

false claims about uranium from Niger in the State of the Union Message?

Madam President, 20 years of training and experience and millions of dollars were invested in this agent. Leaking her identity violated the law and constituted a betrayal of this country. Yet, for all we know, the person responsible for this betrayal could at this very moment still be exercising a senior decisionmaking role in this administration where the buck never stops, an administration where abuses occur, but no one at the top is ever forced to accept responsibility.

In her 20-year career, Valerie Plame operated with unofficial cover, which means she had no diplomatic immunity. Effectively, her only defense was a painstakingly created and maintained cover. She worked closely with undercover operatives and a network of contacts. All were potentially placed in jeopardy and exposed to danger by the disclosure of her status.

Last November, we heard testimony from three former CIA experts. They all agreed on the far-reaching damage this disclosure represented for Ms. Plame's broader network of contacts and for the intelligence community as a whole. After all, what guarantee does any intelligence agent now have that they could not be the next victim of some administration's smear campaign?

Vincent Cannistraro, former chief of operations and analysis at the CIA Counterterrorism Center, said of the Plame disclosure:

The consequences are much greater than Valerie Plame's job as a clandestine CIA employee—they include the damage to the lives and livelihoods of many foreign nationals with whom she was connected and it has destroyed a clandestine cover mechanism that may have been used to protect other CIA nonofficial cover officers.

James Marcinkowski, a former CIA operations officer, seconded this by saying:

The deliberate exposure and identification of Ambassador Wilson's wife, by our government, was unprecedented, unnecessary, harmful and dangerous.

Larry Johnson, a former CIA analyst and State Department employee, said:

For this administration to run on a security platform and allow people in the administration to compromise the security of intelligence assets, I think is unconscionable.

No one in this Chamber, after listening to these three men, could have any doubts about the damage this act has done to the relationship between the intelligence community and the administration. From all reports, the special prosecutor, finally appointed the day before New Year's, Mr. Fitzgerald, has been conducting a very aggressive investigation. He has issued subpoenas, called witnesses before a grand jury, and interviewed the President and Vice President.

I inquired as to whether the President or Vice President were put under oath. I am informed they were not.

Now I find this more than passing strange that the previous President of the United States, President Clinton, when he was being questioned about his relationship with a White House intern, was put under oath and filmed, and yet this President and this Vice President, the head of an administration where people leaked the identity in clear violation of the law of a CIA operative, are interviewed; they are not put under oath; they are not filmed. Would someone please explain the priorities?

In fact, the President has been kind of cavalier and dismissive of this entire situation. In his only public statement about the leak, he told reporters, and this is a direct quote from President Bush:

... I don't know if we are going to find out the senior administration official. Now, this is a large administration, and there's a lot of senior officials. I don't have any idea.

That is what George Bush said on October 7, 2003.

What I would like to know is, where is the President's outrage? Where is the recognition that this is not the same as leaking promising numbers on the economy? Where is the President's fury that one of his own valuable intelligence assets has been destroyed? And what about the Vice President? We know he can be relentless when he is on a quest for information to justify the case for the war in Iraq. Where is his determination to find the people who have destroyed the confidence of the intelligence community in this administration?

All we hear from the President and the Vice President is silence on this issue, as if they do not want to know who leaked this information, or they know and they do not want to be held accountable. In either case, it is inexcusable for the President or Vice President.

The disclosure of Ms. Plame's identity represents an extremely damaging breach of national security. She worked gathering human intelligence, exactly the type of intelligence we have heard over and over again since September 11, 2001 that is so critical to our fighting terrorism.

Only 2 days ago, National Public Radio reported on the fact that there is a growing consensus on the need to improve our human intelligence capacity. There is a recognition that after years of increasing reliance on intercepts and satellite imagery, only solid human intelligence can help us deal with the type of insurgency we face in Iraq in effectively fighting al-Qaida.

The other critical point that was made is that sending troops to a training course on intelligence gathering is not enough. According to one CIA agent, he said it takes 10 years to season somebody as a case officer in order to judge the information and the people they are dealing with, check on bona fides. That is the kind of asset Valerie Plame used to be, and, as Mr. Cannistraro pointed out, the damage

that was done was not only to her but to her network and potentially to all CIA human intelligence operatives.

One publication reported after reading of her own blown cover, Ms. Plame immediately sat down to make a list of all of her contacts and associates who could be in jeopardy. I can only hope when we find out the identity of this leaker or leakers, that person is forced to see this list and be confronted with the full extent of their betrayal of this country and our citizens.

