We must do more and focus more attention on the intelligence resources that may help detect potential terrorist attacks before they can be consummated. We should take up and pass President Clinton's anti-terrorism proposals. We should determine what additional tools the FBI and other law enforcement agencies may need to carry out their missions.

We should examine proposals for improved visa tracking of overseas visitors to the United States, so that those who overstay their visa time cannot simply vanish into society without a trace. We should take steps to alter our asylum procedures, so that those legitimately seeking political refuge can be admitted, while those using asylum backlogs as a pretext are not allowed to stay indefinitely, but let us remember, as well, that this tragedy was not the work of overseas terrorists, but of Americans, people who enjoyed the great freedom our Nation offers.

We have become accustomed to seeing terrorist attacks in other parts of the world—Bosnia, the Middle East, Europe, and Latin America. Americans have seen hundreds of smoke-stained people streaming out of the World Trade Center Buildings in New York City. In response, we have been quick to explain that the causes are nationalism, or religious fanaticism, or some other belief system with which Americans have nothing in common.

Americans have always been quick to seek reasons to explain what happens in the world around them. But there are events so monstrous, so evil, that they cannot be explained away. No human reasons can account for the minds that could conceive, or the hands that could carry out, this deed.

Nevertheless, it is natural and healthy for each of us to question and try to understand how this could have happened, and to think—beyond laws—about what we as a society might do to reverse the trends of violence and intolerance in America.

It is imperative that we find ways for Americans from diverse backgrounds with sometimes very divergent points of view to live harmoniously.

The first step toward that goal is for us to talk to each other. We must find better ways to do that. We must restore civility to private, and especially public, discourse. We should not permit our political or racial or ethnic or other differences to blind us to each other's truths.

If we listen to one another, we are likely to find our differences are not as great as some of the intemperate rhetoric makes them appear. We are likely to remember that what divides us is much less important than what unites us as a nation. We will never eliminate all our differences, but we will learn that we can live with them.

Each of us—as parents, neighbors, teachers, elected officials, candidates for office, journalists—has an affirmative responsibility to promote that kind of environment.

The bombing in Oklahoma City is the result of evil, misguided people. We do not yet know what their motivation was; we can only speculate. But we can ask ourselves if our increasingly hateful public discourse is falling on ears receptive to hate, if it is providing a context for hands ready to undertake hateful acts.

No one believes that the actions of any man are the fault of the speech of anther, but people are inspired and uplifted by words and ideas. We saw that at the memorial service in Oklahoma City. Words and ideas can and do inspire and uplift. But they can mislead and delude. All of us who speak and act in the public arena have an obligation to bear that in mind, for every time we speak, in effect, we are making a choice about what kind of environment we promote. The privilege of serving our community carries with it the obligation not to damage that community.

Americans now can and must do what earlier generations of Americans have done. We must mourn with the families of victims and pray for all the shattered lives and hopes. We must identify changes in the law that have the promise of making us safer. And we must continue to live our lives, saddened by the enormous loss, but rededicated to the social contract that binds us together and allows all of us from different backgrounds, with different ideas, to live together in peace.

CONDEMNING THE BOMBING IN OKLAHOMA CITY

The PRESIDING OFFICER (Mrs. HUTCHISON). Under the previous order, the hour of 12 noon having arrived, the Senate will now proceed to consideration of Senate Resolution 110, which the clerk will report. Under the previous order, the Senate will proceed to vote on the resolution. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 110) expressing the sense of the Senate condemning the bombing in Oklahoma City.

The Senate proceeded to consider the resolution.

Mr. NICKLES. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the resolution. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Oregon [Mr. HATFIELD] and the Senator from Vermont [Mr. JEFFORDS] are necessarily absent.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN] is necessarily absent.

The PRESIDING OFFICER (Mr. INHOFE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 133 Leg.]

YEAS—97

Abraham	Feingold	McCain
Akaka	Feinstein	McConnell
Ashcroft	Ford	Mikulski
Baucus	Frist	Moseley-Braun
Bennett	Glenn	Moynihan
Biden	Gorton	Murkowski
Bingaman	Graham	Murray
Bond	Gramm	Nickles
Boxer	Grams	Nunn
Bradley	Grassley	Packwood
Breaux	Gregg	Pell
Brown	Hatch	Pressler
Bryan	Heflin	Pryor
Bumpers	Helms	Reid
Burns	Hollings	Robb
Byrd	Hutchison	Rockefeller
Campbell	Inhofe	Roth
Chafee	Inouye	Santorum
Coats	Johnston	Sarbanes
Cochran	Kassebaum	Shelby
Cohen	Kempthorne	Simon
Conrad	Kennedy	Simpson
Coverdell	Kerrey	Smith
Craig	Kerry	Snowe
D'Amato	Kohl	Specter
Daschle	Kyl	Stevens
DeWine	Lautenberg	Thomas
Dodd	Leahy	Thompson
Dole	Levin	Thurmond
Domenici	Lieberman	Warner
Dorgan	Lott	Wellstone
Exon	Lugar	
Faircloth	Mack	

NOT VOTING—3

Harkin	Hatfield	Jeffords

So the resolution (S. Res. 110) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

[Senate Resolution 110 was not available for printing. It will appear in a future issue of the RECORD.]

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:37 p.m., recessed until 2:16 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. KYL].

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER. The clerk will report pending business.

The legislative clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

The Senate resumed the consideration of the bill.

Pending:

Gorton amendment No. 596, in the nature of a substitute.

The PRESIDING OFFICER. The Senator from Rhode Island.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. 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. HOLLINGS. Mr. President, awaiting others who wish to address this particular problem, I would like to emphasize, of course, the good that has been done over the many, many years when we have debated product liability. The sponsors of the bill here are looking for a problem to solve and disregarding the fact that the United States of America is the safest society with respect to manufactured products in the history of the world. That has been done in large measure due to that group of trial lawyers, damage suits, punitive damages, and other verdicts. With respect to punitive damages, they can only come about as a result of gross negligence and willful misconduct. And in my State, and in many of the States, some States do not even allow them. But in my State, if the trial judge himself does not find proof of willful misconduct to his own satisfaction, he just throws out that particular finding.

So punitive damages have been used very judiciously, and in reality, are seldom used. For example, we asked the particular witness who appeared before us at the hearings who had presented the issue of punitive damages before the U.S. Supreme Court, we asked him to please study and come back and report to us over the past 30 years the total amount of punitive damages found. I know from my own experience and otherwise that it was a small amount, relatively speaking. I cited at that particular time the $3 billion punitive damage verdict in the *Exxon Valdez* case.

And the gentlemen studied the particular findings of punitive damages over the 50 States in the past 30 years and it was $1.3 billion. Of all punitive damage findings, in all product liability cases, there was an amount less than one-half in one manufacturer's case.

That has been the problem, Mr. President, in the sense that the great number of punitive damages are industries suing industries. An example again was down in the Pennzoil case, in Pennzoil against the Texaco Co. in the State of Texas some years ago. Again there was another $3 billion finding. So I can just cite two manufacturer's cases where all the punitive damage findings in product liability cases amounts to one-sixth of the amounts of those two cases.

But look at the magnificent good that the tort system has done over many, many years. I think, for example, Mr. President, of the 4 million minivan recalls by Chrysler Corp. here in the last several weeks. Quite to the point. You do not find Chrysler Corp. recalling minivans to correct that faulty latch on the back door because they think it is just good business. They know good and well that they are going to get socked for actual and punitive damages if they willfully allow that particular defect to continue, to knowingly, willfully, heedlessly—recklessly is the language used in punitive damage awards—allow that to continue.

And as a result we will give the body before long over at the Department of Transportation information about the millions and millions of car recalls by the various automobile companies over the past several years, which means what? Which means exactly what we are trying to say. If you want to talk about Medicare, limit the damages, limit the recovery of the injured parties as a result of the neglect of these manufacturers as this bill does, and what will happen is that you and I will pick them up in Medicare and Medicaid costs.

In all my years of trial work, I have never really seen an injured party make money. And I can tell you less and less of those in the trial bar are joining that particular trial bar because the other is much more luxurious. If you can represent the industry, the business, the manufacturer, if you can represent, as some 60,000 lawyers here in the District of Columbia represent, lobbyist consultant causes, hardly ever entering the courtroom, you are into the game of billable hours. In my 20 years of active practice and over 40 years at the bar—almost 50 years now at the bar—I have never had a billable hour case. We are always practicing law from the standpoint of the success of the trial and the representation of that particular client.

But be that as it may, let me emphasize going right to the different studies made by the Rand Corp. and others, large manufacturers have responded to product liability suits by establishing corporate level product safety officers. In the 1987 Conference Board report, 232 risk managers reported that over two-thirds of the companies in this survey had responded to product liability by making their products safer.

I can go down the list of the various trials and findings that led to a change of practice, whether it is in the Dalkon shield case, or the Drano case. The evidence showed in the Drano case that, subsequent to the plaintiff's injury, the screw top on the can was changed because it caused it to explode. That particular design was changed on account of the plaintiff being awarded $900,000 in compensatory damages and $10,000 in punitive damages. With regard to firefighter respirators, three firefighters in Lubbock, TX, were killed as a result of a defect in their respirators, a hole in the diaphragm. A lawsuit revealed that the company knew that the respirator was unsafe. The manufacturer later corrected the mask as a result of the lawsuit.

I have a whole documentary of product after product after product being made more safe than ever before on account of product liability. We are all talking like product liability is a burden on society. It is an advantage to the American body politic because it brings out this safe conduct.

Specifically, Mr. President, just a few years ago, originally some 15 to 20 years ago, I went into Bosch, a manufacturer of fuel injectors in my backyard, which now has graduated up to making antilock brakes. I would think that any investor on the New York Stock Exchange would say wait a minute, before I invest in the antilock brake manufacturer, I can see that after a year one might go awry, after 10 years a car with an antilock brake might go and cause the one wheel to lock and the rest spill them over and cause, without even running into somebody else, a serious accident. I better not invest in an antilock brake manufacturer.

The truth of the matter is that I was introduced into the manufacturing plant itself, and I put coverings over my shoes, a smock around my clothing, a head cover over my hair and my head and everything else as if we were producing pharmaceuticals or film. We have the film making plants of Fuji that is doubling their size right now in Greenwood, SC. I have Hoffmann-La Roche actually building the most modern pharmaceutical plant in the world in Florence, SC, right this minute. And we have brought in Parke-Davis and Baxter and Norwich and the other medical pharmaceutical manufacturers. So we know about them.

I thought I was already into one of those film making plants where you could not stand the slightest speck of dust. I asked the manager at the Bosch plant, I said, ''Let me ask you about this plant. How many product liability claims have you had?'' He said, ''What's that?'' I said, ''Product liability claims. Defective antilock brakes, some of them going bad.'' He said, ''Oh, Senator, we have never had a product liability claim. If we had''—and he quickly ran over on the line there and picked up one—he said, ''See that little number. Every antilock brake that goes out of this particular plant has a serial number and we could immediately identify where and at what stage any kind of defect occurred, but we have never had it.''

Now, that particular corporation makes the antilock brakes for the Toyota, for the Mercedes-Benz, and was recently awarded a 10-year contract for all General Motors cars. This is what we have going on as a result of product liability. It is not the stultification or denial of the development of manufactured products or pharmaceuticals or whatever else. What has developed is far more safe to the consuming public.

We know that, and we appreciate it. The Consumer Federation of America, Consumers Union, every consumer organization of any credibility whatsoever in the United States of America, is absolutely opposed to this so-called reasonable bill. They know it, and I know it. It is not reasonable.

The bill in the last three Congresses never had caps. They have caps on punitive damages now in this bill. We never had in the last three Congresses the matter of misuse. Now they have a misuse provision. It allows them to get out from under the particular claims exemption. They have the exclusion for rental car exemptions, the matter of component parts. We can go right on down the different things that have been sneaked into this particular bill.

To talk in terms that I have heard recently about how you cannot pass product liability reform at the State level absolutely begs the question. The distinguished Presiding Officer knows that. He has it in his own State.

In 1988, in South Carolina, under a Republican administration, a Republican Governor, we had a get-together of the chamber of commerce, the textile manufacturers, the pharmaceutical groups, the trial lawyers, the medical bar and all insurance companies, and we got a product liability reform bill passed and signed by the Governor. Forty-six States have done that.

I heard just recently that, to do that at the State level would take 4 or 5 years because those trial lawyers would come in and delay it, because they like delay. Totally false. The sponsors of this bill do not understand that.

I am a trial lawyer. That is the last thing I want is delay. I know the game. The insurance company is going to ultimately pay, if at all, if there is going to be any recovery. The insurance company and the manufacturers' attorneys win every time if they can delay the case. Witnesses get lost, they ''malaccuse,'' and everything else of that particular kind, and all along that trial lawyer is having to pay for what? For the investigative costs, the medical experts, the depositions, interrogatories, the court costs, his own time and everything else on a contingent-fee basis.

You get 5 to 10 fairly substantial cases in your practice and you are carrying those for 2 to 3 years now. Do not tell me it will take 4 to 5 years, I will go broke. So I as a trial lawyer am trying my best to bring those cases to a conclusion. Yes, the trial lawyer does have a self-interest in bringing that case to a conclusion and as quickly as he can. The delay is on the other side. I know, because I represented the electric and gas company and the bus operator in my own hometown in defending injury claims against that bus company. Any time I got the investigators—and we can sit up there with the mahogany desk and nice Karastan rug, answer the phone and act dignified and do not have to worry about looking for any witnesses or talking to any doctors or anything else, just tell the investigatory team of the large corporation—and it was the largest corporation we had in the State of South Carolina at the time I represented them—''Go ahead and get all of those statements. Don't worry about it.'' ''Miss so and so, fill out interrogatories No. 52 and send that to the lawyers and I'll send them another bill.''

Oh, man, that is luxury practice. That is what you have downtown here. That is what you have with this crowd that is sponsoring this particular bill. They wrote it. The game plan now is quite obvious. The game plan is ooze and cruise. How reasonable and how fair and they call it the fairness act and all that nonsense, like somebody is fast asleep, and then go over there and get with the Gingrich contract.

Republicans are rolling over on this side with the Gingrich contract. He writes it over there. He tells them, ''You do this or you're out of it. You're not going to have your funds raised by us, you're not going to have our support in the next year's election and if you want to be on the team, you have to come out for practice and vote as we say vote.''

Right now they have in the morning news how they are trying to get them to sign a pledge about a budget. Can you imagine that? Like joining some organization or fraternity. I never was in a fraternity. They were against the rules at the campus of the college I attended. But you take an oath. So they have an oath of loyalty to whatever else—not to the people they represent or their conscience but what Mr. GINGRICH and the contract finds.

So we are in a dangerous strait here in this particular body. We will be asking for time to debate every one of these particular measures. You have not only the matter of the punitive damages provision in here, you have the exemption for the manufacturer. You would think that the conscience would get them, if you please, and they say, ''Well, it makes no difference.'' If it does not make any difference, I want them to go along with the amendment when we put it up that the manufacturer will also be under the provisions of this particular measure.

They have it for everybody but who? The manufacturer. The manufacturer is not subject to the provisions of this bill. It is a manufacturer's scapegoat if there ever was one. In good conscience, I just could not put up a bill like that and try to defend it amongst my colleagues. I would lose all my credibility. But that is what they have. They say it is not restrictive. Yet, certain evidence is not admissible. They say it is simplicity, eliminating duplication, the multiplicity of suits. They asked for a bifurcated system on the one hand for action and on the other hand for punitive damages and say you cannot on the willfulness part submit that kind of evidence in the actual damage claim over here for compensatory damages.

The Conference of State Supreme Court Justices came up, the National Conference of State Legislatures came up and said this is really going to bog us down taking the guidelines from Washington and trying to administer with new words of art and provisions at the State level. If there is ever one unfunded mandate, this is it. This is an unfunded mandate back at the States to cost more money, more legal costs and everything else of that kind, and they have the audacity to come forth with a straight face and say they are interested in the consumers getting the money because the lawyers are getting too much. That is out of the whole cloth.

Of all tort claims in the United States of America, rather of all civil claims filed in the United States of America, tort represents 9 percent of all civil claims filed. Of the 9 percent of tort claims filed, product liability represents 4 percent of the 9 percent, or thirty-six one-hundredths. We are not talking about medical malpractice. We are not talking about businesses suing businesses. We are not talking about Securities and Exchange Commission suits and class actions. We are not talking about automobile wreck cases. We are not talking about any of those kinds of injury cases. We are talking solely about product liability. It is not a national problem.

President Ford took this up starting back in 1976 with a special study commission, and after 4 years of findings, they found that the States were doing it. Sure enough, over the past 15 years, as I pointed out, 46 of the 50 States have just done that, they have upgraded, in a sense, their product liability laws.

Now cometh the theme, so to speak, of the revolution of the Contract With America. I never heard so many Republican friends of mine quote Jefferson, but all of a sudden Thomas Jefferson has gotten very popular around here in Washington these days. ''That Government closest to the people is the best Government.'' So when it comes to welfare reform, block grant it back, give it to the States. When it comes to housing, give them the money. When it comes to the crime bill, eliminate the cops on the beat, give them block grants back there. The people back home know how to better spend the money. They have the better judgment at the local level. You would think that 12 jurors having sworn under oath to listen to the particular evidence would better be able to make a judgment in a case. But, no, no, not with this manufacturers' bill. Corporate America has come to the scam here and they come and say: ''No, wait a minute, we have to reverse fields and we have to bring this to Washington, and do not worry about it, Washington, we are really not going to get uniformity because we are not going to give you a Federal cause of action,'' which I have been debating for 15 years. If you believe it is a Federal problem, give us a Federal cause of action. They said: ''No, what we are going to do is give you Federal regulatory guidelines.'' That is what this whole body is up against—regulatory measures at the State level. Here with this bill we are going to heap it upon them.

