to pour money into the defense of their nations, they pour money into their economies. We need to invest our resources here at home as our allies have been doing in past years.

Our negotiators need to change that. Unfortunately, U.S. negotiators have not been tough enough. They tell us that German economic problems and political considerations require them to settle for in-kind contributions. But that doesn't help us reduce spending.

It also is not consistent with American interests or existing American policy. The Pentagon and our negotiators need to be tougher. The provision states that, as a matter of policy, the administration should enter negotiations with each host nation with a presumption that residual-value payments will be made in cash and deposited into the Department of Defense Overseas Military Facility Investment Recovery Account. It also makes it clear that the administration should only enter into negotiations for in-kind payments as a last resort and only after negotiations for cash payments have failed.

The second goal of the provision is to reduce American spending by applying in-kind contributions toward our stated budget requirements. If we have to accept in-kind payments, then I want to make sure that, rather than meeting the desires of the host nation, they are used to pay for projects our military has identified as our own priorities through the budget process. That way, we cut spending and the deficit.

Here is the point. Our allies have already agreed to pay—in-kind—for the cost of nearly 200 million dollars' worth of projects overseas. In my view, that means the American taxpayer should spend $200 million less as a result. But I don't think they are. Instead, they're being asked to spend exactly what would have been proposed had the administration not negotiated with the allies in the first place. There are no savings. That should change.

Under the current system, the Pentagon is not required to return directly to the U.S. taxpayers what it gets from other countries. It is not required to use the allies' in-kind contributions to bring requested spending levels down and reduce the deficit. The net result is more spending overall and less control of spending by the Congress. What the allies agree to build in Europe through in-kind contributions ought to be a substitute for other expenditures the Pentagon will make.

Mr. President, let me illustrate the problem. Look at overseas military construction spending. The administration submitted a budget which asks the Congress to authorize and appropriate approximately $22 million for military construction projects in Germany for next year. Although residual value negotiations should generate hundreds of millions of dollars' worth of in-kind contributions, the Pentagon is not asking the Germans to build the projects already identified as important through the budget process. If it did, the Pentagon could save the taxpayers $22 million.

It's the same thing with the NATO infrastructure budget request. The Pentagon asked the American taxpayers to spend almost $230 million in NATO countries next year. At the same time, it is seeking hundreds of millions of dollars' worth of in-kind contributions from the allies for the debt they owe the American people. Why not let the allies pay for the NATO infrastructure projects rather than the American people. Let's let the allies pick up the tab, and give the American taxpayer a break.

Mr. President, this issue and amendment go beyond the budget for fiscal year 1995. The administration notified the Congress that it will seek $200 million from Germany for each of 5 years for residual-value payments. That's $1 billion. If the administration identifies 1 billion dollars' worth of projects already included in its future year budget plans, and asks the Germans to pay for those projects—as the provision included in the conference agreement would require—we could save the American taxpayer $1 billion. That's $1 billion that could be applied toward deficit reduction.

Again, the point is that our allies are apparently not being asked to offset hundreds of millions of dollars' worth of requirements the administration has asked the Congress to fund in Europe or has identified through the budget process. Instead, the allies are being asked to pay for construction projects the Pentagon says it needs, but have never been identified as priorities in the budget. By requiring the Pentagon to ask the allies to cover the cost of projects that have been identified in the budget, we could save hundreds of millions of dollars—billions down the road.

The provision included in the conference agreement would correct this problem by requiring that in-kind contributions be used to offset costs that would otherwise be incurred by the Department of Defense and the American taxpayer.

Under current law, the Pentagon is required to submit "a written notice to the congressional defense committees containing a justification for entering into negotiations for payments-in-kind with the host country * * *" before it seeks in-kind contributions. The new law would require the Pentagon, at the time it submits this justification, to let us know how the budget will be adjusted to reflect costs that may no longer be incurred by the United States as a result of the residual value payment-in-kind being sought from the allies.

Thirty days before the Pentagon enters into an agreement with a host country to accept a burden-sharing contribution in-kind, the provision would require the Pentagon to notify the Congress and to certify that tax dollars will no longer be necessary as a result of the allies burden-sharing in-kind contribution.

The third goal is to protect against wasteful spending by requiring congressional approval of these burden-sharing contributions made in-kind.

Mr. President, the Congress is required to approve military construction projects by law. It is not the role of the German Government or any foreign government to set our budget priorities. If residual-value payments were secured in cash from the allies, the Congress would authorize and appropriate those funds. We could help bring defense spending down and reduce the deficit by applying those dollars to projects included in the administration's budget request. The Congress should play the same role in approving military construction projects secured as in-kind contributions.

There has been abuse in the system even with congressional oversight. Without congressional oversight and with billions of dollars' worth of in-kind projects at stake, we do more than invite waste, fraud, and abuse—we virtually require it.

Look at what happened at the Ramstein Air Base in Germany in the late 1980's. In 1989 the Department of Defense Office of the Inspector General found that the Ramstein Air Base had inappropriately used taxpayer money at officers clubs to buy a $6,800 snooker table, to buy party equipment—like cocktail, champagne, and wine glasses—and to upgrade the officers club.

I'd like to keep Ramstein Air Base a unique example. I fear it will be all too common unless we get control over the use of the purposes for which in-kind contributions can be used.

I am not suggesting that we shouldn't give our military the kind of facilities they deserve. That isn't the point. The point is simply that even with oversight, fraud can happen. Wasteful spending can slip through the cracks. The system can be abused. Imagine what could happen with little or no congressional oversight.

Under the new law, the Congress will have a greater oversight and approval role. Currently, we have none. Thirty days before the Pentagon accepts a burden-sharing payment through an in-kind contribution, it must submit it to the Congress for review. Based on a letter from the Comptroller I previously submitted for the record, I expect the mandated notification to be submitted in a manner consistent with current notification reprogramming procedures.

Given this system, we will have at least 30 days to scrutinize the project and have the opportunity to disapprove if we do not believe it is meritorious or in the national interest.

Mr. President, we have carried the burden of defending Europe for generations. We have created a safe environment that has allowed European economies to flourish. Maybe there is no way to get our allies to pay as much as they should. But, Mr. President, we must do better.

We must ensure that burdensharing inkind payments reduce the Federal deficit. We must ensure that burdensharing inkind payments benefit the United States, because our allies sure do benefit. Instead of paying us for what they are getting, they are in essence paying themselves: They are putting their people to work, they are improving structures they may ultimately inherit. They are making the decisions, and we are still footing the bill.

Mr. President, the provision included in this conference agreement has been endorsed by the Citizens Against Government Waste. I ask that a copy of a letter from this organization be inserted in the RECORD at the conclusion of my remarks.

(See exhibit 1.)

Mr. LAUTENBERG. The provision reiterates U.S. burdensharing policies which look to our allies to pay their fair share for their defense. That fair share amounts to billions. It requires that our Government use contributions by the allies to reduce the deficit and bring our spending down. And, it puts on record against potential wasteful spending of billions owed to the American people. I am pleased it has been included in the final version of this legislation.

EXHIBIT 1

COUNCIL FOR CITIZENS AGAINST GOVERNMENT WASTE,
Washington, DC, July 29, 1994.

Hon. FRANK LAUTENBERG,
Hon. LARRY PRESSLER,
U.S. Senate,
Washington, DC.

DEAR SENATORS LAUTENBERG AND PRESSLER: On behalf of the Council for Citizens Against Government Waste (CCAGW), we support the burden sharing amendment you successfully offered to the Department of Defense Authorization bill, H.R. 4301. We urge the conferees to keep this fiscally responsible amendment in the bill.

We share a common goal. The Cold War is over and it is time to focus like a laser beam on a new national security risk—America's $4.6 trillion debt. CCAGW has been battling this enemy for nearly ten years, and time is running out if our nation is going to continue to prosper as it has in this century.

The only way America can continue to provide for the common defense is to pass legislation that addresses our nation's fiscal concerns.

Your amendment has teeth. According to the Congressional Budget Office, during the next decade, your burden sharing amendment could save between $1 and $2.7 billion for the taxpayers. It would ensure that the allies—mostly the German government—pay the American taxpayer for bearing the brunt of the defense burden for the last 50 years. In addition, the Lautenberg-Pressler amendment is "fiscally correct" by requiring burden sharing payments to relieve pressure on the deficit. It also provides congressional oversight to guard against wasteful spending.

CCAGW supports this burden sharing amendment and urges the House of Representatives to support it as well.

Sincerely,

TOM SCHATZ.

MEMORIAL FOR PAUL V. MONAGHAN

Mr. COHEN. Mr. President, I would like to note with sadness a memorial service being held today in Washington for Paul V. Monaghan, a reporter for Griffin-Larrabee News Service who wrote for many years for newspapers in my home State of Maine.

Paul died September 2 after a lengthy battle with brain cancer. He was only 45.

Paul was a native of Weymouth, MA. He graduated from Archbishop Williams High School in Braintree and Bridgewater State College and received a master's degree in journalism from the University of Massachusetts at Amherst.

Among Paul's duties was covering Capitol Hill for the Times Record in Brunswick, ME. That assignment included following closely legislation affecting Bath Iron Works, Maine's largest private employer. He pursued this assignment with diligence, intelligence and the knowledge and understanding of defense policy and congressional procedures to bring insight to the process. His readers in Brunswick were fortunate indeed to have benefit of his many years of experience.

But Paul was known for much more than his professionalism. We will miss most his engaging good humor and his ready smile. He was soft spoken but persistent, mild mannered but firm. He carried out his duties with grace and charm—and he had the ability to get the information he needed without resorting to bombast or unpleasantness.

Paul's most difficult challenge came months ago when he was diagnosed with brain cancer. His treatment was difficult; his prognosis poor. Yet he maintained his customary good humor, and he never stopped looking ahead. Paul used his time between treatments to study at the Library of Congress, and he talked repeatedly of becoming healthy enough to return to his post in the Senate Press Gallery.

I know that Paul will be missed by his family—his sisters Judy and Kathy and his brothers Michael, Mark, Richard, and especially Brian, who cared for him during his illness.

We will miss him, too—for the dignity with which he carried out his duties and the courage with which he faced his last and most difficult assignment.

TRIBUTE TO DR. JOHN STEPHENSON OF BEREA COLLEGE

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to Dr. John Stephenson who retired on July 31, 1994 as president of Berea College. Dr. Stephenson received his undergraduate degree from the College of William and Mary and later earned his graduate degree from the University of North Carolina at Chapel Hill. After serving as dean of undergraduate studies at the University of Kentucky and as the first director of UK's Appalachian Center, Dr. Stephenson began his tenure at Berea College in January 1984.

During his 10 years at Berea, Dr. Stephenson compiled a lengthy list of accomplishments adding to the prestige of an already well respected institution of higher learning. As president, he helped lead one of the most successful fund raising campaigns in the school's history, raising over $70 million for use in improving the school's library, expanding student aid, and providing salary increases for teachers. Through his leadership, Berea College also developed a program to work with community leaders to enhance economic and educational opportunities in Appalachia.

Throughout Dr. Stephenson's service to the faculty and students of Berea College, his main priority was to maintain the rich traditions of the college. He worked diligently to keep the school among the finest institutions in the Nation, and he strove to insure that Berea College never becomes "just another good liberal arts school." For 125 years, the school has furnished its students with an education that is second to none. Berea College focuses on opening the doors to higher education to those students who would otherwise lack the financial resources to attend college. Berea College's emphasis on applied and academic instruction has brought the school national attention for its comprehensive approach to excellence in education. In 1992, U.S. News and World Report ranked Berea College third among the best colleges in the South.

Mr. President, I ask that my colleagues join me in wishing Dr. Stephenson well as he passes his duties along to this successor, Dr. Larry Shinn. Dr. Stephenson's work at Berea College was an invaluable service to the Commonwealth of Kentucky and he will be sorely missed by those whom his work touched.

INSPECTOR GENERAL AT THE UNITED NATIONS

Mr. GLENN. Mr. President, I rise today to speak about the imminent appointment of an inspector general at the United Nations.

For a long time, I have sponsored and taken a personal interest in the inspectors general in the Federal Government. Beginning back in 1978, as a member of the Governmental Affairs Committee, we drafted and passed the original Inspector General Act creating IG's in several departments. I then authored amendments to that act in 1988 to add several more IG's in other Federal agencies and entities for a grand total today of 61 independent IG's ferreting out fraud, waste, and abuse in our Federal agencies.

I have also been quite concerned about the lack of controls on U.N. systems and operations, and I know that concern is shared by other Members. In that vein, this past spring I went up to New York to meet with Madeleine Albright, our U.N. Ambassador, and Secretary General Boutros Boutros Ghali to discuss the possible creation of an inspector general at the United Nations.

The result of these discussions and previous work by our U.S. delegation is an approved U.N. resolution to create what will be known as the Undersecretary General [USG] for Internal Oversight Services [IOS] in the U.N. Office of Internal Oversight Services [OIOS].

I asked the General Accounting Office [GAO] to take a look at the resolution to see how it stacked up to our own IG act. Because we believe the standards in place for United States IG's have worked very well, we wanted to ensure that any IG at the United Nation would be afforded the same independence, authority, and resources of a United States IG.

Now, there are some Senators who probably think that this resolution does not go far enough. I happen to disagree. The resolution may not be perfect, but I feel it has the potential, if correctly implemented, to produce the kind of independent IG office that we have become familiar with in U.S. Government agencies. I intend to monitor how it is implemented, and, if any changes are needed, pressure will be applied to make those changes occur.

I'd like to take just a moment to discuss the independence of the U.N. IG.

The GAO highlighted the areas of staffing, budget, and procedure as being key in determining whether the IG has full operational independence. For instance, the resolution does not specifically provide for any staff for the Office of Internal Oversight Services, the OIOS. To be effective, implementation of the resolution must provide for a minimum number of staff, including investigators and support. Implementing regulations issued last Thursday, September 8, address this

point, and clarify many others, stating that the IG shall develop his own organizational structure, staffing table, and job descriptions. I have asked the GAO to take a look at these regulations to see if they address the gaps left by the resolution.

Funding for the United Nations IG will be proposed by the OIOS and approved by the General Assembly which must consider the office's independence. The separate budget line item secured by the OIOS's predecessor office—Office for Inspections and Investigations, OII—will be retained by the OIOS. This will ensure that the funding of this office is not discretionary. In addition, the IG may comment on the adequacy of the budget through the reporting process.

I was originally concerned about certain policies and procedures that had yet to be established, including audit and compliance standards, general guidelines, quality standards for inspections and investigations, and a procedure for audit followup. However, these have since been established under the implementing regulations.

Additionally, the U.N. resolution provides for the removal of the IG for cause with the approval of a majority of the General Assembly. Our IG's can be removed by the appointing authority, with a notification to the Congress of the reasons for dismissal. Although I am pleased that the U.N. resolution provides a standard, I am concerned that for cause is not defined, and I am concerned about the lack of precedent in this area.

I am satisfied with the resolution's reporting requirements which state that all reports are required to be made to the Secretary General, who then transmits them unaltered to the General Assembly accompanied by his—the Secretary General's—comments. This is similar to our process of transmission by an IG to his or her agency head who then transmits the report to the Congress.

In most other respects, the resolution accurately reflects our own process. For instance, there are provisions for the equivalent of whistleblower protection, ample reporting requirements, and access to documents and personnel necessary to conduct a complete investigation or audit.

In addition, the resolution provides that all U.N. systems, processes, operations, functions, and activities will be subject to audit based on a systematic assessment of the risk associated with each activity. Similarly, our IG's are required to identify their audit universe and determine the coverage, frequency, and priority of audits required.

Concerns were raised in a recent letter to the editor of the Washington Post that the U.N. resolution does not go far enough. The letter cited lack of budgetary independence, lack of independent hiring authority, and lack of whistleblower protection.

I agree that the OIOS needs a separate item for its funding, and as I stated earlier, the OIOS has that separate line item under the implementing regulations.

I also agree that the head of the office should be able to staff it as he or she sees fit, and this is also addressed in the regulations, the U.N. IG will not only have the right to hire and fire, but will, in fact, also have more independence than most other program managers at the United Nations.

I was concerned about the statement by Belgian authorities, referred to in the letter, which would treat situations where whistleblowers make unintended false accusations, as cases of wrongdoing. On its face, that's exactly how this statement reads. However, I have determined two things through further inquiry: First, this is not a statement of opinion of the Belgian delegation to the United Nations; it is a statement by the coordination of the committee drafting the resolution who happened to be Belgian.

Second, the intent, according to the regulations, is not to include unintended false accusations as cases of wrongdoing; only those false accusations made intentionally or maliciously.