Usually when the cover of agents like Valerie Plame is blown and their contacts placed in jeopardy, it is a result of espionage. The perpetrators, when convicted, face life in prison or even death. In many ways, it is almost worse that this was done as an act of political revenge. The disclosure of Ms. Plame's identity was unquestionably a vicious act of political intimidation and retribution, but it is much more than that. It is part of a clear pattern of coverup, concealment, and contempt for the truth. That is why so much rests on the outcome of Mr. Fitzgerald's investigation.

We need to identify and prosecute those responsible for this damaging episode, and in so doing we need to send a clear message to the President and the Vice President that sacrificing intelligence assets and breaching national security is too high a price to pay for maintaining the issue of deceit that was used to justify the war in Iraq to the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

#### ENERGY POLICY

Ms. CANTWELL. Madam President, I rise this morning to talk about where we are going with our Nation's energy policy and what this body and the House of Representatives are going to do in protecting consumers and ratepayers from continued market manipulation and energy fraud.

This morning, most of America woke up to a picture of one of America's corporate leaders led off to an indictment in handcuffs. Yes, that is right, Ken Lay from the Enron Corporation, while not found guilty today, was indicted on 11 different counts, including wire fraud, securities fraud, and making false and misleading statements. The question is whether this 65-page indictment of Ken Lay, which does prove that no one is above the law, is going to bring justice to ratepayers and consumers in America who have suffered from market manipulation at the hands of Enron.

I say that because there are still about 10 States in America that have utilities that are being sued by Enron. That is right, even though Enron has manipulated contracts, even though there are documents from Federal investigators showing that market manipulation has happened, Enron still has the audacity to sue utilities across

the country forcing them to pay on fraudulent contracts. For the State of Washington there has not been an insignificant consequence for our economy. The fact that people in Snohomish County had a more than 50-percent rate increase and have had that rate increase in place for some time, shows the great impact it has had on our ability to keep jobs, keep people in their homes with proper heating. Even the school districts have had challenges. Snohomish, Mukilteo, and Everett School Districts have estimated that they will pay \$2-plus million in energy costs if their utility is forced to pay Enron. That money could go for hiring teachers, putting classroom materials together, and helping to promote programs under the No Child Left Behind Act, but at the same time they are getting hit with exorbitant energy costs.

So my constituents want to know whether this 65-page indictment is going to lead to justice for Americans who have been impacted by this matter.

Washington is not the only State. Nevada, the State of the Presiding Officer who understands this issue well, has been impacted. There are States in the Midwest. There are many utilities that cannot believe that with all this information that has come about they are being asked to pay on these fraudulent contracts.

I think the question that Federal regulators ought to be asking themselves, and those who are responsible for the indictment of Ken Lay—I want to applaud the Department of Justice for doing the great work they have done in actually bringing about this indictment today. But the question becomes, How did Mr. Lay influence the rest of the regulatory process? If you are the Department of Justice you are bringing about justice to individuals believed to have manipulated the market, financial documents, or made false or misleading statements. Then is the Department of Justice not doing its job? The Securities Exchange Commission, an independent organization that has basically helped in producing this indictment, showing that there has been accounting fraud, aren't they doing their job? The question remains, Why aren't energy regulatory officials doing their job. They are the ones who are supposed to make sure there are just and reasonable rates and that there isn't market manipulation. And, basically, they have said you are right, there weren't just and reasonable rates as it relates to manipulated contracts, but we are keeping those contracts in place.

I raise the question this morning, with Ken Lay's indictment, whether in fact Mr. Lay did not have undue influence on the process of actually helping to get FERC Commissioners on board, and influencing policy by saying to them, stay the course with the California crisis and in the impact it is having on western markets. Today, I

say we definitely need relief from these Enron contracts.

Still, Mr. Lay sent a letter to the executive branch basically saying: I am attaching a list of potential candidates we think would do an excellent job on the Federal Energy Regulatory Commission. Basically, he went on in that document to then give a list of issues that he thought were very important to consider for the Commission appointees that he thought would help influence the process. Specifically, he talked about how basically the free market should continue to be allowed, that they should not push in the energy crisis for a variety of resolutions.

In fact, he actually said one of the criteria should be: Willingness to abolish current native load preference under current tariffs. For us in the Northwest, right there he was lobbying the administration to say, only appoint Commissioners to the Federal Energy Regulatory Commission who are going to let us have our way, putting whatever Enron power on the grid that can go on the grid. If we are willing to pay to put Enron energy onto the grid and pay more money than the Bonneville Power Administration is willing to pay, nominate FERC Commissioners that are going to let us do that.

