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PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

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House of Representatives

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore [Mrs. WALDHOLTZ].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
May 1, 1995.

I hereby designate the Honorable ENID G. WALDHOLTZ to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

MORNING BUSINESS

The SPEAKER pro tempore. Pursuant to the order of the House of January 4, 1995, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member except the majority and minority leaders limited to not to exceed 5 minutes.

RECESS IN SOUTHWEST FLORIDA

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Florida [Mr. GOSS] is recognized for 5 minutes.

Mr. GOSS. Madam Speaker, the House has just completed a district work period, as Members know. Members are returning to Washington as we speak. The district work period is a time we all go home and listen to what the people we work for have to say. We reflect on what has been accomplished here in Washington. We report back to them. We get a little bit of a report card on how things should be done and instructions about what it is that the people that we work for would like us to try and achieve as we go forward with the congressional agenda.

This year's spring break tragically, as we all know, was overshadowed by the terrible bomb blast that occurred April 19 in Oklahoma City. Our hearts and our prayers go out to the victims, their families, the entire Oklahoma community, and all the extraordinary Americans who have rallied together in this time of crisis. So many people were touched by this tragedy. Even in remote southwest Florida that I represent the grief was felt in families who lost loved ones who were killed in the blast. We certainly applaud the efforts of the President, Federal and local law enforcement, and Members of this Congress in coming together to bring the perpetrators to justice and explore the challenge of preventing such a tragedy from recurring again.

Madam Speaker, I spent a good part of the break meeting with citizens in Florida, from small business owners and operators to students, to representatives of the media, a broad cross section of the people who make things tick in our small corner of America. It was an extremely valuable period of dialog for me, a time to share ideas and reflect on where we as a nation need to be headed. The timing of the recess—which we all know included the tax filing deadline of April 17—helped focus people's attention on the functions of their Federal Government and the need for change in the way we conduct the Nation's business. Just about everywhere I went in my travels throughout the district and beyond the district as well, people were encouraged by the changes that are taking place up here in Congress in terms of increased efficiency, streamlined operations, less Government interference in their daily life, and maybe even achieving a better return to citizens for their hard-earned tax dollars in the way we spend them. But there was also growing interest in tackling the challenge of reforming our tax system in a comprehensive way, and I suspect that may have had something to do with the fact that people were trying to understand those very difficult instruction forms at the last minute on April 15 when they were rushing to get in even before the extended deadline of April 17 this year. I think most people recognize that our current tax structure is inefficient, it is unfair, and it is largely incomprehensive certainly to the average American if they try and read the instructions. The paperwork alone is enough to ruin anyone's day, and the feeling is pervasive that many filers are paying too much and do not see a fair return on the investment they are required to make, and I think many agree that taxes are not moneys that are always well spent by Washington.

In fact, it was while I was home over this break that I received a note from our UPS delivery person who brought a package to my house. He scribbled his message right on the little yellow delivery ticket one gets right over the printed instructions so I could not read it exactly, but the sentiment was very clear. It said: ''Today's tax system is unfair and needs to be changed.'' This particular citizen urged my support for a flat tax, an option that is gaining in popularity and deserves our close attention. There are, in fact, many possibilities for tax overhaul, including not just the flat tax, or some version of it, but the national sales tax and other variations on those themes. I am pleased that the chairman of the House Committee on Ways and Means and the House majority leader have committed to beginning the dialog of tax reform this year, with the possibility of real change by next year. That would certainly be a welcome relief by the time April 15 came around.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

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This is a discussion that affects every American, and I hope the national dialog will help to educate us all about the pros and cons of the options out there.

We understand the problem. We just do not know what the best solution is yet, and I think that that ought to be at the top of our agenda. I think it is clear from those of us who went home and took the pulse that America is ready for bold change. It is time to stop fooling around at the edges of some of these systems and start constructing new systems that are fairer and more efficient. Everybody I talked to one way our the other, when we got on the subject of taxation, said, ''How about a better deal with our taxes? How about a system that we can understand?''

Well, Madam Speaker, how about it? As we tackle the budget process, can we include tax reform? I think the people we work for have asked us to do that, and I can see no reason at all why we should not. So how about it? Let us take on tax reform.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until 2 p.m.

Accordingly (at 12 o'clock and 37 minutes p.m.), the House stood in recess until 2 p.m.

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 2 p.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O loving God, we come together on this day and we recount with thanksgiving all the blessings You have bestowed upon Your people. Yet, we are painfully aware of the suffering of people whose lives have been devastated and whose families have been destroyed. We especially remember with our thoughts and prayers the people of Oklahoma City who have suffered such distress and misery. We pray that Your good spirit that supports and gives hope even in tragedy will be with them in their grief and give healing to their souls. We pray also for all those valiant people who have done so much to rescue those in need and who have risked their own lives to save others. May Your peace, gracious God, that passes all human understanding, be with all Your people, this day and every day, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. The gentleman from Mississippi [Mr. MONTGOMERY] will lead the membership in the Pledge of Allegiance.

Mr. MONTGOMERY led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed a resolution of the following title, in which the concurrence of the House is requested:

S. RES. 111

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable John C. Stennis, late a Senator from the State of Mississippi.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased Senator.