The body is up against the Washington bureaucracy to give it back to the local level. This whole body is all wound up about unfunded mandates here now. Come the end of April, we are going against the contract, and we are going to give them an unfunded mandate, and they know it. The whole body is saying that in welfare we have to make the recipient more responsible. Here we say that the manufacturer is not going to be responsible. We have all kinds of bars in here to protect the manufacturer. If you have any doubt about it, we will show you the section where the manufacturer itself is exempt from the bill. That is what we have going here with respect to product liability.

We have serious problems in this country of ours. But torts, historically, under the English system for 200 some years, has been a matter of the jurisdiction of the States. They are trying to give meaning to the 10th amendment. When I go home and turn on C-SPAN, I see the speakers about the contract say we are going to give meaning to the 10th amendment. Those responsibilities, not delegated specifically under the Constitution to the Federal Government, shall be reserved to the States. Oh, no, they say, on this one, if we can put over this one—how do you put it over? When you get in a campaign, Mr. President, you know how they have been putting it over because I get it from the other side. They come to me, the National Association of Manufacturers, in my campaign over the last 15 years, elected three times. They say, ''Why do you not go along with this thing? We have product liability problems''.

The chamber of commerce comes to you and the Business Roundtable members come to you, responsible civic leaders and all think there is a real problem. Why? Because Victor Schwartz, and the hired hands up here, a bunch of 60,000 lawyers, have been paid off. They say, ''Get ahold of that Senator and get a commitment from him because he has not committed.'' We tried to tell the business leaders, ''Look, wherein do you ever think that the National Congress in Washington, DC, is more conservative than your own legislature back in the State capital?'' I know from 40 years in government that temporarily, yes, you might have a more conservative government and group over in the House of Representatives. But give it a few more years and I can tell you from my experience up here, I would much rather have the State legislature find on this particular score. You might think you get temporary relief but in a few years, you will trip up on this rug and go up to the window and get your money. Business does not have a problem. The 232 risk managers under the Conference Board study showed that it was less than 1 percent of the cost of doing business.

When they get to talking about competitiveness, competitiveness, competitiveness, I have to smile, because I have been in the game for years and I wish they would point out—and they cannot—that we have over 100 German industries—recently BMW, recently Hoffmann-La Roche, and over 50 Japanese industries, and I got the blue chip corporations of America that came to my home State. Not once have they said: ''What about this product liability? We need some kind of solution to it.''

The fine businesses that like and respect safety are willing to put it into the cost of the product and into the practices, with safety offices and everything else in these particular entities all over the United States.

If you want safe manufacturing, you come to the United States of America. We take it for granted and we are about to strip it today and tomorrow and the next day, whenever we vote, trying our best to put in a fixed situation which is, frankly, an embarrassment to me having been on both sides of this particular problem in the courtroom representing businesses as well as representing injured parties. It is difficult, difficult, difficult in this day and age. You do not get runaway juries. They all know about insurance. They are very sophisticated. They have all good businesses. They know there is no free lunch. You have to prove by the greater weight of the evidence to all 12 jurors—all 12. If you miss one, your case is over with; you get a mistrial and you have a hard time getting back into the courtroom and all that time your costs and all are going up.

So in these civil claims of tort, if we want to get to the problem, let us go to the businesses suing businesses that have billions and billions of dollars, where these fellows sit around in the boardroom and say, ''I do not care, let us go to trial and let us show what we can do.'' I put in the RECORD here yesterday the most spurious of claims by different businesses for millions and billions of dollars, really, which says to me perhaps there is a problem. The most objective group—and if you had to characterize it, it could be characterized ''corporate''—is the American Bar Association. They have various divisions. The American Bar started really with the utilities and the railroad and other lawyers. They are the ones who had the money to go all the way to Chicago, all the way to New York or Los Angeles to a meeting. Working lawyers for individual clients never had that kind of money. They found out they were not represented. As a result, that is why you have ATLA, the American Trial Lawyers Association. I was in on the early days when it was organized. Now we have almost as many defense lawyers attend our ATLA conferences as plaintiff's lawyers. The defense lawyers come and learn and understand the various issues, the various demonstrative evidence that was started out years ago on the west coast by Lou Ashe and Mel Belli, and others, to keep a record, rather than an operation by ambush. Give everybody everything you have and say here is what I am going to prove. As a result, we have the Restatement of Torts and otherwise, and wonderful progress has been made in the field of law in the trial of cases over many, many years.

That has been done at the State level. What happened as a result is that the American Bar Association, once again, for the sixth time, has opposed this bill. They have prepared testimony and testified against the bill. You have the American Bar Association; you have the Association of Law School Deans and Professors—over 121—opposing this as bad law. You have the National Conference of State Legislatures and the Conference of State Supreme Court Justices. We have the credibility and the concern of the responsible consumer groups and other wise individuals—the AFL–CIO and everyone else who really understands the plight of injured parties. They all oppose this as a bad, bad, bad, prejudicial kind of measure that should not be in the National Congress. If there is a problem, the States are handling it well. This is part of the contract. I hope that in this context these folks will keep their contract with the American people.

Mr. BREAUX. If the Senator will yield, I would like to ask the Senator a question. One of the arguments I have heard on the side of the proponents of the legislation is that we have to do this in Congress, in Washington, because we have to have what they call uniformity among all of the States, and all of the States have to have the same laws when it deals with personal injuries that are derived from defective products that hurt people, that we have to have the same laws in all of the States.

It is my understanding that this legislation says you have to have uniformity, unless the State wants to make it even more difficult for an injured person to recover, and then we can have 50 States having 50 sets of different rules, if the rules make it more difficult for an injured person to recover. That is not uniformity.

Mr. HOLLINGS. Mr. President, that is not uniformity; the Senator is quite correct. More restricted measures are permitted.

The fact of the matter is that it is not uniform with respect to one of the big issues of concern, the matter of punitive damages.

In the distinguished State of Washington, home of the manager of this bill and the principal author, they do not have punitive damages. Where they have punitive damages, they are limited to $250,000, but they are not required by this bill in those States that do not have punitive damages.

There is no uniformity here. If they really wanted uniformity, we would have had ipso facto a Federal cause of action. Then we would have the rules, the simplicity, and the uniformity.

There is no attempt to produce true uniformity, even though we have had

this measure up time and time again, everyone has wondered about this particular measure and requirement of the States in their jurisdiction. There is a constitutional question involved, but they have said: ''Wait a minute; if we really want uniformity, please give a Federal cause of action and we will go from there.''

If we want a finding under the interstate clause, Congress has that authority and responsibility to make the finding and get a Federal cause of action. Then we have uniformity. But they use every gimmick to make sure it is not.

Mr. BREAUX. It is my understanding, does the Senator agree, that this uniformity argument really does not apply; if each State wants to make it more difficult for an injured person to recover, they have the right to do that?

Under this proposal, we could have 50 different States with 50 different sets of rules with regard to an injured person's ability to recover damages, if it is more restrictive than this bill.

Mr. HOLLINGS. That is right. Take every page of the bill—every page of the bill has certain legislative, congressional language. That is to be interpreted, the intent of that particular language is to be interpreted by the 50 several supreme courts of the 50 several, separate States. Then, in certain instances, it could go all the way to the U.S. Supreme Court. So they know that.

We would not have that if we had a Federal cause of action. We would have one jurisdiction and we would move with that and the lawyers and the parties would know where they are. They do not want them to know where they are.

There are certain roadblocks, restrictions, as indicated in your question. This bill says that, if we want to get more restrictive or want to put a greater burden to the injured party, fine. We do not mind at the national level.

If we approve this bill, we are saying as a Government up here, if people want to do that, the Government in Washington, the great white father, we approve that. If a State wants to be more considerate of the injured party; no, no. We, the Federal Government, the end-all, be-all of wisdom up here, the Washington bureaucrats, we say no.

Mr. BREAUX. If the Senator will yield, I think he has very clearly made the point we are talking about—fairness. This legislation does not represent fairness at all. I think the Senator from South Carolina has made that point very well. I thank him.

Mr. HOLLINGS. I thank the distinguished Senator from Louisiana. He has been a leader on this measure.

I can say manufacturers are not all that steamed up. They would have long since gotten rid of me. They have tried, and they have come pretty close the last time, so I am not bragging.

I can say right now, the manufacturers understand it. I met time and again with manufacturers, business leaders, bankers, and everyone else of that kind, and they begin to realize that.

I have asked, I challenged them, get a judge in the State of South Carolina that has just been put up to the circuit court of appeals, as has Billy Wilkins. Remember Judge Wilkins, who headed up a sentencing commission for President Reagan and was considered for the head of the FBI? Go back to Billy and say, ''Is product liability a problem here, really?'' He would say, ''Not in South Carolina, not in the State. They handle it well.''

This has not come from the judiciary or the American bar. This has not come from the consumers, whose interest it is supposed to—with that title, Fairness Act—supposed to represent. On the contrary, it is a manufacturers scam.

I yield the floor.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. GORTON. 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. GORTON. Mr. President, in the nature of attempting to correct a few, I think, inadvertent misstatements during the course of the last 24 hours, and also in the interest of speaking philosophically on at least one of the points made by my friend and colleague from South Carolina, I would like to speak briefly on three or four subjects.

Yesterday in his opening statement, the distinguished junior Senator from Louisiana [Mr. BREAUX] commented that although Louisiana State law does not allow punitive damages, S. 565 would preempt this refusal to allow such damages. It is quite important for me to correct that misapprehension, as my own State of Washington, like Louisiana, is one of roughly five in this country that does not permit punitive damages in most civil litigation at all.

As I said in my opening statement, if I had my way, I would abolish punitive damages in civil litigation. It amounts to an unlimited form of punishment, the risk of unlimited punishment in civil litigation at the absolute discretion or whim of the jury. My view of civil litigation is that it should be designed to redress grievances, to compensate fully individuals for actual damages that they have suffered, but should not be used for punishment.

So I would be extremely disturbed if we were dealing with a bill that included the preemption to which the Senator from Louisiana referred.

S. 565, which, in essence, is what we are dealing with in my substitute amendment, does not preempt the ability of a State to restrict punitive damages to a greater extent than are restricted in S. 565 itself.

Section 107, subsection (A) reads:

> General ruling. Punitive damages may, to the extent permitted by applicable State law, be awarded against the defendant in a product liability action that is subject to this title.

And then it goes on to limit punitive damages in such actions. That is to say, that it does put certain limitations on punitive damages, but it does not mandate that a State must permit even up to that limitation in product liability litigation in those States.

While we are on the subject of preemption, there are two other similar areas in which there is no preemption in the sense, at least, that there is no preemption of a State prohibition against punitive damages. We have in this bill a statute of repose for certain manufactured items of 20 years. But if a State has a statute of repose as broad or broader than the one in this bill with a limit of fewer than 20 years, that statute of repose is not preempted.

Section 108, subsection (B)(2) reads:

> Notwithstanding paragraph 1—

Which establishes a 20-year statute of repose—

> If pursuant to applicable State law an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such a period.

And, finally, if a State law does not allow joint liability at all, S. 565, which bans joint liability for noneconomic damages, does not require a State to ban joint liability for economic damages.

All of this is relevant because in a conversation an hour or so ago on this floor between the distinguished Senators from Louisiana and South Carolina, the criticism was raised that if we are going to go for uniformity, we should require absolute uniformity; that there is something perverse or something wrong about a preemption in one direction without a preemption which is all encompassing in nature.

In fact, I believe the Senator from South Carolina went beyond that point to say that if we desired uniformity in product liability litigation, we should transform what is now a State cause of action to exclusively a Federal cause of action and have identical rules applicable in every State in the country.

I find it curious that we should so frequently in this body be faced with an argument that because we seek to reach a certain goal, we have to do it absolutely and without exception.

I believe that it is the essence of our system that we are constantly adjusting our rules to meet the present needs of the society. I do not believe that we must act mechanistically and, of course, we do not act mechanistically. Usually, this kind of argument is brought up simply because the entire concept is opposed by whoever presents it.

I began my remarks on this bill yesterday by saying that obviously there

are two purposes of society on which sometimes the margins come into conflict. Clearly, in connection with this litigation, one is the regressive grievances, is the proposition that courts should be open to citizens of the United States and of the respective States to sue when they feel that they have been wronged. The other is economic efficiency, is the encouragement of the creation of jobs, of research, of development resulting from that research, the marketing of new and improved goods and pharmaceutical drugs, and the prevention of the irrational and unreasonable withdrawal from the market of goods and services which are of great use to most of society but which occasionally are accompanied by adverse reactions on the part of a few consumers.

So what we are trying to do here is to deal with the proposition that the proponents of this bill—and I think the clear majority of the Members of this body—feel that the pendulum has swung too far in favor of litigation. This should not be a surprise. We read about this constantly, we hear about it constantly, and we know that we are the most litigious society, literally, in the history of the world. It seems quite evident to most citizens that the operations of our society and of our economy are often inhibited by the amount and the nature of much of the litigation with which the people of America are faced.

And so here we seek, in a modest way, in one field of litigation, to put some limits on that litigation. We do not do so by depriving anybody of a cause of action. Every cause of action that exists at the present time will exist if this bill becomes law. But we do put some inhibitions in the way of the pursuit of punitive damages, damages which do not, by their very nature, compensate for an injury. We put limitations on the ability of plaintiffs to recover from defendants beyond the responsibility of those defendants with a particular harm. And, yes—I must correct myself—we do under some circumstances deprive people of causes of action with respect to equipment and manufactured items which are more than 20 years in age.

That does not mean that we feel we have done everything that might appropriately be done. We feel that these limitations are reasonable and should be universal in nature. But that does not automatically carry with it the philosophy that no one else, no other State, can feel that other limitations, greater limitations, are also appropriate. We need the experimentation of a federal system in that connection. Nor do we feel that because we desire somewhat greater uniformity in the law, we have to have absolute uniformity. Now, with 50 States and the District of Columbia, each with a different legal code, there is a total lack of imposed uniformity in the law relating to product liability, in spite of the fact that the production and marketing of products is national in nature. Of course, I suppose we can say we should go from no mandatory uniformity at all to 100 percent mandated uniformity. Personally, I think that would be absurd. I think most Members of this body think it would be absurd. There is not the slightest chance that this body, in its wisdom, would federalize the entire product liability system. But that does not mean that a greater degree of uniformity that we have at the present time is not socially desirable. We—and even more important than we—the market thinks that a greater degree of uniformity is essential. So we go toward the center. We attempt to get that pendulum back into a centerpiece. We are seeking balance. So we do not intend to go to the extremes with respect to product liability, and we do not in this bill.

We do not intend to go to the extremes with respect to joint liability, and we do not in the course of this bill. We do not adopt the shortest possible statute of repose in this bill, and we do not demand absolute uniformity in this bill.

In the four most important elements of this bill, we seek not some kind of pure ideology, but an appropriate balance, a greater degree of encouragement for the economy to create jobs, competitiveness, new and improved products, certain limitations on the kind of litigation problems which plague our society, and we feel it is this middle ground that is the appropriate ground. That is the rationale that, I think, is overwhelmingly appropriate for the way in which we treat preemption in each of these areas.

Mr. President, I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. HEFLIN. Mr. President, I rise in opposition to this bill. It is entitled the Product Liability Fairness Act. In my judgment, that is the biggest misnaming of any bill that I have seen come before this body. It is a misnomer because, in my judgment, it is very unfair and one-sided. It is sort of like you have seen in the fine print—you know, everybody's choice—they say it is a contract you entered into. It is one of those take-it-or-leave-it sort of things, in that here we have a very unfair bill. I will be going into that as we discuss this over the next several days.

I want to discuss several things. First, my friend from the State of Washington says that he would like to do away with all punitive damages, and I wonder if he has thought that when a company hires employees—chemists, engineers, and so forth—who have had a record of alcoholism or drug abuse and nevertheless the manufacturer exposes the public to those types of people and a person is injured, should not that company be punished?

Let us consider a case—this is not in product liability situation—where a person is driving where an automobile accident occurs, and the driver of one car has 10 beers, crosses the center line, causes an accident, and man loses his leg, as compared to an accident in which a bare distraction causes damage to someone.

I think both the people who lose legs regardless should be entitled to recover compensation, but the man who was under the influence of 10 beers, and who got behind the wheel and injured someone, ought to be punished.

The concept of tort liability is that there is a wrongdoer and someone is injured as a result thereof. The whole basis of our law that has developed over the common law over the years is being that the wrongdoer must pay.

So are we talking about a situation in which we want to put all wrongdoers on the same level? Human beings differ. In regard to injuries, the loss of one, two, three fingers—if I were to be injured by a machine that did not have a proper guard on it—those three fingers that I lose may be different from the three fingers that a violinist loses.

So we make distinctions in regard to individuals. There are a lot of aspects of noneconomic damage that we fail to give appropriate attention to. A young woman who loses the capacity to have a child, a young woman whose face is scarred in a fire—all of those are noneconomic pain and suffering.

In Russia, when Chernobyl, the nuclear plant, experienced a meltdown, the people who suffered radiation and who suffered in many ways, many of those suffered noneconomic damages, but they ought not to be limited in their compensation.

Now, I realize that in some aspects there have been changes in the bill before the Senate. Changes that have been made, designed to be able to get it passed in the Senate. I do not think anybody here fails to realize that the House of Representatives passed a bill that was written with one purpose in mind—to see that awards are substantially reduced and that the injured party does not receive what they really are entitled to.

Whatever the Senate were to pass, if cloture is obtained, will go to conference. What will come out of conference will be the bill that will go to the President.

Looking at who the players are, the cast of characters, who will be in conference, I do not think there is much question as to who will prevail. I think the Speaker of the House will prevail, relative to the bill that comes out of conference.

There is no question that he has shown superb leadership in getting legislation passed in the House and in being able to bring about party discipline and to attract others. I do not sell him short on what the conference version of this bill will be like.

Now, I want to go over a few things in this bill and in the House-passed bill, and list what in my judgment I think the final version will be.

Both bills exclude commercial loss. Commercial loss by business—which includes loss of profits, destruction to facilities, everything else—does not come under this bill or the House bill.

