

process and we look forward to continuing to work with the Senate for the benefit of investors in this area.

Sincerely,

PAUL SCHOTT STEVENS,  
President and Chief Executive Officer.

### MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

### TRIBUTE TO FORMER NEVADA SUPREME COURT CHIEF JUSTICE E.M. "AL" GUNDERSON

Mr. REID. Mr. President, Al Gunderson was a paratrooper, a blackjack dealer, a sailor and a voracious reader. He was a lawyer, a justice, a mentor and a teacher. He was a humanitarian. And he was a loving husband to Lupe for 45 years and a wonderful father to Randy. Of all the determined leaders I have met in Nevada, no one was tougher than Al. No one was funnier. And no one worked harder than he did.

His wife, Lupe, told me this week about one memory from their time in Carson City. A young man came up to her once and asked why he kept seeing Al's Jeep at the courthouse at 3 a.m. But everyone knew the answer: Al Gunderson worked round the clock. It would be more strange not to see his car at the office.

The man who as chief justice presided for 6 years over the highest court in our State believed strongly in the phrase that watches over the entryway of the highest court in our Nation: Equal justice under law. He dedicated his life in public service to making sure everyone got a fair hearing and a just ruling. During his 18 years on the court, he steered it away from elitism and shaped it as a forum for everyday Nevadans. And if that meant standing up for the little guy, all the better.

He was a staunch advocate for civil rights. He used his passion for the law to groom future lawyers and judges as a professor at California's Southwestern University. And the same year Al was sworn in and joined the Nevada Supreme Court, he established the Nevada Judges Foundation to extend to more in our State the opportunity to serve as judges, especially in rural communities.

Al found his way to Nevada by way of Minnesota, where he was born of humble means; Nebraska, where he earned his law degree; and Chicago, where he began his legal and public service career with the Federal Trade Commission. We are fortunate that he did.

My friend and mentor and our State's former Governor, Mike O'Callaghan, used to call Al Gunderson a human being first and an outstanding legal mind second. He was right. Al Gunder-

son brought honor not only to the title of justice but also the pursuit of justice. We were honored to know him and learn from him.

### THE PRESIDENT'S POLICY: LEADERS WITHOUT FOLLOWERS

Mr. KYL. Mr. President, I ask unanimous consent that the text of my remarks today to the National Policy Conference of The Nixon Center and The Richard Nixon Foundation be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A central tenet of the Obama Administration's security policy is that, if the U.S. "leads by example" we can "reassert our moral leadership" and influence other nations to do things. It is the way the President intends to advance his goal of working toward a world free of nuclear weapons and to deal with the stated twin top priorities of the Administration: nuclear proliferation and nuclear terrorism. This morning, I want to test this thesis—to explore whether, for example, limiting our nuclear capability will cause others who pose problems to change their policies.

To begin the discussion, let me mention just three specific examples of things the administration has done to "lead by example."

First, the Administration's Nuclear Posture Review (NPR) changed U.S. declaratory policy to limit the circumstances under which the U.S. would use nuclear weapons to defend the nation on the theory that if we appear to devalue nuclear weapons, other states will similarly devalue them and choose not to obtain them. The downside, of course, is that such emphasis on nuclear weapons only reminds states, including rogue regimes, of their value.

Second, the central point of the START agreement, was a significant draw down of our nuclear stockpiles. And, the Administration has already been talking about a next phase that could even include reductions by countries in addition to the U.S. and Russia.

Third, President Obama wants to commit the U.S. never again to test nuclear weapons under the CTBT so that, hopefully, others will follow our example.

I'll discuss these three examples in more detail in a minute.

Obviously, if the theory is wrong, we could be risking a lot. For example, we could be jeopardizing our own security and the nuclear umbrella that assures 31 other countries of their security. Ironically, as our capacity is reduced, their propensity to build their own deterrent is increased—the opposite of what we intend.

We could be sacrificing our freedom to deploy the full range of missile defenses we need by agreeing to arms control agreements like START or other agreements or unilateral actions like the U.S. statement on missile defense accompanying the START treaty.

Were we to ratify the CTBT, we would forever legally give up our right to test weapons. That's a very serious limitation.

The point is, leading by example means sacrifices on our part that could have significant consequences. The question is whether the risks are justified.

Zero nukes: what does President Obama want to achieve with this strategy? Barack Obama has long advocated zero nuclear weapons going all the way back to his writings as a college student in 1983. In fact, he wrote then that the drive to achieve a ban

on all nuclear weapons testing would be "a powerful first step towards a nuclear free world." He's even cast it in moral terms, saying that "as a nuclear power, as the only nuclear power to have used a nuclear weapon, the United States has a moral responsibility to act."

There are four big assumptions here: that the Global Zero idea, a world without nuclear weapons, is necessarily a good thing; that such a world could realistically be achieved; that our leadership here will help to reestablish previously lost moral force behind U.S. policy; and that, if we lead by example, others will follow.

The first three assumptions need to be carefully examined; though this morning, I will focus only on the last.

