

the armed robbery of seven million dollars from a Wells Fargo depot, to fund a similar Puerto Rican revolutionary independence group, Los Macheteros. This is an organization that ambushed a Navy bus and killed two U.S. servicemen and launched a rocket attack at the federal courthouse in Hato Rey, Puerto Rico.

Madam President, building bombs and committing armed robberies on U.S. soil are not political acts. They are crimes, plain and simple, and these people were appropriately locked up for their offenses. It should make no difference that the prisoners had political motivations which some may share. Virtually all terrorists are politically motivated, and many justify their acts in the cause of "national liberation." But terrorism is a cowardly and evil means to achieve such ends, which can never be justified, and which must be punished harshly.

It has been reported that the clemency petition was opposed by the FBI and the Bureau of Prisons. The Fraternal Order of Police has vehemently condemned this offer, calling it a "horrendously bad idea."

Clemency proponents have asserted that these prisoners harmed no one. A former Assistant U.S. Attorney who prosecuted some of these FALN members counters this assertion, noting: "A few dedicated federal agents are the only people who stood in their way. The conspirators made every effort to murder and to maim. It is no small irony that they should be freed under the guise of humanitarianism."

History has shown us that making concessions to terrorists spurs increased terrorism. The President made the wrong decision. I hope and pray that his decision will not have this effect, but I fear it will.

Despite the flawed procedure, I will vote to proceed to Senate Joint Resolution 33, and I will subsequently vote for its passage. Terrorism does not deserve leniency.

• **Mr. HATCH.** Madam President, the President's ill-considered offer of clemency has now been accepted by 12 of the 16 FALN members, many of whom are now back on the street.

These are people who have been convicted of very serious offenses involving sedition, firearms, explosives, and threats of violence. The FALN has claimed responsibility for past bombings that have killed and maimed American citizens. I pray that no one else gets hurt.

This is yet another example of this Administration sending the wrong message to criminals—be they foreign spies, gun offenders, or—in this case—terrorists.

In this case, it appears President Clinton put the interests of these convicted criminals ahead of the interests of victims, the law enforcement community, and the public.

I think we need to know: Did Attorney General Janet Reno do her job?

Media reports suggest that—notwithstanding the strong opposition of pros-

ecutors, the FBI, the Bureau of Prisons, and the victims of crime, the Department of Justice and the Attorney General apparently did not take a formal position on the matter even though the Department's own rules require doing so.

Here we have another example of what people suspect: The Attorney General is asleep at the switch while the White House runs the Justice Department.

As Chairman of the Senate Committee with oversight of the Department of Justice, I have requested copies of all relevant documents, including the Department's memo to the White House. Even our colleague Senator SCHUMER believes we should have these documents. But, so far, the Department has refused to turn over anything.

The Department and the Attorney General are hiding behind their tired, old ploy of studying whether to assert executive privilege. If the President has confidence that his decision was a just one, then he ought to be willing to hold it up to public scrutiny.

I will hold a hearing on the matter next Wednesday, September 15, at which time we will hear from the law enforcement community and those negatively affected by this grant of clemency.

I believe, Madam President, that our entire nation is victimized by terrorism. A bomb at the World Trade Center, the Oklahoma City Federal Building, or a U.S. embassy abroad has an effect on all of us.

This clemency deal is an insult to every American citizen. This clemency deal is not humanitarian; it is not just.

Exactly what is this? A weak moment? Political favoritism? Another foreign policy miscalculation?

I'll tell you what it is—it is wrong. •

#### CLOTURE MOTION

The **PRESIDING OFFICER.** Under the previous order, the hour of 5 p.m. having arrived, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S.J. Res. 33, a joint resolution deploring the actions of President Clinton regarding granting clemency to FALN terrorists:

Trent Lott, Conrad R. Burns, Ted Stevens, Peter Fitzgerald, Jim Bunning, Larry E. Craig, Michael D. Crapo, Chuck Hagel, Fred Thompson, Bill Frist, Michael B. Enzi, Judd Gregg, Craig Thomas, Jesse Helms, Pat Roberts, and Paul Coverdell.