Why, then, if the provisions of this bill are so great and so needed that corporate America is excluded from it? There are a lot of examples. We have a machine that blows up in a factory because of defective manufacturing. That machine blows up and people on the sidewalk and other places are injured. They come under the provisions of this bill. However, the company itself can sue the manufacturer of the machine for lost profits, for the destruction done to the physical property, for numerous elements of damage. They do it outside the purview of this particular bill.

If something is good for the goose, it ought to be good for the gander. But businesses do not want to come under this bill.

Where have the large damage verdicts occurred? The biggest one that we know about was Pennzoil versus Texaco, for $11 billion. It was not a product liability case, but a commercial case.

Go down the list and we will see most of the largest verdicts that have occurred relative to civil litigation are where businesses suing businesses. They do not attempt to take care of that in this bill. They do not want to be put under this bill.

The fact that they do not want to be put under this bill indicates that there are provisions that they do not want that could affect their lawsuits, when they suffer a loss, and when they sue a wrongdoer, to have to live with and to have to comply with.

When we stop and think, there are other aspects we should consider. The bill does exclude airlines for hire, but there are other aircraft that we ought to look at. Two planes crash in the air. Persons that are injured in those planes come under this proposed bill as to their damages. The airplane does not. One of the planes drops parts of its body down on Yankee Stadium and Yankee Stadium suffers a financial loss. The spectators are injured. They come under this bill; the owner of the Yankees for the loss of business profits, destruction to grandstands or to bleachers or what else might be, they do not come under it. What is good for the goose is good for the gander.

The bill talks about an ongoing business. I even got to thinking about it, and this may apply or may not apply, but if part of that airplane falls on a house of ill repute, if it is legitimate in a town—and there are States and towns where they are—then the ongoing business can recover for the loss of profits. That may be an extreme example, but it shows you how they have crafted this bill to take care of situations pertaining to commercial use, to business losses, yet the human elements of loss of limbs and of pain and suffering are restricted under this bill.

In the product liability bill during the 103d Congress, there was a provision for a defense against punitive damages where the FDA had given premarket approval to a drug or medical device. Last time there were several Senators who were very concerned about this provision, so this time the proponents left it out with the idea of picking up some votes. The House, on the other hand, left it in. They left in the FDA provision whereas statistics have shown, over a 10-year period 51.6 percent of all products that have been approved for the market by FDA have been recalled. But when this gets to conference, you can rest pretty well assured that the House provisions on that will control and be maintained.

This bill has a 20-year statute of repose. A statute of repose says that regardless of what happens, after 20 years of it being built—and where it says ''construct''—that thereafter, regardless of what was the reason, you cannot bring a lawsuit. You have a complete defense. This language of the bill is broad enough, in my judgment, with the use of the word ''construct'' to include a bridge, which if it collapses, will be subject to a statute of repose of 20 years. Yet the House bill has a statute of repose of only 15 years, and I think it will end up being 15 years.

You had the general aviation awhile back, where a bill was passed, agreement was worked out by most of the people involved here. They put in an 18-year statute of repose, which I think was a serious mistake since the figures show that 60 percent of the small planes in use were 20 years old or older. But, anyway, the House would even reduce that down further—20 years or 15 years. I mentioned a nuclear power plant, Chernobyl, and the pain and suffering that had incurred. Practically every nuclear powerplant in the United States today is at least 15 years of age. Most of them are older than 20 years.

Maybe it might not cover it. It uses the word ''construct'' and as I read the various language, I think it does. But regardless whether it does as a unit object as a whole, component parts in a nuclear powerplant which have been there for 20 years or longer, or 15 if the House prevails and I think they will. I am not sure, but it seems to me I read awhile back the last nuclear power plant that was started in construction was more than 20 years ago.

I think we do not realize the breadth of this bill and its effort to try to encompass all situations and what it will do.

I think there was testimony before the Commerce Committee on machine tools. The indications were that over 50 percent were at least 30 years old or older. Design conflicts, metal stress on airplanes and metal stress on airplanes that cause damages frequently, in the decision of the national safety investigation board—I do not remember the exact name—would indicate that metal stress on airplanes does not occur until after 15 or 20 years.

On the House side there are caps on noneconomic damages on drug companies, on pharmaceuticals. That cap is $250,000 on noneconomic damages, and there are provisions throughout on pharmaceuticals and drugs. This new section that was added, this biomaterials section, you first read it and it looks like raw materials. I was told that is like a fluid such as silicone that is in a breast implant, or the tissue that is sewed together in regards to making it, that gives them some immunity and protection against these suits.

But then you read further in that and it says ''component parts.'' I have a pacemaker. I do not know all the component parts. But, as I understand it, it has batteries and some computers and other component parts. There are wires that go down from that pacemaker, and its battery, into my ventricle—into the chambers of my heart. There are several component parts.

If it is defective, it would mean that for implants—and this biomaterial provision deals with implants—that an individual would practically have no way of recovering for defective products.

In pharmaceuticals, manufacturers are just almost given complete immunity in any suits. Drugs, and those implants I was mentioning a while ago, the silicone breast implant, the Copper IUD, and the Dalkon shield, as I understand it, are implants. So some people were worried about those as it would affect women for punitive damages. We ought to be concerned about this new section that they put in the bill on biomaterials.

The House bill abolishes joint and several liability for noneconomic damages as to all civil lawsuits. The House-passed bill, which again I think will prevail in conference, does not limit it to products but it says to all civil suits. I do not know who is responsible for the Oklahoma City bombing, but someone could bring a civil suit. I know in my home State that civil action was brought against the Ku Klux Klan and really did a great deal to stop the Ku Klux Klan through that civil lawsuit because the Klan had some land and other assets that were collectible. In the Oklahoma City situation, in the Alfred Murrah Building, if there were four people that were involved in it and a court would have to determine the part that each played relative to a conspiracy. But what if one of the conspirators happens to inherit 5,000 acres of land or has other assets, and it is determined that he is the one with the most knowledge, it may be that a plaintiff could not collect damages.

The present law is let the parties themselves determine among themselves the apportionment of the damage rather than having the plaintiff responsible relative to the apportionment of damages and the determination on each and every individual case. I think they have worked it out over the years.

There are some States that have contributions from joint tort feasors. There are others that do not. But as a general rule, it has been worked out in a manner where it is not a difficult situation that has caused any tremendous injustice among the defendants to apportion that responsibility.

We mention caps on punitive damages, and the House has caps on noneconomic damages on drug companies, pharmaceuticals. The language is that it is a cap of $250,000, or three times the economic loss. How does that apply? Let us take an example. We have a 55-year-old CEO of a company. He has 10 years of work expectancy say, and at 65 he would retire. He makes $5 million a year. So you take $5 million, multiply it by the annuity tables, which would we will say 10 years is what he would have. You have $50 million that would be then a part of his cap. You then multiply it by three. He would have a $150 million cap on punitive damage, or on the matter of the cap on noneconomic damages that the House has on drugs.

Then we compare the $150 million, which takes care of the wealthy, to the housewife. She has no economic loss because she does not work outside the home. So the housewife has a cap of $250,000, as opposed to $150 million for the CEO. The 65- or 70-year-old retired person has no economic loss, and he is not working. Mr. President, $250,000 is the cap. The CEO 55 years of age is capped at $150 million. And you can go on down the list of the inequities. The provisions as it would apply on factual situations shock your conscience.

There is a provision that allows you to collect workers compensation. Perhaps you collect under the workman's compensation, $40,000 or $30,000. You get your medical bills paid and other expenses. They are subrogated. That means, if a claimant recovers against a third-party wrongdoer, the insurer is entitled to get its workman's compensation insurance back. But this bill has the language that a claimant cannot settle his lawsuit without that workman's compensation insurer's permission. You have to have the permission of the insurer to settle, unless that workman's compensation insurer is paid in full. You come to the point that, well, I do not want to gamble. The case is probably worth $500,000. Maybe if somebody does not want to go through a lawsuit so they say, ''Well, I will settle my damages for basically about two-thirds on the dollar. But the workman's compensation company says, ''No. I want 100 percent on the dollar,'' and this is shocking to one's conscience.

I also remind you that we have an exemption under antitrust laws for insurance companies, and they can get together and in effect reach some sort of an agreement. There is also the situation that it could well be that they are the same insurance company for the employer as well as the manufacturer. Therefore, they are bargaining for a cheaper figure, putting a claimant in a disadvantageous situation.

There are all sorts of factual situations that can arise which show this question is which really shocks your mind to consider from a viewpoint of what is right and wrong and gives them a hammer over a claimant's head.

Shocking your conscience further, there is a provision in this bill that says that if you sue for punitive damages, then either party, the plaintiff or defendant or any of the defendants, has a right to have a separate trial on the issue of punitive damages as opposed to the trial in chief in which compensatory damages are sought. This bill provides for bifurcated, separate trial.

Then the language of this bill provides that you cannot prove the elements of culpability, the fault, the evidence of punitive damages in the compensatory damage lawsuit.

So you have evidence of a drunk chemist that was involved with a company making a drug. That evidence would go to punitive damages, but it could not be introduced in the compensatory damage lawsuit. I think that shocks your conscience.

Consider the example of where a person is intoxicated. The bill has a provision which gives a complete bar to recover if the intoxication of the plaintiff amounted to 50 percent of the causation and the damages. On the other hand, if a punitive damage case was brought under this bill, the drunkenness or the alcoholic activity of the chemist or whoever the actor might be that was involved in the production of the product could not be shown in the compensatory damage lawsuit. You would have to show it only in the punitive damage part of the lawsuit.

Now, this bill does not have the loser pay in regard to the attorney's fee. But when it comes out of conference, I think you better be extremely watchful as to whether the conference report will contain such a provision.

I think it is important that we look at this bill carefully. I pointed out some of the provisions, and every time I read the bill I see more and more fine print, methods by which there is an advantage that is sought for manufacturers. I have not had the time to review this yet, but in the punitive damage aspect of it, they have changed the language where it was generally accepted throughout as either willful or wanton or gross negligence depending on the State standards. It uses the words ''conscious, flagrant indifference to the safety of others,'' and so on. I am interested in seeing where that language came from and the reason.

I do not in my recollection remember the use of conscious, but I remember that under certain circumstances—and I am hazy on this, and I have asked staff to do some research, to contact a tort professor at a university pertaining to this—there seems to me to be a body of law that for a corporation to be conscious, it requires activity on the part of the board of directors. I am vague on that, and I do not want to make a statement because I am not sure as to that. But that is something that is troubling and something that I wish to look at further and perhaps say something else at a later time. But these words are new words. And, of course, they would be interpreted by the courts as they come along, and there may be basic case law in regards to it at the present time that has given some type of interpretation which means that there is an existing precedent. It may not have to be followed from one State to another.

But that brings up the interpretation which to me is just entirely inconsistent by the original motivation that brought forth the idea of some federalized tort law. That was the concept that we live in a world in which interstate commerce goes from one State to the other and products are sold and everything else. Therefore, we need a uniform Federal products liability.

Well, this is far from being uniform. First, it only preempts the State laws in the specific matters that are listed within the bill. The interpretation that is given is placed upon the State court system and in diversity cases on the circuit court of appeals. Under the original bill that they proposed, they had the State courts reviewing this as well as the territories. You could have had 55 different interpretations of law and of with little uniformity in that regard.

The proponents made a change somewhat in that whereby it says that the 11 Federal circuit courts will be involved in interpretations. So you have got all of at least 11 circuits that could have different interpretations, and you could have conflicts of law. They made a change which says basically does away with the concept of the old line of cases of Erie which say that the Federal courts shall follow the State law and they say now the State laws pertaining to interpretation of this shall follow each circuit, but instead of uniformity you can still have at least—well, it would take, in my judgment, 20 to 25 years before you would finally get the matter to the Supreme Court, and you would have uniform interpretation of a particular language or particular provision. It is devoid of uniformity. There is no uniformity except for the few instances in which they preempt in this, and the ones they preempt are in effect the guts of a civil lawsuit. But you have a situation where you do not have uniformity relative to the motivation that many businesses argued for relative to that. So there is no uniformity that is involved here.

There has been this lawsuit about McDonald's and the woman with the cup of coffee, and there is an article by Roger Simon in the Baltimore Sun on February 22, 1995. He says:

> Forget about the millions won by sue-happy lawyers.
>
> Just about everybody knows about the woman who spilled a cup of coffee on herself and sued McDonald's because it was too hot.

Just about everybody knows the jury awarded her millions of dollars and this is what is wrong with America.

It is so wrong, in fact, that the Republican ''Contract With America'' has promised to fix it and hearings are now under way before Congress to make it much harder for consumers to sue for large amounts of money.

But the real story of what happened to that much-maligned woman tells us something else about America.

Stella Liebeck was 79 years old in 1992 and sitting in her grandson's car when she bought a 49-cent cup of coffee at a McDonald's drive-through window in Albuquerque, N.M.

The car was stationary when she lifted the lid to put in cream and sugar, but she spilled the coffee on her lap.

She received third-degree burns on her groin, thighs, and buttocks. She was hospitalized for 8 days and underwent skin grafts. According to her lawyer, she was disabled for more than 2 years. Her hospital bills were in excess of $10,000.

McDonald's offered the woman $800 to settle, and she had a $10,000 hospital bill.

She sued.

At trial, Liebeck's attorney, S. Reed Morgan of Houston, told the jury that McDonald's serves its coffee between 180 and 190 degrees, which, he argued, is 40 degrees hotter than most food establishments. McDonald's says coffee tastes better at the higher temperature.

Morgan presented an array of expert witnesses who testified that serving coffee at such a high temperature presents an unacceptable risk to consumers.

The jurors also learned that between 1982 and 1992, more than 700 claims had been filed against McDonald's for coffee burns and that McDonald's had settled claims for more than $500,000.

After a 6-day trial, the jury awarded Mrs. Liebeck $200,000 in compensatory damages for her injuries, but reduced that by 20 percent because the jury felt the spill was 20 percent her fault.

Then the jury awarded her $2.7 million in punitive damages, a figure it did not pick out of a hat.

Having been told during the trial that McDonald's sold $1.35 million worth of coffee per day, the jurors assessed McDonald's a fine equal to 2 days of gross coffee sales.

The trial judge, however, reduced the amount of punitive damages to $480,000 or triple Mrs. Liebeck's actual damages.

Both sides could have appealed, but it was now 1994. Mrs. Liebeck was 81, and her lawyer felt McDonald's was hoping she would die before the case was concluded.

So he negotiated a settlement with McDonald's. He is not allowed to say for how much, but let's say it was roughly $500,000.

Mrs. Liebeck's attorney would get one-third of that amount and the expert witnesses, who can cost tens of thousands of dollars, would be paid out of Mrs. Liebeck's share.

So Mrs. Liebeck did not become a millionaire or anything close to it. Which is typical of such cases.

''I have been an attorney for 20 years and I have received two awards for punitive damages in all that time''—

The lawyer Morgan told Roger Simon.

in a telephone interview * * *. ''And you know how many times I have gotten full punitive damages as the jury intended? Never.''

An American Bar Association study of over 25,000 jury awards between 1981 and 1985 found that the median punitive damage award was only $30,000. According to a U.S. News & World Report, the current average award in personal injury cases is $48,000.

And, contrary to claims that there has been an explosion of personal injury lawsuits, the number of such suits have been dropping since 1990.

It is important to keep in mind, however, that punitive damages are supposed to serve a purpose.

''It's all economics,'' Mr. Morgan said. ''If some companies can make more money injuring you with a bad product than keeping you safe with a good one, they will injure you. I am not saying all companies; I am saying some companies.''

In other words, the fear of being socked with large punitive damages is all that keeps some companies from doing us harm.

So why should we ''reform'' away our ability to hit them where it hurts?

I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HEFLIN. Mr. President, there are many other aspects, and I will speak further in regard to it but, at this time, I yield the floor.

EXHIBIT 1

FORGET ABOUT THE MILLIONS WON BY SUE-HAPPY LAWYERS

(By Roger Simon)

Just about everybody knows about the woman who spilled a cup of coffee on herself and sued McDonald's because it was too hot.

Just about everybody knows a jury awarded her millions of dollars and this is what is wrong with America.

It is so wrong, in fact, that the Republican ''Contract with America'' has promised to fix it and hearings are now under way before Congress to make it much harder for consumers to sue for large amounts of money.

But the real story of what happened to that much-maligned woman tells us something else about America:

Stella Liebeck was 79 years old in 1992 and sitting in her grandson's car when she bought a 49-cent cup of coffee at as McDonald's drive-through window in Albuquerque, N.M.

The car was stationary when she lifted the lid to put in cream and sugar, but she spilled the coffee on her lap.

She received third-degree burns on her groin, thighs and buttocks. She was hospitalized for eight days and underwent skin grafts. According to her lawyer, she was disabled for more than two years. Her hospital bills were in excess of $10,000.

McDonald's offered Mrs. Liebeck $800. She sued.

At trial, Liebeck's attorney, S. Reed Morgan of Houston, told the jury that McDonald's serves its coffee at between 180 and 190 degrees, which, he argued, is more than 40 degrees hotter than most food establishments. McDonald's says coffee tastes better at the higher temperature. (McDonald's declined to be interviewed for this column.)

Morgan presented an array of expert witness who testified that serving coffee at such a high temperature presents an unacceptable risk to consumers.

The jurors also learned that between 1982 and 1992 more than 700 claims had been filed against McDonald's for coffee burns and that McDonald's had settled claims for more than $500,000.

After a six-day trial, the jury awarded Mrs. Liebeck $200,000 in compensatory damages for her injuries, but reduced that by 20 percent because the jury felt the spill was 20 percent her fault.

Then the jury awarded her $2.7 million in punitive damages, a figure it did not pick out of a hat.

Having been told during the trial that McDonald's sold $1.35 million worth of coffee per day, the jurors assessed McDonald's fine equal to two days of gross coffee sales.

The trial judge, however, reduced the amount of punitive damages to $480,000 or triple Mrs. Liebeck's actual damages.

Both sides could have appealed. But it was now 1994, Mrs. Liebeck was 81, and her lawyer felt McDonald's was hoping she would die before the case was concluded.