Finally, Mr. President, I am anxiously awaiting the commencement of the term of the newly approved Undersecretary for Internal Oversight Services, Ambassador Karl Theodore Paschke of Germany. He appears to have the experience and familiarity with the United Nations necessary to effectively carry out the charge of this position. I wish him well and will be watching him closely.

Mr. President, I am generally pleased with the resolution and am confident that those weaknesses the GAO has identified and I've discussed will be resolved favorably. I fully intend to monitor the implementation of the resolution to ensure that there is an effective and independent IG at the United Nations. Fully implemented, a U.N. IG office can be a major force for reestablishment of confidence in how the United Nations spends its money—most of which comes from U.S. taxpayers.

Mr. President, I ask unanimous consent that the 8-page GAO report be placed in the RECORD following my remarks.

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

GENERAL ACCOUNTING OFFICE,
NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION,
Washington, DC., August 8, 1994.

Hon. JOHN GLENN,
U.S. Senate.

DEAR SENATOR GLENN: In response to your request, we have analyzed the resolution passed by the United Nations General Assembly on July 29, 1994 which authorized a United Nations (U.N.) Office of Under Secretary General for Internal Oversight Services. We have long held the view that the U.N. should have an independent and professional audit and evaluation office. This office should be headed by a highly qualified individual responsible for conducting and supervising audits, evaluations, inspections and investigations relating to U.N. operations. Our analysis indicates that the Office to be established under the authority of the Secretary General can have, if properly implemented, the operational independence to perform functions substantially similar to those performed by the Offices of Inspectors General, established under the Inspector General Act of 1978, as amended. (See enclosure 1.)

While the creation of the Office is important, how the resolution is implemented will be key as to whether the Office will indeed have full operational independence and achieve the General Assembly's intended result. The appointment of a sufficient and highly qualified staff; the strong commitment from senior U.N. management to cooperate with the Office and provide it with sufficient budgetary resources; and the establishment of sound policies and procedures for conducting audits, evaluations, inspections and investigations, obtaining corrective action, and reporting to the General Assembly will be required to ensure that the Office is instrumental in achieving management improvements in the U.N. It is expected that the Office, while obtaining its budgetary resources through the budget of the U.N. Secretariat, will have a separately identified line item in the budget. Also, the head of the Office may inform the General Assembly through the reporting process established in the resolution as to the adequacy of the resources provided.

According to State Department officials, a number of actions called for by the resolution will be completed before September 30, 1994. These include (1) the appointment of an Under Secretary General for Internal Oversight Services with requisite qualifications, and approval by the General Assembly (2) the issuance of procedures to ensure compliance with recommendations of the Office, and (3) the issuance of procedures to protect the identity of, and to prevent reprisals against, any staff members making a complaint or disclosing information, or cooperating in any investigation or inspection by the Office. The President can then certify that the requirements of section 401(b) of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995 have been satisfied.

If you have any question concerning this letter, please do not hesitate to call me on (202) 512-2800.

Sincerely yours,

FRANK C. CONAHAN,
Assistant Comptroller General

Enclosure.

COMPARISON OF THE U.S. OFFICES OF INSPECTORS GENERAL TO THE UNITED NATIONS OFFICE OF INTERNAL OVERSIGHT SERVICES

Subjects	U.S. Offices of Inspectors General	United Nations Office of Internal Oversight Services
Office	Office of Inspector General (OIG)	Office of Internal Oversight Services (OIOS).
Office head	Inspector General (IG)	Under Secretary General (USG) for Internal Oversight Services (IOS).
Purpose	Create independent and objective units to conduct and supervise audits and investigations of programs and operations..	Exercise operational independence to initiate, carry out, and report with regard to monitoring program implementation and conducting internal audits, inspections, evaluation, and investigations.
	Promote economy, efficiency, and effectiveness of programs and operations.	Evaluate the efficiency and effectiveness of programs and legislative mandates.
	Prevent and detect fraud and abuse in programs and operations.	Investigate reports of violations of regulations, rules, and administrative issuances and assess the potential within program areas for fraud and other violations through the analysis of systems of control.
	Provide a means for keeping the head of the agency and the Congress fully and currently informed about problems and deficiencies in programs and operations..	Assist the Secretary General in fulfilling his internal oversight responsibilities and prepare reports for transmittal to the General Assembly by the Secretary General as presented.
Authority	Each IG shall report to and be under the general supervision of their agency head.	The USG for IOS shall be under the authority of the Secretary General.
	Neither the head of the agency, nor the officer next in rank below the agency head, shall prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation..	OIOS shall have operational independence to initiate, carry out, and report on any action which the OIOS considers necessary to fulfill its responsibilities. Operational independence means that the Secretary General has the right to instruct the OIOS to carry out an action within the purview of its mandate but cannot prohibit it from doing so.
Authority	Each IG is authorized to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to programs and operations..	The OIOS has the authority to access all information it needs with respect to the resources and staff of the U.N. Organization. By reference to its assumption of all functions of the Office of Inspections and Investigations has the Office has direct access to all necessary documents and people.
Appointment	28 IGs are appointed by the President, by and with the advice and consent of the Senate. 32 IGs are appointed by their entity heads..	The USG for IOS shall be appointed by the Secretary General, following consultations with Member States, and approved by the General Assembly.
	Appointed without regard to political affiliation.	Appointed with due regard for geographic rotation.
	Appointed solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations..	The USG for IOS shall be an expert in the fields of accounting, auditing, financial analysis, investigations, management law or public administration.
	IGs have no fixed term of office.	The USG for IOS shall serve for one fixed term of five years without possibility of renewal.
Removal	Presidentially-appointed IGs may be removed from office by the President. Likewise, entity heads who appoint IGs may also remove them. Reasons for such removal shall be communicated to the Congress by the President and entity heads, respectively..	The USG for OIS may be removed by the Secretary General only for cause and with the approval of the General Assembly.
Reporting	Each IG is authorized to make such investigations and reports relating to the administration of programs and operations the IGs consider necessary, and to keep the head of the agency and the Congress fully and currently informed by means of reports and otherwise..	OIOS shall submit reports on the effective utilization and management of resources and the protection of assets to the Secretary General, who shall ensure that all such reports are made available to the General Assembly as presented, together with any separate comments the Secretary General may deem appropriate.
	Each IG shall report immediately to the head of the agency whenever the IG becomes aware of particularly serious or flagrant problems, abuses, or deficiencies. The agency head shall transmit any such report to the Congress within seven calendar days..	The OIOS will submit to the Secretary General special reports on significant investigations involving serious mismanagement, abuse or fraud as they arise. OIOS reports concerning the utilization and management of resources, and the protection of assets, will be submitted without change to the General Assembly, along with any comments the Secretary General deems appropriate.
	Each IG shall prepare semiannual reports summarizing the activities of the OIG during the immediately preceding six-month periods. These reports shall be furnished to the agency head for transmittal to the Congress together with a report by the agency head..	The OIOS shall submit to the Secretary General for transmittal as received to the General Assembly, together with separate comments the Secretary General deems appropriate, an annual analytical and summary report on its activities for the year. Reports containing personnel information which, if disclosed, may violate individual rights to privacy, and those related to ongoing investigations involving potential criminal actions would not be provided to the General Assembly.
	Agency heads are responsible for designating a top management official to oversee audit followup, including resolution and corrective action..	The Secretary General shall establish procedures for the approval of recommendations and the resolution of disputes and shall facilitate the prompt and effective implementation of the approved recommendations of OIOS and inform the General Assembly of actions taken in response.
	IGs are responsible for reviewing responses to audit reports and reporting significance disagreements to the audit followup official..	An OIOS compliance unit will be dedicated to ensuring that recommendations, including those of the Board of Auditors, are implemented promptly and effectively.
	IG semiannual reports to the agency head for transmittal to the Congress, shall contain the status of audit recommendations..	The OIOS shall report to the Secretary General as and when necessary but at least twice yearly on the implementation of recommendations addressed to program managers.
Coordination	Each IG shall give particular regard to the activities of the Comptroller General with a view toward avoiding duplication and insuring effective coordination and cooperation..	The OIOS will coordinate its activities and provide copies of all final reports to the Board of Auditors and the Joint Inspection Unit to minimize duplication of effort.
Standards	Each IG shall comply with audit standards established by the Comptroller General. Also, the IGs have established quality standards for investigations..	For audit and compliance functions, standards along the lines of those issued by the International Organization of Supreme Audit Institutions will be established. General guidelines and quality standards for inspections and investigations will also be established.
Referrals	Each IG shall report expeditiously to the Attorney General whenever the IG has reasonable grounds to believe there has been a violation of federal criminal law..	The Secretary General is to ensure that disciplinary and/or jurisdictional proceedings are initiated without undue delay in cases where the Secretary General considers it justified.
Complaints	An IG may receive and investigate complaints or information from an employee about possible violations of law, gross waste of funds, and abuse of authority. The IG shall not disclose the identity of the employee without his/her consent, unless the IG determines such disclosure is unavoidable. Also, employees are to be protected from reprisal for making a complaint to the IG..	OIOS will investigate reports of alleged misconduct, malfeasance, deliberate mismanagement, abuses, or violations of regulations and administrative issuances. The Secretary General is to ensure that procedures are in place that provide for direct confidential access of staff members to OIOS and for protection against repercussions.
Funding	Federal agencies with presidentially-appointed IGs and the National Science Foundation have separate appropriation accounts. Entity-appointed IGs have their office's financed with funds that are also available for other entity activities..	OIOS budget proposals shall be submitted to the Secretary General who shall submit proposals to the General Assembly for its consideration and approval, taking into account the office's independence in the exercise of its functions. By references to this assumption of all function of the Office of Inspections and Investigations, it is expected that OIOS funding will be identified in a separate line item of the budget of the U.N. Secretariat. The OIOS may comment on the adequacy of its budget in its annual analytical and summary report transmitted to the General Assembly.
Planning	IGs are required to identify their audit universe and to determine the coverage, frequency, and priority of audits required..	All U.N. systems, processes, operations, functions and activities will be subject to audit based on a systematic assessment of the risk associated with each activity.
Additional authorities	The "Inspectors General Vision Statement" states that IGs will work with agency heads and the Congress to improve program management, and to build relationships with program managers based on a shared commitment to improving program operations and effectiveness..	The OIOS may advise program managers on the effective discharge of their responsibilities, provide assistance to program managers in implementing recommendations, ascertain that program managers are given methodological support, and encourage self-evaluation.
	Each IG is authorized to have direct and prompt access to the head of the agency when necessary, subject to the appointments governing the civil service regulations..	The USG to IOS shall have direct access to the Secretary General as well as all personnel to fulfill the responsibilities of the Office.
	Each IG is authorized to select, appoint, and employ such officers and employees as may be necessary..	This administrative provision is not addressed in the resolution establishing OIOS.
	Each IG is authorized to enter into contracts and other arrangements for audits or other studies.	Budget provisions exist to assist in the professional assessment of a wide range of U.N. actions in the areas of inspections, evaluations, auditing and investigation.
	Whenever information or assistance requested by the IG is unreasonably refused or not provided, the IG shall report this circumstance to the agency head without delay..	The Office has the authority to demand compliance whenever information or assistance requested is unreasonably refused, delayed or not provided.

Sources: "Review of the Efficiency of the Administrative and Financial Functioning of the United Nations," A Report of the Fifth Committee of the United Nations, A.48/501/Add.2, July 21, 1994, which was approved by resolution in the United Nations General Assembly on July 29, 1994; "Review of the Efficiency of the Administrative and Financial Functioning of the United Nations: Office of Inspections and Investigations," Note by the Secretary General, A/48/640, November 23, 1994; Inspector General Act of 1978, as amended; Office of Management and Budget Circular A–50, "Audit Followup"; Office of Management and Budget Circular A–73, "Audit of Federal Programs and Operations"; and "Inspectors General Vision and Strategies to Apply Our Reinvention Principles," January 1994; "Secretary-Generals Bulletin" Subject: Office for Inspections on Investigation ST/SGB/268 23 November 1993; "Review of the Efficiency of the Administration and Financial Functioning of the United Nations" Program Budget for the Biennium 1994–1995A/C.5/48/42, 6 December 1993.

"CENTURION"

Mr. D'AMATO. Mr. President, the House and Senate Defense appropriations marks regarding the *Centurion*, or new attack submarine [NAS], call for the following:

HOUSE APPROPRIATIONS COMMITTEE

Adds $100 million to advanced submarine system development, PE No. 0603561N, for producibility improvements.

Directs the incorporation of full modular configurability into the *Centurion* design.

Deletes $137.322 million for NSSN contract design, Proj. No. F2199/PE No. 0604567N, from ship contract design.

Deletes $62.678 million from New Design SSN, PE No. 0604558N.

Directs continued "efforts to find better and cheaper ways to produce the propulsion plant."

SECDEF certification that the "follow-ship procurement cost goal of $1.2 billion in constant dollars will be met and that the Navy cost estimate has been verified by an independent Department of Defense cost estimate."

SECDEF submission of detailed quarterly reports to the Congress on the efforts being undertaken to reduce the cost of the NAS; first report due March 31, 1995.

SENATE APPROPRIATIONS COMMITTEE

Directs consideration of an alternative to the NAS "before going forward to Milestone III".

Fences 50 percent of fiscal year 1995 NAS development funds to submission to Congress of report on review of alternatives to the NAS.

Directs the Navy to compete the submarine combat system.

Fences all combat system funding to ASN(RDA) report on the competitive acquisition strategy; report due December 31, 1994.

Were it a conference of one, I would meld the best elements of both into the following:

APPROPRIATIONS CONFERENCE

Directs the incorporation of "full modular configurability" into the *Centurion* design.

Directs immediate initiation of development of a new reactor designed to be one-half the cost of the S9G in constant fiscal year 1998 dollars and ready for introduction not the 5th ship of the *Centurion* class.

SECDEF certification that the lead ship procurement cost goal of $1.6 billion in constant fiscal year 1998 dollars and follow-ship procurement cost goal of $1.2 billion in constant fiscal year 1998 dollars will be met and that the Navy cost estimate has been verified by an independent Department of Defense cost estimate.

SECDEF submission of detailed quarterly reports to the Congress: First, updating design to cost data, and second, describing efforts being undertaken to reduce the cost of the NAS; first report due March 31, 1995.

Directs the Navy to compete the submarine combat system.

Fences all combat system funding to ASN(RDA) report on the competitive acquisition strategy; report due December 31, 1994.

As it is, there are likely to be as many solutions to the problem of *Centurion* affordability as there are Conferees. The challenge for the Navy is to convince conferees that the savings we want are best achieved by letting the detailed design process go forward. I am skeptical. If, however, the decision is to take the Navy at its word, I believe it is absolutely essential that Congress impose strict fiscal discipline on the *Centurion* program by means of cost caps and competition requirements that transfer as much development and management responsibility as possible to the private sector.

NATIONAL HISPANIC HERITAGE MONTH

Mr. RIEGLE. Mr. President, I rise today to commemorate National Hispanic Heritage Month, which is celebrated every year from September 15 through October 15. This event is intended as a tribute to the diverse Hispanic-Americans community—hailing from Mexico, Latin America, the Caribbean, and Spain. More than 25 million Hispanic-Americans live in the United States, accounting for approximately 10 percent of our population. It is my hope that throughout this month, Americans of every ethnic background will join me in commemorating the important social and cultural contributions Hispanic-Americans have made to this country.

The diverse Hispanic-American community is bound together by commonly held values which include family ties, religious faith, hard work, and education. Equally important throughout these communities is the need to preserve their Hispanic heritage. As a nation, we take pride in the traditional value system embodied by this culture, and respect the desire of Hispanic-Americans to assimilate themselves into American life without losing the language and culture of their origins. But even as we commemorate the special bonds that unite Hispanic-Americans, we must also confront the problems they collectively face.

It is estimated that one in every four Hispanic-American families lives in poverty. Only about half of the adults hold high school diplomas and fewer than 10 percent have graduated from college. And at a time when U.S. concern over illegal immigration is high, Hispanic-Americans are frequently the targets of racial discrimination. Many Hispanic immigrants encounter obstacles with respect to language; adults often have difficulty finding employment due to limited English skills, and many children and teenagers struggle through schools which are unequipped to deal with their special needs. Although steps have been taken in some cities with large Hispanic populations to provide bilingual education and other services, many Americans are resistant to what they perceive as a takeover of the English language by Spanish, and these attitudes further foster racial tension.

But despite the challenges confronting Hispanic-Americans, their social and cultural contributions are prevalent in American life. From musicians and artists to some of the most noted writers of our time, from activists and volunteers to government officials at all levels. Hispanic-Americans have contributed to every facet of the American experience.

