

What the people hated most about the Watergate scandal was not the amateur break-in at the Democratic National Committee. What they could not tolerate and what led to the resignation of President Nixon was the cover-up, the stonewalling, the fact that the President placed himself above the law.

But Mr. President, even Richard Nixon did not hide behind the attorney-client privilege. Bill Clinton did.

Eighteen-months ago this was something that President Clinton said that he would never do, as we can see from a quote from President Clinton's remarks to a town meeting in Charlotte, NC on April 5, 1994. The President said:

I've looked for no procedural ways to get around this. I say, you tell me you want to know, I'll give you the information. I have done everything I could to be open and aboveboard.

Some have asked why it is so important that the special committee receive access to Mr. Kennedy's notes. I can only answer by asking President Clinton why it was so important to him that these notes not be seen. Why did he go to such lengths as to use privilege as a shield to hide these notes from the public?

Obviously, if there is nothing to hide, there is no reason to keep these notes a secret or to conditionally withhold them. If there is nothing incriminating in these pages, why not disclose them openly and honestly?

The fact of the matter is we will not know until we see them. And if there is something there, these notes may help us piece together the puzzle known as Whitewater.

Because unlike the witnesses from the administration who have been expertly coached to experience suspiciously selective memory during their testimony, these notes cannot hide anything. They cannot duck questions by saying, "My memory fails me" or "I can't recollect at this time."

And maybe that is what scares Bill Clinton the most.

Mr. President, it may surprise you, but I hope that these notes do not incriminate anyone. Like most Americans, I want to think the best of our President.

But we have a responsibility to get to the bottom of this whole affair, because, like everyone who has worked for the Clinton administration, we too are paid by the taxpayers. And we owe it to them to uncover the truth, no matter how dark or unsavory it might be.

That, Mr. President, is what this resolution before the Senate is all about—it is what this entire Whitewater investigation is about: Our obligation to tell the truth, the whole truth and nothing but the truth. I urge the President to unconditionally release these notes.

If he does not, I hope my colleagues will join me in a spirit of honesty and openness in supporting this resolution. We owe the American people that much.

Thank you, Mr. President. I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Vermont.

#### THE STATEMENT OF SENATOR BYRD

Mr. LEAHY. Mr. President, I am going to speak about the issue before us on Whitewater, but because of the extraordinary statement by the distinguished senior Senator from West Virginia, I wish to make a few additional comments.

I have been privileged to serve in this body for 21 years with Senator ROBERT C. BYRD. I have been privileged to serve with a number of giants—I consider him one, certainly—but giants on both sides of the aisle, both Republicans and Democrats. I think of the leadership of Senator BYRD, who has served both as majority and minority leader, and how much I appreciate and respect his leadership. I think also of our other Democratic leaders like Mike Mansfield, George Mitchell, and Tom DASCHLE and the great Republican leaders, BOB DOLE and Howard Baker, who have served with such distinction in this body.

I think, as I have been on this floor, of the remarkable opportunity I have been given to serve here. One set of my grandparents came to Vermont and came to these shores not speaking a word of English. My other great-grandparents left a distant country to come to Vermont to seek a better way of life. Both my grandfathers were stonecutters in Vermont. My paternal grandfather died when my father was just a youngster. He died in the stone sheds of Vermont leaving a widow and two children—my grandmother, my father, and his sister.

My father, as a teenager, had to help support the family and never completed the schooling that his son was later able to pursue. He became a self-taught historian, certainly one of the best I ever knew. And he revered and respected the U.S. Senate.

So many times my father would tell me, as I sat here on the floor of the Senate, that this body should be the conscience of our Nation. In my first two terms, when my father was still alive, he was able to come and listen to Senators debate. I remember him repeating almost verbatim statements made by Senators—again, both Republicans and Democrats. He spoke with a sense of admiration of the courage that those men, and now women, show in this body in speaking to the conscience of our Nation. He talked about how this is where leaders of our Nation reside.

Only 15 people in the present Senate have served in this body longer than I. No Democrat has served longer than Senator BYRD. I believe Senator BYRD has done a great service for this body today. I hope that each of us will read and reread what he said, because, in

my 21 years here, I have seen the Senate degenerate. And I do not use that word casually. I have seen some of the finest Members leave, and in leaving say this body is not what it used to be.