So he negotiated a settlement with McDonald's. He is not allowed to say for how much, but let's say it was roughly $500,000.

Mrs. Liebeck's attorney would get one-third of that amount and the expert witnesses, who can cost tens of thousands of dollars, would be paid out of Mrs. Liebeck's share.

So Mrs. Liebeck did not become a millionaire or anything close to it. Which is typical of such cases.

''I have been an attorney for 20 years and I have received two awards for punitive damages in all that time.'' Morgan told me in a telephone interview yesterday. ''And you know how many times I have gotten full punitive damages as the jury intended? Never.''

An American Bar Association study of over 25,000 jury awards between 1981 and 1985 found that the median punitive damage award was only $30,000. According to a U.S. News & World report, the current average award in personal injury cases if $48,000.

And, contrary to claims that there has been an explosion of personal injury lawsuits, the number of such suits has been dropping since 1990.

It is important to keep in mind, however, that punitive damages are supposed to serve a purpose.

''It's all economics,'' Morgan said. ''If some companies can make more money injuring you with a bad product than keeping you safe with a good one, they will injure you. I am not saying all companies; I am saying some companies.''

In other words, the fear of being socked with large punitive damages is all that keeps some companies from doing us harm.

So why should we ''reform'' away our ability to hit them where it hurts?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. 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. HOLLINGS. Mr. President, I have been waiting my turn to comment on the observations of my distinguished colleague from Washington. I have been waiting with anticipation.

The distinguished author and manager of the bill, the Senator from Washington, said, as best I can remember that here in the Senate, if we seek to accomplish a certain goal, we should do it absolutely. It is very, very curious to me, if we seek to accomplish a certain goal, we should do it absolutely.

Now if what is attempted is uniformity, then why not require uniformity? It is not about whether it is an absolute or a balanced measured, or any forensic approach. It is a matter of law and what is provided. We go right to the idea of uniformity and its inconsistency with respect to the States.

Very interestingly, Mr. President, this bill—which I have a copy of—starts off, if we look at the front page of S. 565, as ''A bill to regulate interstate commerce by providing for a uniform product liability law.''

Well, they got into that pollster nonsense that I was talking about earlier. They do not want to call it a uniform law, rather they now want to focus on fairness. The buzzword now is everything has to be ''fair.'' I do not know who it is going to be fair to. They say here that ''This act may be cited as the Product Liability Fairness Act.'' However, what they ought to call it is the ''Product Liability Generosity Act to Manufacturers of 1995.'' Very, very generous to the manufacturers.

Now let us go to the matter of punitive damages. Let us look at S. 687, the 1993 bill, at page 22. S. 687, page 22, says in the proof of punitive damages:

> In determining the amount of punitive damages, the trier of fact shall consider all relevant evidence, one, the financial condition of the manufacturer of product seller; two, the severity of the harm caused by the manufacture of product seller; three, the duration of the conduct or any concealment of it by the manufacturer or product seller; four, the profitability of the conduct to the manufacturer or product seller; five, the number of products sold by the manufacturer or product seller of the kind causing the harm complained of by the claimant.

These are the elements that you have, generally, at the State court level on the proof of punitive damages, so it is not just a runaway jury. Many times I have heard—and the distinguished Presiding Officer has tried these cases—a judge turn and say there is going to be a fine to make sure they do not engage in this reckless course of conduct again. And in determining whether there is going to be punitive damages, it's important to look at the worth of the organization and whether or not it is a customary violation, the duration of the conduct or concealment of it and all of these elements.

Now look at the matter with respect to this particular bill, S. 565, on punitive damages. They do not list those things at all. It says here at the bottom of page 47: ''Proceeding with respect to punitive damages.'' Line 24: ''Evidence that is admissible in the separate proceeding under paragraph 1—(i) may include evidence of the profits of the defendant, if any, from the alleged wrongdoing; and (ii) shall not include evidence of the overall assets of the defendant.''

That is all. They don't spell out what you can look at in this bill, Mr. President. You can consider evidence of the profits from the wrongdoing, but not any evidence whatsoever of the overall assets, or the nature or the duration of the conduct, or concealment of the manufacturer, or the number of products sold, or the financial condition of the manufacturer. In fact, they say: ''Shall not include evidence of the overall assets of the defendant.''

In the *Exxon Valdez* case, how do you think Exxon Corp. profited from running into the ground? There would not be any profit there. I could go through the list of different manufacturers' cases. I refer to the matter of the illusory part position on the Ford automobile, whereby the users of Ford cars between 1970 and 1979 thought that when they had a car in the park position, it was giving the operator the impression that the car was secured. Of course, it was the slamming of the car door or vibration caused the car to move in reverse. We have one case here, and several others, about a car that backed up into a particular individual that was walking by the rear of the automobile and was run down, and they gave $4 million in punitive damages.

Under this particular test against Ford, if you put this into law, I do not see where Ford gained an advantage or made profits—if they could call it profits—from the misconduct that caused the injury to the pedestrian that the car all of a sudden backed into. Of course, Ford Motor Co. could change the thing. When they got the punitive damages, they understood and changed the park position in the gear of the Ford automobile.

But to come now, and rather than list commonsense provisions that they had in the 1993 and 1991 bills and everything else, they put these kinds of restrictive provisions in, and then claim it is a fairer bill. I go right to the punitive caps there on page 47. They have in the bill what purports to be uniform standards for punitive damages. But when get beneath the cover, Mr. President, you discover the real deal. That is, if you have punitive damages in your State, it's preempted. But if in a State that does not provide for punitive damages, you are not given the benefit of uniformity. The Senator from Washington does not want uniformity for the State of Washington since they do not have punitive damages, but, yet, he is talking about uniformity. Of course, it is all uniformity so long as it is advantages, so to speak, for the manufacturer, but not the injured party. So this does not provide for punitive damages in all States and for all citizens, even though the so-called goal of the bill is uniformity. In this particular bill, he said, even though we want uniformity, if you do not have punitive damages, no way, you still do not get them. On the other hand, even if you were injured, you cannot exceed $250,000 or three times the economic loss which, in many instances, is a lot less than the $250,000 cap. So you do not teach the lesson there.

With respect to a more reasonable bill, again, you have the matter of misuse on page 44. Regarding the previous bills, they are talking about how reasonable they have gotten now. ''Reduction for misuse for alteration of the product.'' This provision was not in the three previous bills. The statute of repose, as has already been pointed out, for no good reason, has been reduced now to 20 years. So pass this, with the House at 15 years, it is going to be reconciled downward.

The liability shield for component parts manufacturers was not in the three previous bills. As the distinguished Senator from Alabama, having a heart beeper in his own body, which is obviously comprised of component parts, said wait a minute, if this thing is defective, do not give me this particular bill or I am a definite loser. There will be no recovery there.

On the morning of the markup, they added this rental car provision to exempt rental car companies from liability. If you get a rental car and you run into somebody, the rental car owner is not responsible. But if you borrow my car, and run into somebody, I am still responsible. They have many more severe provisions, if you read down, as we have in covering this particular measure. The fact of the matter is that this bill is not intended to be more reasonable but rather more restrictive on those seeking recovery for their particular injury.

And I want to go here to the uniformity part where it does not apply to the manufacturer, and they talk now about the Uniform Commercial Code.

Mr. President, I ask unanimous consent at this particular point—it is not that long—to have printed in the RECORD an overview of the Uniform Commercial Code.

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

THE UNIFORM COMMERCIAL CODE—AN INTRODUCTION

1. NATURE AND ORIGINS

As of 1988, one of three different Official Texts of the Uniform Commercial Code was in force in each of the American states except Louisiana, as well as the District of Columbia and the Virgin Islands. The 1962 Official Text (or a predecessor with minor variations) was in force in 3 states. The 1972 Official Text was in force in 14 states. The 1978 Official Text was in force in 32 states. Unless otherwise indicated, all references in this book are to the 1978 Official Text of the Code. The Code is law in these jurisdictions by virtue of ''local,'' state by state, enactment. The United States Congress did not enact the Code as general federal statutory law, although it did enact the Code for the District of Columbia. The 1978 Code is divided into eleven articles as follows:

Article 1. General Provisions.
Article 2. Sales.
Article 3. Commercial Paper.
Article 4. Bank Deposits and Collections.
Article 5. Letters of Credit.
Article 6. Bulk Transfers.
Article 7. Warehouse Receipts, Bills of Lading and Other Documents of Title.
Article 8. Investment Securities.
Article 9. Secured Transactions; Sales of Accounts and Chattel Paper.
Article 10. Effective Date and Repealer.

Article 11. Effective Date and Transition Provisions.

In all but Articles Ten and Eleven, the Articles are subdivided into ''Parts.'' Thus, in Article One there are two ''Parts'' while in Article Two there are seven. Each Part is in turn subdivided into ''sections.'' Sections are numbered in a manner that indicates both Article and Part. Thus, section 2–206 on ''Offer and Acceptance in Formation of Contract'' is in Article Two, Part Two. The first number of a section always indicates the Article and the second number the Part within that Article in which the section appears. The Official Text of The Code includes ''Official Comments'' on each section. The enacting jurisdictions did not enact these comments, although they did enact both the section headings and the sections (except insofar as they amended the Official Text, a topic which will be considered below.) The various jurisdictions, on enacting the Code, generally followed the arrangement and sequence of the Official Text. In almost all instances, they also preserved the Code's numbering system. For example, in the great State of Oregon, a seven appears before the first digit in the Code's numbering system and a zero after the last digit. Otherwise, the Code's numbering system is left intact. Thus, in Oregon, 1–101 is 71–1010.

The National Conference of Commissioners on Uniform State Laws was the originating sponsor of the Code. This was hardly the first venture of the Conference into the field of commercial law reform. The Conference had earlier sponsored a number of ''uniform acts'' in this field. Those acts that were adopted in one or more jurisdictions are listed below, with dates of promulgation.

Uniform Negotiable Instruments Law, 1896.
Uniform Warehouse Receipts Act, 1906.
Uniform Sales Act, 1906.
Uniform Bills of Lading Act, 1909.
Uniform Stock Transfer Act, 1909.
Uniform Conditional Sales Act, 1918.
Uniform Trust Receipts Act, 1933.

All states adopted the Uniform Negotiable Instruments Law and the Uniform Warehouse Receipts Act. Roughly two-thirds of the states adopted the Uniform Sales Act and the Uniform Trust Receipts Act. The other acts were less well received.

By the late 1930's, the foregoing uniform acts had become outdated. Changes had occurred in the patterns of commercial activity prevalent when the acts were promulgated. Also, wholly new patterns had emerged which gave rise to new kinds of legal needs. Moreover, a major objective of the uniform acts had been to promote uniformity. But not all states enacted the acts, and the courts of the states rendered countless nonuniform ''judicial amendments.'' By 1940, there was growing interest in large scale commercial law reform. The Conference was already at work revising the old Uniform Sales Act and was giving consideration to a revision of the Uniform Negotiable Instruments Law.

In 1940, Mr. William A. Schnader conceived the idea of a comprehensive commercial code that would modernize and displace the old uniform acts. That same year, with the support and advice of Professor Karl N. Llewellyn, Mr. Schnader, as President of the National Conference of Commissioners on Uniform State Laws, persuaded the Conference to adopt a proposal to prepare a comprehensive code. Shortly thereafter, Schnader and others sought the co-sponsorship of the American Law Institute. Initially, the Institute agreed only to co-sponsor a revision of the old Uniform Sales Act, but on December 1, 1944 the two organizations formally agreed to co-sponsor a Uniform Commercial Code project, with Professor Karl N. Llewellyn of the Columbia Law School as its ''Chief Reporter'' and Soia Mentschikoff as Associate Chief Reporter. The co-sponsors also set up a supervisory Editorial Board of five members which was later enlarged. Professor Llewellyn then chose various individuals to serve as principal drafters of the main Code Articles:

Article 1. Karl N. Llewellyn.
Article 2. Karl N. Llewellyn.
Article 3. William L. Prosser.
Article 4. Fairfax Leary, Jr.
Article 5. Friedrich Kessler.
Article 6. Charles Bunn.
Article 7. Louis B. Schwartz.
Article 8. Soia Mentschikoff.
Article 9. Allison Dunham and Grant Gilmore.

Between 1944 and 1950, the foregoing team formulated (not without extensive consultation) the first complete draft of the Code. The co-sponsors then circulated this draft widely for comment. After revision, the co-sponsors promulgated the first Official Text of the Code in September 1951 and published it as the ''1952 Official Text.'' In 1953, Pennsylvania became the first state to enact the Code, effective July 1, 1954. In February of 1953, the New York State Legislature and Governor Thomas E. Dewey referred the Code to the New York State Law Revision Commission (located at the Cornell Law School) for study and recommendations. Between 1953 and 1955, the Commission dropped all other work to study the Code. In the end, the Commission concluded that the Code idea was a good one but that New York should not enact the Code without extensive revision. Meanwhile, the Code's Editorial Board had been studying the Commission's work (as well as proposals for revision from other sources) and in 1956 the Board recommended many changes in the 1952 Official Text. In 1957, the co-sponsors promulgated a 1957 Official Text that embodied numerous changes, many of which were based on the Commission's study. Another Official Text was promulgated in 1958, and still another in 1962. The latter two made relatively minor changes in the 1957 Official Text.

Meanwhile, Massachusetts became the second state to enact some version of the Code in September 1957. By 1960, Kentucky, Connecticut, New Hampshire, and Rhode Island had followed suit. In 1961, eight more states joined the fold. In 1962, there were four more, including New York. In 1963, there were eleven more enacting states, in 1964 one, in 1965 thirteen, and in 1966 five more. By 1968, the Code was effective in forty-nine states, the District of Columbia, and the Virgin Islands. Louisiana is the only state not to have adopted the entire Code. In 1974, however, that state did enact Articles 1, 3, 4, 5, 7 and 8 of the 1972 Official Text, with amendments.

In 1961, the Code sponsors set up a Permanent Editorial Board for the Code which continues in operation to this day. After its first written report on October 31, 1962, the Board made three further reports. During the 1960's and early 1970's, the Board was concerned mainly with two tasks: (1) promoting uniformity in state by state enactment and interpretation of the Code and (2) evaluating and preparing proposals for revision of the 1962 Official Text. For example, the Board devoted great energy to revision of Article Nine on personal property security. Eventually, the American Law Institute and the National Conference of Commissioners on Uniform State Laws approved a revised Article Nine which West Publishing Co. published in 1972 as part of a new 1972 Official Text of the entire Code (incorporating all officially approved amendments thereto).

In the mid and late 1970's the Code sponsors and others studied possible revisions of Article Eight on investment securities. A committee called the 348 Committee of the Permanent Editorial Board reviewed proposals and made recommendations to the Board. Eventually, the Code sponsors adopted a revised Article Eight and in 1978 promulgated a new Official Text embodying these revisions. As of January 1, 1988, thirty-two states had adopted most of this Official Text.[22]

No one has published an authentic ''inside'' story of the evolution of the Code. Judged by its reception in the enacting legislatures, the code is the most spectacular success story in the history of American law. We know that the design and text of the Code bears the inimitable imprint of its chief draftsman, Karl N. Llewellyn, and that his spouse, Soia Mentschikoff, had a major hand in the entire project. We know, too, that many individuals whose names have not appeared so prominently as draftsmen or as reporters had great influence on aspects of the final product. One example is Professor Rudolf B. Schlesinger of the Cornell Law School who was not only responsible for the idea of a Permanent Editorial Board,[24] but also provided most of the ideas for the radical revision of Article Five on letters of credit that appeared in the 1957 Official Text. Another example is the extensive work of the late Professor Robert Braucher of the Harvard Law School (subsequently Mr. Justice Braucher of the Massachusetts Judicial Court). His efforts began in the 1940's and continued until his death in 1981. We know, too, that politically and in other ways, William A. Schnader of the Philadelphia Bar was the Code's prime mover. It seems safe to say that without his efforts, the Code would not have come into being. Llewellyn and Schnader are now dead (deceased 1962 and 1969 respectively), a fact that imposes a real handicap on anyone who seeks to prepare an authentic history of the Code project. A British scholar, Professor William Twining, has catalogued Llewellyn's papers at the University of Chicago Law School, and any future history of the Code project must take account of these papers.

2. COMMERCIAL LAW NOT COVERED; FREEDOM OF CONTRACT

The Uniform Commercial Code does not apply to the sale of realty nor to security interests in realty (except fixtures), yet these are undeniably commercial matters. The Code does not apply to the formation, performance, and enforcement of insurance contracts. It does not apply to suretyship transactions (except where the surety is a party to a negotiable instrument). It does not govern bankruptcy. It does not define legal tender. It is not a comprehensive codification of commercial law.

The Code does not even cover all aspects of transactions to which its provision do apply. For example, it includes several innovative provisions on the formation of sales contracts, but it still leaves most issues of contract formation to general contract law. To cite one more example, the code includes provisions on the purchaser's title to goods, but one of these provisions turns on the distinction between void and voidable title, a distinction that requires courts to invoke non-Code law. Section 1–103 is probably the most important single provision in the Code, and will be discussed in section five of this Introduction. The provision reads:

''Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.''

As Professor Grant Gilmore once put it, the Code ''derives from the common law

[and] assumes the continuing existence of a large body of pre-Code and non-Code law on which it rests for support, [without which the Code] could not survive.'' Much of the pre-Code and non-Code law to which Professor Gilmore refers is case law from such fields as contracts, agency, and property, which comes into play via 1–103.

Of course, federal commercial law overrides the Code. The Federal Bills of Lading Act is illustrative. So, too, is the Carmack Amendment to the Interstate Commerce Act. Federal regulatory law overrides the Code, too. Today there are federal statutes such as the National Consumer Credit Protection Act, and the Magnuson-Moss-Warranty-Federal Trade Commission Improvement Act regulating aspects of consumer warranty practices. Similarly, state regulatory statutes also override the Code. Thus, there are state retail installment sales acts, state usury laws, state laws on consumer credit, and so on. The Code itself includes a few regulatory provisions.

