

the introduction of S. 2218 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CRAPO). Without objection, it is so ordered.

Mr. SESSIONS. I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. The Senate is in morning business with Senators permitted to speak for up to 10 minutes.

The Senator may proceed.

#### NOMINATION OF RICHARD A. PAEZ

Mr. SESSIONS. Mr. President, I believe I have the responsibility today to write the majority leader to ask that we not proceed to vote on the Paez nomination, and to ask that additional hearings be held on that nomination to determine whether or not he correctly and properly handled the guilty plea and sentencing of John Huang in Los Angeles, CA, that fell before his jurisdiction in the Los Angeles district court.

This is a matter of importance. It is something we have not gotten to the bottom of. It is something my staff has uncovered as we have come up to this final vote. I believe it is important.

Judge Paez is a Federal judge today. He has been controversial because of his activist opinions and background and has been held up longer than any other judge now pending before the Congress. We have only had a few who have had substantial delays, probably fewer than two or three. There are two now who have been delayed. He is still the longest. I do not lightly ask that he be delayed again, but he is a sitting Federal judge; he has a lifetime appointment. It is not as if his law practice is being disrupted and he is being left in limbo about his future. He can continue to work until we get to the bottom of this.

The President seeks to have him confirmed to the Ninth Circuit Court of Appeals, which is the highest appellate court in the United States except for the Supreme Court. It is a high and important position. We ought to make sure we know what really happened out there when John Huang was sentenced.

Basically, that is what happened. The John Huang case was part of the investigation of campaign finance abuses by the Clinton-Gore team in the 1996 election. Mr. Huang is the one who raised \$1.6 million, a lot of it from foreign sources, the Riadys in China—those kinds of things. Ultimately, the Democratic National Committee had to refund \$1.6 million that they believed

they had received wrongfully and illegally. Eventually, the Clinton Department of Justice proceeded with this investigation.

The Judiciary Committee chairman, ORRIN HATCH, and the chairman of the Governmental Affairs Committee, FRED THOMPSON from Tennessee, repeatedly urged the U.S. Attorney General not to investigate that case herself because she held her office at the pleasure of the President of the United States. He could remove her at any time. Even if she did a fair and good job with it, people would have reason to question it. They urged her repeatedly—and I have, others have, and a large number of Senators have—to turn this over to an independent counsel. She did on many other investigations. But this one they would not let go of; they held onto it. The President's own appointees held on to this campaign finance investigation.

I spent 15 years as a Federal prosecutor, 12 as a U.S. attorney, 2½ as an assistant U.S. attorney. I have personally tried hundreds of cases. I have personally participated in, supervised, and directly handled plea bargains. I know something about the sentencing guidelines, which are mandatory Federal sentencing rules saying how much time one should serve.

What happened is that the case did not go before a Federal grand jury for indictment. The prosecutor, a Department of Justice employee, and Mr. Huang and his attorneys met and discussed the case. They reached a plea agreement. That plea agreement called for him to plead guilty to illegal contributions to the mayor's race in Los Angeles for \$7,500—maybe another little plea, but I think it was just that \$7,500—and he would be given immunity for the \$1.6 million or any illegal contributions he may have received for the Clinton-Gore campaign that had to be refunded. He would be given immunity for that. He was supposed to cooperate and testify. That was going to justify the sentence.

After they reached this agreement and Mr. Huang agreed to waive his constitutional rights to be indicted by a grand jury, he said: Don't take me before a grand jury. You make a charge, Mr. Prosecutor, called an information, instead of an indictment, and I will plead guilty to that. So they worked out an agreement. He agreed to plead guilty to that.

Sometimes that is done. It is not in itself wrong, but it is a matter that increases the possibility of an abusive relationship between the prosecutor and the defendant, I must admit.

They say that cases are randomly assigned in Los Angeles. There are 34 judges in Los Angeles. Judge Paez was one of those judges. He got the Huang case. Curiously, he also got the Maria Hsia case. They had a case against Maria Hsia in Los Angeles because she was involved in this, too, and they eventually tried her a few days ago and convicted her in Washington on

charges of tax evasion, I believe, arising out of this same matter. She was tried and convicted here on separate charges.

Oddly, this judge, who was a nominee of the President of the United States, somehow got these cases and presided over them. I think there is a real question whether he should have taken the cases.

There is no doubt in my mind, as a professional prosecutor who has been through these cases for many years, that the prosecutor's duty is to make sure the defendant is given credit for cooperating; that is, spilling the beans, admitting he did wrong, asking for mercy in those cases, agreeing to testify about what he knows. When you do that, you are entitled to get less than the sentencing guidelines would cause you to get.