The message also announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 421. An act to amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of Cook Inlet Region, and for other purposes; and

H.R. 517. An act to amend title V of Public Law 96–550, designating the Chaco Culture Archeological Protection Sites, and for other purposes.

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 1158. An act making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 1158) ''An act making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes,'' requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HATFIELD, Mr. STEVENS, Mr. COCHRAN, Mr. SPECTER, Mr. DOMENICI, Mr. GRAMM, Mr. BOND, Mr. GORTON, Mr. MCCONNELL, Mr. MACK, Mr. BURNS, Mr. SHELBY, Mr. JEFFORDS, Mr. GREGG, Mr. BENNETT, Mr. BYRD, Mr. INOUYE, Mr. HOLLINGS, Mr. JOHNSTON, Mr. LEAHY, Mr. BUMPERS, Mr. LAUTENBERG, Mr. HARKIN, Ms. MIKULSKI, Mr. REID, Mr. KERREY, Mr. KOHL, and Mrs. MURRAY to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills and a joint resolution of the following titles, in which the concurrence of the House is requested:

S. 268. An act to authorize the collection of fees for expenses for triploid grass carp certification inspections, and for other purposes;

S. 349. An act to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program,

S. 441. An act to reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes;

S. 523. An act to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes; and

S.J. Res. 32. Joint resolution expressing the concern of the Congress regarding certain recent remarks that unfairly and inaccurately maligned the integrity of the Nation's law enforcement officers.

The message also announced, that in accordance with Public Law 99–498, section 1505(a)(1)(B)(ii), the Chair, on behalf of the President pro tempore, appoints Mr. DOMENICI to the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development.

The message also announced, that pursuant to the provisions of Public Law 99–93, as amended by Public law 99–151, the Chair, on behalf of the Vice President, appoints Mr. GRASSLEY as a member and chairman of the United States Senate Caucus on International Narcotics Control.

The message also announced, that in accordance with Public Law 99–498, section 1505(a)(1)(B)(ii), the Chair, on behalf of the President pro tempore, appoints Mr. INOUYE to the Board of Trustees of the Institute of American Indian and Alaska Native culture and Arts Development.

The message also announced that pursuant to Public Law 96–388, as amended by Public Law 97–84, the Chair, on behalf of the President pro tempore appoints Mr. GRASSLEY, to the United States Holocaust Memorial Council, vice Mr. METZENBAUM.

The message also announced that pursuant to Public Law 94–304, as amended by Public Law 99–7, the Chair, on behalf of the Vice President, appoints Mr. LAUTENBERG, Mr. REID, and Mr. GRAHAM, to the Commission on Security and Cooperation in Europe.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore (Mrs. WALDHOLTZ) laid before the House the following communication from the Clerk of the House of Representatives:

HOUSE OF REPRESENTATIVES,
Washington, DC, April 25, 1995.

Hon. NEWT GINGRICH,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in clause 5 of rule III of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate, on Tuesday, April 25, 1995 at 9:40 a.m.: that the Senate passed without amendment H.R. 1380.

With great respect, I am

Sincerely yours,

ROBIN H. CARLE,
Clerk, U.S. House of Representatives.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker signed the following enrolled bills on Friday, April 7, 1995:

H.R. 889. Making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes;

S. 178. To amend the Commodity Exchange Act to extend the authorization for the Commodity Futures Trading Commission, and for other purposes;

S. 244. To further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes;

And the Speaker pro tempore signed the following enrolled bill on Wednesday, April 12, 1995:

H.R. 1345. To eliminate budget deficits and management inefficiencies in the government of the District of Columbia through the establishment of the District of Columbia financial responsibility and management assistance authority, and for other purposes.

COMMUNICATION FROM THE HONORABLE PATRICIA SCHROEDER, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Hon. PATRICIA SCHROEDER, Member of Congress:

HOUSE OF REPRESENTATIVES,
Washington, DC, April 7, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you pursuant to rule L (50) of the Rules of the House that my office has received a subpoena for testimony and documents concerning constituent casework. The subpoena was issued by the County Court, City and County of Denver, Colorado.

After consultation with the General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

PAT SCHROEDER,
Congresswoman.

PERMISSION TO FILE PRIVILEGED REPORT ON RULE FOR CONSIDERATION OF H.R. 655, HYDROGEN FUTURE ACT OF 1995

Mr. SOLOMON. Madam Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file a privileged report on a rule for the consideration of H.R. 655, the Hydrogen Future Act of 1995.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

COMMEMORATING THE 30TH ANNIVERSARY OF THE DISAPPEARANCE OF COL. CHARLES SHELTON

(Mr. LEWIS of Kentucky asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of Kentucky. Madam Speaker, I rise today to honor an American hero who disappeared 30 years ago.

Charles Shelton was an Owensboro, KY native who was shot down over Laos April 29, 1965—his 33d birthday.

His Air Force plane crash-landed, and he even made radio contact with friendly forces before being captured. Several reports describe Colonel Shelton's escape and recapture—as well as other sightings—well into the 1980's.