Finally, most of the Code's provisions are not mandatory. The parties may vary their effect or displace them altogether: freedom of contract is the rule rather than the exception. Most commercial law is therefore not in the Code at all but in private agreements, including course of dealing, usage of trade, and course of performance.

3. VARIATIONS IN ENACTMENT AND IN INTERPRETATION; CONFLICT OF LAWS RULES

The Uniform Commercial Code is not uniform. As early as 1967, the various jurisdictions enacting the Code had made approximately 775 separate amendments to it. Article Nine on security interests in personal property was the chief victim of the nonuniform amendments. As of December 15, 1966, 47 of the 54 sections in the Article had been amended; California, in particular, liberally rewrote or deleted segments of it. The new Article Nine, embodied in the 1972 and 1978 Official Texts, had become law in forty-six states (including California) by January 1, 1987. Article Six on bulk transfers was also the subject of many nonuniform amendments. New York amended Article Five in a way that renders it inapplicable to many letter of credit transactions, and yet New York does more letter of credit business than any other state.

Another source of nonuniformity lies in the various ''optional'' provisions in the Official Texts of the Code. Thus, for example, Section 9–401 offers enacting states three alternatives with respect to the place of filing of financial statements. Section 7–403(1)(b) offers two versions of the burden of proving the bailee's negligence. Section 6–106 imposes a duty on the bulk transferee to see that the transferor's creditors are paid off, but it is wholly optional. Section 2–318 includes three options on third party beneficiaries of warranties. And the Code includes still other optional provisions. In almost every instance, some states have adopted one version while other states have adopted another.

So-called ''open-ended' drafting is another source of nonuniformity. In Articles Two and Nine, the draftsmen used such phrases as ''commercial reasonableness'' and ''good faith.'' That different courts will give such phrases different meanings should surprise no one. And, after any uniform law has been on the books for very long, disparate judicial interpretation and construction of even quite detailed provisions become another source of nonuniformity. Today, many Code sections have been the subject of judicial interpretation and construction in more than one jurisdiction and the courts disagree over the meaning of many sections.

The foregoing sources of nonuniformity signify that the Code's conflict of laws rules are becoming especially important. Section 1–105 sets forth the basic Code provisions.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state shall govern their rights and duties. Failing such agreement this Act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2–402.

Applicability of the Article on Bank Deposits and Collections. Section 4–102.

Bulk transfers subject to the Article on Bulk Transfers. Section 6–102.

Applicability of the Article on Investment Securities. Section 8–106.

Perfection Provisions of the Article on Secured Transactions. Section 9–103.

Various scholars of conflict of laws have offered their thoughts on 1–105, and we have collected some of their writings in the footnote. Later in this book we also address ourselves to specify conflicts problems in the context in which they arise.

4. AIDS TO INTERPRETATION AND CONSTRUCTION

The principal aids to interpretation and construction of the Code are these:

Case law.

Prior drafts and prior official texts.

Other legislative history—New York Law Revision Commission Reports—State legislative hearings and committee reports.

Official Comments to each section.

Periodic Reports of the Permanent Editorial Board.

Treatises and other secondary sources.

Rules of interpretation and construction.

Standard interpretation technique.

Mr. HOLLINGS. Mr. President, I will read the very first line:

As of 1988, one of the three different Official Texts of the Uniform Commercial Code was in force in each of the American States except Louisiana. . . . The United States Congress did not enact the code as general Federal statutory law.

It is talking of the nature and origins. Then it goes on to point out that what we have under the code is a selective process. It says here in the section two, titled ''Commercial Law Not Covered; Freedom of Contract'':

Finally, most of the Code's provisions are not mandatory. . . . Most commercial law is therefore not in the Code at all but in private agreements, including course of dealing, usage of trade, and course of performance.

The Uniform Commercial Code is not uniform. Now that is the manufacturers.

I ask unanimous consent to have printed in the RECORD a particular law review article on the conflict of laws under the Uniform Commercial Code at this point.

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

[From the Arkansas Law Review]

CONFLICT OF LAWS UNDER THE U.C.C.

(By Robert A. Leflar)

When do conflict of laws problems arise under the Uniform Commercial Code, now that it is law in all the states and other subdivisions of the United States except Louisiana?

Conflicts do still occur. Obviously they can occur when part of a commercial transaction takes place in Louisiana or in a foreign nation whose law differs from the Code. But they occur more frequently between the laws of states that have adopted the Code. Why? Because (1) several states have enacted variant amendments to some sections of the Code, and (2) the courts of a number of states, careless of the function of uniformity in a uniform act, have given nonuniform interpretations to some sections of the Code. Conflicts are not now as inevitable as in the 1950's and early 1960's, when only a few states had enacted the Code, but they can be even more frustrating than they were then. The answers to the conflicts problems, however, are reasonably definite.

The history of choice-of-law provisions in the Code is, in a very real sense, a pre-outline of the more recent history of American conflicts law generally. It is a history of increased emphasis upon substance over form and of deliberate preference for an approach that would result in application of better, sounder rules of commercial law as distinguished from mechanical choice-of-law rules applied for their own sake. The approach is primarily designed by commercial law specialists whose concern was with what they conceived to be good commercial law, rather than by conflicts scholars. Most conflicts scholars, however, ultimately agreed with the approach.

Joe C. Barrett of Arkansas was one of the practical lawyer-Commissioners whose interests lay in the substantive law areas, not in choice-of-law theory. His voice was an influential one almost from the beginning of work on the Code, and he agreed with the pragmatic approach to conflicts issues. Though he left it to others, for the most part, to frame the conflicts language, he supported their ideas, particularly as the sections were reviewed by the Permanent Editorial Board of which he was a longtime member. He had much to do with the thinking and rethinking that is reflected in the successive drafts as they are presented in the next few pages. Above all, he was satisfied by section I–105 as it finally emerged, first in the 1958 Official Text, then with one further change in 1972. The section as it now stands is as follows:

SECTION 1–105. TERRITORIAL APPLICATION OF THE ACT; PARTIES' POWER TO CHOOSE APPLICABLE LAW

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of the Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2–402.

Applicability of the Article on Bank Deposits and Collections. Section 4–102.

Bulk transfers subject to the Article on Bulk Transfers. Section 6–102.

Applicability of the Article Investment Securities. Section * * *.

Perfection provisions of the Article on Secured Transactions. Section 9–103.

The first 25 years

From the beginning the effort was to make the new Code applicable to as many transactions as could constitutionally be brought under it. The due process clause of the federal Constitution, and possibly the full faith and credit clause, set the outer limits. The leading case was (and is) *Home Insurance Co. v. Dick*, which held that due process was violated by a state's holding a transaction to be governed by the substantive law of a state which had no substantial connection with the transaction.

The October, 1949 draft of section 1–105 attempted to achieve the desired maximum application of the new Code by providing that this Act shall apply to any contract or transaction within its terms if:

(a) the contract is completed, or the offer made or accepted, or the transaction occurs within this state; or

(b) the contract is to be performed or the transaction is to be completed within this state; or

(c) the contract or transaction relates to or involves goods which are to be or are in fact located, delivered, shipped or received within this state; or

(d) the contract or transaction involves a bill of lading, warehouse receipt or other document of title which is to be or is in fact issued, delivered, sent or received within this state; or

(e) the contract or transaction involves commercial paper which is made, drawn, transferred or payable within this state; or

(f) the contract or transaction involves a commercial credit made, sent or received within this state; or involves a commercial credit issued in this state or confirmation or advice of which is sent or received within this state, or involves any negotiation within this state of a draft drawn under a credit; or

(g) the contract or transaction involves a foreign remittance drawn, transferred or payable within this state; or

(h) the contract or transaction involves an investment security issued or transferred within this state; or

(i) the contract or transaction involves a security interest created within this state or relating to tangible personal property which is or is to be actually within this state or to intangible personal property which has or is to have its situs within this state; or involves a bulk transfer of property to the extent that such property is within this state; or if the borrower's principal place of business is within this state; or

(j) whenever the contract, instrument or document states in terms or in substance that it is subject to the Uniform Commercial Code.

(2) Notwithstanding the provisions of the foregoing subsection, the parties to a contract or transaction involving foreign trade may agree in writing that the law of a specified jurisdiction shall apply.

The objective had been to list all the factual connections that were substantial enough to permit forum law (the Code) to be constitutionally applicable.

At the same time an alternative section 1–105 was drafted, for inclusion in a proposed enactment of the Code by the federal Congress, on the supposed authority of the commerce clause. This draft generally tracked the language of the state section.

The reaction to this section came near to being violent. A part of the reaction was automatic resistance to change: ''If it's different from what I learned in law school it must be wrong.'' A number of conflicts scholars joined in unanimous adoption of a resolution introduced by the respected Professor Elliott E. Cheatham of Columbia University Law School:

''Resolved, that the undersigned, participants in the 1949 Institute of International and Comparative Law, Ann Arbor, Michigan, are of the opinion that Section 1–105 (in both forms) of the May, 1949, draft of the Uniform Commercial Code, dealing with conflict of laws, is unwise and should be omitted from the Code; and the Executive Secretary of the Institute of International and Comparative Law is requested to transmit a copy of this resolution to the President of the American Law Institute and the Chairman of the Commissioners on Uniform Laws.''

This reaction induced the Institute and the Commissioners to revise the section by lengthening it considerably, deleting the alternative proposed for federal enactment, but retaining the same objective that the Act, as a state statute, apply to as many transactions as the Constitution would permit. The 1952 draft of the section, instead of providing that ''this Act'' shall apply to all the enumerated situations, called for application of particular parts (articles) of the Act to the fact situations:

SECTION 1–105. APPLICABILITY OF THE ACT; PARTIES' RIGHT TO CHOOSE APPLICABLE LAW.

(1) Article 1 applies to any contract or transaction to which any other Article of this Act applies.

(2) The Articles on Sales (Article 2), Documentary Letters of Credit (Article 5) and Documents of Title (Article 7) apply whenever any contract or transaction within the terms of any one of the Articles is made or occurs after the effective date of this Act and the contract

(a) is made, offered or accepted or the transaction occurs within this state; or

(b) is to be performed or completed wholly or in part within this state; or

(c) relates to or involves goods which are to be or are in fact delivered, shipped or received within this state; or

(d) involves a bill of lading, warehouse receipt or other document of title which is to be or in fact issued, delivered, sent or received within this state; or

(e) is an application or agreement for a credit made, sent or received within this state, or involves a credit issued in this state or under which drafts are to be presented in this state or confirmation or advice of which is sent or received within this state, or involves any negotiation within this state of a draft drawn under a credit.

(3) The Articles on Commercial Paper (Article 3) and Bank Deposits and Collections (Article 4) apply whenever any contract or transaction within the terms of either of the Articles is made or occurs after the effective date of this Act and the contract

(a) is made, offered or accepted or the transaction occurs within this state; or

(b) is to be performed or completed wholly or in part within this state; or

(c) involves commercial paper which is made, drawn or transferred within the state.

(4) The Article on Investment Securities (Article 8) applies whenever any contract or transaction within its terms is made or occurs after the effective date of this Act and the contract

(a) is made, offered or accepted or occurs within this state; or

(b) is to be performed or completed wholly or in part within this state; or

(c) involves an investment security issued or transferred within this state.

But the validity of a corporate security shall be governed by the law of the jurisdiction of incorporation.

(5) The Articles on Bulk Transfers (Article 6) and Secured Transactions (Article 9) apply whenever any contract or transaction within their terms is made or occurs after the effective date of this Act and falls within the provisions of section 6–102 or sections 9–102 and 9–103.

(6) Whenever a contract, instrument, document, security or transaction bears a reasonable relationship to one or more states or nations in addition to this state the parties may agree that the law of any such other state or nation shall govern their rights and duties. In the absence of an agreement which meets the requirements of this subsection, this Act governs.

This, too, produced negative reactions. These were largely based on the assumption, actually not justified, that section 1–105 followed the mechanical choice-of-laws theories of Professor Joseph H. Beale of Harvard, as those theories were embodied in the American Law Institute's Restatement I of Conflicts of Laws, for which Professor Beale was the Reporter. Two facts tended to support the assumption. One was the designation of specific fact situations as being determinative of the stated choices of law. That was the way Beale had set forth his hard and fast jurisdiction-selecting rules, and the critics tended to overlook the fact that the Code's choices would be different from Beale's. The other was that Judge Herbert F. Goodrich, Director of the American Law Institute and Chairman of the Code's Editorial Board, was a former student and long-time disciple of Beale and was at least to some extent responsible for the successive drafts of section 1–105. On this point, the tendency was to overlook the fact that Judge Goodrich, in his support of these early drafts of section 1–105, had moved far away from Beale's still earlier rules. These reactions were, nevertheless, part of the reason for the slow acceptance of the Code by state legislatures in the next few years. Reconsideration of the language was called for, but there was no serious thought of abandoning the objective of having the Code apply to all the fact situations to which the due process clause would permit its application. It was sincerely believed to be a better body of commercial law than any other anywhere, and the best basis for choice of law was deliberate application of this ''better law.''

Simplification was the principal result of the reconsideration. The 1958 official draft of the Code, substantially completed in 1957, put section 1–105 in very nearly its present form. It became apparent that, apart from permitting parties to agree on what law should govern their transactions, the effect of the detailed listing in the 1952 Code of the fact situations to which the various portions of the Code were to apply was nearly the same as a simple statement that all the transactions listed were to be governed by the relevant parts of the Code. The listed fact situations, it was believed, all bore a constitutionally ''appropriate relation'' to the forum state in which the Code was the law. But if any of them did not, the new phrasing, ''this Act applies to transactions bearing an appropriate relation to this state,'' evaded possible unconstitutionality. At the same time it avoided hard-and-fast rules of the Bealian kind and left the choice-of-law limits open-ended so that they would fit in with whatever new developments the future might bring to that small branch of constitutional law.

The next conflicts change came in 1972. It was not a modification of section 1–105 as such, but rather a deletion of all choice-of-law provisions from section 9–102 and a revision of the choice-of-law provisions in section 9–103, both dealing with secured transactions. This increased somewhat the scope

of the first paragraph of section 1–105, but left as before the separate applicability of choice-of-law rules laid down for the five separate areas identified in the second paragraph of section 1–105, including the revised section 9–103. Section 8–106, on the law governing certain investment securities transactions, was revised in 1977, and another minor change was at the same time made in section 9–103, correlating it with the revised section 8–106. That is where the Code's conflicts sections stand today. There are still a number of doubts and unresolved questions not only under section 1–105 but under the other listed sections as well.

Party autonomy—reasonable relation

With specified exceptions, ''when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.'' What constitutes a ''reasonable relation''? How far afield may the parties go in deciding for themselves what law is to govern their transactions?

The theory of party autonomy in choice of law has not always been accepted by American jurists, though it has for a century been a factor affecting choice of governing law in contracts cases. Acceptance of the parties' stated intention, or even their implied intention, as to what law should govern their contract is a part of the common law of conflict of laws today. To that extent the Code merely follows the common law. The unanswered question is only as to where the outer limit lies. The term ''reasonable relation'' sets an outer limit, and suggests that common sense defines it, but still does not locate it, geographically or otherwise.

The Official Comment on section 1–105 is not very conclusive. The Comment's principal reliance is on *Seeman v. Philadelphia Warehouse Co.*, a case in which, actually, no choice-of-law clause was involved. The holding was that a contract calling for a rate of interest usurious by New York law but valid by Pennsylvania law should be governed by Pennsylvania's law, and the contract sustained. There were substantial elements of both making and performance in each state. The court did rely upon an inference that parties contracting in good faith would have intended their contract to be governed by the law of the one of the only two related states that would validate it. This was not so much party autonomy in choice of law as it was a preference for the law that would validate a contract made in good faith—a ''basic rule of validation'' approach.

The Restatement (Second) of Conflict of Laws is somewhat more in point. It specifies an outer geographic limit on the contracting parties' freedom to name the governing law by providing that their choice will not control if ''the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice.'' This of course is only a negative, not an affirmative, statement as to how far afield the choice may go. Yet the implication that the parties are free to choose the law of a state unrelated to the transaction or to themselves is significant. The significance is increased by the implication that a ''reasonable basis'' for such an extraneous choice may exist. And the Official Comment on section 1–105 does say:

''an agreement as to choice of law may sometimes take effect as a shorthand expression of the intent of the parties as to matters governed by their agreement, even though the transaction has no significant contact with the jurisdiction chosen.''

The argument that follows is that agreements by contracting parties as to what law shall govern their transaction are not essentially different from other parts of their contract upon which they are completely free to agree. The only limitation should be that they cannot lawfully do something that would be violative of the strong public policy of a concerned state. Reasonableness should have to do with good reasons for wishing a particular system of law to govern their transaction, not necessarily limited to states having physical contacts with them or it. That is the view taken by most academic interpreters of the Section.

A set of facts suggested by the most recent commentator illustrates the argument. Suppose a contract completed in Florida for sale of goods to be delivered to a Canadian buyer in Montreal by a seller incorporated in Delaware but operating factories in Arkansas, Louisiana and Wisconsin. The contract stipulates that New York law shall govern its validity, construction and enforcement. ''The stipulation could be upheld based upon the parties' familiarity with New York law, its fuller development in dealing with issues of the type presented by the particular contract or perhaps the parties' preference for a particular substantive doctrine established under New York law. Unless the selection offends a fundamental public policy of the forum state or constitutes a wilful evasion that smacks of bad faith or overreaching, the court would have no cause to interfere with the choice of the parties.'' The same author, however, cites two cases both holding that similar contract stipulations were ineffectual because New York had no physical connection with the transaction sued on. Despite such cases, it is not unlikely that the ''reasonable relation'' required by section 1–105 will some day, in some courts, be held to be satisfied simply by the parties' deliberate designation of a relevant law that in their opinion best serves the purposes of their voluntary transaction.