But the critical thing is, Mr. Huang knew high officials in this administration and knew the President. I believe he spent the night in the White House. He has certainly been there for meetings at times. So this was a man who had been involved in not just some inadvertent event but a very large effort to solicit foreign money, some of it connected to the country of China, which is a competitor of the United States. It was a big deal case.

Knowing that the person who had nominated him at that very moment could have been embarrassed or maybe even found to be guilty of wrongdoing if Mr. Huang spilled all the beans, I am not sure he should have taken the case at all out of propriety, but he took it, assuming he did the right thing.

The case then came up for sentencing. Some of the people who defend Judge Paez have told me repeatedly in recent days that they don't believe it was Judge Paez's fault so much as it was the fault of the Department of Justice, that they did not tell him all the truth; they acted improperly; if they had told him all the facts, he may have rendered a more serious sentence than he did under these circumstances.

I have had my staff review the plea agreement. Much of it is not available to us. We did not get the pre-sentence report, which I would love to see. We did not get to see some other matters involving the extent of the cooperation of Mr. Huang. That was not available to us. But we do have a transcript of the guilty plea, what went down and what facts were produced and what facts the judge did know and the judge was told.

It appears to me the judge was not told all the facts by the Department of Justice. That is a very serious thing, if it occurred. It is a failure on their part to fulfill the high ideals of justice in this country.

If we look on the Supreme Court building, right across the street from the Capitol, the words written in big letters on the front of that building are these: Equal justice under law. When charges were brought against President Nixon, the impeachment charges voted

against him were clearly established by the Supreme Court—that the President and no person in this country is above the law.

We are a government of laws and not of men. That is a foundation principle of America. It is in our early debates about establishing the Constitution and the rule of law.

We are a government of laws and not of men. That was raised during the drafting of the impeachment clause. I remember I researched that at the time. That high ideal was discussed by the people who wrote our Constitution. So I say to you that this was a high-profile case of immense national interest. It had been a subject about which TV and news stories, magazines, newspapers, and so forth have written—the Huang case. The American public had every right to expect this case would be handled scrupulously and that there not be the slightest misstep.

A judge with a lifetime appointment ought not to have felt in any way obligated to do anything other than conduct himself according to the fair and just aspects of handling this case. That, to me, was basic. That is why we give the stunning power of a lifetime appointment. But we have to ask that they adhere to high standards in utilizing that power. If they misuse it, we can't vote and say: We don't like the way you are doing your job, judge, we are going to remove you. No. He has a constitutional right to a lifetime appointment, unless he commits an impeachable offense. Bad decisions are not impeachable offenses.

So the judge took this case, and I believe he had a high obligation to conduct himself properly. The whole Nation was watching. Maybe he didn't have all the facts, but we found that he started at a base level of 6. Under our Federal sentencing guidelines—many of you may not know, but this Congress did a great thing a number of years ago. When I was prosecuting cases, they eliminated parole and put a restriction on how a judge could sentence. They said you have to carefully evaluate every case that comes before you, and we have a sentencing commission that goes over the details.

There are guidelines about what you must find. If you find the defendant used a gun, or that he is a previously convicted felon, or that he used corrupt means to organize an entity, all of these factors could increase the time he or she serves in jail. How much money was involved could increase the time in jail; a little bit is less, and more is more. Judges have used all of those guidelines. But there was great concern in the Congress that many judges in Federal court didn't sentence appropriately. You might have an offense in one district that is treated one way, and it might be treated much more lightly in another district. So he got the base level for that.

One of the factors that the judge had awareness of and had the evidence on was that a substantial part of this

fraudulent scheme was committed outside the United States. Under the sentencing guidelines, that calls for adding two different levels to this sentence. Judge Paez made no adjustment. He did not increase the level for the fact that in part of this scheme the money came from outside the United States. People who were giving the money were from outside the United States. A substantial part of this involved international activity. That is precisely the motive behind adding to punishment within the level of guidelines. The judge failed to do so. I believe he clearly should have done so under the circumstances.

He also had evidence that at least 24 illegal contributions were spread out over the course of 2 years involving multiple U.S. and overseas corporate entities, which John Huang was responsible for soliciting and reimbursing these illegal contributions. So he was actively involved with these corporations. Under Federal guidelines, "If an individual is an organizer or a manager that significantly facilitated the commission or concealment of the offense"—that is a direct quote—"under 3(b)1.3, he should be given a 2 to 4 level increase."

Judge Paez gave him no level increase for those two acts. John Huang also was "an officer and director of various corporate entities involved and also was a director and vice chairman of a bank." What does that mean when you are doing sentencing guidelines? Under the guidelines, if an individual abuses a position of public or private trust, such as using his position as a board director and vice president of a bank in a manner that significantly facilitated the commission or concealment of the offense, then he should have added two additional levels for that. Right there, we are talking about at least six, maybe eight, different additional levels. The judge found no increases for that.