The **PRESIDING OFFICER.** By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S.J. Res. 33, a joint resolution deploring the actions of President Clinton regarding the granting of clemency to FALN terrorists, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative assistant called the roll.

**Mr. NICKLES.** I announce that the Senator from Alabama (Mr. SESSIONS), the Senator from Utah (Mr. HATCH), the Senator from Utah (Mr. BENNETT), the Senator from Wyoming (Mr. ENZI), the Senator from North Carolina (Mr. HELMS) and the Senator from Oregon (Mr. SMITH) are necessarily absent.

**Mr. REID.** I announce that the Senator from Florida (Mr. GRAHAM), is necessarily absent.

The **PRESIDING OFFICER.** Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 93, nays 0, as follows:

[Rollcall Vote No. 270 Leg.]

#### YEAS—93

Abraham	Edwards	Lugar
Akaka	Feingold	Mack
Allard	Feinstein	McCain
Ashcroft	Fitzgerald	McConnell
Baucus	Frist	Mikulski
Bayh	Gorton	Moynihan
Biden	Gramm	Murkowski
Bingaman	Grams	Murray
Bond	Grassley	Nickles
Boxer	Gregg	Reed
Breaux	Hagel	Reid
Brownback	Harkin	Robb
Bryan	Hollings	Roberts
Bunning	Hutchinson	Rockefeller
Burns	Hutchison	Roth
Byrd	Inhofe	Santorum
Campbell	Inouye	Sarbanes
Chafee	Jeffords	Schumer
Cleland	Johnson	Shelby
Cochran	Kennedy	Smith (NH)
Collins	Kerrey	Snowe
Conrad	Kerry	Specter
Coverdell	Kohl	Stevens
Craig	Kyl	Thomas
Crapo	Landrieu	Thompson
Daschle	Lautenberg	Thurmond
DeWine	Leahy	Torricelli
Dodd	Levin	Voinovich
Domenici	Lieberman	Warner
Dorgan	Lincoln	Wellstone
Durbin	Lott	Wyden

#### NOT VOTING—7

Bennett	Hatch	Smith (OR)
Enzi	Helms	
Graham	Sessions	

The **PRESIDING OFFICER** (Ms. SNOWE). On this vote, the yeas are 93, the nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

#### DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2000—Continued

#### CLOTURE MOTION

The **PRESIDING OFFICER.** Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on amendment No. 1603 to Calendar No. 210, H.R. 2466, the Interior appropriations bill.

Trent Lott, Kay Bailey Hutchison, Gordon Smith of OR, Thad Cochran,

Larry E. Craig, Bill Frist, Michael Crapo, Don Nickles, Craig Thomas, Chuck Hagel, Christopher Bond, Jon Kyl, Peter Fitzgerald, Pete V. Domenici, Phil Gramm, and Slade Gorton.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, in view of the fact that seven of our Members are missing, I ask unanimous consent to move the cloture vote to tomorrow following the votes at 10:30.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. I object. I object.

The PRESIDING OFFICER. Objection is heard. Under the previous order, there will now be 5 minutes of debate equally divided between the Senator from Texas and the Senator from California.

Mrs. BOXER. Madam President, I ask if Senator HUTCHISON would like to go first?

Mrs. HUTCHISON. Madam President, I prefer to reserve my time and close.

Mrs. BOXER. Madam President, may we have order in the Chamber, please.

The PRESIDING OFFICER. The point is well taken. Senators will take their conversations to the Cloakroom, please.

The Senator from California.

Mrs. BOXER. Madam President, I have taken the Senate's time on this matter. Here is why: I simply care about the Senate too much to see it be a party to a deliberate scheme by just 5 percent of the oil companies to underpay their royalty payments to our constituents. The Hutchison amendment allows the situation to continue by stopping the Interior Department from fixing it.