It must not be thought that every choice-of-law clause in every commercial contract that any parties execute is deserving of enforcement. Such clauses can be hidden in the fine print of take-it-or-leave-it form contracts which casual customers have little or no opportunity to study. Adhesion contracts are always suspect. Something turns upon the meaning of the Code word ''agree.'' The take-it-or-leave-it party may not have ''agreed'' to a strange and unread choice-of-law clause in the fine print that was never called to his attention. At least there can be as much justification for avoiding these clauses as there is for avoiding any other harsh and unanticipated provision in any kind of adhesion contract. Other Code provisions also afford means for avoidance of unfair choice-of-law clauses. Section 1–103 preserves defenses based on ''estoppel, fraud, misrepresentation, duress, coercion, mistake, * * *''; section 1–203 ''imposes an obligation of good faith'' in all contracts; and section 2–302 permits refusal of enforcement as to any unconscionable clause in a sales contract. The enforceability of choice-of-law clauses is no more required than for any other sort of contract clause.

It must be admitted, also, that choice-of-law contract clauses have been avoided by simply neglecting to notice section 1–105 as a controlling statute.

One of the worries that was discussed when the party-autonomy part of section 105 was first drafted was whether third persons, not parties to the contract but affected by it might be prejudiced by the parties' selection of a state law unfavorable to the third persons' interests. Such third persons may include creditors of a seller who retained possession of the sold goods, other creditors of either party or nonbuyers in whose favor a warranty might or might not run.

The drafters' quick answer to this worry is in the wording of section 1–105 itself. It says that the parties may agree on what law is to ''govern *their* rights and duties.'' This does not refer to the rights and duties of third persons. That may not be conclusive in all situations. More in point is subparagraph (2) of the section, which in its five specific exceptions identifies the situations in which the interests of third persons are most likely to be involved, and takes them out of the party-autonomy category. There may be other situations, but at least the problem is minimized.

''This act applies . . . appropriate relation''

''Except as provided hereafter in this section . . . [and] failing such agreement this Act applies to transactions bearing an appropriate relation to this state.'' One purpose behind section 1–105 from its beginning was that the Code (''this Act''), believed to be the most nearly perfect system of commercial law yet devised by man, should be as widely applicable as possible. Within the United States, the only limitations upon territorial applicability of an otherwise valid state statute (which was what was contemplated for the Code), are to be found in the Federal Constitution. What are they?

The due process clause in the fourteenth amendment is the traditional one, and probably still the principal one. *Home Insurance Co. v. Dick* is the leading case. In it, the United States Supreme Court held that for Texas to apply Texas law to invalidate a time-for-suit clause in a Mexican insurance contract, valid by Mexican law, was a violation of due process. The constitutional requirement, broadly stated, is that no state's substantive law may be applied to govern a transaction unless the transaction had some fairly substantial connection with that state. In *Dick*, the only Texas connection was that the plaintiff, assignee of claims under the Mexican contract, was a Texas domiciliary. That was not enough. There are many contacts that will suffice, but they must be significant ones.

The 1949 and 1952 drafts of section 1–105 listed a considerable number of specific contacts which the drafters believed, or at least hoped, would be accepted by the Supreme Court as sufficiently substantial to permit application of ''this Act'' or the designated one of the Act's articles. One of the frequently-voiced objections to these early drafts was that several of the listed contacts were so casual, so insignificant as elements in the total transaction, that they would not satisfy the constitutional standard. Some of them probably would not have. That was one reason why the specificity of the early drafts was abandoned in the present (1958) revision. Yet the basic thought that the Code was a superior body of commercial law that ought to be widely applied was not abandoned. Making it applicable whenever the facts bore an ''appropriate relation'' to the forum state having the Act preserved the potential for maximum applicability, without risking specific unconstitutional possibilities.

Another concern also was involved. This one arose partly from the fact that probable wide adoption of the Code, plus variant interpretations of it and local amendments to it, made it less urgent that ''this Act'' as it was operative in any given state be there applied to essentially extrastate transactions. Assurance that the Code as amended and interpreted in any given state was clearly the ''better law'' could not be maintained. Forum shopping by plaintiffs not interested in ''better law'' but only in law most favorable to their private interests would be encouraged by a choice-of-law rule always requiring application of the forum's version of the Code. The original purpose of the earlier

section 1–105, to compel application of ''this Act,'' in every state that adopted the Code, to every commercial lawsuit filed in the state, was no longer the worthy purpose that it had at first appeared to be.

Also important was the modernization of American choice-of-law law was occurring at about the same time, breaking away from the old hard-and-fast mechanical rules that had been accepted during most of the century. The infusion of Brainerd Currie's concepts of ''governmental interest,'' of Ehrenzweig's idea of a ''basic rule of validation, of Cavers' ''principles of preference,'' and of the fundamental ''choice-influencing considerations'' into the mainstream of conflicts law has made that body of law far more reasonable than it used to be, and far more acceptable as an intelligent basis for choosing between competing laws.

Choice-of-law problems in commercial litigation do not arise as often today as they did before the Code or in the Code's early days. Many of them are resolved beforehand by agreement of the parties. Others are covered by the specific rules set out in the second paragraph of section 1–105. For the rest, the governing words ''appropriate relation'' can well be taken to refer to what appears to be appropriate under sensible modern choice-of-law principles. There is good reason to believe that this is the approach which the majority of courts are taking to the problem.

There may be infrequent cases not covered by either of the two sentences in the first paragraph in section 1–105, nor by any of the five possibilities specified in the second paragraph. These will involve transactions in which the parties have not agreed to as to what state's law shall govern and in which the transaction does not bear ''an appropriate relation to this [the forum] state.'' The situation will arise when the plaintiff has for reasons of his own filed his lawsuit in what has been called a ''disinterested third state.'' It might be resolved by a forum non conveniens dismissal. But if jurisdiction is retained, since the Code simply prescribes no choice-of-law rule for the case, the court must of necessity fall back on its preexistent statutory or common law of conflicts law, whatever that may be.

Paragraph (2) of the section

The second paragraph of the 1958 draft of section I–105 named five areas, identified by numbered Code sections, that were not to be governed by the rather loose provisions of the first paragraph. These areas, for the sake of maximum predictability of results in the transactions covered by them, were to be subject to hard-and-fast choice-of-law rules, explicitly laid down. The governing law was to be that of a designated place, so that the parties could know beforehand, by knowing that law, what the legal consequences of their transaction would be.

Maximum assurance of this predictability was provided by requiring, for each of the five areas, that the whole relevant law ''including the conflict of laws rules'' of the designated place be applied. Reliance upon this *renvoi* technique was designed to make certain that the forum court trying the case would handle the issue in exactly the same way that a court at the designated place would handle it, by applying the same choice-of-law rules that court would apply and thus reaching exactly the same decision that would be reached by a court at that place. Accidents might interfere with this absolute predictability, but that came as close to it as could be planned.

The section as thus drafted in 1958 remains unchanged except for the scope of the last (fifth) area. That was modified in 1972, and the modification has now been accepted in a majority of the states. Each of the five excepted areas will now be noted.

Section 2–402. This section in part of the Article on sales of goods. It deals with the rights that a creditor of the seller may have against the sold goods by reason of the seller's misleading retention of possession or other allegedly fraudulent conduct with reference to the goods. The Code itself provides that certain types of conduct are either fraudulent or not fraudulent. Apart from those provisions, section 2–402 prescribes a specific choice-of-law rule, that the law governing the creditor's rights, if any, in the sold goods (as against both buyer and seller) is that of the state where the goods are situated. This is the sort of case in which one related state's law is likely to be as good as another's, and about as relevant. The goods' situs is an ascertainable extrinsic fact on the basis of which a firm determination of governing law and resultant rights can most readily be made not only by a court but by the parties themselves.

Section 4–102. Article 4 of the Code deals with bank deposits and collections. Section 4–102 provides:

''The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.''

Here again the purpose was to lay down a clear and simple choice-of-law rule that would prescribe the law of an obvious and readily ascertainable place to govern the literally millions of elementary transactions that occur on every banking day in the United States. The Official Comment makes it clear that the rule is to ''apply from the inception of the collection process of an item through all phases of deposit, forwarding, presentment, payment and remittance, or credit of proceeds.'' Unity of governing law is part of the objective. At the same time, however, section 4–103 permits the parties, ''by agreement,'' to vary the choice-of-law rule laid down by section 4–102. Thus the party autonomy which is a central feature of section I–105 is available for this area also.

Section 6–102. The law governing bulk transfers of tangible goods is covered by Article 6 of the Code. The paragraph numbered (4) of section 6–102 provides:

''Except as limited by the following section all bulk transfers of goods located within this State are subject to this article.''

The following section (6–103) does not deal with choice of law, but rather lists eight kinds of transfers that are not governed by Article 6 at all, therefore not by section 6–102.

Again, situs of the affected goods is made the controlling choice-of-law fact. There has been criticism of sections 6–102 and 6–103 of the Code, but the criticism has apparently not been directed at the choice of law provision in paragraph (4) of section 6–102.

Section 8–106. Investment securities (stocks, bonds, and the like) constitute the subject matter of Article 8. Section 8–106 does not lay down conflicts rules for all matters covered by the article, but only for a specified part of it. The first paragraph of section 1–105 governs as to the rest. The 1972 version of section 8–106 was as follows:

''The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.''

That version is still the law in most states. In 1977, however, the section was changed to read:

''The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

''(a) registration of transfer of a certificated security;

''(b) registration of transfer, pledge, or release of an uncertificated security; and

''(c) sending of statements of uncertificated securities.''

It is interesting that both versions of the section repeal, presumably for the sake of emphasis, the *renvoi* provision which is in any event applicable to it, as well as to all the others of the five specified exceptions listed in the second paragraph of section 1–105.

The modification of the section does not change the rule as to what law governs the validity of a security as issued, nor as to the transfer of certificated securities. What it does is clarify the aspects and effects of registration, particularly of uncertificated securities, that are to be governed by the designated law. As under the earlier version, the first paragraph of section 1–105 relates the rest. Application of the law of the issuer's ''jurisdiction of organization'' to registrations and closely related matters present no real difficulties and is in keeping with normal expectancies.

Section 9–103. Secured transactions, the subject covered by Article 9 of the Code, includes some of the most difficult areas of commercial law, and the choice-of-law sections of the article have been among its most controversial. In the 1958–1962 version of the Code, section 9–102 applied most of the article's provisions to ''any personal property and fixtures within the jurisdiction of this state.'' The 1972 revision deleted this choice-of-law clause completely. The 1958–1962 version, in section 9–103, dealt with choice-of-law issues as to validity, perfection and the effects of default in security transactions. The 1972 revision eliminated the conflicts parts dealing with validity and defaults, leaving only as hard-and-fast choice-of-law rules those parts dealing with perfection and the consequences of non-perfection of security interests. These obviously are substantial legal areas. But the deleted areas, from both sections, were also substantial. The choice-of-law rules applicable to them are now those set out in the first paragraph of section 1–105.

There are many ways in which movable goods can be pledged as security for discharge of obligations owed to creditors or other obligees, and many ways in which third persons may acquire conflicting claims. Removal of the goods from one state to another may be contemplated or not contemplated by the secured party (obligee), and removal may occur even though it was not contemplated. Removal increases the risk that third persons may, possibly in good faith, acquire conflicting claims to the goods. Official recordation of the security transaction (''perfection'' of the security interest) is the accepted method for validating the security holder's interest as against most of such conflicting third-person claims. But recordation where?

That is the principal question which section 9–103 undertakes to answer, along with companion questions as to the effects of non-perfection. Potential fact situations and the variant rules prescribed for them by section 9–103 are too elaborate for detailed explanation in this short article. They are much clearer, however, under the 1972 revision than they were before, also more fair and more efficient. They are sufficiently specific that not a great deal of litigation on choice-of-law questions has developed in states, now

a substantial majority, that have enacted the 1972 revision, and commentators on the section have envinced general agreement as to its scope and applicability. By 9–103(1)(b) perfection of security interests is governed by the law of the state where the chattel was located at the time of the transaction, except that under 9–103(1)(c) if at the time a purchase money security interest is created the parties contemplate removal of the chattel to another state then the law of the other state governs, subject to a 30-day recordation requirement. A certificate of title thus issued will in most situations protect the holder of security interests noted on it for four months after the chattel is removed to a different state, after which time an innocent purchaser, under 9–103(2)(b), will take free of a locally unrecorded security interest.

There are still problems, especially with reference to inherently movable chattels such as motor vehicles. Most of the states have motor vehicle title certificate laws, under which motor vehicle titles are integrated in properly issued certificates, but not in improperly issued ones. In the ten states which have enacted the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, there is coordination with the corresponding provisions of the Code, but in some other states there may not be. Perfection of security interests in chattels the title to which is supposed to be integrated in a title certificate is referred by the Code to the relevant title certificate law. Under the Code, however, if a title certificate though improperly issued in a second state (fraudulently procured, as after a theft or by an absconding buyer after a conditional sale) is fair on its face, a buyer of the chattel who purchases it in good faith and for value in reliance on the bad certificate, and ''who is not in the business of selling goods of that kind,'' gets good title even against the owner of a prior properly ''protected'' security interest. A used car dealer who relies on such a bad certificate, on the other hand, would not prevail over the prior security interest.

* * * * *

Mr. HOLLINGS. Mr. President, I will read this little example to show exactly what we are getting at:

Suppose a contract is completed in Florida for the sale of goods to be delivered to a Canadian buyer in Montreal by a seller incorporated in Delaware, but operating factories in Arkansas, Louisiana, and Wisconsin; the contract stipulates that New York law shall govern its validity, construction, and enforcement.

Now, there we are. Talking about foreign shopping, New York lawyers sitting up there on the top floor of the World Trade Center Building, having their martinis at lunch, they say, ''We do not care what State this is in, we have the Universal Commercial Code and for us we will select where we are, where it is convenient for us to try cases, or any other forum that is available to us.'' But not the injured party.

They claim all they want is uniformity, but have the unmitigated gall to include an exclusion for manufacturers—for manufacturers. They boldface put it in there as an exemption for manufacturers for this particular law that they say is such a national necessity.

I have seen a lot of activity in my service here as the junior Senator over the years, but I have never seen a provision where they come in, absolutely representing the manufacturers and saying they are trying to get money to the injured parties. They really say that. I will go back to the CONGRESSIONAL RECORD and show it.

Where all the representative organizations of injured parties, whether it is the lawyers themselves or otherwise the consumer groups of Americans say ''No, no, no, do not give us this,'' yet they put in all the favorable provisions for the manufacturers. With respect to the joint and several, we know there are some 10 States that do not include joint and several but rather, several only for the proof of compensatory damages.

Do we think they make that uniform? Just as they do not extend punitive damages to those States that do not have it, they do not extend the joint and several provision to those States that only have several.

If it was the intent to get uniformity, we would have it there, but they do not provide it there.

So, we can go right on down the list in all regards to this particular bill with respect to uniformity on the one hand, or how far they have come over the past several years and made it more reasonable, when the truth of the matter is they have included a lot of things here in this particular measure that were included in the House bill, so that when it passes the Senate, of course, it will not be conferenceable at all. It will not be subject to the conference because it will be a provision not in dispute but contained in both measures.

I yield the floor.

AMENDMENT NO. 597 TO AMENDMENT NO. 596

(Purpose: To provide for equity in legal fees, and for other purposes)

Mr. ABRAHAM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. DEWINE). The clerk will report.

The bill clerk read as follows:

The Senator from Michigan [Mr. ABRAHAM] proposes an amendment numbered 597 to amendment No. 596.

Mr. ABRAHAM. Mr. President, I ask unanimous consent that the reading be dispensed.

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

The amendment is as follows:

At the end of the pending amendment add the following new title:

TITLE III—EQUITY IN LEGAL FEES

SEC. 301. EQUITY IN LEGAL FEES.

(a) DISCLOSURE OF ATTORNEY'S FEES INFORMATION.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) the term ''attorney'' means any natural person, professional law association, corporation, or partnership authorized under applicable State law to practice law;

(B) the term ''attorney's services'' means the professional advice or counseling of or representation by an attorney, but such term shall not include other assistance incurred, directly or indirectly, in connection with an attorney's services, such as administrative or secretarial assistance, overhead, travel expenses, witness fees, or preparation by a person other than the attorney of any study, analysis, report, or test;

(C) the term ''claimant'' means any natural person who files a civil action arising under any Federal law or in any diversity action in Federal court and—

(i) if such a claim is filed on behalf of the claimant's estate, the term shall include the claimant's personal representative; or

(ii) if such a claim is brought on behalf of a minor or incompetent, the term shall include the claimant's parent, guardian, or personal representative;

(D) the term ''contingent fee'' means the cost or price of an attorney's services determined by applying a specified percentage, which may be a firm fixed percentage, a graduated or sliding percentage, or any combination thereof, to the amount of the settlement or judgment obtained;

(E) the term ''hourly fee'' means the cost or price per hour of an attorney's services;

(F) the term ''initial meeting'' means the first conference or discussion between the claimant and the attorney, whether by telephone or in person, concerning the details, facts, or basis of the claim;

(G) the term ''natural person'' means any individual, and does not include an artificial organization or legal entity, such as a firm, corporation, association, company, partnership, society, joint venture, or governmental body; and

(H) the term ''retain'' means the act of a claimant in engaging an attorney's services, whether by express or implied agreement, by seeking and obtaining the attorney's services.

(2) DISCLOSURE AT INITIAL MEETING.—

(A) IN GENERAL.—An attorney retained by a claimant shall, at the initial meeting, disclose to the claimant the claimant's right to receive a written statement of the information described under paragraph (3).

(B) WAIVER AND EXTENSION.—The claimant, in writing, may—

(i) waive the right to receive the statement required under subparagraph (A); or

(ii) extend the 30-day period referred to under paragraph (3).

(3) INFORMATION AFTER INITIAL MEETING.—Subject to paragraph (2)(B), within 30 days after the initial meeting, an attorney retained by a claimant shall provide a written statement to the claimant containing—

(A) the estimated number of hours of the attorney's services that will be spent—

(i) settling or attempting to settle the claim or action; and

(ii) handling the claim through trial;

(B) the basis of the attorney's fee for services (such as a contingent, hourly, or flat fee basis) and any conditions, limitations, restrictions, or other qualifications on the fee the attorney determines are appropriate; and

(C) the contingent fee, hourly fee, or flat fee the attorney will charge the client.

(4) INFORMATION AFTER SETTLEMENT.—

(A) IN GENERAL.—An attorney retained by a claimant shall, within a reasonable time not later than 30 days after the date on which the claim or action is finally settled or adjudicated, provide a written statement to the claimant containing—

(i) the actual number of hours of the attorney's services in connection with the claim;

(ii) the total amount of the fee for the attorney's services in connection with the claim; and

(iii) the actual fee per hour of the attorney's services in connection with the claim, determined by dividing the total amount of the fee by the actual number of hours of attorney's services.

(B) WAIVER AND EXTENSION.—A client, in writing, may—

(i) waive the right to receive the statement required under subparagraph (A); or

(ii) extend the 30-day period referred to under subparagraph (A).

(5) FAILURE TO DISCLOSE.—Except with regard to a claimant who provides a waiver under paragraph (2)(B) or (4)(B), a claimant to whom an attorney fails to disclose information required by this section may withhold 10 percent of the fee and file a civil action for damages resulting from the failure to disclose in the court in which the claim or action was filed or could have been filed.

(6) OTHER REMEDIES.—This subsection shall supplement and not supplant any other available remedies or penalties.

(b) EFFECTIVE DATE.—This title shall take effect and apply to claims or actions filed on and after the date occurring 30 days after the date of enactment of this Act.

Mr. ABRAHAM. Mr. President, my esteemed colleague from Kentucky and I are proposing here an amendment which would establish a consumer of legal services' right to know how much he or she is paying and for what services. This is a right we recognize in most other markets for goods and services, and one which is no doubt recognized and respected by most reputable attorneys.

Nonetheless, Mr. President, there are too many cases in this country in which tort victims and other consumers of legal services have real difficulty determining whether they are getting a fair shake from their attorney.

As a result, victims receive less of their rewards than they should, the legal system costs everyone too much, and ever-higher fees are encouraged by a lack of competition.

Mr. President, this amendment will give consumers of legal services the means with which to make informed decisions concerning their legal representation. By establishing a consumer's right to know in the legal services market it will encourage competition and fair dealing. It will help make our system more fair to litigants and reduce the total cost of our legal system.

The unfairness of our current system is shown by the fact that tort victims receive only 43 cents of every $1 awarded from damages—the other 57 cents going to pay lawyers and court fees and to cover the litigants' lost time.

A significant portion of the 57 cents taken by the legal system goes directly to attorneys. Plaintiff's attorneys, in particular, collected from 33 to 40 percent of the average award in a contingency fee case—that, plus fees for all costs related to the litigation.

Now, I am not begrudging the hard-working attorney for his or her hard-won fee. Nor am I proposing that we establish any set fee. But it seems clear to me that something is wrong with a system in which, as was noted by Professor Lester Brickman of the Cardozo School of Law, 25 to 30 percent of all contingency fee cases have no real contingency.

In particular, in cases such as those involving airline crashes, fault often is not in doubt as a practical matter. This means that plaintiff's lawyers, who still collect their full 33-to-40 percent fee, may receive the equivalent of $10,000 or even $30,000 per hour.

I was struck in particular by a 1989 case Professor Brickman noted out of Alton, TX, in which a school bus was hit by a delivery truck. In this tragic incident 21 children were killed and 60 were injured. Obviously and rightfully there was a large judgment in favor of the plaintiff/children.

While there was no doubt about who was at fault, the lawyers still charged their full fees. As a result, according to Professor Brickman, the attorneys received as much as $30,000 an hour for their services—money for which they did little and which could have done much more to help the victims and their families.

Mr. President, victims are losing out, and so are the rest of us, because legal costs are too high. Professor Brickman estimates that contingency fees now run $13 to $15 billion annually. This represents a substantial portion, more than 10 percent, of the $132 billion which Tillinghast research estimates we spend as a nation on our legal system each year. This $132 billion acts as a huge, business-stifling liability tax on consumer goods and services.

Now, again, most attorneys recognize their duty to inform clients of how much they will be paying and for what services. Indeed, this is a standard for professions in general.

Doctors provide fee schedules to insurers. Architects and even furniture movers provide written, binding estimates upon request. Consumers of legal services, I believe, deserve the same treatment.

This is what our reforms would provide: At the initial meeting with the prospective client the attorney would be obligated to inform the client of his or her right to obtain a written fee statement within 30 days. This statement would contain, first, the estimated hours of the attorney's services that will be spent settling or attempting to settle the claim and handling the claim through trial; second, the basis on which the attorney proposes to charge the client—hourly, contingent, or flat fee; and third, the hourly rate, contingent fee, or flat fee the attorney proposes to charge.

The attorney would be obligated to give this statement to the client within 30 days unless the client in writing waives the right to receive it or extend the attorney's time within which to provide.

Similarly, within 30 days after completion of the litigation either by settlement or trial, the attorney would be obliged to furnish the client a written statement describing, first, the number of hours the attorney expended in connection with the claim; second, the total amount of the fee; and third, the actual fee per hour charged, regardless of how the fee was structured. Again, the client could waive the right to the statement or extend the 30-day deadline.

A claimant who does not receive the requisite disclosures has the right to withhold up to 10 percent of the fee charged and to file a civil action for any damages the client incurred as a result of the failure to disclose.

Mr. President, we need these reforms to help potential clients make informed decisions concerning legal representation.

The legal services market is in particular need of open information because clients may never have dealt with the legal system before. This lack of client experience establishes a significant information and expertise imbalance, one that can lead to a client's receiving less favorable treatment than he or she might obtain with better information.

Moreover, this problem is made worse when an attorney is hired to provide services for a single piece of litigation. That lawyer does not have the same incentives to keep the clients happy at the conclusion of the lawsuit as an attorney providing services to a longstanding firm or client on an ongoing basis.

The right to know established by this amendment will facilitate an exchange of information concerning the quality of legal services provided, and even single-issue relationships.

Thus we can empower clients in their dealings with attorneys while actually increasing the ability of market forces to work in the legal services markets. The result will be increased competition, better service, lower fees, and savings for everyone.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, the amendment proposed by my friend, the distinguished Senator from Michigan, is the first amendment that has been proposed to this bill in something over 24 hours of debate. It is a most interesting amendment. I hope that any Member who feels that he or she can contribute to the debate on the amendment will appear on the floor and share with Members of the Senate that Senator's views.

The amendment is relatively modest in one respect, and in another sense is expansive. It is not directly connected with the other provisions of this bill in that it is not limited to product liability litigation. It is, on the other hand, limited, as I understand it, to actions in Federal court—basically in the U.S. district courts—and applies to all such litigation in those courts.

The concept that there should be disclosure, both in the initial stages of an attorney-client relationship and at the end of that relationship, over a particular case is, of course, an appropriate one. On its surface, the amendment seems to be constructive. I hope we will very promptly get the views of other Senators on the subject.

I would like to conclude the debate on this relatively narrow amendment before we adjourn this evening.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HOLLINGS. 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. HOLLINGS. While I am trying to obtain a copy of the amendment, I have in hand from the distinguished Senator from Michigan a copy of a letter dated April 24, I take it, outlining the amendment itself. It says here:

> Under our proposal, at the initial meeting the attorney would be obligated to inform the client of his or her right to obtain, within thirty days, a written statement containing (1) the estimated hours of the attorney's services that will be spent (a) settling or attempting to settle the claim and (b) handling the claim through trial; (2) the basis on which the attorney proposes to charge the client (hourly, contingent or flat fee); and (3) the hourly rate, contingent fee, or flat fee the attorney proposes to charge. The attorney would then be obligated to provide that statement to the client within thirty days unless the client in writing waives the right to receive it, or extends the time.

Mr. President, on the matter of fees, I was in the practice actively for 20 years and I never had outlined this. I have always had an understanding, and a written one. I wish I had one of the forms here, because it was the minimum fee schedule, approved by the Charleston bar, my hometown, where we had a minimum fee schedule—at a formal meeting that was agreed upon—and that was a contingency contract. And wherein I was retained, I had that contingency contract signed not only by, of course, the client, but by myself.

In 20 years I have never found this problem. You can get this professor. I doubt he has tried a case, because I find that is the case with most professors and that is why they are professors.

But right to the point, this so-called estimated hours. Let me go to one of the cases that was taken all the way to the Fourth Circuit Court of Appeals and then finally abandoned before the Supreme Court. It was a case of the C&S Bank as the trustee for Harold Tummestone versus the Morgan Construction Co. The reason I got the bank as a trustee is because the particular individual had been severely damaged, brain damaged, which I will be glad to go into because, unless others want to speak to this particular amendment, until I can get a copy of it I want to say a few words.

But we wanted to get comity or the trustee to bring that particular case. I knew the bank had credibility. I wanted to bring credibility to this so-called damage suit. Of course I got the bank to go over there and handle it and have them review all of my activities.

With respect to that, I can tell you the bank would not have required, and the bank would not have had any idea, nor would I have had any idea about the estimated hours of the attorney's services that will be spent (a) settling or attempting to settle the claim.

Excuse me, let me rescind that particular statement by saying, yes, I could have put on there an estimation of (a) the hours spent settling or attempting to settle the claim. But, I can tell you here and now, they never offered any settlement. We tried that case. It was not until the jury came in that they wanted to try to even talk about settlement. I will never forget it. The trial judge in court recommended that we settle the case. The truth of the matter is I had proven a very, very strong case. I felt very confident. In spite of the admonition of the trial judge, I told him to go ahead and write his order, whatever it was, but I was not going to yield 1 red cent on that particular verdict because I knew what we had done. And I was not offered any settlement.

I never had billable hours. That is annoying to this particular Senator and lawyer. I have no idea how you can really make it. You might sit in an office and talk about so many hours you are going to try to settle. But it depends on how you reach the case on the docket and what the pressure is that you can bring on the defendant, if they can get a continuance and everything else of that kind, and there is such a tremendous variable it does not help the client and it does not help the lawyer. It is a sort of spurious thing.

We believe in the client being informed. The information that I have always had with respect to the contract and agreement with my clients is just exactly as I have pointed out. It is a contingent basis of one-third, whereby we assume, as the attorney for that particular case, all costs and all court costs, all medical fees to get examined by doctors and specialists' fees.

I remember in this particular case I had to get a neurosurgeon to come down and spend several days and later on testify. So not only were his fees billed to me—you have to pay the doctor's fee if you do not want a witness who feels like he has not been paid. You want him to be a happy witness, so you pay his medical fees. You pay the investigative fees. You pay all the interrogatory fees, discovery fees, all the time. You pay for the appeals and the brief and the court, the transcript of record and everything else, the printing of that on appeal.

And of course all your hours and time—I did not sit down and start computing hours and time. But for the poor, indigent client, ''Look. Don't worry. We will do our level best to get you any recoveries made, and any offers made we are obviously going to tell you what the offer is and make sure you know about it. And you have the approval or disapproval of any kind of settlement offer.'' Because, of course, we have malpractice in law as well as malpractice in medicine. So you have to protect yourself and deal open and on top of the table with the particular client.

But I can tell you now. Being at the bar, this particular thing here is the first I ever heard of it. I started in 1947; 1997 would be 50 years. So in almost 47 years of practice, I never heard this as a problem. Let me go further. I can tell you what I find as a problem. But the basis on which the attorney proposes to charge the client an hourly contingent or flat fee, I think I can answer that and just say what I have said here.

Three, the hourly rate contingent fee or flat fee the attorney proposes to charge.

So mine again would be just the contingent fee. I could comply with two and three. But I have no idea about the estimated hours of settling or attempting to settle the claim and estimated hours of handling the claim through trial. Of course, it says nothing here about the appeal.

It says similarly, within 30 days after completion of the litigation, either by settlement or trial, the attorney would be obliged to furnish the client a written statement describing, first, the number of hours the attorney expended in connection with the claim; second, the total amount of the fee; and, third, the actual fee per hour charged regardless of how the fee was structured. That brings us back.

I really object to bringing it back to billable hours because we have to work and represent clients. I am not in Michigan in one of these large law firms. We are in a relatively small town. I guess speaking with respect to large law firms in any event, and I have to spend, not bureaucracy and regulatory. Here we have regulatory reform. Now they have regulations here about actual fee per hour charged. We will have to hire someone to keep track of this thing because I have work to do, study the law, interview the witnesses, and talk about not only the pleadings and everything else of that kind but the chances of prevailing. All of that is tied up as we have been hearing about 2 to 3 years. I would rather just put it on a contingent basis trying my best to get it to trial and get it to a conclusion, and not be into the proposition of the actual fee per hour charged and trying to compute it.

There is nothing wrong with disclosure. Like I say, I disclose. I want a clear understanding. I cannot represent a client fully and fairly unless there is absolute trust. You build that up. You do not write that into law up here in Washington. I practice law. You get a reputation. You get a reputation for trust and for accomplishment, and by that reputation of being able to be successful at the bar and totally trustworthy, the word spreads. You get a client and you get a successful law practice. Incidentally, I had it. I had at least three times what I made when I got here in 1966.

But one of the things I really did not like was charging clients. I never did charge enough. A client told me that

later on, as did several lawyers. I would rather come up here where I do not have to worry about charging the clients. I can talk to the jury and then go in with the jury and vote. I like this much better. I get a variety of cases, too. I do not get a reputation just by bringing one set of cases on the claimant side. You get any and every case whether it is a terrorism case, whether it is a product liability case, or whether it is going to be telecommunications or whatever it is. So it is the enrichment of the learning experience up here that attracted me and not the fees.

But having said that, what really disturbs me is this trying to bureaucratize the law practice which I have resisted. But if we are going to go ahead and bureaucratize the law practice, what really is outrageous in my opinion is this billable hours whereby this crowd downtown here is charging $300, $400, $500 an hour.

I will never forget when I was first up here and I put in on the case statute the textile amendment. I got help from the distinguished Senator from New Hampshire on the other side of the aisle, Norris Cotton.

After we succeeded in passing that textile bill over 25 years ago, Senator Cotton said, ''You know what so and so downtown was paid to pass that bill?''

I said, ''I did not know he had anything to do with the bill.''

He said, ''No. But he was retained by the industry and given $1 million to get that bill through.''

I said, ''Did you ever talk to him?''

He said, ''No. I never did talk to him. But I just found that out.'' I never talked to him.

But these lawyers in this town get these enormous fees. I found since that time regarding drugs—that is a terrible menace to our society—that these lawyers that are successful in the drug cases immediately demand and receive a $50,000 retainer, $100,000 retainer, large, exorbitant fees of that kind. I think that is really the thing that discourages society against the lawyers. I think what we ought to do really is limit the attorneys' fees. I think what we ought to do is limit the billable hours, the attorneys' fees in all cases, the billable hours to $50 an hour.

Mr. President, at $50 an hour, at a 40-hour workweek, and a 52-week year, you would exceed over $100,000. That is just $50. Of course, if you work on weekends and overtime like any trial lawyer would work overtime. Everybody was off to the football game and Sunday afternoon driving with the family, and I was working in the office and Sunday night getting ready to go to court on Monday morning. You could easily at $50 an hour, if you work as a lawyer, make $150,000 to $175,000 a year. I think that is a good salary for a working lawyer. Senators get less, of course, and work harder. We start out early in the morning around here, and then when you supposedly get time off like Easter break, that is constituent service.

What I want to do is send an amendment to the desk to limit attorneys' fees in all civil actions to $50 per hour. And at the end of the matter proposed to be inserted, I want to add section 302, limitation on fees. If an attorney at law brings a civil action, or is engaged to defend against any civil action, the word ''action'' should be inserted there because I was not familiar with this particular amendment and never had heard of it until the distinguished Senator from Michigan submitted it. But if any attorney at law brings a civil action or is engaged to defend against any civil action, the attorneys may not be compensated for legal services provided in connection with that action at a rate in excess of $50 an hour.

I expect to get reelected on this amendment. I can tell you here and now, if we can bring that down to $50 an hour. I remember my poor colleagues on ethics charges having to go back on this particular record.

You have my colleagues here right now who would elect me President of the Senate if they could get a fair vote because they were charged $400 an hour, and they all owe their lawyers downtown. You come to this place and in the legal game of bringing ethics charges and everything else of that kind and then having to go through all the records and what have you and pay the lawyer downtown, you have got $400, $500 an hour. I have heard of all kinds of charges of that nature. And I think that what we ought to do is get to the real problem in these civil actions, not just in product liability, if we are going to have an amendment that goes into all of this disclosure like there is some kind of secret hocus pocus.

Now, let me agree with the distinguished Senator from Michigan. I noted in that letter as I was reading, and I quote, ''This concern is not merely hypothetical.'' So says the Senator from Michigan.

To give just one example: According to the Washington Post, last month, attorneys collected $16 million in a settlement of antitrust claims against several airlines. Their clients received coupons worth $10 to $25 redeemable toward the purchase of airline tickets, under limited and restricted conditions. According to Prof. Lester Brickman of the Cardozo School of Law, in many tort cases lawyers are charging standard contingent fees even though the contingency is in name only. Similarly, professionals who audit law firm fees find significant overcharging in many of the cases they examine.

If you got the contract that this lawyer has had, you cannot find any overcharging. If you get the one-third, you have to pay all the costs and you have been paying for doctors; you have been paying for printing costs; you are paying for interview costs; you are paying all kind of costs over the 2- to 3-year period, and that comes out of your fee. That does not come out of the claimant's award or verdict, I can tell you here and now.

I do not know the background of this particular case, but it is obvious to me this antitrust claim—and that is what these lawyers get in so much billable hours. I noticed in one they had on another bankruptcy, and so forth, if someday we can retire and get to be a referee in bankruptcy and sit around on golf courses, learning how to finally settle the bankrupt nature of the entity, we can pay really thousands and thousands of dollars in fees, which to me is a disgrace. I have seen that happen in my own backyard, and I have complained about it in our hearings on bankruptcy cases.