So when he pleaded guilty, Judge Paez found that his level was eight. That is very critical because, I am sad to say, that is the highest level you can have and still get probation and not spend a day in jail. It calls for a sentence of zero to 6 months if you have level 8. If the judge wants to be tough, he can give him 6 months if he falls under level 8. If he wants to be lenient, he can give straight probation, or zero time in jail. Judge Paez gave him probation, the lowest possible sentence. If it would have been level 9, the lowest possible sentence would have been time in the slammer, in the bastille where he belonged.

I am troubled by that. I know there was a lot of pressure to move this case along, get this case out of the way and not have any embarrassment. I am sure there was a lot of tension. But a lifetime-appointed Federal judge should have a commitment to the highest standards of integrity. Even if it involved the President of the United States, the man who appointed him, he

should not play with the sentencing guidelines. I assure you that 18-, 19-, and 25-year-old kids, every day, going into Federal court—and I have seen it; I presided over them—are getting 10, 15, 25 years without parole because they are significant drug dealers and they have been selling crack. They are sent off to the slammer and nobody worries about them.

So how is it that John Huang raises \$1.6 million that had to be returned, pleads guilty to some token offense on a contribution to the mayor of Los Angeles, and he gets to walk out without 1 day in jail? Well, the prosecutor was at fault, in my opinion. This was an unjustified disposition of this case, in light of the circumstances involved.

I cannot imagine that anybody can ultimately defend the disposition of this case. They may say, well, the judge just followed the prosecutor's recommendation. The judge did follow the prosecutor's recommendation, but he was not required to do so. In that plea bargain, as I noted, it said the judge is not required to follow this plea bargain. If he, Mr. Huang, rejects it, we will withdraw the plea and we will go back to square one and start all over. The judge is not required to accept it. The judge wasn't required to accept the plea, and he should not have accepted this plea.

These are the exact words from the plea agreement:

This agreement is not binding on the court. The United States and you—

Meaning Mr. Huang, in the contract between the prosecutor and Mr. Huang—

understand that the court retains complete discretion to accept or reject the agreed upon disposition provided for in this agreement. If the court does not accept this agreement, it will be void, and you will be free to withdraw your plea of guilty. If you do withdraw your plea of guilty, this agreement made in connection with it and the discussions leading up to it shall not be admissible against you in any court.

That is standard language. I have used it many times myself. The judge was obligated to follow the law of the United States. He was obligated to make sure justice occurred, if there was equal justice under the law.

I don't know how judges who send kids to jail for 20 years without parole can sleep at night when they are talking about letting this guy off the hook for this offense.

Mrs. BOXER. Mr. President, will the Senator yield?

Mr. SESSIONS. Yes.

Mrs. BOXER. I know my friend doesn't want us to vote on Judge Paez.

Mr. SESSIONS. Let me just say to the Senator that I have asked for an additional hearing to find out if I might be wrong about this and hear both sides of it. But I am not going to support a filibuster on this nomination. If we do that, we will just vote on it, as far as I am concerned.

Mrs. BOXER. I thank my friend very much.

I want to ask him if he read what Senator SPECTER said regarding the two cases we raised, the Maria Hsia case and the Huang case. I ask the Senator to react to this because I think it is important.

When asked if this vote ought to be put off, he said:

These matters are now ripe for decision by the Senate. There has been some suggestion of a further investigation on this matter, but when Judge Paez's nomination has been pending since 1996, and all of the factors on the record demonstrate it was the Government's failure, the failure of the Department of Justice to bring these matters to the attention of Judge Paez and on the record, he has qualifications to be confirmed.

In other words, what Senator SPECTER is saying is that Judge Paez was following the recommendation of the prosecutor.

I ask my friend: When the prosecutors say this is what we think is the best for the case, is it really that unusual for a judge to say let the prosecution stand? If we want to accuse Judge Paez of something, it ought to be that he was soft on the case, No. 1. I say to my friend: It was randomly selected; he got these two cases; he didn't ask for these cases. No. 2, he followed the prosecution's request, and he is being condemned for it.

My last point is—I know my friend will comment on all of this—my friend was interested in the sentencing issue surrounding Judge Paez. We have the facts on that, and he does as well.

I think it is important to note that if you look at U.S. district court as a whole—

Mr. SESSIONS. I have the floor.

Mrs. BOXER. I will come back to it.

Mr. SESSIONS. I will finish, and the Senator can respond.

Mrs. BOXER. I appreciate my friend yielding. I will wait.

Mr. SESSIONS. I am sorry. I will be happy to enter into a dialogue and come back to it later.

Senator SPECTER was, in fact, a State prosecutor. He is familiar in that boiler room of Philadelphia when judges are sitting up there and prosecutors come forward on burglary cases. The judge is a victim. He has to take the recommendation of the prosecutor and does so routinely. Federal judges try to do that, but it is always recognized that they have ultimate responsibility, as this plea agreement says.