He goes on to say that he wants to select people who are going to ensure that there are free markets and open access, which is a concern. While he mentions orderly rules of the road, one of the issues has been whether there have been any orderly rules of the road. I think that is part of the concern that we have with his indictment: how much did he influence the regulatory process?

A second thing came to light within the context of the Governmental Affairs Committee. The committee performed an investigation of how much Enron did influence the Commission. In fact, after reviewing memos that had been sent by Ken Lay to the Federal Government, to various individuals, including his support for the nomination of two of the Commissioners, basically the Senate Governmental Affairs Committee said that "documents obtained indicate that Enron attempted to directly and indirectly influence the FERC investigation of the California markets and subsequent decision-making."

So here we have Federal regulators that have been basically nominated and pushed by Ken Lay, and not in the normal, let's nominate somebody to head up an independent commission with such an important role for our economy and Government, way. He sent a letter basically with a litmus test:

Support these people to be Commissioners of the FERC if in fact they support this philosophy of continuing to let the market go without the proper rules and regulations, and basically let standard market design, something that this body has had a lot of concern about, let that be the policy of the day.

Well, one of our committees, the Government Affairs Committee, basi-

cally found that Enron attempted to have direct and indirect influence upon FERC's investigation of the market; that they were trying to lobby FERC, if you will, to do nothing about the California crisis. I find that a very interesting connection in this particular issue, again, because my ratepayers are continuing to pay exorbitant amounts for energy, being sued by Enron. They are on the hook for millions more. Madam President, \$122 million just from the utility in my home county is what they want to get out of our ratepayers, when they have admitted market manipulation. I find this interesting. The day that Ken Lay actually sent the letter to the executive branch was January 8, 2001. In it, he is basically saying: I want to get Commissioners who think like Enron does. I want to get those people making these important policy decisions. Here are the policy decisions I think they should make. Make sure these markets continue to operate in the way that Enron likes.

I find it amazing because instead of Ken Lay doing his job on a daily basis as a CEO, with oversight over an organization, he was lobbying for FERC commissioners. Meanwhile, less than 2 days after Ken Lay writes this letter we have audiotapes from Enron traders talking about the ricochet scheme, which was selling power outside of California and then selling it back in, doing that because it could get a higher price.

So he writes this letter on January 8, and we have audiotapes on January 18 of Enron discussing how they were manipulating the market using the ricochet scheme. On January 23, about 2 weeks after he writes this, there are tapes of Enron traders on the phone discussing how they are going to take a contract with a utility in my State, in Snohomish County, and jack up the price, lying to make them think there was a higher demand for the power, and that way the county would pay more money.

Just after that, 2½ weeks after he sends this letter, there is another audiotape where Enron traders are discussing how much money they are going to make off of the Snohomish County deal and how they are going to account for it in two different ways, one at \$10 million and the other at \$20 million, just because that is the way they keep the books.

Here is a CEO who is spending his time lobbying Federal regulators on how they should not take a hard stance in California, how they should do nothing about the crisis, how they should continue to let the free market work its will, and at the same time his own employees are on the phone talking about how to manipulate price and gouge consumers.

In fact, 2 days after this letter—sent on January 8—on January 10, traders discuss whether they should lie to the Wall Street Journal about their activities.

Here are the people who work for this company. He could have been doing oversight of the people within his company and the market manipulation, particularly since these individuals, executives of his company, had come before Congress basically telling everybody that they were doing their job and that market manipulation was not occurring.

I have a great deal of concern about whether this indictment of Ken Lay is going to bring justice for the American people and the ratepayers. Again, I applaud DOJ for getting the indictment, but the question is whether people who are still being impacted by this crisis are going to get relief.

What does Chairman Pat Wood of the Federal Energy Regulatory Commission say about Enron? At the time this happened, Pat Wood continued to be, I guess, a market-oriented person even though the deregulation experiment in California had proven to be ill-fated, it was proven people would take advantage and manipulate the market. The publication, *Inside FERC*, wrote that Pat Wood believed that "the marketmaking style created by Enron should be emulated by other companies and supported by regulators."

This is after Enron's bankruptcy. Enron had gone bankrupt and we had the chairman, supported by Ken Lay—we had the Federal regulator, who is the policeman on the beat supposedly protecting people—saying Enron should be emulated.

The PRESIDING OFFICER. The Senator's time has expired.

Ms. CANTWELL. I ask unanimous consent for an additional 5 minutes.

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

Ms. CANTWELL. I thank the Chair. What else did Chairman Pat Wood say about Enron and the market manipulation? I get that he thinks a market needs to be open, but a market without transparency and a market without aggressive regulators to make sure they monitor for manipulation is not a true market.

Pat Wood, again according to *Inside FERC*, shortly after Enron went bankrupt, said, "While Enron may be a 'goner,' . . . 'the innovation and entrepreneurial [spirit] that characterized this company remain . . .'"

I will hope Mr. Wood's observations have changed by today with the 65-page, 11-count indictment of Mr. Lay. There are lots of things going on here, and the entrepreneurial spirit that he thought existed in 2001 has definitely been characterized in a different light today. It has been shown that market manipulation has happened and was perpetrated by Enron.

I think where we are is taking a closer look at a deeper philosophy of what Chairman Wood really believes. It is a philosophy, again, where Chairman Wood of the Federal Energy Regulatory Commission was quoted as saying:

. . . the new breed of energy company, in fact, is going to be the only game in town 5 years from now.

That is his philosophy. This leads to the kind of hands-off approach for which Ken Lay lobbied. And again, an approach that the Governmental Affairs Committee said Enron attempted to put in place through direct and indirect influence on the Federal energy regulators. This is basically the policy I think got us into so much trouble in California, without regulators responding in due time. It is the same philosophy that has gotten utilities in about 10 States in financial risk because Enron continues to sue them. Pat Wood is clear in his philosophy. He thinks that the Enron model is the only game in town and it is the way we should proceed.

I can tell you, I don't think it is the only game in town. I don't think we are doing enough on this matter. This body needs to take a firm stand that market manipulation is wrong. It can't be just and reasonable. It can't be in the public interest. And it is not what we ratepayers across the country should be forced to pay on.

Again, Pat Wood, Chairman of the Federal Energy Regulatory Commission, has said, "We're doing the maximum we can do."

We are doing the maximum we can do. He said that in January of this year. In January of this year, while the utility in my State, in Snohomish County, was being the policeman on the beat, transcribing audiotapes, looking through documents, doing all the homework the Federal energy regulators should be doing. While Pat Wood was making the same statement saying we are doing all we can do, my constituents in Washington State were proving there was a heck of a lot more to do to give ratepayers justice.

Again, I applaud what the Department of Justice has done in the indictment of Ken Lay. They are going to try to get to the bottom of this story. But what my colleagues need to realize, and understand, is we have an imbalance. We cannot have the Department of Justice doing a great job with its Enron task force and prosecution of various Enron executives on accounting and securities fraud. We can't have the SEC doing a great job on making sure there are new securities regulations in place to make sure these violations don't happen again, and then have the Federal energy regulators who are in charge of protecting ratepayers fall down on the job. That is exactly what has happened. They have fallen down on the job, they are not protecting ratepayers. We are going to see that after this indictment we are going to continue to pursue this case in the Senate, if we have to, and in the House of Representatives, to make sure that all Federal agencies do their job, and they are giving justice to ratepayers who have been impacted by fraudulent contracts.

I yield the floor.

Mr. BINGAMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENSIGN). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## CLASS ACTION FAIRNESS ACT OF 2004

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2062, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2062) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Pending:

Frist amendment No. 3548, relative to the enactment date of the act.

Frist amendment No. 3549 (amendment No. 3548), relative to the enactment date of the act.

Frist amendment No. 3550 (to the instructions of the motion to commit), relative to the enactment date of the act.

Frist amendment No. 3551 (amendment No. 3550), relative to the enactment date of the act.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I know that most in the Chamber, and those who are in their offices, went home to their home States over the Fourth of July break. It is always a treat for me to do that because, frankly, I think I come from one of the most beautiful places in the world. For me to go to California and get "rooted" in why I want this job, to protect that beautiful place, and to protect the people who live there and to work for them, it is always a joy.

Constituents asked me: What are you going to be doing when you come back? They had asked me about a number of issues they cared about. They are worried about this economy. They say it is uneven. They point out that college tuition is going up more than 20 percent. They are squeezed. They point out that gasoline prices in our State are raging. It is costing them more. They point out that their health care premiums are going up. They are worried about even keeping health insurance. Some of them do not have any.

Those on Medicare are very worried about what they view as a false promise of the administration's Medicare proposal which was supposed to be so great for them in terms of prescription drugs. It turns out the thing is so bureaucratic and such a nightmare they cannot figure it out.

Not only that, they express shock when I tell them in that bill we do