But this $16 million in the antitrust claim no doubt was approved by the Court itself. Now, they had a claim and they had all of these billable hours. I know how to get that $16 million down to about $2 or $3 million by coming down to my amendment with $50 an hour maximum at that particular time. I think that is one way to rectify what the distinguished Senator from Michigan finds is an abuse.

It is not really lack of disclosure because when you get an antitrust case of this kind, you bring a class action, which apparently this was, you really produce a case that was not in existence. You go around and fetch people who do not have any idea that they are being recharged and you tell them I wish to get and bring a class action; I happen from research to believe that you have a case here; you are not obligated to pay anything to me unless we succeed.

So the clients, while the distinguished Senator from Michigan may complain and I may complain at an inordinately high $16 million fee, you can bet your boots that the people themselves had nothing to complain about because they did not have anything in the first place. They did not even know they had a claim. They did not even know they could get involved and help bring this abusive practice of overcharging by the airlines to a halt.

So they have performed a public service. Whether the lawyers in that particular case deserved $16 million, at least the Court thought so. And the clients could well have appealed, and it could have been adjusted, and it could be subject now to adjustment and that kind of thing. I just really do not know. I agree that I am, as the Senator from Michigan, disturbed not about disclosure because clients can find out. And I can tell you now, if you have a client and you come around and all of a sudden win a case and you do not have an understanding, that client can go to another lawyer and you have malpractice on your hands. You can be hit with a malpractice suit, whether they win or lose. What happens is that hurts your reputation. So irrespective of the merit of the particular case, you

are supercautious in this day and age to not engage in any kind of misunderstanding with clients. So, yes, write it down, write down the contingent fee.

But I would have to oppose the amendment with respect to the billable hours. But if there is to be billable hours in product liability claimants attorneys' restrictions, then I think maybe, if that is the will of the body, they want to consider limiting attorneys' fees in all civil actions to $50 per hour.

AMENDMENT NO. 598 TO AMENDMENT NO. 597

(Purpose: To limit attorneys' fees in all civil actions to $50 per hour)

Mr. HOLLINGS. Mr. President, I send an amendment to the desk to the amendment of the Senator from Michigan and ask that the clerk report.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows.

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 598 to amendment numbered 597.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the matter proposed to be inserted, add the following:

SEC. 302. LIMITATION ON FEES.

If an attorney of law brings a civil action or is engaged to defend against any civil action, the attorney may not be compensated for the legal services provided in connection with that action at a rate in excess of $50 an hour.

Mr. HOLLINGS. I have explained the amendment and about read it to my colleagues.

I thank the Chair. I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I am pleased to be a cosponsor of the amendment by the distinguished Senator from Michigan [Mr. ABRAHAM] requiring lawyers to disclose to their clients information about fee arrangements.

The amendment of the Senator from Michigan is a very simple consumer protection amendment. Too often, those in need of legal services are inexperienced in evaluating whether they are getting good value for the money they pay. After all, choosing a lawyer is not exactly like choosing a lawn mower. No objective specifications, to my knowledge, exist. It is virtually impossible to compare prices. The only thing a prospective client may know in selecting the lawyer is what law school he or she attended, and that he or she passed the State bar examination. The client may not even know if it took the lawyer more than one try to pass the bar exam. And unfortunately, some lawyers take advantage of unsuspecting clients. In contingent fee cases, lawyers charge standard rates, regardless of how much effort or how much risk is involved in the particular case, typically, to take one-third of any settlement, 40 percent of any award resulting from trial, and frequently 50 percent if the case gets appealed. Many jury verdicts are eventually reduced on appeal, so often an injured person will recover less money the further the case is litigated.

A few weeks ago, the Washington Post reported on the settlement of an antitrust case against several airlines. The clients got $10 to $25 coupons redeemable under restricted and limited conditions. The lawyers shared $16 million in fees.

Lawyers who bill their clients on an hourly basis create problems of a different sort. Consider the case of the Denver law firm that claimed it did not bill its clients for the first class airfare. A legal auditor hired by a client discovered that the firm bought business class tickets but individual lawyers were upgrading to first class at the airports and then billing the clients. In another firm, a lawyer was discovered to have billed for 62 hours in a single day—quite an accomplishment, I might say.

Still, another lawyer drafted a motion for a client that could be used in thousands of asbestos cases that the lawyer was defending. The lawyer billed his clients 3,000 separate times for the same motion—3,000 separate times, I repeat, Mr. President, for the same motion.

These anecdotes are related in a recent U.S. News & World Report story entitled ''Lawyers Who Abuse the Law.'' Add on to a few lawyers who take advantage of their clients the reality that the legal system does not fairly compensate those who seek redress. Someone injured because of another's negligence has as much chance of winning in a lawsuit as he or she does by taking a turn at the gaming tables of Las Vegas. Sometimes, as at the casinos, it is possible to win big. But we know that in gambling, the house is usually the big winner. The same is true in the legal system, only the house is the system itself—lawyers and court costs.

After all, more than half of every dollar spent in the liability system, 57 cents goes to the lawyers and to the courts. The injured get only 43 cents of that dollar.

These experiences are causing the American people to lose confidence in our legal system. The same U.S. News & World Report article found that 69 percent of the American people believe lawyers are only sometimes or not usually honest.

Restoring integrity to our legal system is a fundamental goal of this reform effort. This amendment is designed to give clients some reasonable information about the financial aspects of the relationship with a lawyer.

Under the amendment of the Senator from Michigan, the lawyer would be required to provide the client with two statements, one at the outset of the representation and another when the case is concluded.

The attorney must provide the client with the following information at the beginning: How many hours will be spent trying to settle the case; how many hours it will take to bring the case to trial; how the attorney will charge the client—hourly, contingent, or flat fee; and, the precise rate.

A final statement at the end of the case must include the following: The number of hours the lawyer spent on the case, the total amount of the fee and the effective hourly rate, regardless of the rate actually charged.

This basic information will go a long way toward restoring America's faith in our legal system, and it will enable those who need legal counsel to be better informed in selecting counsel. The scope of the amendment is limited. It applies only to those cases filed in Federal courts. So the Senator from Michigan has narrowed the scope of this considerably.

While there is no reason for these disclosure requirements not to apply to State courts, we are trying to be mindful of imposing too many requirements upon the States in this particular instance. So we have left the scope of this effort quite narrow, and the States are free to adopt these disclosure requirements on their own, obviously.

Let me close by stating what the amendment does not do. First of all, it does not prohibit or restrict contingent or hourly fees. It does not mandate the use of contingent or hourly fees.

We recognize the importance of contingent fees. In some situations, a contingent fee may be the only way a person can afford to hire a lawyer to pursue a case. But the Abraham amendment affords consumers important information. It will help those choosing lawyers to be good consumers, and it will put consumers on a more level playing field with the lawyers whose services they need.

So I want to commend the distinguished Senator from Michigan for his amendment. I think it is an excellent amendment. I hope it will be adopted by the Senate at the appropriate time.

Mr. President, 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. HOLLINGS. 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. HOLLINGS. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HOLLINGS. I thank the distinguished Chair.

Mr. President, of course, you can see now what is entering into this particular issue, and that is what I would call candor. The reason this issue has survived over 15 years but never passed the Senate, the reason it hasn't gotten anywhere is the antipathy to lawyers. And here in the middle of the treatment of product liability, a very restricted part of civil actions—you take all the civil actions in the United States filed, 9 percent of all civil actions filed comprise tort claims. And if you take all the tort claims filed, only 4 percent of the 9 percent comprise product liability.

What you have is thirty-six one-hundredths of the civil actions being treated in product liability. But superimposed on top of that comes the first amendment, and the first amendment is: ''Kill all the lawyers,'' they said in King Henry VI, Shakespeare. We will kill all the lawyers here. We have the disclosure of attorneys fees and information.

They take an anecdotal measure that they refer to in the newspaper relative to antitrust, having nothing to do with product liability, and they put in an antitrust charge which is no doubt a class action—not class action on product liability—and a class action that has been conducted over the many years. I have to go back and find out what it was.

Quite to the point, the $16 million, with the inference here, they do not tell you how many millions went to the claimants. Obviously, millions went to the claimants, but when you had thousands and thousands of claimants, maybe millions of claimants, then it did reduce it to a $10 to $25 redeemable toward the purchase of an airline ticket.

Those things come out when you get the full facts. But this anecdotal approach, and taken with all civil cases in Federal court and putting down lawyers' disclosure amounts gets to the candor that really is behind the movement here at hand.

Product liability has been handled at the State level and in a very judicious and forceful fashion. We know it is not a national problem. All the little things that they tried to bring up over the years—incidentally, Mr. President, by way of amusement to this Senator, I remember when they brought up the Little League, and the Little League had the right and said, no, no, we are not a part of this case. Then they had an anecdotal amount of Girl Scout cookies and they had the right and said, no, we are not into this at all. Then our former colleague who, incidentally, sat right here in the Senate, the Senator from South Dakota, George McGovern, was on a little TV exposé, how he went out of business on account of product liability, and then he reversed field and said, no, no, they had cut that particular little 30-second bite that they had him and former Congressman and then Secretary Jack Kemp on, which they were trying to build up.

They tried every amusing thing in the world to give some force and credence to our product liability problem. There is none. There is no national problem in product liability. Now if we cannot get the votes for that, then what we ought to do is get lawyers fees here and call it disclosure, like the lawyers are running around cheating their clients. Come on. If the lawyers do that, they are not going to last long. I do not know what town they practice in, but reputation means everything in the profession. Oh, yes, we object to doctors and doctors' fees and everything else, until we get sick, and then we want the best and we love our doctors. In a similar fashion, yes, they all complain about the lawyers, until they get in trouble and then they get a lawyer of their choice and have complete trust.

Like I say, at the bar we require a minimum fee kind of schedule and contract, and the lawyers of the local bar associations police their groups. And, yes, there are many cases being brought up now before our State supreme court for malpractice, disbarment, and everything else of that kind, where they have taken the client's money. But that was not because they did not disclose. You are going to find those kinds of lawyers and those kind of individuals in every practice, profession, trade, or business.

It is unfortunate, but you certainly do not need here at the Federal level to try and burden product liability with a lawyer fee act. But if we are going to do it, let us get to the real heart of the matter, because there is a cleavage of division. When, Mr. President, I work for you as my client, I do not get paid until I succeed and you understand the percentage or the contingent basis. If I go to you under billable hours, in addition to trying to win your case, I am trying to win myself more fees, and on a billable hour basis, the more I can say that I worked on Saturday and I spent some hours reading here and I looked there and everything else—in other words, I am trying my case and not the client's case.

I think that is unethical. I think it is basically unethical. There are a lot of things that I think are unethical. Perhaps our conference that we have around here every Tuesday trying to ambush each other is. We never had that before. We had policy committees. As the distinguished Parliamentarian who has been here for years knows, the policy committee set the seriatim of the treatment of measures. But we never had parties meeting, the Republican conference and the Democratic conference, to meet in ambush of the other side and come around here and talk about ethics.

When you get these billable hours, you begin to work for your billable hours, you begin to work for your case rather than the client's case. I never did like it. I never charged billable hours. I resent it and reject it. But if we are going to have it, let us limit it because it is unforgivable what they are trying to charge. If that is what the market forces are, I never heard of all the hours charged. Look at the O.J. Simpson case, what they say those high-powered lawyers are charging. Maybe we can have a hearing before the Judiciary Committee and find out. I know we have not had any hearings on this.

The product liability measure was referred to the Commerce Committee and there was not one word of testimony on this matter. That made me withhold the matter of lawyers fees. I was waiting for somebody to raise the subject of let us get the lawyers. Now that it has been raised in the Abraham-McConnell amendment, I have to amend that amendment with my particular one of a limitation of $50, at the most, on any billable hours.

As I pointed out, I am confident that the anecdotal antitrust case—not a product liability case—would reduce the $16 million. Oh, that would reduce it down to $2 or $3 million.

So we are moving in the right direction in the Hollings amendment. But more than that, I would challenge those who sponsored this amendment to bring me the product liability case wherein the claimant represented by an attorney was misled, misinformed, or not disclosed fully what the fee basis was. I do not know of any. I never have heard of any. I cannot understand it. Maybe it happened here in this antitrust case. But if that is what they are disturbed about, do not just reach around in a magazine article having nothing to do with product liability or reach around in a newspaper article in the Washington Post having to do with antitrust and a class action brought over a series of years and court approved that we do not have the facts for, having nothing to do with product liability. I want to ask them to please bring—if that is their intent now on disclosure—evidence of where it is a national problem.

Heavens above, we have enough work to do around here. But if we are going to start debating lawyer's fees at the national level, and disclosures, and how many hours, and what do you expect, and how many hours on settlement, and how many hours on trial, and then the actual fee per hour charge, regardless of how the fee was structured, and all of these things of that kind, this is a solution looking for a problem. What the real problem is, is lawyers. So they say we can enhance this product liability initiative by going at lawyers. And we will find out who is for lawyers and against lawyers.

Well, I happen to be for lawyers. We will have to get that saying of ''kill all the lawyers.'' But that was really a laudatory comment, whereby lawyers stand between tyranny and freedom. In Shakespeare, you will find that reference with respect to lawyers not being against all the lawyers, but the

tyrant was saying the only way we can prevail and continue this tyranny is to get the lawyers because they are the only ones that understand and know and stand in our way of freedom, and we can continue this tyranny. So it was not a pejorative saying of ''kill all the lawyers.''

We can go through to the Founding Fathers who were all lawyers and drew the Constitution and worked at it overnight. We can come right on down the line with respect to the lawyers in the history of this land, whether it be President Lincoln in the days during the Civil War, or most recently here, in civil rights cases, Thurgood Marshall and others. If they had not had those lawyers, I can tell you now, having been at the local level over the many years, had Thurgood Marshall not succeeded in Brown versus Board of Education, you would not have found the advancements made.

Advancements were not made as a result of the Civil Rights Act of 1964 so much as the advancement made in the 1954 Brown versus Board of Education decision by the U.S. Supreme Court, brought by the trial lawyer for the NAACP, Thurgood Marshall.

I will bring the cases, when we have time, to the attention of my colleagues. The hour is late and I want to yield to others to be heard on this.

Since it has just come up, I have represented to the distinguished manager of the bill, it is not our intent to delay. We will survey colleagues on this side of the aisle and see what amendments they want to present. I want to see if there are those who want to talk on this particular measure before we vote. And pending that, Mr. President, I yield the floor. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. 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. HOLLINGS. Mr. President, my staff brought to my attention—I wish we had billable hours for Senators. We could make a living up here. Maybe that is the next amendment we will have if they insist on this amendment, Mr. President.

Pending that, we have the Model Rules of Professional Conduct and the Code of Judicial Conduct by the American Bar Association.

I look at rule 1.4, ''Communication'' and I read:

> A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
>
> A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

That is the American Bar Association Model Rule that we all are governed by.

With respect to the fees themselves, rule 1.5:

> (A) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a file include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to a client, that the acceptance of the particular employment will preclude other employment by the lawyer;

I take that, Mr. President, to be no conflict of interest.

> (3) the fee customarily charged in the locality with similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, repetition, and the ability of the lawyer or lawyers performing the services;
>
> (8) where the fee is fixed, whether the fee is fixed or contingent.

It goes on in detail on the basis of the rate of fee, the terms of payment, and all the necessary things—the divisions of fee, how to settle if there is a dispute about the fee, all are matters of disclosure.

What they are really coming with on product liability is an assault against the bar. I know the former distinguished Vice President of the United States thought it was good politics, and he brought up about lawyers at the American Bar Association.

If a person practices law, they are under the rule and guidelines. It is still a profession. Just like I have resisted actually the TV coverage of the proceedings here of the U.S. Senate because we could get a lot more work done and we did a lot more work and we got things done.

I also have resisted the so-called advertisement by attorneys with the neon sign ''Divorces, divorces,'' or ''If you think you are hurt,'' or, ''We get more money in our claims than anybody else.'' I think that is unethical. I hate to see that coming about with the particular profession.

If we take the television out of the O.J. Simpson courtroom, that case could be handled in the next 3 weeks. But it will take the next 3 months at least with TV there. The idea is to get justice and not to amuse the public generally.

I hope we get the television out of this body, the television out of the courtroom, and get back to some economic sense, go to work for the people of America, and certainly not take what never has been recognized as a national problem, except with respect to the American Bar Association and its code of conduct which it has over the many, many years. It has never made a national problem to be legislated upon.

I know what they have in mind, and I think that my amendment will help them get at the 60,000 billable hour lawyers, and not the trial lawyers. They really go after the trial lawyers and product liability.

I want to talk about the corporate lawyers and that billable hour crowd that extends out. I have heard my colleague from West Virginia. He does not have any understanding of the law practice. He says, why, at the State level it is very difficult to get product liability reform. False. We have it in 46 of the 50 States in the last 15 years.

He says one of the reasons we cannot get it are these trial lawyers holding things up because they like to extend their cases and get more money. Extend more cases, I get more expenses.

I am paid on a contingency basis. I am not paid by a billable hour. The fellow who gets more money is the insurance company lawyer, the corporate lawyer. They love it. They try to stretch it out, get continuances, make more motions and everything else. I got 10 or 15 good cases in the office that I have taken for seriously injured clients. I have hundreds of thousands of dollars in time and costs wrapped up. I am really having to carry and finance, which we do. I have done it in my private practice.

We know how it is in corporate law. They have the mahogany desks and the Persian rugs, and they sit down there with the paneled walls and just answer the phone and everything. Answer the phone and say, by the way, charge him that I talked to him on the phone. I never heard of a contingency fee lawyer say I talked to somebody and charged so much. They charge so much per telephone call, so much per letter, so much per hour, so much per this. There is more per fees in the practice than we could ever contemplate.

Heavens, let us not write this bureaucracy into the law.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. Mr. President, I ask unanimous consent I be permitted to speak as in morning business for 10 minutes.

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

IN MEMORY OF SENATOR JOHN C. STENNIS

Mr. DASCHLE. Mr. President, I would like to take a few minutes to discuss the life and career of Senator John C. Stennis, who passed away earlier this week.

Senator Stennis served in this Chamber for 41 years. His work here included