This month in particular, it is my hope that all Americans will take advantage of this opportunity to deepen their understanding and appreciation of Hispanic culture and heritage. Events will be staged all over the country to celebrate the achievements and contributions that Hispanic-Americans have made to the United States. Diversity is at the very foundation of American civilization, and by celebrating our differences we can deepen our national unity based on mutual understanding and respect. It is in this spirit of national unity that I join you in commemorating National Hispanic Heritage Month.

FACES OF THE HEALTH CARE CRISIS

Mr. RIEGLE. Mr. President, over the last 2 years I have profiled 64 Michigan individuals and families who have faced the severe consequences of the health care crisis. Today I rise to tell my colleagues about Linda Clark, a courageous woman from Flint, MI who has been struggling to maintain the emotional and physical well-being of her family since her husband was brutally murdered last year.

Until early May 1993, Linda and Kevin Clark were typical parents working to support their two children, 7-year-old Wesley and Kasey, age 5. Kevin Clark owned a small residential construction business that provided the family a modest middle income.

The family depended completely on Kevin's earnings. Linda cared for their children, did bookkeeping and general office work for Kevin's business and attended the University of Michigan at Flint. She was pursuing a bachelor's degree in early elementary education with an emphasis on early childhood development, and had just 1 year of classes left. Linda funded her education through a Pell grant and was awarded an academic scholarship from the university after she earned a high grade point average.

Neither Linda nor Kevin had health insurance or life insurance. Although they had looked into purchasing health insurance coverage for their family, the least expensive policy they found still would have cost them $350 per month and they simply could not afford it on their income. And so, like thousands of American families, the Clarks hoped they could get by without insurance.

Then tragedy struck the Clark family. On May 10, 1993, while he was out shopping, Kevin fell victim to a random, senseless, and cruel crime. He was shot by five teenagers who had just robbed a store and were fleeing the scene. After the shooting, Kevin was rushed to Hurley Hospital but it was too late, and he died from his gunshot wounds. Linda Clark was left a widow with a $24,000 debt to the hospital for its emergency services.

The Clark family had no income at all for almost 16 weeks after Kevin's death. Unable to afford to continue her studies, Linda dropped out of the University of Michigan. The family now depends completely on their Social Security survivors benefits. The Clarks have already experienced the financial hardship of incurring a huge hospital debt because Kevin was not insured for health care. But Linda now must live in dread of a similar crisis occurring again because she is not able to purchase health insurance coverage for herself or her children. Their monthly Social Security payment is high enough to disqualify them for Medicaid coverage, yet too low to afford a

monthly health insurance premium. Linda stretches the survivors benefit to cover the house payment, utilities, groceries, clothes, and all the other expenses of raising two young children. And the tremendous hospital bill leftover from Kevin's murder remains a source of strain for Linda, who is trying to negotiate a reduction in the amount, as well as a modest payment plan.

Beyond her grief over her husband and her concerns for the financial predicament that followed his death, Linda worries about not being able to provide the medical care that Wesley and Kasey may need. Both of her children are prone to strep throat infections and need medical care for this problem several times a year. When one of them is ill, it can cost $250 for an office visit, lab tests, and prescription drugs. And, as happens in families, when one child is sick, the other often catches the illness. Linda must make health care decisions that balance the need to seek medical care against what that care will cost. What will she do if serious and costly health services are needed by her children?

Linda herself has a degenerative hearing problem that requires her to use a hearing aid, but she will not even consider replacing her old one because she does not want to spend money on herself. Linda also has had a long term, very painful wrist problem. She recently consulted a doctor for it, but after spending $200 for this initial visit and xrays she cannot afford the cat scan or ultrasound which are needed to diagnose and treat her condition. Linda does not know what she will do if the pain continues untreated.

Since her husband's murder, Linda has begun a statewide citizens petition for juvenile law reforms and enactment of truth in sentencing laws. Her courageous efforts have attracted nationwide attention, and Michigan is very proud that she was invited to Washington for the signing of the crime bill yesterday. But Linda also serves as a reminder to us all of the need for health care reform to protect families like hers.

Working parents like the Clarks could not afford to buy basic insurance and were forced to leave themselves and their families at risk. Mr. President, we must improve the health care system so that families do not face financial ruin from catastrophic health care costs. We can pass reforms so that all families have access to affordable insurance. We can provide subsidies for lower-income families who need help to buy health insurance, and we can ensure that every child is covered for the preventive medical care they need to stay well so mothers like Linda are not forced to make impossible choices. Mr. President, I will continue working toward passage of some type of reform in this Congress.

TRIBUTE TO ANDY MACPHAIL

Mr. DURENBERGER. Mr. President, in Minnesota we have always respected the judgment of Andy MacPhail, general manager of the Minnesota Twins. That is why we were so shocked to hear that he was leaving Minnesota and the Twins, for Chicago and the Cubs. You think you have a person figured out and then all of a sudden——

Seriously, Minnesota baseball fans bid a fond farewell this week to Andy MacPhail as he heads east to become president and CEO of the Cubs. We are tremendously grateful to him for a wonderful decade of baseball in Minnesota. He helped bring many of us our pinnacle experiences as sports fans: The Twins two thrilling World Series victories in 1987 and 1991. He assembled two world championship teams with his genius for blending athletic talent and human chemistry.

One thing that has made baseball so much fun in Minnesota is Andy's openness and obvious love of the game. He connects fans to a simpler appreciation of the game, before it became dominated by agents, labor negotiations, and the like. He proved you could run a baseball team as a very efficient business and still love baseball like a kid.

In these dark days for the Nation's pastime we need more of that spirit.

After the MacPhail Twins won the 1987 World Series, I had the opportunity to host Andy here in the Senator's dining room. As soon as we came in, he was approached by a member of the wonderful wait-staff who had some very pointed questions for the general manager. You see, many Washingtonians still refuse to recognize the move of the then Washington Senators to Minnesota, so it is still their team. Anyway, this fan was objecting strenuously to Mr. MacPhail's trade of Frank Viola to the Mets for five players. Andy just took it all in stride.

Two weeks later I got to talk with Bart Giamatti, just before his death, and in that conversation, he said the Viola trade was one of the best in recent baseball history. The Twins' 1991 world championship, built around the nucleus of players obtained in that trade, proved him right.

The people of the city of Chicago will come to enjoy Andy MacPhail as much as we do. He may not become Michael Jordan or Oprah Winfrey, but his candor and good natured personality will make Chicago a better place to live, and a much better place to watch baseball.

From all your friends in Minnesota, Andy we wish you every success within the friendly confines of Wrigley Field. Chicago, count your blessings.

IS CONGRESS IRRESPONSIBLE? YOU BE THE JUDGE OF THAT

Mr. HELMS. Mr. President, anyone even remotely familiar with the U.S. Constitution knows that no President can spend a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

So when you hear a politician or an editor or a commentator declare that "Reagan ran up the Federal debt" or that "Bush ran it up," bear in mind that it was, and is, the constitutional duty and responsibility of Congress to control Federal spending. Congress has failed miserably in that task for about 50 years.

The fiscal irresponsibility of Congress has created a Federal debt which stood at $4,681,594,117,770.50 as of the close of business Tuesday, September 13. Averaged out, every man, woman and child in America owes a share of this massive debt, and that per capita share is $17,957.03.

HONORING THE LATE CATHERINE W. MENNINGER

Mr. DURENBERGER. Mr. President, I rise today to commemorate the passing of one of America's most valuable public citizens. Last week, Catherine L. Wright Menninger died at the age of 91.

To those of us who care about the future of health care in this country, Catherine Menninger was an inspiration. While she became nationally prominent through her outstanding work with People to People International—she served 24 years as a trustee, including the last 2 years as a life trustee—her efforts were much broader than even this would indicate.

She worked closely on mental health issues with her husband, Dr. Will Menninger, even editing his professional papers.

She served as membership secretary of the Menninger Foundation for 17 years.

She was devoted to the Kansas capital area chapter of the American Red Cross, serving a combined 20 years as its chairman of volunteers, and 24 years as a member of its board of directors.

She undertook her role on the board of directors in 1966, after the death of her husband. At an age when most people are thinking of retiring, she was on the lookout for new ways to serve her community.

As a Red Cross official, a historian, a Presbyterian Church elder, and an overall humanitarian, Catherine Menninger showed throughout her 91 years that to her, service is what matters.

On behalf of the people of Minnesota, I say thank you to this outstanding lady—and express our deepest condolences to her three sons, Roy, Philip, and W. Walter Menninger, her 15 grandchildren, and her 7 great-grandchildren.

She leaves behind her a large number of grateful people. I am proud to consider myself one of those who had the opportunity of experiencing her special grace.

DEATH OF ALLAN HOUSER, NOTED ARTIST

Mr. BINGAMAN. Mr. President, I rise today to express my sadness over the recent death of Mr. Allan Houser, a generous man and world-renowned artist from Santa Fe, NM.

Mr. Houser, a Chiracahua Apache who first moved to New Mexico more than five decades ago, was a true leader in the world of Indian art. As a congressionally appointed member of the board of trustees of the Institute of American Indian Arts, the Nation's only college dedicated solely to Indian art and culture, I know first hand of Mr. Houser's tremendous impact as an artist, a teacher, and a mentor to young American Indian artists. Throughout the world, Mr. Houser was known for his work in stone, clay, wood, steel, as well as his work in painting and drawing. The monumental bronze pieces of art he created are perhaps his best known works. They grace museums, governmental buildings, and private homes from New Mexico to Japan. In fact, one stands today in a place of honor in the Senate Russell Building, room 485, the Senate Indian Affairs Committee's hearing room. If my colleagues have not seen this beautiful tribute to the American Indian spirit, I urge them to do so.

This past April, Mr. Houser presented Hillary Rodham Clinton with a piece aptly entitled "May We Have Peace." This sculpture of an Indian offering a peace pipe will be placed in the Smithsonian Institution's National Museum of the American Indian, which is currently under development.

Throughout his distinguished career, Mr. Houser was the recipient of several prestigious awards. In 1980 he received the New Mexico Governor's Award for his contributions to the arts. In 1992 President George Bush presented him with the National Medal of Arts, the Nation's highest honor for artists. Mr. Houser was the first American Indian to receive this award. Perhaps his most touching tribute is the Allan Houser Art Park, located on the grounds of the Institute of American Indian Arts Museum in Santa Fe, NM. This beautiful sanctuary is a source of peaceful inspiration to all visitors, but it is particularly significant to the many young and talented American Indian art students who attend IAIA each year.

Mr. President, my thoughts and prayers are with Mr. Houser's family and friends. I hope they can find comfort in knowing that while we have indeed lost a treasure, Allan Houser's legacy will always remain in our hearts and in the extraordinary works of art he created. Thank you.

STATE DEPARTMENT'S QUOTAS

Mr. HELMS. Mr. President, we are left to suppose, in horror, that the Serbs are "ethnically cleansing" the former Yugoslavia of both Moslems and Croats. In Rwanda, Hutus, and Tutsis are slaughtering each other. The world has always been polarized but it now has become violently so.

Meanwhile, the State Department is drumming up a new brand of polarization called diversity. Foggy Bottom would rather fulfill ethnic quotas, thereby creating divisions and resentment, than choose the best qualified people to tend U.S. interests abroad.

The State Department's problem is that the American people reject ethnic and gender quotas. It is an absurd policy and it is unfair. It is an insult to basic American precepts and principles.

I hope Senators will take note of a cable written by Lewis Anselem, the political counselor at the United States Embassy in Bolivia. This cable, highly critical of the State Department's quota policy, was published in the July edition of Washingtonian magazine. Mr. Anselem raises a number of significant questions about the Clinton administration's pursuit of ethnic quotas at the State Department.

Mr. Anselem deserves forthright answers to his questions but I recommend that nobody hold his or her breath until answers are forthcoming from the State Department.

I recall Hubert Humphrey's asking the Senate 30 years ago, "Do you want a society that is nothing but an endless power struggle among organized groups? Do you want a society where there is no place for the individual?" If Hubert were still around he would instantly recognize that this administration has made clear that it values special interest groups over independent individuals. And Hubert would discover that the "politically correct" crowd in charge today is making the ground fertile for polarization.

Mr. President, the State Department should reject its misguided efforts to enact quotas. I ask unanimous consent that W. Lewis Anselem's cable, published by Washingtonian magazine, be printed in the RECORD at the conclusion of my remarks.

[From the Washingtonian, July 1994]

UNDIPLOMATICALLY YOURS

(A cable from W. Lewis Anselem, political counselor in the United States embassy in La Paz, Bolivia, on diversity within the State Department has been making the rounds in Foggy Bottom. Here is the text of the cable.)

1. I am taking advantage of your call for a full exchange of views of personnel issues to send you this message on "diversity." I probably should use the "dissent channel" but given my prior experience with that channel on a different issue (i.e., eight months to get a reply), I have chosen to address you directly. A previous cable I sent the Director General (93 La Paz 15382) on diversity issues was replied to six weeks later by the acting DIRGEN (State 384875) in a "form letter" which ignored the bulk of the issues I raised. A follow-up cable (La Paz 734) was ignored.

2. I realize senior department officers cannot provide personal answers to all cables they receive; I certainly don't expect that. But given repeated calls by those officials for a full and frank exchange in diversity and other personnel issues, those officials should be ready and willing to address such issues in a full and frank manner somewhere and somehow. That has not happened. What statements these officials have made on diversity reveal a lack of understanding of basic issues, are contradictory, deceptive, condescending in the extreme, insulting, and, above all, confusing. It is that sort of behavior, I think, which led the department to be the target of prior lawsuits and creates an unease in the ranks today that could result in new ones tomorrow. Current AFSA leadership seems to be management's pet puppy on diversity, eager to please its master (I urge everyone I know to stop paying AFSA dues).

3. I won't repeat what I stated in previous cables on diversity. I want to discuss two articles in the February and March issues of "State Magazine." Those articles contain statements by the director general and the legal advisor that need clarification; anything you can do would be appreciated. I apologize for this cable's length, but the topic has many facets.

ROLE OF EXAMS

4. In the February "State Magazine" report on the January 11 "townhall meeting" the director general (pg. 2) is cited as stating on the issue of FS [Foreign Service] employees who enter without taking the exam, that "while some 'assume that we want to give a free pass to people who couldn't pass the exam' it is rather the opposite, she said, explaining there are persons who are so highly sought after that State could never hope to recruit them if it had to wait for the lengthy exam process."

5. Is this an accurate characterization of the director general's position on the exam issue? If so, is that an accurate reflection of Department policy? Who are these persons "who are so highly sought after?" What special skills do they bring to the promoting of American overseas interests? Does the department consider those who took the exam and put up with the lengthy exam process as second-class citizens? Why have exams if they only draw second-raters such as myself? Will a warning label be placed on the exam so that potential test-takers know they are not "highly sought after?" Perhaps something similar to what we have on tobacco goods: Warning: The Director General has determined that if you take this test you are second-rate.

6. Will the same attitude of disregard for the exam extend to the EER [employee evaluation report]? Can we anticipate that certain persons will be promoted outside of the EER process (because they are so "valuable") while only we non-valuable ones need worry about EER ratings?

THE EVILS OF MERIT

7. In the same issue of "State," the department's legal advisor (identified as black although no one else's race is mentioned, a matter which should be taken up with the editor) is portrayed as claiming the following (pg. 3): "'We must get rid of the notion that merit has been such a success that we don't have a problem * * * It just doesn't do to walk into a bureau and to see no one or

only one person who looks like me.' The fact is, he added, that white males are overrepresented in the department * * * He continued: * * * 'We shouldn't assume that because a woman or minority winds up as a DAS [deputy assistant secretary], that this was reserved for a woman or a minority. What we should assume is that the person was qualified for the job.'"

8. Is this an accurate characterization of the legal advisor's position? Can we conclude that, under this administration, merit is no longer the basis for employment and advancement in the department? If, indeed, merit is no longer the basis of assignment, advancement, etc., why should we assume a person holding a particular job is qualified for the job? Why shouldn't women and minorities feel stigmatized, as the director general rightly worries they are? How can the legal advisor's statements be reconciled with repeated assertions (including in that same article, pg. 2) by the director general and others that no dichotomy exists between diversity and merit?

9. Is it department policy that white males are "overrepresented?" What others does the department consider "overrepresented?" Are there too many Jews in the department? How will the department solve the "Jewish problem?" Too many Catholics? Too many Baptists? Too many Asians? Too many Mormons? Too many left-handed Protestants? What else is there too many of? Is the legal advisor out to cull the herd? What is the legal advisor's position on the Chicago Bulls? That organization doesn't have too many people who look like me, but as a team based on merit, not diversity, they play great ball. Should we lower the net and shorten the court so short, fat, cigar-smoking white guys can play? What about the engineering school at UCLA? Not many folks who look like me there, either, but they sure are good engineers. From the charts provided in the director general's article in the March "State" it seems minorities are "over-represented" in the government workforce in general (see chart on pg. 20). Will the advisor propose minorities in other agencies be fired to bring down their representation to the "proper" level? Or is it only OK to insult and degrade white males?