In a case of national importance, which in itself just on the face of it does not pass the smell test, in my view, he should not have accepted it.

Another thing Senator SPECTER has never done is handle the sentencing guidelines. They were not a part of the State courts of Philadelphia or Pennsylvania, but they were a part of the Federal court where Judge Paez was sitting. I don't think Senator SPECTER has ever considered the fact that the evidence is what the judge had, and he did not have all that he should have had. But what he did have indicates that he did not properly apply the guidelines. That is the only thing he

can be responsible for, in my view. If evidence was withheld from him, I understand that. But what I have been quoting here is what he did have.

I also note in Roll Call, in the Republican Representative Jay Kim probation case, they said Judge Paez's sentence of Representative Kim was a mere slap on the wrist and makes us think that the Senate Judiciary Committee ought to question whether or not Paez is too soft on criminals to be a Federal judge.

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

Mr. SESSIONS. I thank the Chair.

I hate to ask this to be delayed. But he is a sitting Federal judge. It is not messing up his Federal practice in a couple or three weeks to get to the bottom of this and how the case was assigned, because it didn't come out of an indictment by a grand jury, it came out of the handling by the prosecutor. In my experience, those cases are not randomly assigned. Quite often, they are taken directly by the prosecutor to the judge.

I would like to have somebody under oath explain to me how the Hsia case and the Huang case went to Judge Paez. Out of 34 judges, they went to Judge Paez. That doesn't strike well with me. I would like to know that before we go forward with the vote. If he has a good answer, I am willing to accept it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I ask unanimous consent to be allowed to proceed in morning business for up to 10 minutes and that my remarks be followed by the Senator from California, Mrs. BOXER.

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

Mr. GRAMS. Thank you very much.

#### THE INCOME TAX ANNIVERSARY

Mr. GRAMS. Mr. President, 87 years ago today, the Federal Government began collecting income tax. I rise not to celebrate the anniversary, but to condemn the occasion. What began as a simple flat tax on the revenue of a few has turned into a Pandora's box that devastates many. And so I take this opportunity today to strongly urge Congress to begin repealing the process of the constitutional amendment granting the Federal Government the power to tax, abolish the income tax, and replace it with a tax that is fairer, simpler, and friendlier to the taxpayers.

The reasons for abolishing the Federal income tax are compelling. To begin with, the income tax has clearly violated the fundamental principles upon which this great Nation was founded.

Mr. President, our country was born out of a tax revolt—a tax revolt built upon freedom and liberty. To preserve liberty, our Founding Fathers crafted an article in the Constitution un-

equivocally rejecting all direct income taxes that were not apportioned to each state by its population.

During the following 100 years, this provision brought enormous economic opportunities and prosperity for America. Although Congress attempted to enact income taxes in the late 19th century, the Supreme Court repeatedly declared the income tax unconstitutional. As a result, between 1870 and 1913, before the income tax was levied, the U.S. economy expanded by over 435 percent in real terms. This was an average growth rate of more than 10 percent per year, without inflation.

Congress has passed many ill-advised laws, but nothing has been more disastrous than the passing of the 16th amendment in 1909, which allowed the Federal Government to begin levying and collecting income tax as of March 8, 1913.

This shift in policy represented the efforts of those liberal elements who believes and promoted the ideology that society has a claim on one's capital and labor. They suggested that the redistribution of private income would increase equality among people. Their strategy was simple: they claimed this income tax was to "soak the rich" and was not supposed to provide a mechanism for Washington to reach into most Americans' pockets—the argument we still hear again and again on the Senate floor.

Initially, less than 1 percent of all Americans paid income tax. Only 5 percent of Americans paid any income tax as late as 1939. But today, nearly every American is subject to the income tax. The Federal tax burden is at an historic high. A median-income family can expect to give up nearly 40 percent of its income in Federal, State, and local taxes—more than it spends on food, clothing, transportation, and housing combined.

More Americans are working harder and are earning more today. But a large share of the higher incomes of hard-working Americans aren't being spent on family priorities, but are instead being siphoned off by Washington.

They are working harder, but they are taking home less money because the Government is taking a bigger bite out of their paychecks. Then there is "bracket creep." I think everybody knows what that is. It means a large share of revenues goes to taxes as inflation pushes you into another income level, or another tax bracket, so Washington can get a bigger bite out of your paycheck.

Mr. President, is this what our Founding Fathers fought for? Even the sponsor of the 16th amendment, Congressman Sereno E. Payne of New York, later realized his mistake and denounced direct taxation as "a tax upon the income of honest men and an exemption, to a greater or lesser extent, of the income of rascals."

T. Coleman Andrews, a former commissioner of the Internal Revenue Service said: