The answer is that you are afraid that too high a price will lead people to use less gasoline, heating oil and so on, cutting into your exports. Suppose, however, that you can count on the U.S. government to reduce gasoline taxes whenever the price of crude oil rises. Then Americans are less likely to reduce their oil consumption if you conspire to drive prices up—which makes such a conspiracy a considerably more attractive proposition.

Anyway, in the short run—and what we have right now is a short-run gasoline shortage—cutting gas taxes probably won't even temporarily reduce prices at the pump. The quantity of oil available for U.S. consumption over the near future is pretty much a fixed number: the inventories on hand plus the supplies already en route from the Middle East. Even if OPEC increases its output next month, supplies are likely to be limited for a couple more months. The rising price of gasoline to consumers is in effect the market's way of rationing that limited supply of oil.

Now suppose that we were to cut gasoline taxes. If the price of gas at the pump were to fall, motorists would buy more gas. But there isn't any more gas, so the price at the pump, inclusive of the lowered tax, would quickly be bid right back up to the pre-tax-cut level. And that means that any cut in taxes would show up not in a lower price at the pump, but in a higher price paid to distributors. In other words, the benefits of the tax cut would flow not to consumers but to other parties, mainly the domestic oil refining industry. (As the taxtbooks will tell you, reducing the tax rate on an inelastically supplied good benefits the sellers, not the buyers.)

A cynic might suggest that that is the point. But I'd rather think that Mr. Bush isn't deliberately trying to throw his friends in the oil industry a few extra billions; I prefer to believe that the candidate, or whichever adviser decided to make gasoline taxes an issue, was playing a political rather than a financial game.

There still remains the argument that the only good tax is a dead tax. This leads us into the whole question of whether those huge federal surplus projections are realistic (they aren't), whether the budget is loaded with fat (it isn't), and so on. But anyway, the gasoline tax is dedicated revenue, used for maintaining and improving the nation's highways. This is one case in which a tax cut would lead directly to cutbacks in a necessary and popular government service. You could say that I am making too much of a mere political gambit. Gasoline prices have increased more than 50 cents per gallon over the past year; Mr. Bush only proposes rolling back 1993's 4.3-cent tax increase.

But the gas tax proposal is nonetheless revealing. Mr. Bush numbers some of the world's leading experts on tax incidence among his advisers. I cannot believe that they think cutting gasoline taxes is a good economic policy in the face of an OPEC power play. So this suggests a certain degree of cynical political opportunism. (I'm shocked, shocked!) And it also illustrates the candidate's attachment to a sort of knee-jerk conservatism, according to which tax cuts are the answer to every problem.

As a citizen, then, I deplore this proposal. As a college lecturer, however, I am delighted.

Mr. KENNEDY. Mr. Krugman writes:

Anyway, in the short run—and what we have right now is a short-run gasoline shortage—cutting gas taxes probably won't even temporarily reduce prices at the pump. The quantity of oil available for U.S. consumption over the near future is pretty much a fixed number; the inventories on hand plus the supplies en route from the Middle East. Even if OPEC increases its output next month—

Which they did, as we heard from the announcements in the last couple of days—

supplies are likely to be limited for a couple more months. The rising price of gasoline to consumers is in effect the market's way of rationing that limited supply of oil.

Now suppose that we were to cut gasoline taxes. If the price of gas at the pump were to fall, motorists would buy more gas. But there isn't any more gas, so the price at the pump, inclusive of the lower tax, would quickly be bid right back up to the pre-tax-cut level. And that means that any cut in taxes would show up not in lower price at the pump, but in a higher price paid to distributors. In other words, the benefits of the tax cut would flow not to consumers but to the other parties, mainly the domestic oil refining industry.

There is a very substantial body of opinion that agrees with that. If we are talking about enhancements of profits of the domestic oil refining industry—and that is going to be the result of legislation—we ought to give consideration to men and women in this country making the minimum wage, trying to make ends meet, playing by the rules, working hard 40 hours a week, 52 weeks of the year trying to keep their families together.

There is a more compelling public interest for a modest increase in the minimum wage than in lowering the gas tax. If we are talking about providing some relief to the American consumers, it seems to me among the American consumers, the ones who are the most hard-pressed in our society, are those who are earning the minimum wage. If we are interested in providing such relief, we ought to at least address their particular needs.