10. The legal advisor is also quoted as saying (pg. 3) that litigation is "a blunt instrument but one that gets our attention." I predict that if the department adopts the attitude apparently held by the legal advisor, a lot more "blunt instruments" will get your attention.

ON DEFINITIONS AND THE PLASTIC MEDIUM OF STATISTICS

11. In the March issue of "State" (pp. 18–25), the director general presents a number of statistics on the department workforce. Most of these are partial and misleading. I note, however, that the second chart on pg. 21 clearly makes the point that there is "gender bending" going on in promotions. Since 1989 female officers are consistently more likely to be promoted than are their male colleagues. The 1993 figures are very telling. In that chart alone, I suspect there is enough for a lawsuit. What that chart doesn't show (but previous stats laboriously squeezed out of the department do) is that women are much more likely to cross the FS–1 to senior officer threshold than are men. In addition, they are much more likely to get DCM [deputy chief of mission] or P.O. [principal officer] jobs in desirable postings than are men (a glance through the "Key Officers" book shows that). And, please, despite what the director general claims, we all know some positions are held as long as possible for applicants of the "right" sex, race, or ethnicity; it's one of the worst kept secrets in the department.

12. Nowhere in the article does the director general provide a definition of "minority." This is a critical failing I have noticed throughout the discussions of the diversity issue. What is a minority in a country of minorities? From what I can tell if you don't file a lawsuit, you ain't a minority.

13. The issue of defining "minority" is a critical one. When we join the Foreign Service we have to auto-declare ourselves Hispanic, black, white, Native American, etc. Is this the only means we have? Surely this is not very accurate. Many Americans (myself included) are of mixed background. How do we know who is "truly" white, black, or Hispanic? How many white ancestors must you have before you are no longer another race? What if you have one black great-grandmother? Would a person with one European-origin parent and one African-origin parent be white or black? What about one with an Asian and an African parent? How does the department know it is not being conned by unscrupulous race and ethnic jumpers? What if you are currently a man but "feel" you are really a woman? Can those of us who listed ourselves as in one group get reclassified?

14. If you are serious about racial labels, then department medical services should be brought in to determine degrees of racial "purity." You can hire phrenologists and other experts on racial traits. There are lots of those people now unemployed in South Africa or under false names in Paraguay (better move on this last group fast, they're getting old).

AH, YES * * * ONE MORE DEFINITION

15. In the whole debate on diversity, including in the two articles I mention, I have yet to see a definition of "diversity." I just can't believe personnel officers would launch a policy without knowing what it is. Please provide a definition of "diversity." How will we know when we have it? What are the exact quotas established? Once those are reached, will the department have a "diversity maintenance" program to ensure old devil merit doesn't upset the correct mix?

16. Will only race and gender be considered? What about regional diversity? Are there too many Californians? Too many Alaskans? What about elderly Americans? What about those of Albanian descent? I have an Albanian-American friend from Chicago; I would like him to know what his quota is. Would Albanian-Americans from Philadelphia have a different quota than those from Chicago (my friend has a brother in Philadelphia)? What's the point system?

OH YES, I WANT MY COUNTRY TO BE JUST LIKE YUGOSLAVIA

17. I find diversity's obsession with race and gender repugnant and potentially dangerous. Despite what the director general claims, it is not those who object to diversity who corrode efficiency and morale in the service, it is those who promote diversity who do so. I might add, the director general takes a cheap shot in her March article (pg. 18) by implying that those opposing diversity so do either out of fear of change or resentment over diminished promotion possibilities.

18. There are many legitimate and idealistic reasons to oppose diversity. Not the least is that qualified women and minority officers are being stigmatized by diversity and the obvious "white man's burden" mentality behind it. The assumption is that women and minorities (however defined) can't compete unless the Great White Father designs a "special program" for them (what would the Bulls say about that?). Diversity is causing serious, perhaps permanent damage to a service already battered by years of abuse as a playground for unqualified political appointees (not always: I've served under some very fine political appointees). Can you imagine a used car salesman commanding a nuclear aircraft carrier? No? How about one as ambassador of the world's most important country?

19. My parents did not immigrate to America so their kids could face quotas. They came to get away from prejudice. The social engineers in the department and its AFSA sidekick have forgotten that the idea of America is to let people be their best and in that way we all benefit. If engineering schools have an "overrepresentation" of Asian-origin students, it doesn't bother me. If for whatever reasons one group or another has a greater tendency to go into one sort of business rather than another, that doesn't bother me at all. Diversity zealots are toying with explosive issues; no matter how "civilized" we think we are, eventually, as we have seen in Yugoslavia and only God knows how many other places, we all will come out to defend our ethnicity, race, religion, etc.—and at times violently. Call it tribalism or whatever you want, but it's there under the surface. Let it stay there; don't stir it up with misguided polices.

20. Thank you for this opportunity to express my views.

THE NATIONAL PERFORMANCE REVIEW

Mr. GLENN. Mr. President, I rise today to mark the 1 year anniversary of the National Performance Review's initial set of recommendations on reinventing Government. This morning, during a White House ceremony, the President released a follow-up report detailing the many successes that have come out of the National Performance Review.

It is unfortunate that Americans appear to have lost faith in the Federal Government. As I travel in my home State of Ohio, many people tell me that they don't believe Washington is working for them. From business leaders to farmers to students, I hear constantly that people cannot rely on the Federal Government to wisely spend the billions in tax dollars sent to Washington each year.

The National Performance Review was initiated to take real steps to get us a Government that works better at less cost. And I'm pleased to say that over the past year we have seen solid results stemming from this effort. Unlike past commissions and reports, I am seeing a concentrated reform effort in Government agencies, led by the White House, to make Government work better.

The National Performance Review began in March, 1993, when President Clinton tasked Vice President GORE to find ways to improve the operations of Government while eliminating waste, fat, fraud, and abuse. As chairman of

the Senate Governmental Affairs Committee, I can appreciate the magnitude of the Vice President's undertaking.

For years, I've worked with the General Accounting Office, the inspectors general, the chief financial officers and all the other officials and organizations devoted to making our Government work more efficiently. The committee has held numerous hearings and initiated a large number of studies designed to identify and eliminate Government waste.

My personal experience in this area has taught me that, from the point of view of the press and other Washington observers, there may not be a more dry and dull task than examining the efficiencies of Government—yet there may not be a more important task either. While the work may make many eyes glaze over, the billions in taxpayer dollars that have been and will be, saved make it all worthwhile and necessary.

That's why Vice President GORE has my full support, and sympathy, as he continues the excellent work of the National Performance Review. Today's report only underscores the significant improvements we've already made in improving how the Government works and where we need to concentrate our future efforts.

I am proud to say that many of the National Performance Review's most substantial successes have come through work here in Congress—much of that work launched by the Governmental Affairs Committee. I am particularly pleased with the bipartisan tone this reform effort has taken on. During a time when it seems as though partisan battles threaten to halt the work of this institution, it is refreshing to see that both sides of the aisle can work together toward reinventing Government.

This bipartisanship was first evident in the Governmental Affairs Committee, where Senator ROTH and I worked to initiate many of the proposals now in law or moving through Congress. I was pleased to see that spirit on the Senate and House floors as well. A confluence of different interests—Republicans and Democrats, Congress and the Executive branch, American business leaders and Government workers—have come together to help make our Government work more efficiently.

For example, we are now witnessing the final steps in enacting legislation to reform how the Government purchases goods and services. This legislation was developed in a cooperative effort among the Senate Governmental Affairs, Armed Services and Small Business Committees, their counterparts in the House of Representatives, the National Performance Review, the Office of Management and Budget, the General Services Administration, and the Department of Defense. The Senate passed the conference report accompanying procurement reform legislation 3 weeks ago and I expect it will soon be approved by the House. Republicans and Democrats, Congress and executive branch agencies, all participated in crafting this landmark legislation.

The legislation, which incorporates many recommendations of the National Performance Review, will make the Government's procurement system more streamlined and manageable for both American businesses and Federal agencies. Gone will be the days when a 12-page spec-sheet is produced for the simple purchase of oatmeal cookies. And I also hope this legislation will end the need for Vice President GORE's ashtray smashing days.

Another significant piece of legislation that had its roots in the National Performance Review is the Federal employee buyout bill. This legislation, as my colleagues know, also originated in the Governmental Affairs Committee and will help downsize the Federal bureaucracy. Right now, the Federal Government has a gross imbalance of managers to employees. In the private sector, there is a ratio of 1 manager to every 12 to 15 employees. However, in the Government, that ratio is closer to 1 to 7.

The bill we enacted is tailored to correct that problem. The buyout legislation is a fair and equitable way to do this and will reduce the Federal bureaucracy by over 250,000 employees. I might add that the money we save through these reductions has been targeted to help reduce the threat of crime on our streets.

This week I hope the Senate will act on yet another National Performance Review-related reform proposal, the Government Management Reform Act of 1994. This bill reflects additional National Performance Review recommendations within the jurisdiction of the Governmental Affairs Committee—most notably expansion of the Chief Financial Officers Act. I hope once the Senate acts on my bill, the House will then pass it and we can quickly send it to the President's desk.

The Governmental Affairs Committee laid the groundwork for much of this reform when it moved the Government Performance and Results Act in the summer of 1993. The act, which I coauthored with my colleague Senator WILLIAM ROTH, has helped the administration improve the performance of Government programs and report to the public on that performance. Americans deserve to know how the money they send to Washington is being spent and if it's being spent wisely.

These are only a few of the many reforms flowing from the National Performance Review. As we look forward to the next Congress, I would like to see the National Performance Review produce far-reaching Civil Service reform. This process began with the partnership council between the Government and its employees, which has already made some improvements. I hope this effort will also result in a concrete legislative proposal to reform the Civil Service laws.

Reinventing Government is a tricky business. Let me stress that all the reforms, recommendations, and reports won't amount to much unless the people working at the agencies want to change. We must have a work force committed to making the Government run more efficiently

That's where the National Performance Review may have its biggest success. Through the Vice President's tireless work over the past 2 years, we are seeing the sort of change within Government departments that will make reform possible. It won't happen overnight, but I think we're on the right road.

I commend President Clinton and Vice President GORE for their leadership. President Clinton campaigned with a pledge for change. The National Performance Review represents a solid step on delivering that promise, making Government work better and cost less. I look forward to continuing my work here in the Senate to bring about the many changes needed to restore the Government's credibility among the American public.

CONCERN OVER MAINSTREAM COALITION'S HEALTH CARE POLICY

Mr. MOYNIHAN. Mr. President, the mainstream coalition is to be commended for its relentless efforts to construct a bipartisan health care reform bill. The coalition began its work in the Finance Committee and did so with my encouragement.

But let me note, Mr. President, that there are now only 15 working days before the October 7 target date for the sine die adjournment of the Senate. And all that Senators have seen to date is a 31-page outline called the "Mainstream Coalition Proposed Agreement."

There is, this September 14, no mainstream bill, and there is no CBO analysis, not even preliminary CBO cost estimates, of the mainstream proposal.

We are told the deficit will be reduced by $100 billion over the next 10 years.

There will be subsidies for families with incomes up to 200 percent of poverty, and for pregnant women and children with incomes up to 240 percent of poverty. When fully phased in by the year 2004, and if fully funded, about 75 million persons would be receiving subsidies.

Mr. President, the Finance Committee spent 6 months working on a bill, and the Congressional Budget Office determined that the bill that the committee reported on August 2 was fully paid for and, indeed, would produce a modest deficit reduction of $13 billion.

Members of the Finance Committee know that was not an easy achievement.

I am concerned that as this body has attempted to repair the health care financing system it has become apparent that there is an unbridgeable gap between what we wish to provide and what we may be willing to pay for. The likelihood of an imbalance in spending and revenue flows will increase as Senators try to craft a sweeping reform plan at the 11th hour on the floor of the Senate without benefit of committee deliberation.

Mr. President, as chairman of the Senate Finance Committee I am concerned about the implications of the mainstream coalition's proposal for national health policy, particularly its lack of support for research and medical education.

And, Mr. President, as the senior Senator from New York I am concerned about the implications of the mainstream coalition's proposal for the New York State Health Care System.

The Mainstream Coalition proposal would be a step backward for New York and other progressive states that have already taken actions to expand coverage and contain costs.

For example, New York now has an all-payer hospital reimbursement system established more than 10 years ago. This system, which regulates hospital rates and helps cover the hospital costs of the uninsured, makes health care accessible and affordable for millions of New Yorkers, and protects our hospitals from the financial burden of charity care and other uncompensated care.

The New York System is now under a barrage of lawsuits which contend that Federal ERISA law prevents States from regulating hospital charges. These lawsuits do not assert that there is anything necessarily wrong with the way New York is regulating rates, just that ERISA prevents States from regulating hospital rates at all because it infringes on employer sponsored health plans.

In my judgment this conclusion follows only from a strained reading of the statute. Without a clarification that ERISA was never intended to prevent this type of State regulation, these lawsuits are likely to bring the New York System crashing down. As a result, millions of New Yorkers would lose coverage or see their insurance premiums skyrocket.

The mainstream proposal, unlike Senator MITCHELL's proposal, provides neither a waiver from nor a clarification of the ERISA law. In a September 12, 1994, letter to me, New York's Governor Mario Cuomo put his reaction to the mainstream proposal simply and, I am afraid, accurately: "We will have chaos."

The failure to enact national reform should not be allowed to prevent States from moving ahead with their own reforms. In fact, in the absence of universal coverage you must allow State flexibility, fostered by ERISA waivers, so that States can equitably finance uncompensated care.

At this late date the mainstream coalition's proposal raises more questions than it answers.

How will the subsidies be financed?

How will deficit reduction be financed?

And if, under the fail-safe mechanism, deficit reduction takes precedence over subsidies will there be any subsidies at all?

And if there are no subsidies, what will happen to insurance coverage and the flow of payments to providers?

Is it possible that cuts in Medicare and Medicaid will just be used to finance deficit reduction, but will not improve the Health Care System?

And what do we know about those Medicare and Medicaid cuts?

The mainstream document specifies neither the level nor the substance of the proposed Medicare cuts. Will the mainstream cuts directly affect Medicare beneficiaries by increasing co-insurance payments and deductibles? Or will they indirectly affect beneficiaries by limiting payments to providers and potentially affecting access to providers? And how will these cuts affect the financial stability of hospitals?

The answers to these questions are important, affecting the health care received by 36 million Medicare beneficiaries. Yet today—this September 14—there are no answers.

And what about the Medicaid Program cuts? The document issued by the mainstream coalition does not spell out the cuts that would be made in Medicaid. But it is difficult to imagine how a reform proposal that includes Federal subsidies for low-income families could go forward without any reductions in current Medicaid spending. The question is, what will these Medicaid cuts be, how big will they be, and how will they affect the ability of our 50 States to provide care for low-income individuals and families?

The Finance Committee bill had about $700 billion in Medicaid savings over 10 years. These reductions were phased in, and were in the context of a fully funded low-income subsidy program and the integration of most of the Medicaid population into a reformed health care system.

If the Senate should be asked to vote on the mainstream proposal some days from now, Senators may be voting on significant cuts to Medicaid that they may have had no opportunity to study. This is not the way to adopt policies that will affect the more than 11 percent of Americans who receive their health care through the Medicaid Program. New York hospitals that serve those with low income—like hospitals in every other State—are rightly opposed to the mainstream's Medicaid cuts because they have no accompanying guarantee of universal coverage or even a guaranteed subsidy program.

The mainstream proposal makes no mention of academic health centers and graduate medical centers. As such, it appears to be a worst-case scenario for academic health centers and teaching hospitals.

It is silent on a premium tax dedicated to academic health centers and teaching hospitals, thus providing no offset for losses of private funds for teaching hospitals resulting from increasing competition.

It makes Medicaid and Medicare cuts that would likely further reduce payments to teaching hospitals.

It assures continued large numbers of uninsured individuals, many of whom will receive uncompensated care at teaching hospitals.

It would force teaching hospitals to shift the cost of the unfunded Medicare Graduate Medical Education balance onto other private payers, thereby further disadvantaging teaching hospitals, and threatening the quality and accessibility of services provided to Medicare beneficiaries.

The mainstream proposal would tax employer-provided health care plans that cost more than 110 percent of the average-priced plan in the area. The unavoidable result is that employees who have bargained for high-quality health care in exchange for wage concessions will see their overall after tax compensation reduced. Employers will either reduce cash wages to offset the higher cost to the employer of providing coverage, or substitute taxable wages for previously untaxed health benefits.

The stated goal of the mainstream tax on health benefits is to create incentives for employers and employees to shift to "more efficient" health care plans. However, many health plans are more expensive than average for reasons other than inefficiency. For example, plans that cover employees in certain industries—such as mining—or in small companies that happen to employ 1 or 2 workers with a serious illness may be more expensive than average not because delivery systems are inefficient, but because employees in these firms—by necessity—consume more health care.

So rather than taxing "Cadillac" health coverage, the tax often will act as a wage tax on workers who have bargained for high-quality care, or who work in high-risk industries or in small companies with a few sick employees.

Preliminary assessments of the mainstream proposal have been made by two respected health organizations in New York State, the Health Association of New York State [HANYS] and

the Greater New York Hospital Association [GNYHA]. Their analyses highlight the difficulty of trying to restructure the flow of payments to health care providers.

The Greater New York Hospital Association makes the point that disproportionate share hospital [DSH] payments "should only be reduced on a hospital-specific basis commensurate with a dollar-for-dollar increase in revenue associated with newly insured patients."

And there-in lies the dilemma. While cuts in Medicare and Medicaid payments made in order to fund subsidies will reduce the flow of money to health care providers, there is no assurance that the increase in revenues, associated with newly insured patients, will offset the loss of these funds precisely where the loss actually occurs.

In fact, the Healthcare Association of New York State estimates that under the mainstream proposal revenues for New York State hospitals will be reduced by $8.1 billion for the period 1996–2001, even after accounting for the increase in revenues from newly insured patients. For hospitals in New York City, net payments would be reduced by $5.9 billion.

The Healthcare Association argues that under the coalition plan "Persons qualifying for subsidies may find it difficult to meet their part of the payment. Meanwhile, the support for uncompensated care * * * will be reduced by two-thirds."

In its evaluation of the Coalition proposal, the Greater New York Hospital Association notes that "Since New York City is the center of several public health epidemics, such as AIDS and tuberculosis, the average health care costs of its residents is higher than in other areas."

In addition, the Hospital Association argues that "Since the poverty rate * * * is not adjusted for regional cost-of-living differences," too few New Yorkers would qualify for subsidies.

Based on the work of Dr. Dutch Leonard and Monica Friar of the Kennedy School of Government, the number of New Yorkers with below-poverty income would reach 3.3 million or 18.1 percent of the New York population, if the poverty rate were adjusted for State differences in the cost of living. This is 500,000 more than under the official, unadjusted rate.

The Hospital Association also notes that New York State guarantees to its residents "universal access to state-of-the-art hospital inpatient and outpatient care." The Association argues that "The mainstream coalition bill would undercut that guarantee by drastically cutting Federal Medicaid and Medicare disproportionate share funds. Moreover, by not granting an ERISA waiver, the bill would eliminate the only viable mechanism that the State has found * * * to raise money for hospital bad debt and charity care."

With these points in mind the Greater New York Hospital Association suggests that proposals such as the mainstream's "begin to resemble little more than deficit reduction bills in the guise of health care reform legislation."

The mainstream coalition admirably wants to achieve deficit reduction of $100 billion. It does so by cutting Medicare and Medicaid. Last year, the Omnibus Budget Reconciliation Act of 1993 reduced Medicare spending by $56 billion and Medicaid spending by $7 billion for fiscal years 1994–98. I believe those cuts represented necessary reductions in spending to achieve the deficit reduction goal.

Deficit reduction was last year's goal and we did achieve it. Health care reform is this year's goal. For health care reform legislation I have had one clear guideline in mind at every stage of our deliberations: the first principle of the Hippocratic oath "primum non nocere"—First Do No Harm. In my view, the mainstream proposal fails to meet that elemental standard, Mr. President, and therefore I cannot support it.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and treaties which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on September 14, 1994, she had presented to the President of the United States, the following enrolled bills:

S. 1066. An act to restore Federal services to the Pokagon Band of Potawatomi Indians.

S. 1357. An act to reaffirm and clarify the Federal relationship of the Little Traverse Bay Band of Odawa Indians and the Little River Band of Ottawa Indians as distinct federally recognized Indian tribes, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–3275. A communication from the Acting Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report to Congress on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC–3276. A communication from the Acting Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report to Congress on direct spending or receipts legislation within five days of enactment; to the Committee on the Budget.

EC–3277. A communication from the Acting Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report to Congress on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC–3278. A communication from the Acting Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report to Congress on direct spending or receipts legislation within five days of enactment; to the Committee on the Budget.

EC–3279. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report entitled "Highway Safety Performance—Fatal and Injury Accident Rates on Public Roads in the United States"; to the Committee on Commerce, Science, and Transportation.

EC–3280. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on the administration of the Marine Mammal Protection Act of 1972 for calendar year 1991; to the Committee on Commerce, Science, and Transportation.

EC–3281. A communication from the Deputy Associate Director for Compliance, Minerals Management Service (Royalty Management Program), Department of Interior, transmitting, pursuant to law, a report relative to refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–3282. A communication from the Secretary of Energy, transmitting, pursuant to law, a report on metals initiative for fiscal year 1993; to the Committee on Energy and Natural Resources.

EC–3283. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of the Agency for Toxic Substances and Disease Registry for calendar years 1991 and 1992; to the Committee on Environment and Public Works.

EC–3284. A communication from the Acting Assistant Secretary of the Army (Civil Works), Department of the Army, transmitting, pursuant to law, the report on the Marmet Lock Replacement, Kanawha River, West Virginia; to the Committee on Environment and Public Works.

EC–3285. A communication from the Acting Assistant Secretary of the Army (Civil Works), Department of the Army, transmitting, pursuant to law, the report on the metropolitan region of Louisville, Kentucky and Indiana Pond Creek, Kentucky; to the Committee on Environment and Public Works.

EC–3286. A communication from the Acting Assistant Secretary of the Army (Civil Works), Department of the Army, transmitting, pursuant to law, the report on the metropolitan region of Cincinnati, Ohio, Duck Creek; to the Committee on Environment and Public Works.

EC–3287. A communication from the Acting Assistant Secretary of the Army (Civil Works), Department of the Army, transmitting, pursuant to law, the report on the Big

Sioux River and Skunk Creek at Sioux Falls, South Dakota; to the Committee on Environment and Public Works.

EC-3288. A communication from the Acting Assistant Secretary of the Army (Civil Works), Department of the Army, transmitting, pursuant to law, the report on the Wood River at Grand Island, Nebraska; to the Committee on Environment and Public Works.

EC-3289. A communication from the Acting Assistant Secretary of the Army (Civil Works), Department of the Army, transmitting, pursuant to law, the report on the Coos Bay, Oregon (Deep Draft Navigation); to the Committee on Environment and Public Works.

EC-3290. A communication from the Commissioner of Social Security, transmitting, pursuant to law, the report of the Social Security Administration for fiscal year 1993; to the Committee on Finance.

EC-3291. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of the Social Security Administration for fiscal year 1993; to the Committee on Finance.

EC-3292. A communication from the Assistant Legal Adviser (Treaty Affairs), Department of State, transmitting, pursuant to law, a report of the texts of international agreements and background statements, other than treaties; to the Committee on Foreign Relations.

EC-3293. A communication from the Assistant Legal Adviser (Treaty Affairs), Department of State, transmitting, pursuant to law, a report of the texts of international agreements and background statements, other than treaties; to the Committee on Foreign Relations.

EC-3294. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of a Presidential determination relative to RFE/RL Relocation; to the Committee on Foreign Relations.

EC-3295. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of a Presidential determination relative to Rwanda; to the Committee on Foreign Relations.

EC-3296. A communication from the Director of Congressional Affairs, U.S. Arms Control and Disarmament Agency, transmitting, pursuant to law, the report on adherence to and compliance with arms control agreements; to the Committee on Foreign Relations.

EC-3297. A communication from the Director of Congressional Affairs, U.S. Arms Control and Disarmament Agency, transmitting, pursuant to law, the report on adherence to and compliance with arms control agreements; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary:

Report to accompany the bill (S. 1782) to amend title 5, United States Code, to provide for public access to information in an electronic format, to amend the Freedom of Information Act, and for other purposes (Rept. 103-365).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment:

S. 1981. A bill to amend the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Orphan Drug Act to revise the provisions of such Acts relating to orphan drugs, and for other purposes (Rept. No. 103-366).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 1822. A bill to foster the further development of the Nation's telecommunications infrastructure and protection of the public interest, and for other purposes (Rept. No. 103-367).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment and with a preamble:

S.J. Res. 90. A joint resolution to recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy (Rept. No. 103-368).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Luise S. Jordan, of Maryland, to be Inspector General, Corporation for National and Community Service.

Andrea N. Brown, of Michigan, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of one year.

Carol W. Kinsley, of Massachusetts, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of five years.

Christopher C. Gallagher, Sr., of New Hampshire, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of four years.

Arthur J. Naparstek, of Ohio, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of four years.

Walter H. Shorenstein, of California, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of three years.

Leslie Lenkowsky, of Indiana, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of four years.

Reatha Clark King, of Minnesota, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of five years.

Thomas Ehrlich, of California, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of three years.

Marlee Matlin, of California, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of two years.

John Rother, of Maryland, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of two years.

Marc Lincoln Marks, of Pennsylvania, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2000.

Timothy M. Barnicle, of Maryland, to be an Assistant Secretary of Labor.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Pursuant to the order of the Senate of June 17, 1993, the following nomination, favorably reported on September 14, 1994, by the Committee on Labor and Human Resources, was referred to the Committee on Governmental Affairs for not to exceed 20 days:

Luise S. Jordan, of Maryland, to be Inspector General, Corporation for the National and Community Service.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THURMOND:

S. 2436. A bill to amend title 1 of the United States Code to clarify the effect and application of legislation; to the Committee on the Judiciary.

By Mr. CONRAD (for himself and Mr. DASCHLE):

S. 2437. A bill to amend the Food Security Act of 1985 to extend, improve, increase flexibility, and increase conservation benefits of the Conservation Reserve Program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND:

S. 2436. A bill to amend title 1 of the United States Code to clarify the effect and application of legislation; to the Committee on the Judiciary.

CLARIFICATION OF THE APPLICATION AND EFFECT OF LEGISLATION

Mr. THURMOND. Mr. President, I rise today to introduce an act to clarify the application and effects of legislation in order to reduce uncertainty and confusion which is often caused by congressional enactments. This act would provide that unless future legislation specified otherwise, new enactments would be applied prospectively, would not create private rights of action, and would not preempt existing State or Federal law. This would significantly reduce unnecessary litigation and court costs, and would benefit both the public and the judicial system.

The purpose of this legislation is quite simple. Many congressional enactments do not expressly state whether the legislation is to be applied retroactively, whether it creates private rights of action, or whether it preempts existing law. The failure or inability of the Congress to address these issues in each piece of legislation results in unnecessary confusion and litigation and contributes to the high cost of litigation in this country.

In the absence of action by the Congress on these critical threshold questions of retroactively, private rights of

action and preemption, the outcome is left up to the courts. The courts are frequently required to resolve these matters without any guidance from the legislation itself. Although these issues are generally raised early in the litigation, a decision that the litigation can proceed generally cannot be appealed until the end of the case. If the appellate court eventually rules that one of these issues should have prevented the trial, the litigants have been put to substantial burden and unnecessary expense which could have been avoided.

Trial courts around the country often reach conflicting and inconsistent results on these issues, as do appellat courts when the issues are appealed. As a result, many of these cases are eventually resolved by the Supreme Court. This problem was dramatically illustrated after the passage of the Civil Rights Act of 1991. District courts and courts of appeal all over this Nation were required to resolve whether the 1991 act should be applied retroactively, and the issue was ultimately considered by the U.S. Supreme Court. But by the time the Supreme Court resolved the issue in 1994, well over 100 lower courts had ruled on this question, and their decisions were split. Countless litigants across the country expended substantial resources debating this threshold procedural issue.

In the same way, the issues of whether new legislation creates a private right of action or preempts State or Federal law are frequently presented in courts around the country, yielding expensive litigation and conflicting results.

The bill I am introducing today would eliminate this problem by providing a preemption that, unless future legislation specifies otherwise, new legislation is not to be applied retroactively, does not create a private right of action, and does not preempt State or Federal law. Of course, my bill does not in any way restrict the Congress on these important issues. The Congress may override this presumption by simply so stating and referring to this act when it wishes legislation to be retroactive, create new private rights of action or preempt existing law.

My act will eliminate uncertainty and provide rules which are applicable when the Congress fails to specify its position on these important issues in legislation it passes. Although it is difficult to obtain statistics on this issue one U.S. district judge in my State informs me that he spends up to 10 to 15 percent of his time on these issues. Regardless of the precise figure, it is clear that this legislation would serve litigants and our judicial system millions and millions of dollars by avoiding much uncertainty and litigation which currently exists over these issues.

Mr. President, if we are truly concerned about reducing the costs of litigation and relieving the backlog of cases in our courts, we should help our judicial system to spend its limited resources, time and effort on resolving the merits of disputes, rather than deciding these preliminary matters.

By Mr. CONRAD (for himself and Mr. DASCHLE):

S. 2437. A bill to amend the Food Security Act of 1985 to extend, improve, increase flexibility, and increase conservation benefits of the Conservation Reserve Program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE CONSERVATION RESERVE PROGRAM EXTENSION ACT OF 1994

Mr. CONRAD. Mr. President, I introduce the Conservation Reserve Program Extension Act of 1994. I am pleased to be joined in offering this legislation by Senator DASCHLE who, as chairman of the Senate Subcommittee on Agricultural Research, Conservation, Forestry and General Legislation, has worked tirelessly on this issue over the past several months and who will oversee the reauthorization of conservation programs in the 1995 farm bill. Senator DASCHLE and I are also members of the House-Senate CRP Working Group, a coalition of members focused on reauthorization of the program.

Established in the 1985 farm bill, the Conservation Reserve Program [CRP] is one of the most popular programs ever offered by the U.S. Department of Agriculture. Its objective, as stated in the 1985 farm bill, was "to assist owners and operators of highly erodible cropland in conserving and improving the soil and water resources of their farms or ranches."

Several factors contributed to the creation of the program. The United States had accumulated large surpluses of agricultural commodities; commodity prices were extremely low; the agricultural economy was in a precipitous downturn; the cost of agricultural programs was increasing; and soil erosion was actually increasing in some areas of the country. Thus Congress decided to initiate a program that would reduce surplus commodities by retiring cropland, increase prices, boost producer income, and just as important, sharply reduce soil erosion.

Although the program's goal of maintaining higher prices was not as measurable as producers in my State would have liked—a goal which is obviously affected by other factors—the program was well received and achieved positive results. Between 1986 and 1989, farmers were given nine opportunities to enroll land in the CRP, and they enrolled 33.9 million acres. As a result, the program helped return normalcy to the agricultural sector. And, along with conservation compliance requirements of the 1985 farm bill, helped reduced soil erosion substantially.

Conditions were different during the debate over the 1990 farm bill and the CRP was modified to meet those conditions. The CRP was broadened to include more environmentally sensitive lands. Bids were accepted on the basis of an environmental benefits index that measured the potential contribution to conservation and environmental program goals that the land would provide if enrolled. The seven goals included surface water quality improvement, potential ground water quality improvement, preservation of soil productivity, assistance to farmers most affected by conservation compliance, encouragement of tree planting, enrollment in hydrologic unit areas identified under the Water Quality Initiative, and enrollment in conservation priority areas established by Congress.

These changes broadened the scope of the program, helping it achieve positive, measurable results. Although initially mandated to reach 40–45 million acres, according to USDA's Economic Research Service the CRP now includes 36.4 million acres through 375,000 contractual agreements. This represents about 8 percent of total U.S. cropland. The CRP has reduced soil erosion by 700 million tons per year, a reduction of 22 percent compared with conditions that existed prior to the program. In addition, the program has produced enormous benefits for wildlife, both game and nongame species. It is no surprise that reauthorization of the CRP is the primary legislative goal of nearly every wildlife organization.

The CRP has had a significant impact on North Dakota agriculture. Consider the following statistics provided by USDA's Agriculture Stabilization and Conservation Service:

Number of bids	26,600
Number of contracts	18,520
Acres contracted	3,180,569
Average rental rate	$38
Total annual rental	$121,998,974

Commodity base acres involved include:

Wheat	1,138,046
Corn	134,417
Barley	580,059
Oats	263,683
Sorghum	1,837
Total base acres	2,118,042

Total annual erosion reduction: 45,842,990 tons.

The future of this program is central to the debate over the 1995 farm bill in my State.