How do we know taxpayers are being cheated? First, there are many whistleblowers, former oil executives, who say under oath they undervalued the oil from Federal lands in order to pay less.

Second, settlements are occurring all over the country whereby these oil companies are paying billions of dollars in back royalties to keep their cases out of court.

Senator HUTCHISON has said the Interior Department wants to raise taxes on the oil companies. Royalties are not taxes; they are legal agreements just as your mortgage or rent is. As USA Today says:

Imagine if one day you decided to lower your rent by 10 percent. No individual could do that. And yet the oil companies are.

You may hear all we need is more time, but this is the fourth rider this Senate has passed, although we have never had a vote on it before. This is the first vote. We have already lost \$88 million from the Department of the Interior because of it. These companies should do what 95 percent of them are already doing, base their royalty payments on fair market value.

Senator HUTCHISON has said the oil companies are suffering now and it is bad timing to fix this. I voted, and most of us did, for a bill to help the oil companies. That is fine. But royalty

payments must be collected and because they are based on fair market value, they do go down when oil prices are depressed. That is a better deal than most Americans get on their mortgages or their rent.

You may hear about a court case in California that the oil companies won. But that had nothing to do with Federal oil royalties; it was about State royalties.

Finally, the Hutchison amendment is not in the House bill because this is an appropriations bill, and the Hutchison amendment will strip another \$66 million out of the Land and Water Conservation Fund. We need those funds very much. Senator HUTCHISON says it is just \$10 million. Interior and OMB say \$66 million. Regardless, it is a bad rider. I hope you will not vote for cloture.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Texas.

Mrs. HUTCHISON. I yield 1 minute to the Senator from Louisiana, Mr. BREAUX.

Mr. BREAUX. Madam President, I thank the Senator for yielding. In just 60 seconds, it is unfortunate we are voting with a number of Senators absent. I guess we will have to do that.

The question is, How do we value oil? The law says the companies owe the Federal Government, taxpayers, one-sixth to one-eighth of the value of the oil. The problem is, how do you determine the value? It is a very complicated rulemaking procedure that is ongoing to try to determine what are the legitimate deductions and transportation costs, in particular, determining what the fair market value of oil is. We can rush this thing through. It will result in years of litigation. Or we can pause for a few moments, which is what we are asking to be done, to try to negotiate out something to which both sides can agree. I think it makes more sense to pause for a few moments, get the groups together and work it out, rather than run the risk of years and years of litigation. We know what is going to happen then. Nobody is going to win. The American public is not going to win.

I urge we support the Hutchison amendment and get it done in a more realistic and fair fashion.

Mrs. HUTCHISON. I yield 30 seconds to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I rise in support of the Hutchison-Domenici amendment because the MMS's procedures are flawed. Department of the Interior employees involved in the writing of the regulations received \$300,000 each from a group that had interests contrary to those of the oil and gas firms.

It is wrong on substance. I will just give one example showing it is flawed. A producer from one oil well producing one kind of oil would be forced to value his oil ten different ways under this MMS proposal.

Mr. MURKOWSKI. Mr. President, I strongly support Senator HUTCHISON's amendment to keep the Department of Interior from spending additional money for one year to implement their flawed oil valuation regulation. I am a cosponsor of the amendment.

Our amendment does two things: First, it puts the Senate on record opposing a Value-added Tax proposed by the executive branch. Second, it prevents MMS from implementing a rule that is so corrupt the Interior Department's inspector general and the Department of Justice are currently investigating \$700,000 in payoffs to federal employees involved in the rule.

The CBO scored the impact of this amendment at \$11 million. This is the apparent cost of standing up for Congress' constitutional prerogative to raise revenues.

The domestic oil and gas industry is being driven from our shores. During the oil embargo in 1973, we imported 36 percent of our oil. Today, we import 56 percent of our oil. We will continue to burn oil—in fact, we burn a bit more now than we did in 1973. But our own industry is in a death spiral, caused in part by government actions like this. Over 50,000 American families have lost their jobs in the last two years as companies leave the U.S. for foreign shores—foreign shores where it's cheaper to drill and governments encourage domestic energy production.