That is what this amendment will do, and that is the reason I have filed it.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. I ask unanimous consent that I may speak for up to 10 minutes as in morning business.

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

## CONSPIRACIES OF CARTELS

Mr. SPECTER. Mr. President, I have sought recognition to discuss a Dear Colleague letter which Senator BIDEN and I are circulating today. I expect to have the agreement of at least two other Senators to circulate this Dear Colleague letter. It is an effort to deal with the very serious problems which have been caused by the rise in the price of oil as a result of the activities of the OPEC countries.

The price of imported crude oil rose from $10.92 per barrel, for the first quarter of 1999, to over $31 per barrel in this month. In the first quarter of last year gasoline prices were, on an average, 95 cents per gallon, and heating oil was 80 cents per gallon. A year later both have peaked at $1.70.

On Tuesday, the day before yesterday, OPEC agreed to raise oil production over the next 3 months by up to 1.7 million barrels a day. But this is far less than what is necessary to take care of the very serious problems imposed upon Americans at the gas pump, for heating oil, diesel fuel for the truckers, and our whole society beyond the United States—foreign countries, as well—as a result of these cartels and conspiracies.

This conduct is reprehensible. If it were going on in the United States, it would be a clear-cut violation of our antitrust laws.

There have been declarations at the international level. The Organization for Economic Development, consisting of some 29 countries, made a declaration in March of 1998 that conspiracies in restraint of trade constitute a violation of international law.

At about the same time, 11 countries from Latin America made a similar declaration that conspiracies of cartels to restrain trade violate international law.

After a considerable amount of research, we are writing to the President asking him to consider two courses of litigation going to court. One course of action would be to file suit under United States antitrust laws, because these conspiracies of cartels in restraint of trade have an economic impact on the United States. There is ample authority for the Government of the United States to proceed in this way.

Suits were filed by private parties in 1979 in the Central District of California. The Court of Appeals for the Ninth Circuit concluded in 1981 that it would be inappropriate for a U.S. court to pass on that subject because international law was not clearly defined at that time. But there have been significant developments in international law since that 1981 decision by the Court of Appeals for the Ninth Circuit so that, in my judgment, the opportunities would be excellent to win this case and certainly well worth the effort.

The Dear Colleague letter which we are submitting has a second aspect, and that is a recommendation to the President that legal action be instituted in the International Court of Justice, perhaps for only an advisory opinion, that OPEC countries were violating international law.

I was surprised to see the International Court of Justice take jurisdiction in a case involving the issue of the legality to use or threaten to use nuclear weapons in war. I had thought that such an issue would be what is called nonjusticiable law, that is, not subject to going to court. You talk

about national sovereignty. You talk about nuclear weapons. Such a subject would be really beyond the scope of what the International Court of Justice would decide. But the court did take jurisdiction on that issue. The court rendered an advisory opinion it would be illegal to either use or threaten to use nuclear weapons except in self-defense.

We have also seen, in the last few years, very significant developments in international law with the War Crimes Tribunal for the former Yugoslavia, where there have been indictments, prosecutions and convictions for crimes against humanity. There was also the extensive use of international law from the War Crimes Tribunal for Rwanda.

In a surprising case which has captured international headlines for months, an effort has been made to try Pinochet, former leader of Chile, on the application of the courts of Spain, although the acts did not occur in Spain. Customarily under criminal law, the prosecution is brought where the acts occurred. Pinochet was in England. There was a tremendous amount of litigation there. Surprisingly, there was an extension of international law into areas where conduct is really despicable, as are the allegations related to Pinochet. Recently the former dictator from Chad was tried in the courts of Senegal on charges of torture and violation of human rights.

We are looking at a rapidly expanding international picture. I believe we ought to be taking every step possible to deal with these cartels and this conspiratorial and reprehensible conduct by the OPEC nations. While they have agreed to raise production slightly, we are at their whim for action any time they see fit to cut back on production, to extract and extort enormous sums of money from consumers in the United States and consumers around the world.