The legislation we are introducing today represents Senator DASCHLE's and my effort to address the questions of participants in our States and many others who have concerns about the future of CRP: farm implement dealers, fertilizer and pesticide companies, local business people, lenders, conservationists, ranchers, hunters, and various other parties.

Although the Secretary announced on August 24 to offer contract extensions to participants whose contract

expires on September 30, 1995, the various parties' concern over the long-term future of the program must still be addressed. In the meantime, the Secretary's announcement will help solve the immediate problem of contacts expiring before the 1995 farm bill becomes law.

A much larger problem, however, is the budgetary baseline for CRP. The Congressional Budget Office assumes that contracts are not renewed as they expire. Thus there is no money in the baseline for contract extension.

This is important for several reasons:

First, environmental benefits will be lost. As I noted, the CRP provides outstanding improvements in water quality, soil quality, and wildlife habitat. A mistake was made once before in allowing a similar program, the Soil Bank, to expire. From 1956 to 1972, USDA managed the Soil Bank, to divert cropland from production in order to reduce inventories, and to establish and maintain protective vegetative cover on the land. In 1960, there were 28.7 million acres under contract. Although many forces were at work in ending the program such as commodity prices in the world market, by the mid-1970's most land had returned to crop production. Many of those acres are now enrolled in the CRP.

Second, commodity prices will likely fall. As CRP contracts expire, several surveys have shown that a majority of farmers will return the land to production, increasing stocks and depressing prices. According to USDA's Economic Research Service, wheat prices would fall 9 percent; corn prices would fall 5 percent. Lower prices and increased acreage receiving payments would increase total deficiency payments 21 percent.

Third, the debate over the 1995 farm bill could become an unnecessarily difficult, fight. Annual payments under the program are about $1.8 billion for the next several years. If we fail to extend the CRP but pressures to retain the environmental benefits persist through the farm bill debate—which they most assuredly will—some will look to farm programs as the likely source of funds. That is not a battle we should encourage. We have an opportunity to continue to improve the relationship between the agricultural and environmental communities by working together on the CRP. We should seize this opportunity.

Fourth, the combination of lower prices and the loss of rental payments will have serious financial implications for producers and landowners in North Dakota and many other States.

To the administration's credit, progress on the baseline is being made. On July 15, 1994, the Office of Management and Budget's midsession review included a 38 million acre CRP in their current services baseline. However, in August 2, 1994 testimony before the House Subcommittee on Environment, Credit, and Rural Development, the Congressional Budget Office indicated that they would not include the CRP adjustment in their baseline based on the OMB action. CBO indicated that they need a clear statement of policy regarding extension of current CRP contracts and action by USDA to begin implementing the stated policy. The purpose of the bill Senator DASCHLE and I am introducing today is to provide USDA direction in announcing such a policy, and to convey the interests of CRP participants in our States.

The bill would accomplish the following:

Require the Secretary of Agricutlure to offer current contract holders the option of renewing their current contract for 10 years upon expiration. Acreage not reenrolled would be required to follow a basic conservation plan.

Require the Secretary to use a bidding system to enroll new acres into the CRP with cost-share assistance available for carrying out conservation measures and practices. Three criteria shall be used by USDA to determine new enrollment: water quality, soil quality, and wildlife habitat.

By moving forward on such a policy, it is our belief that USDA will secure sufficient baseline to extend a valuable national resource. Again, the value of the CRP is undeniable. The benefits to society in improved water and soil quality and wildlife habitat are real and measurable. Let us not repeat the errors of the past when the Soil Bank was cavalierly eliminated.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2437

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 "Conservation Reserve Program Extension Act of 1994".

SEC. 2. REAUTHORIZATION OF CONSERVATION RESERVE PROGRAM.

Chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3830) et seq.) is amended by striking "1995" each place it appears in section 1230(a), subsections (a), (b)(3), and (d) of section 1231, and section 1232(c) and inserting "2005".

SEC. 3. CRITERIA FOR DETERMINING THE ACCEPTABILITY OF CONTRACT OFFERS.

Paragraph (3) of section 1234(c) of the Food Security Act of 1985 (16 U.S.C. 3834(c)(30) is amended to read as follows:

"(3) In determining the acceptability of contract offers, the Secretary shall, to the extent practicable—

"(A) consider the extent that enrollment of the land that is the subject of the contract offer would provide environmental benefits, using criteria that, as determined by the Secretary, give equal weight to improvement of soil quality, improvement of water quality, and improvement of wildlife habitat; and

"(B) establish different criteria in various States and regions of the United States if, as determined by the Secretary, the establishment of different criteria would improve water quality or wildlife habitat or abate erosion.".

ADDITIONAL COSPONSORS

S. 277

At the request of Mr. SIMON, the names of the Senator from Ohio [Mr. GLENN] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of S. 277, a bill to authorize the establishment of the National African American Museum within the Smithsonian Institution.

S. 1208

At the request of Mr. WOFFORD, the names of the Senator from Vermont [Mr. LEAHY], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from North Dakota [Mr. DORGAN] were added as cosponsors of S. 1208, a bill to authorize the minting of coins to commemorate the historic buildings in which the Constitution of the United States was written.

S. 1288

At the request of Mr. AKAKA, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 1288, a bill to provide for the coordination and implementation of a national aquaculture policy for the private sector by the Secretary of Agriculture, to establish an aquaculture commercialization research program, and for other purposes.

S. 1343

At the request of Mr. AKAKA, the names of the Senator from Illinois [Mr. SIMON] and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of S. 1343, a bill entitled the "Steel Jaw Leghold Trap Prohibition Act."

S. 1746

At the request of Mrs. KASSEBAUM, the names of the Senator from Vermont [Mr. JEFFORDS] and the Senator from North Dakota [Mr. DORGAN] were added as cosponsors of S. 1746, a bill to establish a youth development grant program, and for other purposes.

S. 1986

At the request of Mr. BREAUX, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 1986, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage the preservation of low-income housing.

S. 2091

At the request of Mr. SARBANES, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 2091, a bill to amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees

in the civil service and other public sector firefighters, and for other purposes.

S. 2347

At the request of Mr. SASSER, the names of the Senator from Colorado [Mr. CAMPBELL], the Senator from Hawaii [Mr. INOUYE], the Senator from Tennessee [Mr. MATHEWS], the Senator from Florida [Mr. GRAHAM], the Senator from Arizona [Mr. MCCAIN], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 2347, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 150th anniversary of the founding of the Smithsonian Institution.

S. 2391

At the request of Mr. SIMON, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 2391, a bill to repeal the prohibitions against political recommendations relating to Federal employment, and for other purposes.

SENATE JOINT RESOLUTION 206

At the request of Mr. WOFFORD, the names of the Senator from Pennsylvania [Mr. SPECTER], the Senator from Virginia [Mr. WARNER], and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of Senate Joint Resolution 206, a joint resolution designating September 17, 1994, as "Constitution Day."

SENATE JOINT RESOLUTION 208

At the request of Mr. WOFFORD, the names of the Senator from Connecticut [Mr. DODD], the Senator from Nebraska [Mr. EXON], the Senator from New York [Mr. D'AMATO], the Senator from Tennessee [Mr. SASSER], the Senator from South Dakota [Mr. DASCHLE], the Senator from Virginia [Mr. WARNER], the Senator from Nebraska [Mr. KERREY], and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of Senate Joint Resolution 208, a joint resolution designating the week of November 6, 1994, through November 12, 1994, "National Health Information Management Week."

SENATE CONCURRENT RESOLUTION 62

At the request of Mr. D'AMATO, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of Senate Concurrent Resolution 62, a concurrent resolution expressing the sense of the Congress that the President should not have granted diplomatic recognition to the former Yugoslav Republic of Macedonia.

SENATE RESOLUTION 70

At the request of Mr. FORD, his name was withdrawn as a cosponsor of Senate Resolution 70, a resolution expressing the sense of the Senate regarding the need for the President to seek the advice and consent of the Senate to the ratification of the United Nations Convention on the Rights of the Child.

AMENDMENTS SUBMITTED

THE NOMINATION OF ADM. HENRY MAUZ, JR.

MCCAIN (AND OTHERS) AMENDMENT NO. 2582

Mr. MCCAIN (for himself, Mr. DOLE, and Mr. COVERDELL) proposed an amendment to the motion of Mrs. MURRAY to recommit with instructions the nomination of Admiral Henry Mauz, Jr., to the Committee on Armed services; as follows:

At the end of the instructions add the following:

The Senate finds that:

The President has proposed to use the United States Armed Forces to intervene militarily in the situation in Haiti;

The stated purpose of the proposed United States military intervention in Haiti is the restoration by force of Jean-Bertrand Aristide to the Office of President of Haiti;

The President has not presented a comprehensive case for United States military intervention in Haiti to either the American people or their representative in Congress;

The support of the American people is critically important to the success of any offensive military action;

All national public opinion surveys taken to date establish that a substantial majority of Americans oppose United States military intervention in Haiti;

The State Department Country Reports on Human Rights Practices for 1991 characterized President Aristide's regime as "unwilling or unable to restrain popular justice through mob violence";

Allegations connecting President Aristide to several incidents of human rights abuses, including allegations of his involvement in the assassination of a political opponent, remain unresolved;

United States vital national security interests are not threatened by the situation in Haiti;

It is the sense of the Senate that the Armed Services Committee also consider the fact that it is the sense of the Senate:

That the lives of United States Armed Forces personnel should not be risked in combat for the purpose of restoring Jean-Bertrand Aristide to the office of President of Haiti.

MITCHELL (AND NUNN) AMENDMENT NO. 2583

Mr. MITCHELL (for himself and Mr. NUNN) proposed an amendment to amendment No. 2582 proposed by Mr. MCCAIN to the motion of Mrs. MURRAY, supra; as follows:

Strike all after the first colon and insert the following:

SEC. . SENSE OF THE SENATE ON THE USE OF FUNDS FOR UNITED STATES MILITARY OPERATIONS IN HAITI.

(a) STATEMENT OF POLICY.—It is the sense of the Senate that the Armed Services Committee also consider the fact that it is the sense of the Senate that—

(1) all parties should honor their obligations under the Governor's Island Accord of July 3, 1993, and the New York Pact of July 16, 1993;

(2) the United States has a national interest in preventing uncontrolled emigration from Haiti; and

(3) the United States should remain engaged in Haiti to support national reconciliation and further its interest in preventing uncontrolled emigration.

(b) LIMITATION.—It is the sense of the Senate that funds should not be obligated or expended in Haiti unless—

(1) authorized in advance by the Congress;

(2) the temporary deployment of United States Armed Forces into Haiti is necessary in order to protect or evacuate United States citizens from a situation of imminent danger and the President reports as soon as practicable to Congress after the initiation of the temporary deployment;

(3) the deployment of United States Armed Forces into Haiti is vital to the national security interests of the United States, including but not limited to the protection of American citizens in Haiti, there is not sufficient time to seek and receive congressional authorization, and the President reports as soon as is practicable to Congress after the initiation of the deployment, but in no case later than 48 hours after the initiation of the deployment; or

(4) the President transmits to the Congress a written report pursuant to subsection (c).

(c) REPORT.—It is the sense of the Senate that the limitation in subsection (b) should not apply if the President reports in advance to Congress that the intended deployment of United States Armed Forces into Haiti—

(1) is justified by United States national security interests;

(2) will be undertaken only after necessary steps have been taken to ensure the safety and security of United States Armed Forces, including steps to ensure that United States Armed Forces will not become targets due to the nature of their rules of engagement;

(3) will be undertaken only after an assessment that—

(A) the proposed mission and objectives are most appropriate for the United States Armed Forces rather than civilian personnel or armed forces from other nations, and

(B) the United States Armed Forces proposed for deployment are necessary and sufficient to accomplish the objective of the proposed mission;

(4) will be undertaken only after clear objectives for the deployment are established;

(5) will be undertaken only after an exit strategy for ending the deployment has been identified; and

(6) will be undertaken only after the financial costs of the deployment are estimated.

(d) DEFINITION.—As used in this section, the term "United States military operations in Haiti" means the continued deployment, introduction, or reintroduction of United States Armed Forces into the land territory of Haiti, irrespective of whether those Armed Forces are under United States or United Nations command, but does not include activities for the collection of foreign intelligence, activities directly related to the operations of United States diplomatic or other United States Government facilities, or operations to counter emigration from Haiti.

COMMUNICATIONS ACT OF 1994 TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT OF 1994

ROBB AMENDMENT NO. 2584

(Ordered referred to the Committee on Commerce, Science, and Transportation.)

Mr. ROBB submitted an amendment intended to be proposed by him to the bill (S. 1822) to foster the further development of the Nation's telecommunications infrastructure and protection of the public interest, and for other purposes; as follows:

On page 10, below line 24, add the following:

"(6) To the maximum extent practicable, to ensure that every school and classroom in the United States has access to existing and innovative telecommunications and information services and technologies.

On page 11, line 1, strike out "'(6)'" and insert in lieu thereof "'(7)'".

On page 11, line 4, strike out "'(7)'" and insert in lieu thereof "'(8)'".

On page 12, between lines 16 and 17, insert the following:

"(3)(A) There is hereby established a fund to be known as the Educational Telecommunications and Technology Fund (in this section referred to as the 'Fund'). The purpose of the Fund is to provide funding for activities that ensure that elementary and secondary schools in the United States have complete access to existing and innovative telecommunications and information technologies and services.

"(B)(i) Not later than 180 days after the date of the enactment of this section, the Commission shall prescribe regulations that, notwithstanding the second sentence of paragraph (2), provide for the deposit into the Fund of such portion of the monetary contributions required under that paragraph as the Commission shall prescribe.

"(ii) The regulations under this subparagraph shall also establish guidelines governing the deposit into the Fund of all or a portion of the following:

"(I) Payments to the Commission as a result of the determination of the Commission of overcharges on the part of an entity.

"(II) Payments of penalties assessed by the Commission.

"(iii) The Commission may prescribe in regulations under this subparagraph for the deposit into the Fund of funds from such other sources (including from fees received from auctions of the electromagnetic spectrum) and in such amounts as the Commission determines appropriate.

"(4) Not later than 2 years after the date of the enactment of this section, the Secretary of Education and the Commission shall jointly prescribe regulations relating to the disbursement of sums in the Fund. Such regulations shall include the following provisions:

"(A) Provisions governing the utilization of sums in the Fund, including the projects for which sums in the Fund shall be available.

"(B) Provisions for determining the State and local entities eligible for awards of sums from the Funds.

"(C) Provisions establishing a fair and expeditious process for the application for and selection of the entities to be awarded sums from the Fund.

"(D) Provisions governing the evaluation of the activities of entities that are awarded sums from the Fund.

"(E) Provisions ensuring that entities awarded sums in the Fund utilize such sums for the purposes for which such sums were awarded.

On page 15, between lines 3 and 4, insert the following:

(c) TELECOMMUNICATIONS SERVICES FOR EDUCATIONAL INSTITUTIONS.—(1) Not later than 180 days after the date of enactment of this Act, the Assistant Secretary of Commerce for Communications and Information shall, in consultation with the Federal Communications Commission and the Secretary of Education—

(A) issue a notice of inquiry into the feasibility of establishing an educational telecommunications and technology corporation in order to provide credit and grant funds to support the national goal of ensuring that elementary and secondary schools have complete access to existing and innovative telecommunications and information technologies and services;

(B) review alternative for an appropriate organizational form for such a corporation; and

(C) recommend to _____ an organizational form for such a corporation.

(2) The Assistant Secretary shall complete proceedings on the notice of inquiry and publish the recommendations referred to in paragraph (1)(C) not later than 1 year after the date of enactment of this Act.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 2 p.m. on Wednesday, September 14, 1994, in open session, to consider the following pending nominations: Mr. Paul G. Kaminski, to be Under Secretary of Defense for Acquisition and Technology and Hon. Frederick F.Y. Pang, to be Assistant Secretary of Defense for Force Management.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on September 14, 1994, at 9:30 a.m. on the nomination of Gus Owen to be a member of the Interstate Commerce Commission.

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

COMMITTEE ON FINANCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet today, September 14, 1994 at 10:30 a.m., to hear witnesses testify on S. 1834, the Superfund Reform Act of 1994 and to hear and consider the nominations of Stuart L. Brown, to be an assistant general counsel in the Department of the Treasury and chief counsel for the Internal Revenue Service; Frank Neuman, to be Deputy Secretary of the Treasury; and Edward Knight to be general counsel of the Treasury.