Suffice it to say the following about the first three assumptions: first, is "zero" really desirable? If nuclear deterrence has kept the peace between superpowers since the end of World War II, which itself cost over 60 million lives by some estimates, are nuclear weapons really a risk to peace or a contributor to peace?

Second, since the know-how exists to build nuclear weapons and they can't be disinvented, is it really realistic to think they could be effectively eliminated? For example, if we get near to zero, any nation that can breakout and build even a few nuclear weapons will become a superpower.

And the superpowers themselves will find it difficult to get close to zero. For example, if Russia deploys ten extra nuclear weapons today, that's not a big deal, we have 2,200 deployed. If, however, each side is at 100 weapons, and one side deploys an extra ten, that's a significant military breakout. And while we will have 1,550 deployed weapons under the new treaty, and China will still have only several hundred, as we go lower, China has every incentive to build up quickly and become a peer competitor to the U.S. How do we deal with these problems? It's not clear we know.

Third, do we really have to "restore our moral leadership" and is it necessarily more moral or moral at all to eschew weapons that have been a deterrent to conflict, but the elimination of which could make the world again safe for conventional wars between the great powers? Again, World War 2 cost an estimated 60 million lives. After 1945, the great powers have been deterred from war with each other.

These three questions deserve full debate—but, it is the last assumption I want to explore today—that if we lead, others will follow.

Put another way: is the world just waiting for the U.S. to further limit or eliminate its nuclear weapons? Is it true that if we lead by example, others will follow, and nuclear weapons will cease to exist? And, does our credibility in the world depend on taking these actions?

The President outlined his vision in an interview with the New York Times last year: "it is naïve for us to think that we can grow our nuclear stockpiles, the Russians continue to grow their nuclear stockpiles, and our allies grow their nuclear stockpiles, and that in that environment we're going to be able to pressure countries like Iran and North Korea not to pursue nuclear weapons themselves."

The first problem with that is that it's factually wrong—we are not growing our nuclear stockpiles, we're reducing them, and we have been for years. The second problem is that, notwithstanding our reductions, others are not following suit.

One of the first places President Obama chose to lead was to modify our approach to the use of nuclear weapons in his new Nuclear Posture Review. I previously mentioned his new policy of non-use against certain kinds of non-nuclear attacks.

A second feature of the NPR was to artificially take off the table some necessary options like replacement of nuclear components to make them more reliable and safe. This is leading by example that other nuclear powers aren't following and we shouldn't be doing if we want to ensure that our weapons will do what we want them to do.

The Administration's next step was signing the NEW START treaty, with significant reductions to our deployed warheads and delivery vehicles and potential limitations on missile defense. But Russia was going to reduce its numbers with or without the treaty—so we should not conclude their acts were because we led by example. And it remains to be seen whether what we gave up will be worth the ostensible “reset” in our relations.

And, after NEW START, there is another arms control treaty. Let me quote Assistant Secretary of State Rose Gottemoeller in a speech titled “The Long Road from Prague”: “The second major arms control objective of the Obama Administration is the ratification of the Comprehensive Nuclear Test-Ban Treaty (CTBT). There is no step that we could take that would more effectively restore our moral leadership and improve our ability to reenergize the international non-proliferation consensus than to ratify the CTBT.”

Is it true we have acted badly and must atone to restore our moral leadership? Here's what we've done in disarmament already: the U.S. has reduced its nuclear weapons stockpile by 75 percent since the end of the Cold War and 90 percent since the height of the Cold War (this doesn't even include the NEW START figures). The U.S. has not conducted a nuclear weapons test since 1992. It has not designed a new warhead since the 80s nor has it built one since the 1990s. We have pulled back almost all of our tactical nuclear weapons, and in the new NPR, we will retire our sea launched cruise missile.

And what has this “leadership” gotten us? Has it impressed Iran and North Korea? Has it kept Russia and China and France and Great Britain and India and Pakistan from modernizing (and in some cases growing) their nuclear weapons stockpiles?

Russia is, in fact, deploying a new multi-purpose attack submarine that can launch long range cruise missiles with nuclear warheads against land targets at a range of 5,000 kilometers . . . just barely missing the threshold to be considered a strategic weapon under the New START treaty. Of course, a tactical nuclear weapon has a strategic effect if it is detonated above a U.S. or allied city.

Will Pakistan or North Korea ratify the CTBT just because the U.S. does? Not likely. In fact, both nations continued their nuclear weapons tests after the U.S. unilaterally stopped testing and even after the U.S. signed the CTBT.

Have these steps motivated our allies to be more helpful in dealing with real threats like Iran and North Korea and with nuclear terrorism? If we ratify CTBT, would Great Britain suddenly have a new motivation to help us more on Iran? If we cut more nuclear weapons from our stockpile would France now be willing to cut back on its force de frappe?

Was Russia willing to discuss its tactical nuclear weapons as part of the current START treaty? Russia's President has said that “possessing nuclear weapons is crucial to pursuing independent policies and to safeguarding sovereignty.” In fact, Russia appears to be as difficult as ever, announcing that it will build a nuclear reactor in Syria on the same day that the U.S. announced it will begin nuclear cooperation with Russia.