This is not a problem for this day only. This is a problem which plagued the United States, with the long gas lines in 1974, 26 years ago, but I remember them well. People lined up for three blocks waiting in a gas line to get some fuel. By the time you got there, the pumps sometimes were out or sometimes it was limited. There is no reason why we should have to put up with this kind of conduct because it does violate international norms and really ought to be stopped.

This letter does not contain any reference to actions on a class action basis by consumers. Right now, the antitrust law calls for actions only by so-called direct purchasers. But consideration is being given by a number of Senators to an amendment to the existing antitrust laws to allow indirect purchasers; that is, somebody who buys gas at the pump. Texaco could sue OPEC, at least would have standing to sue OPEC. There would be the other considerations that would have standing as a direct purchaser.

Under a case denominated Illinois v. Brick, an indirect consumer cannot sue. But I believe there would be good reason to amend our antitrust laws, limited to the field of purchases relating to oil. That is a distinction, because oil is such a critical part of our economy and such a critical part of our everyday life: for keeping our houses and offices warm, our general buildings warm, to supplying gasoline for truckers who transport necessary items for everyday life, and for the gasoline which is necessary for our automobiles. This is where we have been gouged by the OPEC conduct.

Some have raised the question: What good would it do to take these cases to court; what would the remedy be? The fact is, there are considerable assets from these OPEC countries in the United States which would be subject to attachment. With respect to the suit in the International Court of Justice, there would be considerable opprobrium in being sued, hauled into court. Nobody likes to be sued, whether an individual, a company, or a country. This conduct is reprehensible and we ought to call them on it.

I do believe, in the final analysis, our U.S. laws on antitrust would enable us to get a remedy. Actually, the International Court of Justice would hold out these international pirates to be nothing more than they are, really preying on the weak, those who have to buy the oil at any price. This conspiracy and restraint of trade and these cartels ought not to be allowed to go on.

Mr. President, I ask unanimous consent that the full text of the letter to the President be printed in the RECORD, together with a copy of a Dear Colleague letter which Senator BIDEN and I are circulating.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
*Washington, DC.*

President WILLIAM JEFFERSON CLINTON,
*The White House,*
*Washington, DC.*

DEAR MR. PRESIDENT: In light of the very serious problems caused by the recent increase in oil prices, we know you will share our view that we should explore every possible alternative to stop OPEC and other oil-producing states from entering into agreements to restrict oil production in order to drive up the price of oil.

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

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

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

(2) A suit in the International Court of Justice at the Hague based, perhaps, upon an advisory opinion under ''the general principles of law recognized by civilized nations,'' which includes prohibiting oil cartels from conspiring to limit production and raise prices.

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

A case can be made that your Administration can sue OPEC in Federal district court under U.S. antitrust law. OPEC is clearly engaging in a ''conspiracy in restraint of trade'' in violation of the Sherman Act (15 U.S.C. Sec. 1). The Administration has the power to sue under 15 U.S.C. Sec. 4 for injunctive relief to prevent such collusion.

In addition, the Administration should consider suing OPEC for treble damages under the Clayton Act (15 U.S.C. Sec. 15a), since OPEC's behavior has caused an ''injury'' to U.S. ''property.'' After all, the U.S. government is a major consumer of petroleum products and must now pay higher prices for these products. In *Reiter* v. *Sonotone Corp.*, 442 U.S. 330 (1979), the Supreme Court held that the consumers who were direct purchasers of certain hearing aides who alleged that collusion among manufacturers had led to an increase in prices had standing to sue those manufacturers under the Clayton Act since ''a consumer deprived of money by reason of allegedly anticompetitive conduct is injured in 'property' within the meaning of [the Clayton Act].'' Indirect purchasers would appear to be precluded from suit, even in a class action, under *Illinois Brick* v. *Illinois*, 431 U.S. 720 (1977), but this would not bar the United States Government, as a direct purchaser, from having the requisite standing.

One potential obstacle to such a suit is whether the Foreign Sovereign Immunities Act (''FSIA'') provides OPEC, a group of sovereign foreign nations, with immunity from suit in U.S. courts. To date, there has been a ruling on this issue in only one case. In *International Association of Machinists* v. *OPEC*, 477 F. Supp. 553 (1979), the District Court for the Central District of California held that the nations which comprise OPEC were immune from suit in the United States under the FSIA. We believe that this opinion was wrongly decided and that other district courts, including the D.C. District, can and should revisit the issue.