People truly respect the Senate. My good friend from Arkansas, Senator PRYOR, who is on the floor today, one whose absence I will feel greatly in the next Congress, and Senator ALAN SIMPSON of Wyoming, another good friend, Senator KASSEBAUM, Senator HATFIELD, Senator BROWN, Senator BRADLEY, Senator NUNN, Senator PELL, Senator SIMON, Senator HEFLIN, and others with whom I have talked—these are people of great experience and great quality—every one of them will tell you the same thing: This Senate has changed.

Mr. President, we owe it to ourselves to listen to what Senator BYRD said, and we owe it to the Senate to listen. More than owing anything to Senator BYRD or me or any other Member, we owe it to the Senate because long after all of us leave, I pray to God this body will still be here. And I pray to God this body will be here as the conscience of the Nation.

If you go back and read the writings of Jefferson, if you go back and read the writings of the founders of this country, you know that this body is a place where ideas should be debated, where the direction of our Nation and the conscience of our Nation should be shaped.

Mr. President, I fear that we are not doing this. I fear that this country will suffer if we do not listen. All of us have a responsibility to listen, Republicans and Democrats alike. Presidents will come and Presidents will go. We will have great Presidents, and we will have Presidents who are not so great. They will come and go. Members of the Senate will come and go, and we will have great Members of the Senate and some not so great. But all of us take the same oath to uphold the Constitution of this great country, and we also come here privileged to help lead this country, but we ought to be humbled by the responsibility that gives us.

I have taken an oath to uphold this country's Constitution four times in this body, and five times as a prosecutor before that. I hold that oath as a very sacred trust. Each one of us ought to ask ourselves if we engage in debate or actions or votes that denigrate that Constitution or denigrate the country or denigrate the most important functions of our Government, do we really deserve to be here? Partisan positions are one thing. Positions that hurt the country are yet another.

So let us listen to what was said here. Let us listen to what was said and let us, each one of us, when we go home tonight or this weekend, ask ourselves what we have done to keep the Senate the institution it should be for the good of our country—not for our individual political fortunes but for the good of the country.

Let us ask ourselves what we have done this year to do that. I do not

think that Senator BYRD has to ask himself that question. We know his answer. It is one with which I agree. But all of us should ask ourselves that question.

Mr. President, in later days I will speak more on the subject.

#### DIRECTING THE SENATE LEGAL COUNSEL TO BRING A CIVIL ACTION

The Senate continued with the consideration of the resolution.

Mr. LEAHY. I would like, Mr. President, to speak about Senate Resolution 199. We have been asked this session to consider a number of matters with which I did not agree. I think, frankly, this one, Senate Resolution 199, may take a special holiday season award. I am not here to talk about the arguments over the attorney-client privilege issues or the precedent we are being asked to establish, or the failure fully to explore settlement of this matter in light of the President's willingness to produce the notes to the Whitewater special counsel and to the Senate so long as a general waiver of privilege does not result. I will not linger on being asked to enforce a subpoena that was not properly served.

Let me direct my colleagues' attention to one aspect of this matter that has not yet been explored: We are being asked to authorize Senate legal counsel to commence an action that cannot be brought.

Senate resolution 199 expressly proposes that we, the Senate, direct our Senate legal counsel to bring a civil action to enforce a subpoena of the Special Committee To Investigate Whitewater Development Corporation and Related Matters for notes taken by an associate counsel to the President. The statute under which we are being asked to authorize the proposed civil contempt proceeding expressly precludes just the kind of legal action we are being asked to authorize, one that would create a confrontation with the executive branch.

The second sentence of section 1365 of title 28, United States Code, provides:

This section shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpoena or order issued to an officer or employee of the Federal Government acting within his official capacity.

This, of course, was put in the statute to avoid putting the courts in a position of having to resolve a conflict between the other two independent branches of government.