Without adoption of the Hutchison amendment, we will be saying: "Go ahead. Raise royalties and taxes. We, the U.S. Senate, yield our power to the Executive." This Senator cannot stand by and watch all power flow to the Executive.

"RENT-A-RULE"—POGO, ETC.

Neither can this Senator stand aside when there are serious allegations of payoffs to government employees involved in the rule.

In May of this year, the press began to report that two federal employees—one at the Department of Interior; the other, retired from the Department of energy—had taken \$700,000 from a self-described "public interest group" as an "award" for their work in the federal government on the rule to raise royalty rates on domestic oil producers. This group, the project on Government Oversight, or POGO, has not been very effective in its membership drive—it has only about 200 subscribers—but it has been very successful attracting trial lawyers as board members. In fact, the trial lawyers on its board have spent years litigating the very cases on oil value that the proposed DOI rule would benefit if the Boxer Amendment is adopted.

The inspector general and the U.S. Department of Justice public Integrity Section are investigating these payments.

In two letters to the Secretary of Interior, Senators DOMENICI, NICKLES, and I have asked the Department to withdraw the proposed rule pending the outcome of the investigations into

whether the employees can take money for "fixing" a rule. The Department has declined to do so twice.

In answering our first letter, DOI said the two had nothing to do with the rule. Senators DOMENICI, NICKLES, and I wrote back, this time providing public documents proving their involvement, and asking them, based upon the evidence, to withdraw the rule.

The response to our second letter was to acknowledge that the two apparently did have some involvement in the rule, but the decision to change the rule was made prior to their official involvement.

The Department's argument is misleading. The two federal employees worked hand-in-glove with POGO to convince the Department to craft a rule to POGO's liking. According to POGO's Executive Director, POGO even arranged for the employees to be specifically requested to testify before a House subcommittee to put pressure on the Department to start a rulemaking.

All the facts suggest that these employees were influential, if not instrumental, in the decision to issue the rule and the content of the rule. After influencing the decision to issue the rule, the employees took part in the public comment phase of the rulemaking. In other words, they were up to their elbows in this issue from start to finish.

A skeptic could conclude that the employees, working with POGO and the trial attorneys who stood to gain from out-of-court settlements, earned their "rewards." POGO, after all, admits they paid them \$350,000 each. The Department's position appears to be that POGO paid the wrong bureaucrats.

The public integrity of the public rulemaking process is at stake, even if Secretary Babbitt fails to see it.

In our nation, federal employees are not paid to push rule changes which benefit one party in a lawsuit. This is a dangerous precedent.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, we directed the MMS to simplify the oil royalty payments so that companies would know what their fair share is. This is what MMS has come forward with as a simplification.

Companies still do not know what they will owe. They want to pay their fair share. I want them to pay their fair share. Whether they have in the past is not an issue. We are trying to have a fair setting of taxes.

The question is: Who makes tax policy in this country? Is it Congress or is it unelected bureaucrats who are not accountable to the people? We are talking about a 1-year moratorium so that this can be worked out in a way that is acceptable to Congress.

The Senator from California says this only affects 5 percent of the producers. I have a letter from the California Independent Petroleum Association, representing 450 independent oil and gas producers, which says:

It is false to claim that this rulemaking only affects the top 5 percent of all oil producers. It affects every California producer on Federal land.

Madam President, I urge a vote for cloture so we can have a fair up-or-down vote on this amendment so that Congress will set the policy of this country.

The PRESIDING OFFICER. All time has expired. By unanimous consent, the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on amendment No. 1603 to H.R. 2466, the Interior appropriations bill, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Utah (Mr. BENNETT), the Senator from Utah (Mr. HATCH), the Senator from North Carolina (Mr. HELMS), and the Senator from Alabama (Mr. SESSIONS) are necessarily absent.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM) is necessarily absent.

