

²⁰ See id.

²¹ See, e.g., testimony of Saul S. Cohen, Rosenman & Colin, before the Telecommunications and Finance Subcommittee of the House Committee on Commerce at 234-35 (February 10, 1995).

²² See id.

²³ For this reason, the Conference Report chose not to include in the pleading standard certain language relating to motive, opportunity, or recklessness.

²⁴ The percentages of damages as market losses in the analysis ranged from 7.9% to 100%. See Princeton Venture Research, Inc., "PVR Analysis, Securities Law Class Actions, Damages as a Percent of Market Losses," June 15, 1993.

²⁵ See Lev and de Villiers, "Stock Price Crashes and 10b-5 Damages: A Legal, Economic and Policy Analysis," *Stanford Law Review*, 7, 9-11 (1994).

²⁶ See testimony of Hon. Richard C. Breeden, former Chairman, SEC, before the Securities Subcommittee of the Senate Committee on Banking, Housing, and Urban Affairs, April 6, 1995.

²⁷ See testimony of the National Venture Capital Association before the Securities Subcommittee on the Senate Committee on Banking, Housing, and Urban Affairs, March 2, 1995.

²⁸ See testimony of Hon. J. Carter Beese, former SEC Commissioner, at id.

²⁹ The concept of a safe harbor for forward-looking statements made under certain conditions is not new. In 1979, the SEC promulgated Rule 175 to provide a safe harbor for certain forward looking statements made with a "reasonable basis" and in "good faith." This safe harbor has not provided companies meaningful protection from litigation. In a February 1995 letter to the SEC, a major pension fund stated: "A major failing of the existing safe harbor is that while it may provide theoretical protection to issuers from liability when disclosing projections, it fails to prevent the threat of frivolous lawsuits that arises every time a legitimate projection is not realized." See February 14, 1995 letter from the California Public Employees' Retirement System to the SEC Courts have also crafted a safe harbor for forward-looking statements or projections accompanied by sufficient cautionary language. The First, Second, Third, Sixth and Ninth Circuits have adopted a version of the "bespoke caution" doctrine. See, e.g., *In re Worlds of Wonder Securities Litigation*, 35 F. 3d 1407 (9th Cir. 1994); *Rubinstein v. Collins*, 20 F.3d 169 (5th Cir. 1994); *Kline v. First Western Government Securities, Inc.*, 24 F. 3d 480 3d Cir. 1994); *Sinay v. Lamson & Sessions Company*, 948 F.2d 1037 (6th Cir. 1991); *I. Meyer Pincus & Associates v. Oppenheimer & Co., Inc.*, 936 F.2d 759 (2d Cir. 1991); *Romani v. Shearson Lehman Hutton*, 929 F.2d 875 (1st Cir. 1991); *Luce v. Edelstein*, 802 F.2d 49 (2d Cir. 1986); *In re Donald J. Trump Casino*, 7 F.3d 357 (3d Cir. 1993).

³⁰ See testimony of Hon. Arthur Levitt, Chairman, SEC, before the Telecommunications and Finance Subcommittee of the House Commerce Committee, February 10, 1995.

From the Committee on Commerce, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

THOMAS BILEY,
BILLY TAUZIN,
JACK FIELDS,
CHRIS COX,
RICHARD F. WHITE,
ANNA G. ESHOO,

As additional conferees from the Committee on the Judiciary, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

BILL MCCOLLUM,
Managers on the Part of the House.

ALFONSE D'AMATO,
PHIL GRAMM,
ROBERT F. BENNETT,
ROD GRAMS,
PETE V. DOMENICI,
CHRISTOPHER DODD,
JOHN F. KERRY,

Managers on the Part of the Senate.

The SPEAKER pro tempore (Mr. CHRYSLER). Under a previous order of the House, the gentleman from New Jersey [Mr. PALLONE] is recognized for 5 minutes.

[Mr. PALLONE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

CLINTON'S CASE FOR SENDING IN THE TROOPS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. DORNAN] is recognized for 5 minutes.