This decision in *Int. Assoc. of Machinists* turned on the technical issue of whether or not the nations which comprise OPEC are engaging in ''commercial activity'' or ''governmental activity'' when they cooperate to sell their oil. If they are engaging in ''governmental activity,'' then the FSIA shields them from suit in U.S. courts. If, however, these nations are engaging in ''commercial activity,'' then they are subject to suit in the U.S. The California District Court held that OPEC activity is ''governmental activity.'' We disagree. It is certainly a governmental activity for a nation to regulate the extraction of petroleum from its territory by ensuring compliance with zoning, environmental and other regulatory regimes. It is clearly a commercial activity, however, for these nations to sit together and collude to limit their oil production for the sole purpose of increasing prices.

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

The 9th Circuit itself acknowledged in its *Int. Assoc. of Machinists* opinion that ''The [act of state] doctrine does not suggest a rigid rule of application,'' but rather application of the rule will depend on the circumstances of each case. The Court also noted that, ''A further consideration is the

availability of internationally-accepted legal principles which would render the issues appropriate for judicial disposition.'' The Court then quotes from the Supreme Court's opinion in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964):

''It should be apparent that the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice.''

Since the 9th Circuit issued its opinion in 1981, there have been major developments in international law that impact directly on the subject matter at issue. As we discuss in greater detail below, the 1990's have witnessed a significant increase in efforts to seek compliance with basic international norms of behavior through international courts and tribunals. In addition, there is strong evidence of an emerging consensus in international law that price fixing by cartels violates such international norms. Accordingly, a court choosing to apply the act of state doctrine to a dispute with OPEC today may very well reach a different conclusion than the 9th Circuit reached almost twenty years ago.

You should also examine whether the anticompetitive conduct of the international oil cartel is being effectuated by private companies who are subject to the enforcement of U.S. antitrust laws (for example, former state oil companies that have now been privatized) rather than sovereign foreign states. If such private oil companies are determined to in fact be participating in the anticompetitive conduct of the oil cartel, then we would urge that these companies be named as defendants in an antitrust lawsuit in addition to the OPEC members.

*(2) A suit in the International Court of Justice at the Hague based upon ''the general principles of law recognized by civilized nations,'' which includes prohibiting oil cartels from conspiring to limit production and raise prices*

In addition to such domestic antitrust actions, we believe you should give serious consideration to bringing a case against OPEC before the International Court of Justice (the ''ICJ'') at the Hague. You should consider both a direct suit against the conspiring nations as well as a request for an advisory opinion from the Court through the auspices of the U.N. Security Council. The actions of OPEC in restraint of trade violate ''the general principles of law recognized by civilized nations.'' Under Article 38 of the Statute of the ICJ, the Court is required to apply these ''general principles'' when deciding cases before it.

This would clearly be a cutting-edge lawsuit, making new law at the international level. But there have been exciting developments in recent years which suggest that the ICJ would be willing to move in this direction. In a number of contexts, we have seen a greater respect for and adherence to fundamental international principles and norms by the world community. For example, we have seen the establishment of the International Criminal Court in 1998, the International Criminal Tribunal for Rwanda in 1994, and the International Criminal Tribunal for the former Yugoslavia in 1993. Each of these bodies has been active, handing down numerous indictments and convictions against individuals who have violated fundamental principles of human rights. For example, as of December 1, 1999 the Yugoslavia tribunal alone had handed down 91 public indictments.

Today, adherence to international principles has spread from the tribunals in the Hague to individual nations around the world. Recently, the exiled former dictator of Chad, Hissene Habre, was indicted in Senegal on charges of torture and barbarity stemming from his reign, where he allegedly killed and tortured thousands. This case is similar to the case brought against former Chilean dictator Augusto Pinochet by Spain on the basis of his alleged atrocities in Chile. At the request of the Spanish government, Pinochet was detained in London for months until an English court determined that he was too ill to stand trial.