So long as it would not violate anyone's attorney-client privilege, I would be extremely interested in knowing what Senate legal counsel has advised the special committee with regard to subpoenas to the White House and for White House legal counsel notes and with regard to their enforceability by way of civil action. I think before the Senate is asked to authorize it, we

ought to know whether the civil contempt proceeding we are being asked to authorize is even legal. Does the special committee have a legal opinion from our Senate legal counsel on the viability of the action proposed? If so, I would like to have it put in the RECORD.

This dispute arises, as the special committee's report explains, from a demand for documents to the White House in response to which the White House identified Mr. Kennedy's notes as privileged.

The special committee goes to great lengths in its report to argue Mr. Kennedy was not acting as a personal attorney to the President and the First Lady, but then dismisses the conclusion that follows. If Mr. Kennedy attended the meeting in his role as associate counsel to the President, then it would appear that no legal action can be brought under section 1365. The special committee cannot have it both ways.

So I think we should consider that which we are being asked to authorize. I know millions of dollars have been spent on this investigation. I know we will probably spend millions more. But at least when we vote we ought to know whether we are voting to do something that can be done.

We have no need to authorize legal action, least of all one that cannot be brought under the terms of the very statute under which authorization is being sought.

I appreciate the distinguished chairman arranging this time for me.

Mr. D'AMATO. Mr. President, in order to attempt to move the flow, I would ask unanimous consent that following Senator MACK, Senator SIMON be recognized, and following Senator SIMON, Senator THOMPSON be recognized.

Mr. SARBANES. And then Senator GLENN.

Mr. D'AMATO. And then followed by Senator GLENN.

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

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MACK. I thank the Chair.

#### CIVILITY IN SENATE DEBATE

Mr. MACK. Mr. President, I had initially come to participate in the debate on Whitewater, but there was a speech of some 45 minutes or so by Senator BYRD a little bit earlier that made reference to some comments I made in the Chamber of the Senate last Friday. The Senator referred to my use of the word "guts" and drew from that that I was implying that a number of Senators maybe did not have the guts to present an alternative proposal.

It would be easy for me to come here with a sense of defensiveness and anger, but I do not. I come to the floor to speak—I am not quite sure how long, and I am not quite sure what

about, other than it was clearly not my intention to impugn the integrity or the intentions of my colleagues in the U.S. Senate.

I really have been, I think, driven to come to the floor this afternoon, as I said, not out of anger but, frankly, out of love. I have strived in my life to try to make civility one of my No. 1 concerns. And when I heard civility being talked about, and I heard it being talked about with reference to words that I had said last Friday, it made me take notice, it made me think about that impassioned speech that I gave last Friday.

Let me say that I feel very strongly about what I had to say about what was going on with respect to the budget and the failure to get a balanced budget and the importance of getting a balanced budget and what that means for this country, for America, for future generations, for children, for my grandchildren. I felt that very deeply.

But since I apparently—maybe I should take out the word "apparently"—so there would be no question—since I have been charged with breaking rule IXX, I apologize to my colleagues in the U.S. Senate. I am driven to do this even though I know there are those who would say, "Oh, you should never apologize, never engage in a defense of your actions because, you know, that brings too much attention to what you've done." But I come to the floor of the U.S. Senate to once again say to my friend and colleague, and somebody whom I respect tremendously, Senator DASCHLE, who in essence is kindness, that in no way did I attempt or did I mean to challenge the minority leader.

I have no ill-feelings toward Senator BYRD. He is right to remind us of the rules of the U.S. Senate. But I hope that we would all take notice of that, Democrat and Republican alike.

For me to stand here on the floor of the U.S. Senate and imply or allow others to conclude that I am the only one that might have pushed the envelope with respect to words used would, in fact, be a tragic mistake. So I hope that we would all listen to what Senator BYRD had to say.

If my coming forward today to react to Senator BYRD's comments will help reduce the rhetoric and allow us to return to a time of greater civility, then my coming to the floor will have been worth it.

I do not know how many times I thought of how we could begin the process of bridging the differences between us, of truly understanding how the other side truly believes the policies, the ideas, and the principles they put forward instead of always questioning the motive. And so I welcome those on the other side of the aisle who want to be engaged in discussions about how we bridge that divide, how we could begin the process of really truly finding out how it is that we can satisfy your concerns and at the same time satisfy ours, instead of there always having to be one winner.