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

COMMITTEE ON THE JUDICIARY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, September 14, 1994, at 2 p.m., in room 226 Senate Dirksen Office Building on the nominations of James L. Dennis to be U.S. circuit judge for the fifth circuit, Frederic Block to be U.S. district judge for the Eastern District of New York, Robert N. Chatigny to be U.S. district judge for the District of Connecticut, Allyne R. Ross to be U.S. district judge for the Eastern District of New York, Shira A. Scheindlin to be U.S. district judge for the Southern District of New York, Dominic J. Squatrito to be U.S. district judge for the District of Connecticut.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to hold a hearing on pending legislation. The hearing will be held on September 14, 1994, at 2 p.m. in room 418 of the Russell Senate Office Building.

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

SUBCOMMITTEE ON SURFACE TRANSPORTATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Surface Transportation Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet on September 14, 1994, immediately following the 9:30 a.m. nomination hearing, on truck lengths and safety.

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

ADDITIONAL STATEMENTS

S. 2329, THE MOHEGAN NATION OF CONNECTICUT LAND CLAIMS SETTLEMENT ACT OF 1994

• Mr. McCAIN. Mr. President, I want to take this opportunity to make a few comments on S. 2329, the Mohegan Nation of Connecticut Land Claims Settlement Act of 1994. First, I want to express my sincere best wishes to the Mohegan Nation for every success in all of their future endeavors. I also want to congratulate them for their diligence and perseverance. They have gone about the process of becoming recognized by the Federal Government and resolving their claims against the State of Connecticut and the United States in accordance with all applicable laws and a healthy respect for the rights of others.

When S. 2329 was considered by the Committee on Indian Affairs, I expressed some serious concerns about the nature of the settlement between the Mohegan Nation and the State of Connecticut. After careful review and analysis, I am now convinced that the settlement agreement reflects a fair bargain reached in good faith by the parties. Accordingly, I do not object to the passage of S. 2329.

However, I do want to call to the attention of my colleagues that this settlement includes a compact between the State of Connecticut and the Mohegan Nation for the conduct of class III gaming activities under the Indian Gaming Regulatory Act. As a condition of the settlement, the Mohegan Nation will be obligated to pay the State and the Town of Montville tens of millions of dollars. Some of these payments are in lieu of taxes which would otherwise have been collected on lands that will be transferred to the United States to be held in trust for the Mohegan Nation. There is nothing unusual about that aspect of this settlement. Other payments will be made primarily for the privilege of engaging in gaming. Even these payments are not without precedent in Connecticut. What is unprecedented is the magnitude of the payments being made in that State by the Pequot Tribe at the present time and those that will be made by the Mohegan Nation in the future.

The Mohegan settlement happens to come along at a time when the Committee on Indian Affairs is engaged in an extensive effort to review the Indian Gaming Regulatory Act to determine how it can be amended to resolve concerns which have been raised by tribal, State and Federal officials. Among those concerns is the need for Federal minimum standards for the regulation of Indian gaming activities and a sufficient Federal regulatory capability to ensure the integrity of Indian gaming. Senator INOUYE and I have proposed that Indian gaming activities should be assessed to pay for the costs of the required Federal regulatory activity. Many Indian tribes have told us that the proposed assessment would make their gaming activities unprofitable. I have no reason to doubt that this may be the case for some of the smaller, more marginal operations. However, I must note that the total estimated annual cost for Federal regulation of Indian gaming is only a small fraction of what is presently paid to the State of Connecticut by the Pequot Tribe and what will be paid by the Mohegan Nation under this settlement.

I have to wonder if current tribal and Federal policy is focused on the proper objectives. Federal regulation of Indian gaming will benefit everyone, including the patrons of Indian gaming, the Indian tribes and the States. If we have a few Indian tribes that can afford to pay hundreds of millions of dollars to Connecticut for the privilege of gaming, then why is it not possible for those tribes and the others that are enjoying success in gaming to pay the relatively modest cost of Federal regulation so that the more marginal Indian gaming operations can be assessed at a rate which will not jeopardize their continued operation?

I raised this concern with several witnesses in the hearings held during July by the Committee on Indian Affairs on S. 2230, the Indian Gaming Regulatory Act Amendments Act. I have attempted to pose this question to the leadership of the Pequot Tribe, but have not had the courtesy of their response. I will continue to seek an answer from them. I have also raised this concern with the distinguished sponsor of S. 2329, Senator DODD, and have received his assurance that he understands my concern and is committed to working with Senator INOUYE and the Committee on Indian Affairs to find a satisfactory way to ensure that the cost of Federal regulation of Indian gaming is funded through fair and equitable assessments on Indian gaming operations. I hope that the rest of our colleagues will join with us as we attempt to resolve this and other concerns associated with Indian gaming activities.•

INSTITUTE FOR MENTAL HEALTH INITIATIVES NEWSLETTER DIALOGUE

• Mr. SIMON. Mr. President, I would like to draw my colleagues' attention to an effective tool in addressing the problem of television violence. The Institute for Mental Health Initiatives, a public nonprofit institute funded by grants and donations, employs a public health approach to promote mental health and prevent mental health disorders. The institute collects and synthesizes the most current behavioral science research, and then presents the information to the public. One of its successes to date is its quarterly newsletter called Dialogue, which illustrates for writers and producers how to avoid violent confrontations on screen. Each issue of the newsletter focuses on an emotional issue, such as loss, violence, fear or hatred, citing movies and programs that illustrate sensitive treatment of each issue, and using psychological research to support its ideas. Dialogue wants TV and movie writers to write more realistic characters, which they hope will mean less gratuitous violence and better role models for kids on TV.

This effort is not about trying to limit creativity. Instead, it is an attempt to provide support for those writers and producers challenging themselves to portray complex human emotions without resorting to violent images.

Many Hollywood writers have cited Dialogue as a resource in their work. I hope they continue to take advantage of the institute's work, and I applaud the institute for its continued contribution to addressing the issue of television violence. I ask that the text of a Wall Street Journal article on this issue be inserted into the RECORD at this point.

The article follows:

[From the Wall Street Journal]

TIP SHEET FOR SCRIPTWRITERS: FIGHT LESS, TALK MORE

(By Yi-Hsin Chang)

NBC liked television-writer Connie Bottinelli's treatment for a "Movie of the Week" but worried it was too violent. So Ms. Bottinelli called on Dialogue.

Dialogue, a newsletter distributed by a small, Washington-based nonprofit group called the Institute for Mental Health Initiatives, illustrates for writers and producers how to avoid violent confrontations on screen. The institute started the four-page newsletter last winter and distributes 20,000 copies quarterly, mostly to creators of movies and TV shows and often for free.

Ms. Bottinelli's story for NBC was about Vincent, a convicted mobster who is found dead in his prison cell. His wife sues law-enforcement authorities for being responsible for his death.

After looking at the newsletter, Ms Bottinelli, who lives in Philadelphia, wrote her script to play down Vincent's violent acts and emphasize instead his imprisonment and death. She even added a scene in which Vincent suffers humiliation so that viewers would understand his rage. NBC liked the changes and bought the script.

The Institute for Mental Health Initiatives gets funding from donations, subscriptions, consultation fees and a $1 million endowment from its founder and president, psychologist Rhoda Baruch.

For each issue, the Dialogue staff meets and decides to focus on an emotional issue, such as loss, violence, fear or hatred. Then the group comes up with movies and TV programs that illustrate sensitive treatment, as well as recent psychological research to back up their ideas. Dialogue wants TV and movie writers to write more realistic characters, which they hope will mean less gratuitous violence and better role models for kids on TV.

For example, in a plot where a man and a woman are arguing, allow them to calm down and then talk about how they feel, says Edith Grotberg, a developmental psychologist and Dialogue's managing editor. "This is more exciting because you're talking about real feelings, which is what people really like."

Robert Wilcox, a TV and screenwriter is Sherman Oaks, Calif., says he makes it a habit to underline key paragraphs in the newsletter and refer to back issues. "I find it very helpful." he says. "A screenwriter has to get below the surface. You have to understand your characters. But, he adds, "I'm not going to take violence out if I feel it is needed to my story."

The first issue of Dialogue examined the feeling of loss, which is often ignored when people die in movies or TV shows. One article cited the film "Terms of Endearment" as an "exemplary model of the treatment of loss."

The issue on risk-taking quotes recent psychology journals and uses characters in the movies "Thelma and Louise" and "A River Runs Through It" as examples of thrill-seekers. The newsletter plans to address fear and hatred in upcoming issues.

The two most recent issues, however were devoted to the realistic and responsible portrayal of violence. Of Steven Spielberg's "Schindler's List" it said: "Spielberg could not have told his story without showing the horror against which Schindler acted. He does not pull away from the violence. But he does render it responsibly."

And Dialogue emphasizes alternatives to violence. "We like to push things from the

healthy side, not the sick side, so to speak," says Suzanne Stutman, a practicing psychotherapist and the institute's executive director. "We in no way are trying to limit creatively. In fact, it's the opposite. The more information these people have to create three-dimensional characters, the more creative they can be."

The writer of "Terminator 2." William Wisher, who had never heard of Dialogue, doesn't think brutal movies make people act violently. "I don't think making films or making television shows in which everyone is nice to everyone makes for interesting stories." He says, adding that all stories need conflict, and "all conflict is inherently violent."

But Isabel Storey, a writer and producer in Santa Monica, Calif., who helped make "Rescue 911," thinks Dialogue can be effective. "I personally think there's too much gratuitous violence on TV, and I think this is an effort in the right direction." she says.

Ms. Bottinelli, who is working on three more television movies, says that she has applied information from Dialogue to many of her characters. She calls the newsletter "priceless" and a good consultant—she rereads the issues before beginning a new script. "This has a forever shelf life for me." she says.•

IN HONOR OF THE MIKULSKI BAMMERS SOFTBALL CHAMPIONSHIP

• Ms. MIKULSKI. Mr. President, we may not have professional baseball in Baltimore this year, but I am proud to say that we do have a championship team from Maryland. My own Mikulski Bammers overcame fierce competition to win the Senate softball league championship this past weekend, regaining the trophy we previously held in 1992.

My staff took to the softball field the way I take to the Senate floor: mission-driven, determined, and willing to yield to no one. While other teams may have had color-coordinated outfits, or large cheering entourages, our feisty crew combined stout hearts with well-honed skills to win five games in 3 days and finish at the top of the 115-team league.

From mailroom to leg staff, Bammers Claire and Mark "Newlywed" Hannan, Steve "Cal" Ganote, Corey "Croquet" Long, Dave "90210" Taetle, Ken "Mr. Softball" Press, and Chris "DH" Rugaber proved they can hit and field as well as they can do a nav chart or sort the mail. They were joined by Marylanders Matt Hickey, Bill Bridges, Shannon Howley, Lisa Splaine, and Kim "Mrs. Softball" Press. Other invaluable staffers helped get the Bammers to the top: Shawnn "Double N" Shears, John "Cheese" Lewis, Erin Callahan, Jen Crawford, Marilyn Lagios, Pam Nystrom, and Dave Tubman.

The Bammers came up against tough opponents throughout the 4 day tournament, capping with two intense games on Sunday. In the semi-final, the Bammers edged past gritty long-time rivals Vermont's Finest, showing the power of a Chesapeake Bay crab diet over Senator LEAHY's Vermont ice cream regimen.

In the final, a spirited and powerful congressional research service team, the Sorcerers, worked their long-ball magic on the Bammers, jumping to an early 8–0 lead. But in the tradition of the World Series, the Bammers fought back, scoring two runs in their last at bat to take a 9–8 victory. The Mikulski Bammers have proved themselves worthy of a round of crab cakes and Boog's barbecue in Camden Yard's box seats, if those other ballplayers ever get back in action.•

CBS' MOVIE SCHEDULE

• Mr. SIMON. Mr. President, I would like to submit for the RECORD an article from August 8–14 issue of Variety Television which outlines changes in CBS' movie department. Responding to a ratings drop for its Tuesday night movie, CBS has eliminated many of its true-crime genre movies in favor of the more contemporary adult dramas showcased in CBS' Sunday night movie.

I applaud CBS for going in a new direction, and I hope that by making this shift in policy, CBS can continue to make progress in the whole area of television violence. I also think it is noteworthy that this policy change was in part the result of lower ratings. CBS obviously feels that moving to more family-oriented programs will be better for ratings, and I applaud their decision.

I ask that the entire Variety Television article be inserted into the RECORD at this point.

The article follows:

CBS RETHINKS TELEPIX

(By Brian Lowry)

CBS Entertainment has undertaken a significant redirection of its movie and miniseries department, in the process pulling the plug on 25 to 30 projects that were in development.

Most of the movies eliminated were in the true-crime genre, which has been a major staple of the network's Tuesday-night movie franchise. Instead, the network is now seeking contemporary adult dramas with strong emotional appeal, aimed largely at female viewers, more similar to the stately fair show-cased in its Sunday movie slot.

That change of direction—combined with a major expansion in volume, with CBS ordering more than 70 movies for the coming season, as many as NBC and ABC combined—has, according to suppliers, left the network scrambling for material.

Producers say the network is "desperate" for completed scripts, putting long-on-the-shelf projects into development and examining appropriately themed projects dropped by other networks. Some movies have also been placed on accelerated production schedules to be ready for fall.

CBS quietly initiated the strategy shift in May, and the effort has been overseen in large part by exec VP Larry Sanitsky, a former TV movie producer who joined the network when Peter Tortorici was elevated to head the entertainment division.

Without specifying the number of projects shelved, Sanitsky confirmed the reevaluation of Tuesday. "We are trying to change the overall profile of the Tuesday night movie," he said, noting that the true-crime genre has "played itself out quite a bit."

Sanitsky also acknowledged the need for product, saying "I have never seen a network more open than we are right now." He added however, that despite speeding up production on some movies, the web is "in pretty good shape" through the end of 1994.

One reason for the inventory crunch is a virtually unprecedented expansion in production. The number has been elevated in part because CBS has ordered nine telefilms to air Sunday afternoons—countering the NFL football games it lost to Fox Broadcasting Co.—and will use additional movies opposite the World Series, which the network televised the last four seasons. "It has created a gigantic appetite for us," Sanitsky said.

Officials have also alluded to plans to broadcast "a miniseries a month," including the web's November telecast of the eight-hour "Gone With the Wind" sequel, "Scarlett."

The CBS shift has sent shock waves through the movie business because of the number of movies the web orders. Even last year, when the Eye network devoted several weeks of primetime to the Winter Olympics and World Series, CBS still aired at least 45 original longform projects. Roughly 60 movies were ordered during the 1992–93 season.

Though true-crime movies have been at the center of the TV violence debate, CBS feels its directional shift Tuesday will provide stronger counter-programming against NBC and ABC sitcoms as well as "NYPD Blue." The average rating for the "CBS Tuesday Movie" dropped 11 percent last season.

CBS has also enjoyed considerable success with softer Sunday movies, which delivered eight of last year's 10 highest-rated telefilms in terms of households.

NIELSEN SYNDICATION RATINGS

[For week ended July 24, 1994]

Rank	Program	Stations/ percent coverage	AA percent	GAA percent
1	Wheel of Fortune	228/99	11.9	.....
2	Jeopardy!	218/99	10.0	.....
3	Star Trek: Next Generation	245/99	8.6	9.2
4	Oprah Winfrey Show	237/99	8.4	.....
5	Entertainment Tonight	187/96	7.5	.....
6	Baywatch	210/97	6.2	6.5
6	Hard Copy	167/93	6.2	6.3
8	Roseanne	178/96	6.1	6.1
8	World Wrestling Fed. Pr.	188/93	6.1	7.5
10	Married w/Children	185/94	5.9	6.5
10	Star Trek: Deep Space Nine	235/99	5.9	6.3
12	Action Pack Network	166/96	5.8	6.1
12	Wheel of Fortune-Wknd.	181/84	5.8	.....
14	Current Affair	187/96	5.7	5.8
15	Family Matters	183/92	5.6	6.7
16	Ricki Lake	179/94	5.3	5.7
17	Cops	173/93	5.0	5.2
18	Renegade	155/94	4.9	5.2
19	Designing Women	202/96	4.7	5.2
20	American Journal	120/88	4.5	6.5
20	Geraldo	164/96	4.5	.....
20	Wrestling Network	123/92	4.5	7.0

AA average refers to nonduplicated viewing for multiple airings of the same show.

GAA average encompasses duplicated viewing.