The emerging scope of international law was demonstrated in an advisory opinion sought by the U.N. General Assembly in 1996 to declare illegal the use or threat to use nuclear weapons. Such an issue would ordinarily be thought beyond the scope of a judicial determination given the doctrines of national sovereignty and the importance of nuclear weapons to the defense of many nations. The ICJ ultimately ruled eight to seven, however, that the use or threat to use nuclear weapons ''would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.'' The fact that this issue was subject to a decision by the ICJ, shows the rapidly expanding horizons of international law.

While these emerging norms of international behavior have tended to focus more on human rights than on economic principles, there is one economic issue on which an international consensus has emerged in recent years—the illegitimacy of price fixing by cartels. For example, on April 27, 1998, the Organization for Economic Cooperation and Development issued an official ''Recommendation'' that all twenty-nine member nations ''ensure that their competition laws effectively halt and deter hard core cartels.'' The recommendation defines ''hard core cartels'' as those which, among other things, fix prices or establish output restriction quotas. The Recommendation further instructs member countries ''to cooperate with each other in enforcing their laws against such cartels.''

On October 9, 1998, eleven Western Hemisphere countries held the first ''Antitrust Summit of the Americas'' in Panama City, Panama. At the close of the summit, all eleven participants issued a joint communique in which they express their intention ''to affirm their commitment to effective enforcement of sound competition laws, particularly in combating illegal price-fixing, bid-rigging, and market allocation.'' The communique further expresses the intention of these countries to ''cooperate with one another . . . to maximize the efficacy and efficiency of the enforcement of each country's competition laws.'' One of the countries participating in this communique, Venezuela, is a member of OPEC.

The behavior of OPEC and other oil-producing nations in restraint of trade violates U.S. antitrust law and basic international norms, and it is injuring the United States and its citizens in a very real way. Consideration of such legal action could provide an inducement to OPEC and other oil-producing countries to raise production to head off such litigation.

We hope that you will seriously consider judicial action to put an end to such behavior.

---

UNITED STATES SENATE,
*Washington, DC.*

DEAR COLLEAGUE: In light of the very serious problems caused by the recent increase in oil prices, we know you will share our view that we should explore every possible alternative to stop OPEC and other oil-producing states from entering into agreements to restrict oil production in order to drive up the price of oil.

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

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

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

(2) A suit in the International Court of Justice at the Hague based upon ''the general principles of law recognized by civilized nations,'' which includes prohibiting oil cartels from conspiring to limit production and raise prices.

We ask you to sign the enclosed letter to President Clinton which urges him to consider these two litigation options. As you will note from the letter, the subject is quite complicated and is set forth in that letter as succinctly as it can be summarized.

If you are interested in co-sponsoring, please have staff call David Brog of Senator Specter's staff at 224–9037 or Bonnie Robin-Vergeer of Senator Biden's staff at 224–6819.

Sincerely,

ARLEN SPECTER.
JOSEPH BIDEN.

Mr. SPECTER. Any Senators who may be listening to this or any staff members, I invite them to call David Brog of my office at 224–4254 or Bonnie Robin-Vergeer of Senator BIDEN's office at 224–5042. We would like to get a good showing and see if we can't get the President to take a really tough position against these cartels which have so disadvantaged so many Americans.

The PRESIDING OFFICER. The distinguished Senator from Arkansas is recognized.

Mrs. LINCOLN. Mr. President, I ask unanimous consent to speak as in morning business for up to 15 minutes.

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

## FUELS TAX REDUCTION

Mrs. LINCOLN. Mr. President, I rise today to discuss S. 2285—a bill that is so flawed I can't believe the majority wants to end debate on it before the debate has even begun, with no committee hearings, no floor debate, no bipartisan discussion over something as important as the tax base for our highway and transportation infrastructure needs. This is literally an ''Our Way or the Highway'' bill, and I will choose the highway.

As a southerner, I represent a large number of farmers and about 1,600 independent trucking firms. Eleven hundred of those firms are one-truck operators; 250 operate 10 or fewer trucks. I've got at least seven of the largest trucking firms in the Nation based in my State, as well as the world's largest retailer, which operates about 4,000 trucks, and one of the largest food processors which operates about 1,500. I am opposed to S. 2285 and should I have the opportunity, I will vote against it.