Has all of our work toward disarmament impressed Turkey to play a constructive or obstructive role in reining in Iran?

The recent Nuclear Security Summit saw no meaningful new commitments because of our newfound moral leadership. In fact the most the Administration could say for it is 47 nations signed a non-binding communiqué.

And with regard to the Non Proliferation Treaty review conference, which is underway as we speak in New York, will our moral leadership bring us any benefit there? It is not encouraging to see the conference devolve into a discussion of Israel's nuclear weapons program as opposed to Iran's.

When countries have cut back their nuclear weapons programs, it was for other reasons, namely, their own security interests or economic requirements. Nations, with the exception of the U.S. it seems, take actions that they perceive to be in their best interests. They do not change their national security posture merely because of U.S. disarmament. They may even observe these steps as weakness and opt to double down on their aggressive outlaw actions as a result.

For example, Russia agreed to the limits in the new START treaty, but, as I noted, that was only because it was already going down to those levels, not because of some U.S. moral leadership.

Nor did South Africa abandon its nuclear weapons program because of our leadership—it was because of the fall of the apartheid regime.

Did Libya end its program because we opted not to go ahead with RNEP or RRW? No, Libya saw 160,000 U.S. troops in Iraq enforcing UN Security Council Resolutions on nuclear proliferation and feared it would be next.

These same interests, security and commercial, also dictate nations' actions with regard to the nuclear terrorism and proliferation issues. For example, Russia says that an Iran with nuclear weapons is a threat. And it will go along with some sanctions, e.g., sanctions that raise the global price of energy, of which Russia is the world's leading exporter—but it won't go along with sanctions cutting off Iran's flow of weapons, which Russia sells in great quantity.

And even a European country like Germany would like the U.S. to remove from that country the tactical nuclear weapons we deploy there for the defense of NATO, but, at the same time, is actually growing its economic links to Iran—and it appears willing only to impose sanctions agreed to by the U.N. and the E.U.

Bottom line: there is no evidence our moral leadership in arms control and disarmament will convince countries to set aside their calculations of the impact of nuclear proliferation and nuclear terrorism on their national security, and help us address these threats.

The Administration's security agenda is based on the notion of the U.S. making substantive changes to our national security posture in the hopes of persuading others to act, frequently contrary to their economic or security interests.

But this good faith assumption that others will reciprocate is not supported by any evidence—it is certainly not informed by any past experience. Before big changes are made to our security posture, the President owes it to the American people to explain exactly how the changes will improve our security. It cannot just be a matter of change and hope. Too much is at stake.

I also think the American people will be quite surprised to learn that their nation lost its moral leadership somewhere and that concessions to their security are now necessary to reestablish it.

As a complete aside, the most recent example of the Obama Administration's thinking in this regard is the Assistant Secretary of State for Democracy and Human Rights' comparison of the immigration law passed by my state of Arizona to the systematic policy of abuse and repression by the “People's Republic of China.”

As you can tell by now, I am not much impressed with the notion that we can achieve important U.S. security goals by leadership which stresses concession by the U.S. Rather than change and hope, I adhere to the philosophy of President Reagan epitomized in the words “peace through strength.”

A strong America is the best guarantor of a peaceful world that has ever been known. And there is nothing immoral about strength that keeps the peace.

#### NOMINATION OF ELENA KAGAN

Mr. LEAHY. Mr. President, earlier today I announced that the Senate Judiciary Committee will hold its confirmation hearing on the nomination of Solicitor General Elena Kagan to be Associate Justice on the U.S. Supreme Court beginning June 28.

I have reached out to Senator SESSIONS, the committee's ranking Republican, to discuss the scheduling of this hearing, and we were finally able to meet yesterday. We worked cooperatively to send a bipartisan questionnaire to the nominee last week. We joined together to send a letter yesterday to the Clinton Library asking for files from Solicitor General Kagan's work in the White House during the Clinton administration. I will continue to consult with Senator SESSIONS to ensure that we hold a fair hearing.

This is a reasonable schedule that is in line with past practice. The hearing on the nomination of Justice Kennedy was held just 33 days after his designation. The hearing on the nomination of Justice Ginsburg was held 36 days after her nomination. And the hearing on the nomination of Justice Rehnquist to be Chief Justice was held 42 days after his nomination. When John Roberts was first nominated to succeed Justice O'Connor, I agreed with the Republican Chairman to proceed 49 days after his designation even though he had not yet even received his answer to the committee's questionnaire. After Hurricane Katrina, the death of Chief Justice Rehnquist, and the withdrawal of that initial nomination and his nomination, instead, to be Chief Justice, the committee proceeded just days after his nomination and only 55 days from his earlier designation. Of course, last year we proceeded with the hearing on the nomination of Justice Sotomayor 48 days after she was designated. Senate Republicans said that hearing was fair and was conducted fairly. This year, I am scheduling the hearing to start 49 days after Elena Kagan's nomination.

There is no reason to unduly delay consideration of this year's nomination. Justice Stevens announced on April 9 that he would be leaving the Court. He wrote that he would resign effective the day after the Supreme