GAA average does not apply when there is only one run of a show.•

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 10:30 a.m. on Thursday, September 15, and that on Thursday the Senate meet in pro forma session only; that at the close of the pro forma session, the Senate then stand in recess until 2 p.m. on Monday, September 19; that on Monday, following the prayer, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business not to extend beyond 3 p.m. with Senators permitted to speak therein for up to 10 minutes each with Senator DORGAN permitted to speak for up to 15 minutes; and, that at 3 p.m. the Senate return to executive session to consider the Mauz nomination.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the following nominations: Calendar Nos. 1113, 1114, 1115, 1116, 1119, 1120, 1142, 1144, 1146, 1162, 1163, 1164, 1165, 1166, 1167, 1171, 1172, 1173, 1174, 1175, 1176, and 1177; I further ask unanimous consent that the nominees be confirmed en bloc and that any statements appear in the RECORD as if read; that upon confirmation, the motions to reconsider be laid upon the table en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS

Susan R. Baron, of Maryland, to be a Member of the National Corporation for Housing Partnerships for the term expiring October 27, 1994.

Danny K. Davis, of Illinois, to be a Member of the National Corporation for Housing Partnerships for the term expiring October 27, 1996.

EXPORT-IMPORT BANK OF THE UNITED STATES

Julie D. Belaga, of Connecticut, to be a Member of the Board of Directors of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 1995.

Julie D. Belaga, of Connecticut, to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 1999. (Reappointment)

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Rear Admiral William L. Stubblefield for appointment in the grade of rear admiral (lower half), while serving in a position of importance and responsibility as Deputy Director, Office of NOAA Corps Operations, under the provisions of title 33, United States Code, section 853u.

COMMUNICATIONS SATELLITE CORPORATION

Peter S. Knight, of the District of Columbia, to be a Member of the Board of Directors of the Communications Satellite Corporation until the date of the annual meeting of the Corporation in 1996.

Sandra Kaplan Stuart, of North Carolina, to be an Assistant Secretary of Defense, vice David J. Gribbin, III, resigned.

Walter Becker Slocombe, of the District of Columbia, to be Under Secretary of Defense for Policy, vice Frank G. Wisner.

Joseph Nye, of Massachusetts, to be an Assistant Secretary of Defense, vice Graham T. Allison, Jr.

THE JUDICIARY

Michael D. Hawkins, of Arizona, to be United States Circuit Judge for the Ninth Circuit.

Napoleon A. Jones, of California, to be United States District Judge for the Southern District of California.

John Corbett O'Meara, of Michigan, to be United States District Judge for the Eastern District of Michigan.

Barrington D. Parker, Jr., of New York, to be United States District Judge for the Southern District of New York vice Leonard B. Sand, retired.

Robert J. Timlin, of California, to be United States District Judge for the Central District of California vice a new position created by Public Law 101-650, approved December 1, 1990.

DEPARTMENT OF JUSTICE

Jan M. Chaiken, of Massachusetts, to be Director of the Bureau of Justice Statistics.

John W. Caldwell, of Georgia, to be United States Marshal for the Southern District of Georgia for the term of four years.

Roy Allen Smith, of Ohio, to be United States Marshal for the Southern District of Ohio for the term of four years.

David William Troutman, of Ohio, to be United States Marshal for the Northern District of Ohio for the term of four years.

Becky Jane Wallace, of North Carolina, to be United States Marshal for the Middle District of North Carolina for a term of four years.

Dennis H. Blome, of Iowa, to be United States Marshal for the Northern District of Iowa for the term of four years.

CORPORATION FOR PUBLIC BROADCASTING

Henry J. Cauthen, of South Carolina, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2000. (Reappointment)

Frank Henry Cruz, of California, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2000.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 103-28; TREATY DOCUMENT NO. 103-29; TREATY DOCUMENT NO. 103-30

Mr. MITCHELL. Mr. President, as if in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following three treaties transmitted to the Senate today by the President of the United States:

Protocol Amending the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital (Treaty Document No. 103-28);

Convention Between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (Treaty Document No. 103-29);

Convention Between the Government of the United States of America and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, with Protocol (Treaty Document No. 103-30);

I further ask that the treaties be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and, that the President's messages be printed in the RECORD.

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

The messages of the President are as follows:

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Protocol Amending the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital Signed at Washington on September 26, 1980, as amended by the Protocols signed on June 14, 1983, and March 28, 1984, signed at Washington August 31, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Protocol.

The Protocol further amends the Convention to reflect changes in U.S. and Canadian law and treaty policy and to make certain technical corrections to the existing Convention that are necessary because of the passage of time. It also improves the operation of the Convention and facilitates the flow of capital and technology between the United States and Canada.

I recommend that the Senate give early and favorable consideration to the Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 14, 1994.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention Between the Government of the United States of America and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to

Taxes on Income signed at Stockholm on September 1, 1994, together with a related exchange of notes. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

The proposed Convention with Sweden replaces the present income tax regime between the two countries. In general, the proposed Convention follows the pattern of other recent U.S. income tax treaties and the 1981 U.S. Model Income Tax Convention, as well as the OECD Model Tax Convention on Income and Capital.

I recommend that the Senate give early and favorable consideration to the Convention and the related exchange of notes and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 14, 1994.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention Between the Government of the United States of America and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, with Protocol, signed at Washington on March 4, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

The Convention replaces, with respect to Ukraine, the 1973 income tax convention between the United States of America and the Union of Soviet Socialist Republics. It will modernize tax relations between the two countries and will facilitate greater private sector United States investment in Ukraine.

I recommend that the Senate give early and favorable consideration to the Convention and related Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 14, 1994.*

PROGRAM FOR MONDAY, SEPTEMBER 19, 1994, AT 2 P.M.

Mr. MITCHELL. Mr. President, for the information of Members of the Senate, the Senate will return to executive session on Monday at 3 p.m. to consider the Mauz nomination.

As a result of the events of today, three separate issues have become entwined in a single measure before the Senate. Each is important in its own right. First is the issue of United States policy toward Haiti. That is obviously an important issue, and that issue must be debated and resolved by the Senate.

The second is the issue of the procedure by which the amendments regarding Haiti were placed upon a nomination which was before the Senate. I have been advised that the procedure utilized for that purpose is unprecedented in the Senate's history and is not a proper procedure. This is also an issue of importance to the Senate, because acceptance of this procedure would result in a drastic change in the methods of operation of the Senate and have serious consequences for those operations in the future. That issue must be thoroughly debated and resolved, especially since it is not limited to the particular subject matter now before the Senate but rather would, if accepted, be applicable to any future nomination and any subject matter.

The third issue is the nomination of Admiral Mauz which, while not as significant nationally as the policy toward Haiti, not as significant to the institution of the Senate as the question of the proper procedure to be used in presenting matters to the Senate, nonetheless is significant certainly to the Admiral himself and his family, and to all those concerned in the matter which has led to the controversy over the nomination, as well as to the Navy and all members of the military themselves.

It will be important for the Senate to resolve each of those issues, and I hope that we will be able to do so early next week. My intention is to proceed with respect to them and to permit full debate in the Senate in a manner that will enable each Senator to make the best possible judgment on each of the three issues.

We will, between now and next Monday, have the opportunity to discuss with our colleagues, and as is my usual practice, with the distinguished Republican leader, the best procedure for processing these matters before the Senate. But those will be the subjects that we will take up when we return in session on next Monday.

As I stated earlier today, and publicly many weeks ago, the Senate will not be in session tomorrow or Friday in observance of religious holidays, a practice which the Senate has followed for many years, and one in which I know all of my colleagues concur.

Mr. President, on the question of whether or not there will be rollcall votes on Monday, I am not able to make an announcement at this time.

That will depend, in part, upon the discussions which I have with the distinguished Republican leader and our other colleagues.

It has been my practice not to make scheduling decisions until I have given the Republican leader and all of our colleagues the fullest opportunity to express their preferences to me.

It is not possible this evening, because our colleagues are not present, to have that kind of input. So I am not in a position to make any statement on that now.

So, until such time as Senators are notified, they will have to assume that votes are possible. We will not be able to make a decision on that, as I said, until such time as others have an opportunity to make their recommendation to me, but we do hope to have a decision on that as soon as possible.

RECESS UNTIL TOMORROW AT 10:30 A.M.

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate today and if no Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 11:06 p.m., recessed until tomorrow, Thursday, September 15, 1994, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 14, 1994:

THE JUDICIARY

KAREN NELSON MOORE, OF OHIO, TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT, VICE ROBERT B. KRUPANSKY, RETIRED.

MAXINE M. CHESNEY, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, VICE JOHN P. VUKASIN, JR., DECEASED.

ROSLYN MOORE-SILVER, OF ARIZONA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA, VICE EARL H. CARROLL, RETIRED.

JAMES ROBERTSON, OF MARYLAND, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, VICE GEORGE H. REVERCOMB, DECEASED.

THOMAS B. RUSSELL, OF KENTUCKY, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF KENTUCKY, VICE EDWARD H. JOHNSTONE, RETIRED.

SIDNEY H. STEIN, OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, VICE PIERRE N. LEVAL, ELEVATED.

ALVIN W. THOMPSON, OF CONNECTICUT, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT, VICE ELLEN BREE BURNS, RETIRED.

WILLIAM H. WALLS, OF NEW JERSEY, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE HAROLD A. ACKERMAN, RETIRED.

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

PEGGY GOLDWATER-CLAY, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION FOR A TERM EXPIRING JUNE 5, 2000, VICE BARRY M. GOLDWATER, JR., TERM EXPIRED.

NIRANJAN SHAMALBHAI SHAH, OF ILLINOIS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION FOR A TERM EXPIRING AUGUST 11, 1998, VICE TIMOTHY W. TONG, TERM EXPIRED.

CIVIL LIBERTIES PUBLIC EDUCATION FUND

ROBERT F. DRINAN, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CIVIL LIBERTIES PUBLIC EDUCATION FUND FOR A TERM OF 3 YEARS. (NEW POSITION.)

CHERRY T. KINOSHITA, OF WASHINGTON, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CIVIL LIBERTIES PUBLIC EDUCATION FUND FOR A TERM OF 2 YEARS. (NEW POSITION.)

ELSA H. KUDO, OF HAWAII, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CIVIL LIBERTIES PUBLIC EDUCATION FUND FOR A TERM OF 2 YEARS. (NEW POSITION.)

YEIICHI KUWAYAMA, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CIVIL LIBERTIES PUBLIC EDUCATION FUND FOR A TERM OF 3 YEARS. (NEW POSITION.)

DON T. NAKANISHI, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CIVIL LIBERTIES PUBLIC EDUCATION FUND FOR A TERM OF 2 YEARS. (NEW POSITION.)

DEPARTMENT OF JUSTICE

MICHAEL R. RAMON, OF CALIFORNIA, TO BE U.S. MARSHAL FOR THE CENTRAL DISTRICT OF CALIFORNIA, VICE CRAIG L. MEACHAM, RESIGNED.

DEPARTMENT OF STATE

HAZEL ROLLINS O'LEARY, OF MINNESOTA, TO BE THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE THIRTY-EIGHTH SESSION OF THE GENERAL CONFERENCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

IVAN SELIN, OF THE DISTRICT OF COLUMBIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE THIRTY-EIGHTH SESSION OF THE GENERAL CONFERENCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

NELSON F. SIEVERING, JR., OF MARYLAND, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE THIRTY-EIGHTH SESSION OF THE GENERAL CONFERENCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

JOHN B. RITCH III, OF THE DISTRICT OF COLUMBIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE THIRTY-EIGHTH SESSION OF THE GENERAL CONFERENCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY

WILLIAM HYBL, OF COLORADO, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 1997. (REAPPOINTMENT.)

PANAMA CANAL COMMISSION

ALBERT H. NAHMAD, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE PANAMA CANAL COMMISSION, VICE ROBERT R. MC MILLIAN.

VINCENT REED RYAN, JR., OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE PANAMA CANAL COMMISSION, VICE WALTER J. SHEA.

IN THE NAVY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. (SELECTEE) HAROLD W. GEHMAN, JR., [redacted]

THE FOLLOWING-NAMED LIEUTENANT IN THE STAFF CORPS OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF LIEUTENANT COMMANDER, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 628, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

MEDICAL CORPS

To be lieutenant commander

NUSHIN F. TODD [redacted]

CONFIRMATIONS

Executive nominations confirmed by the Senate September 14, 1994:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

REAR ADM. WILLIAM L. STUBBLEFIELD FOR APPOINTMENT IN THE GRADE OF REAR ADMIRAL (LOWER HALF), WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY AS DEPUTY DIRECTOR, OFFICE OF NOAA CORPS OPERATIONS, UNDER THE PROVISIONS OF TITLE 33, UNITED STATES CODE, SECTION 853U.

COMMUNICATIONS SATELLITE CORPORATION

PETER S. KNIGHT, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMUNICATIONS SATELLITE CORPORATION UNTIL THE DATE OF THE ANNUAL MEETING OF THE CORPORATION IN 1996.

NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS

SUSAN R. BARTON, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS FOR THE TERM EXPIRING OCTOBER 27, 1994.

DANNY K. DAVIS, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS FOR THE TERM EXPIRING OCTOBER 27, 1996.

EXPORT-IMPORT BANK OF THE UNITED STATES

JULIE D. BELAGA, OF CONNECTICUT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 20, 1995.

JULIEL D. BELAGA, OF CONNECTICUT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 1999.

DEPARTMENT OF DEFENSE

SANDRA KAPLAN STUART, OF NORTH CAROLINA, TO BE AN ASSISTANT SECRETARY OF DEFENSE.

WALTER BECKER SLOCOMBE, OF THE DISTRICT OF COLUMBIA, TO BE UNDER SECRETARY OF DEFENSE FOR POLICY.

JOSEPH NYE, OF MASSACHUSETTS, TO BE AN ASSISTANT SECRETARY OF DEFENSE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

MICHAEL D. HAWKINS, OF ARIZONA, TO BE U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT.

JOHN CORBETT O'MEARA, OF MICHIGAN, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN.

BARRINGTON D. PARKER, JR., OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK.

ROBERT J. TIMLIN, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA.

NAPOLEON A. JONES, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

DEPARTMENT OF JUSTICE

JAN M. CHAIKEN, OF MASSACHUSETTS, TO BE DIRECTOR OF THE BUREAU OF JUSTICE STATISTICS.

JOHN W. CALDWELL, OF GEORGIA, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF GEORGIA FOR THE TERM OF 4 YEARS.

ROY ALLEN SMITH, OF OHIO, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF OHIO FOR THE TERM OF 4 YEARS.

DAVID WILLIAM TROUTMAN, OF OHIO, TO BE U.S. MARSHAL FOR THE NORTHERN DISTRICT OF OHIO FOR THE TERM OF 4 YEARS.

BECKY JANE WALLACE, OF NORTH CAROLINA, TO BE U.S. MARSHAL FOR THE MIDDLE DISTRICT OF NORTH CAROLINA FOR THE TERM OF 4 YEARS.

DENNIS H. BLOME, OF IOWA, TO BE U.S. MARSHAL FOR THE NORTHERN DISTRICT OF IOWA FOR THE TERM OF 4 YEARS.

CORPORATION FOR PUBLIC BROADCASTING

HENRY J. CAUTHEN, OF SOUTH CAROLINA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 2000.

FRANK HENRY CRUZ, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 2000.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, September 15, 1994, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 20

9:30 a.m.
Judiciary
Antitrust, Monopolies and Business Rights Subcommittee
To hold hearings on certain provisions of S. 1822, to foster the further development of the Nation's telecommunications infrastructure and protection of the public interest.
SD–226

Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to review the legislative recommendations of the American Legion.
334 Cannon Building

10:00 a.m.
Governmental Affairs
Business meeting, to consider pending calendar business.
SD–342

2:00 p.m.
Governmental Affairs
To hold hearings on the nomination of Harvey G. Ryland, of Florida, to be Deputy Director of the Federal Emergency Management Agency.
SD–342

SEPTEMBER 21

9:30 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD–366

Labor and Human Resources
Labor Subcommittee
To hold hearings on certain child labor issues.
SD–430

SEPTEMBER 22

9:30 a.m.
Armed Services
To hold a briefing on results of the Nuclear Posture Review.
SR–222

Energy and Natural Resources
Mineral Resources Development and Production Subcommittee
To hold hearings to examine immigration in the Commonwealth of the Northern Mariana Islands.
SD–366

10:00 a.m.
Conferees
Closed, on H.R. 4299, to authorize appropriations for fiscal year 1995 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System.
SH–219

SEPTEMBER 23

11:00 a.m.
Veterans' Affairs
Business meeting, to consider the nomination of Kenneth W. Kizer, of California, to be Under Secretary of Veterans Affairs for Health, and other pending calendar business.
SR–418

SEPTEMBER 28

9:00 a.m.
Office of Technology Assessment
Board Meeting, to consider pending business.
EF–100, Capitol

SEPTEMBER 29

9:30 a.m.
Energy and Natural Resources
To hold hearings to examine the Agreement for Cooperation on Peaceful Uses of Atomic Energy Between the United States and the European Atomic Energy Community (Euratom).
SD–366

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.