The yeas and nays resulted—yeas 55, nays 40, as follows:

[Rollcall Vote No. 271 Leg.]

#### YEAS—55

Abraham	Fitzgerald	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bingaman	Gramm	Roberts
Bond	Grams	Roth
Breaux	Grassley	Santorum
Brownback	Gregg	Shelby
Bunning	Hagel	Smith (NH)
Burns	Hutchinson	Smith (OR)
Campbell	Hutchison	Snowe
Chafee	Inhofe	Specter
Cochran	Inouye	Stevens
Collins	Jeffords	Thomas
Coverdell	Kyl	Thompson
Craig	Landrieu	Thurmond
Crapo	Lincoln	Voynovich
DeWine	Lugar	Warner
Domenici	Mack	
Enzi	McCain	

#### NAYS—40

Akaka	Feingold	Mikulski
Baucus	Feinstein	Moynihan
Bayh	Harkin	Murray
Biden	Hollings	Reed
Boxer	Johnson	Reid
Bryan	Kennedy	Robb
Byrd	Kerrey	Rockefeller
Cleland	Kerry	Sarbanes
Conrad	Kohl	Schumer
Daschle	Lautenberg	Torricelli
Dodd	Leahy	Wellstone
Dorgan	Levin	Wyden
Durbin	Lieberman	
Edwards	Lott	

#### NOT VOTING—5

Bennett	Hatch	Sessions
Graham	Helms	

The PRESIDING OFFICER. On this vote the yeas are 55, the nays 40. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mrs. BOXER. Mr. President, I move to reconsider the vote.

Mr. LOTT. Mr. President, I enter a motion to reconsider the vote by which the Senate failed to invoke cloture on the pending Hutchison amendment.

The PRESIDING OFFICER. The motion is entered.

#### ORDER OF PROCEDURE

Mr. LOTT. Mr. President, I ask unanimous consent that the yeas and nays be vitiated on the nomination of Maryanne Trump Barry.

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

Mr. LOTT. I understand the Chair will now put the question on this nomination.

#### EXECUTIVE SESSION

#### NOMINATION OF MARYANNE TRUMP BARRY, OF NEW JERSEY, TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT

The PRESIDING OFFICER. The Senate will now proceed to executive session to consider Executive Calendar No. 210, which the clerk will report.

#### THE JUDICIARY

The legislative clerk read the nomination of Maryanne Trump Barry, of New Jersey, to be United States Circuit Judge for the Third Circuit.

Mr. LOTT. Mr. President, I also indicate that we will be prepared to confirm two further judicial nominations by consent before we close business this evening. Therefore, there will be no further votes this evening, and the next vote will occur at 10:30 a.m. on Tuesday in relation to the Bryan forestry amendment.

Mr. LEAHY. Mr. President, the confirmation of Maryanne Trump Barry to the Third Circuit—and I predict that she will be confirmed—will bring to 15 the total number of federal judges considered by the Senate all year.

While I am appreciative of this opportunity to consider this nomination, I note that the Republican leadership has chosen to skip over the nominations of Marsha Berzon, Judge Richard Paez, and Ray Fisher to the Ninth Circuit. These nominations have all been on the Senate calendar for as long or longer than that of Ms. Barry. The Republican leadership has, again, skipped over the nomination of Justice Ronnie White for the federal court in Missouri, as well.

All of these nominations could and should have been considered before the August recess. Indeed the nominations of Judge Paez and Justice White, should have been considered when they were first reported last year.

Mr. LAUTENBERG. Mr. President, I rise in strong support of the nomination of Maryanne Trump Barry to the United States Court of Appeals of the Third Circuit.

I commend Senator HATCH for moving forward with this nomination. We must ensure that the federal bench is at full strength so that our citizens will receive justice promptly and fairly. The distinguished chairman of the Judiciary Committee deserves thanks from all who believe that our court system is at the core of our precious democratic structure.