Mr. DORNAN. Mr. Speaker, there is a remarkable column in today's Washington Times by its gifted editor/writer Wesley Pruden. It is titled "The Macabre Tribute to McNamara's Band." Some of us took to the floor here earlier this month to point out that Robert Strange McNamara was literally in Hanoi all but begging forgiveness and asking for a seminar on Vietnam in Vietnam where he could expiate his guilt on sending 58,700 American men to their death, 8 women, and try and go to his grave with some peace. He did this with Castro, a war criminal, down in Cuba, and now he wants to do it with the war criminals that prevail in Hanoi.

Listen to the opening of Mr. Pruden's column:

The man has no shame, but we knew that, and he is not talking about McNamara. He said:

Bill Clinton, who did everything but to defect to Hanoi to avoid doing his duty to his country 30 years ago, yesterday tried to make a case for sending young men to do their duty in Bosnia, and, being Bill Clinton, naturally he cast it as something else. In the afternoon, as an opportunity to immunize little children against childhood disease—this is an extraordinary opportunity, the President said, announcing \$2 million for needles and serum for the children of all of that tragic area of the world.

It says that this man has a problem that others do not. If Mr. Clinton truly loathes the military, and he used that word in his infamous letter to Colonel Holmes that he wrote from England on December 3, 1969, there is no better way to show it than to send upwards of 20, 25; 40 is the better figure, Mr. Speaker, of our loathsome sons to a wintry nonholiday in the mountainous wilds of Bosnia where sniping at Americans or planting land mines under their feet will be the season's sport. Mr. Clinton enlists all the bromides and cliches, many weathered in antiquity, to make his case.

But as I listened to that case last night, Mr. Speaker, Vietnam, the killing fields of Cambodia and the tragedy of Laos kept going through my head. Clinton mentioned in his remarks that Americans will do good things in the face of defending freedom, and he mentioned World War I, which began in Sarajevo, by the way, World War II, Haiti, Iraq, the Middle East, Northern Ireland; he even mentioned Korea, but he studiously dodged paying tribute to the American sacrifices in Vietnam, a sacrifice he acidly scorned in the past, and when asked about Mr. McNamara's disgusting book of self vindication, Clinton told CNN reporter Wolf Blitzer that he, Clinton, felt vindicated by the war criminal McNamara's insidious book.

Mr. Speaker, I am going to do a 1-hour special order tonight. I hope my friends, the gentleman from Indiana [Mr. BURTON] and the gentleman from California [Mr. CUNNINGHAM], who is going to speak after me, will join me.

Here is the problem in the Balkans, and any one of these can be defeated singly. We have threatened and killed Serbs from the air. Now we are going to act as peacekeepers on the ground. We have trained the Croatian Army. I witnessed it myself in August. We have armed the Bosnian military through the airport at Zagreb with Iranian arms. One out of every three airplanes loaded to the gunnels with arms going to the Croats, the other two to the Bosnian Moslems. Now we have conducted peace negotiations, and we claim we are going to see through the indictment of the 53-plus war criminals, all but one a Croat, and he is a Serb, and the Croat is in custody, none of the Serbs are; that we are going to see through the war crimes trials going on at the Hague in the Netherlands. How can we do all of this together unless it is some complicated, incoherent mess that is going to get young American men, and now women. According to the Aspin, Halperin, Clinton plan, women will be going in harm's way, and I will bring to the floor tomorrow night the photograph and cowboy hat, working at home, of Randy Shugart, Medal of Honor winner from the streets of Mogadishu, along with a picture of my dad the day after the war in France with about 20 children. That war that started in Sarajevo, my dad was hit once with shrapnel, twice poison gas with mustard gas.

Mr. Speaker, I question and I want proof that Pope John Paul II, whose advice Clinton has not taken on the sanctity of human life; I doubt he asked Clinton to send our young men to Sarajevo so we would not end this century with a war there. I have a call in to the papal nuncio. I will give you a report on the veracity of that tomorrow night.

QUESTIONS ON DEPLOYING U.S. FORCES TO BOSNIA FOR CLINTON

1. What vital U.S. national interests are being threatened in Bosnia?
2. Have all options been used or considered before deploying U.S. forces?
3. Are you willing to extend the U.S. military commitment past one year to achieve success?
4. What do you consider a success in this operation?
5. What are the specific military and political objectives requiring deployment of 20,000? Why not more than 20,000 young American men and women?
6. If the aforementioned objectives change during the course of U.S. deployment, are you willing to provide our military with the adequate resources needed to meet the changed objectives?
7. Should U.S. forces be sent if the American people and Congress do not explicitly support such action?
8. Will it be guaranteed that the operational command of these forces be kept in American and allied hands?
9. Are you willing to ensure that U.S. personnel are always properly armed and

trained to defeat any threat presented in Bosnia?

10. Are U.S. intelligence gathering operations properly sufficient in the Bosnia theater to maximize the security and protection of our troops and make their mission a success?

11. Will U.S. and allied intelligence be kept away from United Nations officials?

12. Are you ready to explain to American families why their son and daughter was put into harm's way?

13. If American air crews are shot down in the Bosnian Serb region, will U.S. forces be able to retrieve those forces and retaliate against those responsible?

14. What guarantees are you willing to make that every American will be accounted for in this operation?

15. Are you willing to increase resources and manpower significantly if that is what is determined to be needed to achieve success?

16. Volunteer reserve units are being called up for this operation. If this does not prove adequate, are you going to call into service various reserve units?

17. What are the specific rules of engagement for U.S. military personnel?

18. Will the rules of engagement include using force to protect civilian populations even when U.S. personnel are not threatened?

19. Does that include protecting civilian populations like ethnic Serbs in Croatia?

20. What will be the financial cost of this operation to U.S. taxpayers?

21. How do you intend to pay for these costs?

22. It is stated that an international conference will be held to discuss financing for the reconstruction of Bosnia, who will be a part of the international conference?

23. What kind of authority will these negotiators have in committing U.S. funds?

24. In Annex 1A, Article II of the Dayton Agreement, the parties to the agreement commit themselves to disarm and disband all armed civilian groups, except for authorized police forces. How will this be monitored to ensure all sides comply?

25. What will be the consequences of non-compliance?

26. In Annex 11, Article I of the agreement, a U.N. International Police Task Force (IPTF) will be created to carry out the program of assistance for law enforcement. Who will comprise the IPTF?

27. Will the IPTF be armed?

28. If so, will there be IPTF officers in the American protected region?

29. According to the agreement, the IPTF officers will only be able to notify higher officials of failure by the parties to comply with IPTF mandate. What good will that be if IPTF officers come across severe human right violations or other criminal activities?

30. NATO Army commanders had counted on a zone of separation 12 miles wide between the Serb and Muslim-Croat sides to keep Serb artillery as far away as possible. Why did U.S. negotiators agree to just a zone of separation 2½ miles wide?

31. The Bosnian Serbs will be required to reduce their military potential to the level where it is no longer a threat to the Muslim-Croat Federation. How will it be determined if the Serb military potential is a threat?

32. If the Bosnian Serb forces do not comply, will U.S. forces be used to weaken the Bosnian Serb military potential or to strengthen the Muslim forces?

33. Will strengthening the Muslim forces include arming and training the Muslim forces?

34. Will the Croats consider such U.S. action a threat?

35. Will not the Bosnian Serbs consider the U.S. as its antagonist if we try to weaken their side or strengthen the Muslims?

36. Doesn't such a strategy place U.S. forces in the precarious position of being directly in between the Serbs and Muslims?

37. In Annex 1A, Article III, the agreement states that all foreign forces, including individual advisors, freedom fighters, trainers, volunteers, and personnel from neighboring and other states, shall be withdrawn from the Bosnian territory. How will this be carried out?

38. Will this require U.S. forces trying to prove every individual's true national identity in their sector?

39. How will it be determined who are foreign nationals in the Serb zone while there are no Implementation Forces in the Serb region?

40. Many officials in the region believe that without an accounting of the human rights abuses in the Balkans and just punishment for those acts, a long-term solution will not be achieved. Will U.S. forces be used to help account for the numerous violations?

41. Will U.S. forces be used to continue uncovering the evidence of mass killings in the Bosnian Serb regions?

42. The agreement states that 54 accused Serbian war criminals will not be allowed to hold democratically elected offices. What about the one Croatian accused war criminal General Tihomir Blaskic, now the top inspector in the Croatian army, indicted by the U.N. war crimes tribunal?

43. Will U.S. forces be used to chase down war criminals, like the failed Delta Force operation to arrest Aided in Somalia, which resulted in the death of 19 Americans and the mutilation of five of their bodies?

44. There were 400,000 Serbs; 90,000 Muslims and 20,000 Croats displaced from their homes just in 1995. How will the NATO forces guarantee that these people can have safe passage back to their original homes in Bosnia?

45. What will be done to ensure that Serbs who had lived in Croatia will be guaranteed safe return back into Croatia?

46. Ethnic Serbs control the Eastern Slavonia region of Croatia around the devastated town of Vukovar and are supposed to cede control back to Croatia. What if that does not happen?

47. A wider Posavina Corridor in Northern Bosnia, which links the western and eastern regions controlled by the Bosnian Serbs, is supposed to be surrendered to Bosnian Serb forces by Croatian forces. Will U.S. forces be used to ensure Croat compliance?

48. Will U.S. forces be used to protect the Muslim enclave of Gorazde in Eastern Bosnia, which is totally surrounded by the Bosnian Serbs?

49. The Dayton agreement stipulates that each side will be allowed to maintain their own army and parliament. What will be the makeup of the Muslim-Croatian confederation parliament and what will be the structure of the Confederation Army?

50. What is the exit strategy for U.S. forces?

Mr. Speaker, again I submit for America the Weinberger-Dornan 10 principles for committing U.S. combat forces:

1. The U.S. must not commit combat forces unless the situation is vital to U.S. or allied national interests.

2. The U.S. must not commit combat forces unless all other options already have been used or considered.

3. The U.S. must not commit combat forces unless there is a clear commitment, including allocated resources, to achieving victory.

4. The U.S. must not commit combat forces unless there are clearly defined political and military objectives.

5. The U.S. must not commit combat forces unless our commitment of these forces will change if our objectives change.

6. The U.S. must not commit combat forces unless the American people and Congress supports the action, therefore insuring that the American people have been represented.

7. The U.S. must not commit combat forces unless under the operational command of American commanders or integrated allied commanders under a ratified treaty, thereby having insured joint training.

8. The U.S. must not commit combat forces unless properly equipped, trained and maintained by the Congress.

9. The U.S. must not commit combat forces unless there is substantial and reliable intelligence flow including HUMINT (human intelligence).

10. The U.S. must not commit combat forces unless the commander in chief and Congress can explain to the loved ones of any killed or wounded American soldier, sailor, Marine, pilot or aircrewman why their family member or friend was sent in harm's way.

[From USA Today, Nov. 27, 1995]

WEIGHING U.S. ROLE: ARGUMENTS FOR, AGAINST SENDING TROOPS

Key arguments for and against a U.S. military role in Bosnia-Herzegovina peace plan:

PRO

The United States has a moral obligation to try to end the genocide and random violence.

The United States, as a guarantor of the peace pact, must send troops to separate warring forces and establish clear borders.

U.S. forces will represent only a third (20,000) of the 60,000-person NATO force.

U.S. forces will operate under NATO, not United Nations, command, and have broader authority to respond to threats than they did in Somalia and Haiti.

The United States must lead the Bosnia peace effort to maintain its leadership role in NATO and Europe.

The United States cannot go back on the president's pledge to send troops without losing credibility internationally.

U.S. forces can withdraw if the peace agreement is violated.

Keeping peace in Bosnia keeps conflict from spreading.

Bosnian Serb leaders indicted as war criminals will have no role in the new government.

U.S. troops will not be required to track down war criminals or cope with refugees.

The firepower of Bosnian Muslims, long outgunned by Bosnian Serbs, will be improved, helping stabilize the situation.

For the first time, three warring parties, the Bosnians, Croats and Serbs, have initiated an agreement that divides land and agrees to a central government, signaling their interest in peace.

CON

There is no vital U.S. security interest in providing peacekeeping troops in Bosnia.

About 45,000 to 60,000 dissident rebel Serbs object to the accord. Operating in small groups, they could kill U.S. troops in retaliation.

The deployment will cost \$1.5 billion at a time of budget constraints.

The peace pact is suspect because it would not have been reached without the U.S. commitment to send troops as enforcers.

Bosnian Serbs who have been bombed by NATO may view peacekeepers as the enemy.

An estimated 6 million land mines threaten U.S. troops.

U.S. troops will be required to settle local disputes over the treaty, which may give them the appearance of taking sides, and lead to retaliation.

The fighting in Bosnia is based on age-old disputes unlikely to be resolved in the 12-month period the U.S. peacekeeping force would be in the region.

Using NATO forces as peacekeepers is a mission for which the defense alliance is not designed and was not created.

The number of U.S. troops—20,000—is too small to effectively police the peace agreement and puts soldiers at risk.

[From the Washington Times, Nov. 28, 1995]
THE MACABRE TRIBUTE TO MCNAMARA'S BAND
(By Wesley Pruden)

The man has no shame, but we knew that. Bill Clinton, who did everything but defect to Hanoi to avoid doing his duty to his country 30 years ago, tried yesterday to make a case for sending young men to do their duty in Bosnia and, being Bill Clinton, naturally cast it as something else—an opportunity to immunize little children against childhood disease.

"This is an extraordinary opportunity," the president said, announcing that he would commit \$2 million for the needles and the serum.

"We have a very compelling responsibility," he said, stopping just short of announcing that Miss Hillary would accompany the troops as a Red Cross doughnut girl.

Anyone who objects to doing for Europe what European boys should be doing naturally despises children almost as much as the Republicans hate old folks, and probably roots for measles and chickenpox.

The bad news is that the commander-in-chief has the authority to send troops anywhere in the world, even to liberate Scotland from Di's daffy in-laws if such a notion pops into his head, and in the end Congress, skeptical or not, will have little choice but to stamp it "OK."

Once they're in place, there's not a man or woman among us—well, not many—who won't insist that they get everything they need to protect themselves and to make themselves as comfortable as possible.

Besides, if Mr. Clinton truly "loathes" the military, as he said he does, there's no better way to show it than to send upwards of 25,000 of our "loathsome" sons to a wintry holiday in the mountainous wilds of Bosnia, where sniping at Americans, or planting land mines under their feet, will be the season's sport.

Mr. Clinton enlists all the bromides and clichés, many well weathered in antiquity, to make his case: "We must not and we will not turn our backs on peace. The accord [signed in Dayton] offers the people of Bosnia the first real hope of peace in nearly four years. Now we have a responsibility to see this achievement through. That is who we are as a people. That is what we stand for as a nation."

This is remarkably like the fervent exhortations Lyndon Johnson employed to persuade young Bill Clinton three decades ago, and the mature Bill Clinton can only hope that it sounds better in a mock-sincere Arkansas drawl than in a tinny Texas twang.

From the snug comfort of their campaign headquarters, the president and his men, who were—in Mr. Clinton's youthful words—"too educated to fight," can live out the vicarious bang-bang enthusiasms they missed in Vietnam. Just as in Vietnam, the men the president sends to Bosnia will have to deal with the fierce ethnic rivalries and bitter suspicions that fragmented the countryside in the first place. In his speech last night, the president recited the scenes of other American attempts to do good in the face of fighting, in World Wars I and II, in Haiti, Iraq, the Middle East and even Northern Ireland. He studiously dodged paying tribute to the American sacrifice in Vietnam, a sacrifice he has acidly scorned in the past.

Mr. Clinton promises to go through the motions of seeking the support of Congress, and Congress will go through the motions of

resisting. But in the end the troops will debark—unless the president changes his mind, and nobody is foolish enough to bet against that—and Congress will go along. How can it not, if we intend to redeem whatever shred of respect the rest of the world has for us three years into the Clinton era.

Bob Dole, who has seen the face of war up close and personal, understands this. "I want to be in a position to support the president," he says. "It seems to me, when it comes to foreign policy, if we speak with one voice, we're better off." He makes the point that the president "never thought foreign policy was important until now."

Congress has an obligation to the men and women it puts in harm's way to make it clear, since the president and his men won't, exactly who it is who's sending them there, and why. Defense Secretary William Perry, echoing Robert McNamara from the summer of '65, says the American role will be completed within a year. Warren Christopher, echoing Dean Rusk, dusts off the infamous domino theory ("the fighting could spread to Europe unless we act now").

Nicholas Burns, a State Department spokesman who will get no closer to Bosnia than Constitution Avenue, recites the "iron-clad" assurances of the Serbians that they intend to be nice when the Americans arrive, and he scoffs at Radovan Karadzic's grim promise to make Bosnia "bleed for decades" as being meaningless because "his best days are behind him."

Perhaps. And perhaps Bill Clinton's, too, as his chickens from Saigon come home to roost on Pennsylvania Avenue.

RAIDING SOCIAL SECURITY TO BALANCE THE BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Hawaii [Mr. ABERCROMBIE] is recognized for 5 minutes.

Mr. ABERCROMBIE. Mr. Speaker, I am going to begin a series of, I do not know if they can be called lectures, tonight; this is by way of introduction; but certainly a series of observations on what is ostensibly taking place tonight, which is presumably the first meeting with respect to balancing the budget.

Mr. Speaker, I have been on the floor here previously indicating to you and to my colleagues and to the American people that the budget that has been presented to us is not going to be a balanced budget, certainly not a balanced budget in the sense that most Americans understand it to be. This is because we are going to have a category called off-budget spending.

Now the average person and the average household who has to deal with their budget does not begin to accept this kind of terminology, and the fact is that Speaker GINGRICH has indicated over and over again that he wants to have a balanced budget in 7 years, and he wants honest numbers. Well, I am perfectly willing to deal with that situation. I would like to approach it from a different perspective, and I will be discussing that in the days to come as well as to what that might be as an alternative.

But what is before us now very frankly is not honest numbers, not honest numbers as people understand them. I

hope that we will be able to get a much broader discussion under way throughout the Nation as to what constitutes this balanced budget. If the Speaker wants to have honest numbers, then I think he needs to come down here on the floor and indicate that he is going to take money from the Social Security Trust Fund in order to do this balancing. That is where it is going to come from.

I will use the figures of the Congressional Budget Office. This is not something that I am going to be making up because it suits me. There has been an insistence that the Congressional Budget Office figures be used.

Now, I will indicate to you, Mr. Speaker, that the Congressional Budget Office will confirm that in order for the budget, as presented by the majority, to be balanced that it must take from the Social Security Trust Fund upward of \$636 billion plus interest, so that in the year 2002, 7 years from now, when the majority is saying that the budget will be balanced, those of you who expect to be able to draw on Social Security will find that there will be a gigantic IOU for almost \$1 trillion.

Now I am only one person so far, but I believe, if you have the truth on your side, that it will out. Dozens and dozens and dozens of Members can come down on this floor and say they are going to balance the budget in 7 years, and I will maintain that unless they can explain how they are going to pay the almost \$1 trillion that they have taken from Social Security to pay for it, they cannot do it.

You need only look at the budget document itself and it will show every year a deficit. The budget document of the House indicates that starting this year there will be a deficit, and each year that deficit has to be accounted for.

No. 4; this is from the conference report of the 104th Congress, first session, concurrent resolution in the budget proposal for that year, 1996, presented in June of this year. The fourth sequence, deficits. For the purpose of the enforcement of this resolution the amount of the deficits are as follows: Fiscal year 1996, \$245 billion, listing on up to the year 2002, \$108 billion.

How is it possible for the Speaker or anyone else presenting the budget formula for the press, for the American people, to say that the budget is going to be balanced if by the conference report itself there is a \$108 billion deficit? Very simple. You take \$115 billion from Social Security, from the trust fund, and wonder of wonders, you come up with a \$10 billion surplus.

In the days to come, Mr. Speaker, I am going to be examining what this is all about and what it means.

Now the average family, when they are being told that the budget is going to be balanced in 7 years and told that that is a good thing for the United States, has no idea that Social Security is being attacked, and as I have indicated, Mr. Speaker, and I appreciate