Last year, after his children petitioned the Pentagon, Colonel Shelton's status was changed to presumed dead. He was the last American POW of the Vietnam war.

Last year Charles Shelton was eulogized at the grave site of his wife, Mariam, in Arlington National Cemetery.

Saturday, his friends and family began work on a memorial on the lawn of the Daviess County Courthouse. It is a fitting honor for an American hero.

I rise today to remind my colleagues and the American people of the bravery of Charles Shelton—and to ask that the sacrifices of the Shelton family and so many others not be forgotten.

CORRECTING CNN'S STATEMENTS ABOUT THE NATIONAL GUARD

(Mr. MONTGOMERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MONTGOMERY. Madam Speaker, Cable News Network anchor Bernard Shaw made an inaccurate statement last night during CNN's program in observance of the 20th anniversary of the end of the Vietnam war. He was explaining how five National Guardsmen from one small town in Kentucky got killed in the war and then he said the National Guard rarely goes overseas to combat.

That is totally wrong. The only reason more National Guardsmen were not used in Vietnam was that President Johnson wanted to keep them home to control antiwar riots in the States.

The fact is that the National Guard has been involved in overseas combat missions for more than half a century. Four of the 12 divisions landing in Europe and D-day were National Guardsmen and the 29th National Guard Division lost 2,000 men in 1 day at Omaha Beach.

President Bush sent 106,000 young National Guardsmen and reservists to the Persian Gulf war. They fought alongside the Active Forces on the ground and in the air during that war.

And even today, the National Guard and Reserve are flying missions over and into the war-torn country of Bosnia.

The fact is that the Active Forces cannot go anywhere in the world today without the National Guard and Reserve.

I think CNN owes it to these men and women, their families, and the American people to set the record straight on this issue.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mr. HOYER] is recognized for 5 minutes.

[Mr. HOYER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

[Mr. OWENS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Colorado [Mrs. SCHROEDER] is recognized for 5 minutes.

[Mrs. SCHROEDER addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

RECESS

The SPEAKER pro tempore. Pursuant to clause 12, rule I, the Chair declares the House in recess for approximately 5 minutes.

Accordingly (at 2 o'clock and 11 minutes p.m.), the House stood in recess for approximately 5 minutes.

□ 1419

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro

tempore [Mrs. WALDHOLTZ] at 2 o'clock and 19 minutes p.m.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislation program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MONTGOMERY) to revise and extend their remarks and include extraneous material:)

Mr. HOYER, for 5 minutes, today.

Mr. OWENS, for 5 minutes, today.

Mrs. SCHROEDER, for 5 minutes, today.

(The following Member (at the request of Mr. MONTGOMERY) to revise and extend his remarks and include extraneous material:)

Mr. ROBERTS, for 5 minutes, on May 2.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. MONTGOMERY) and to include extraneous matter:)

Mr. TOWNS in eight instances.

Mr. MONTGOMERY.

Mr. SKELTON.

Mr. LAFALCE.

Mr. ACKERMAN.

Mr. STARK.

Mr. STUDDS.

Mr. BARCIA in two instances.

Mrs. MEEK of Florida.

(The following Members (at the request of Mr. MONTGOMERY) and to include extraneous matter:)

Mr. MARTINI.

Mr. DAVIS.

Mr. FIELDS of Texas.

Mr. CRANE.

Mr. SOLOMON in five instances.

ENROLLED BILLS SIGNED

Mr. THOMAS, from the Committee on House Administration, reported that that committee has examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 889. An act making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes; and

H.R. 1345. An act to eliminate budget deficits and management inefficiencies in the government of the District of Columbia through the establishment of the District of Columbia Financial Responsibility and Management Assistance Authority, and for other purposes.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 178. An act to amend the Commodity Exchange Act to extend the authorization for the Commodity Futures Trading Commission, and for other purposes; and

S. 244. An act to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Administration, reported that that committee did on the following dates present to the President, for his approval, bills of the House of the following titles:

On April 7, 1995:

H.R. 889. An act making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

On April 12, 1995:

H.R. 1345. An act to eliminate budget deficits and management inefficiencies in the government of the District of Columbia through the establishment of the District of Columbia Financial Responsibility and Management Assistance Authority, and for other purposes.

ADJOURNMENT

Mr. MONTGOMERY. Madam Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 2 o'clock and 20 minutes p.m.), the House adjourned, under its previous order, until tomorrow, Tuesday, May 2, 1995, at 9:30 a.m.

OATH OF OFFICE, MEMBERS, RESIDENT COMMISSIONER, AND DELEGATES

The oath of office required by the sixth article of the Constitution of the United States, and as provided by section 2 of the act of May 13, 1884 (23 Stat. 22), to be administered to Members, Resident Commissioner, and Delegates of the House of Representatives, the text of which is carried in 5 U.S.C. 3331:

> ''I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.''

has been subscribed to in person and filed in duplicate with the Clerk of the House of Representatives by the following Members of the 104th Congress, pursuant to the provisions of 2 U.S.C. 25:

ALABAMA

1. Sonny Callahan.
2. Terry Everett.
3. Glen Browder.
4. Tom Bevill.
5. Robert E. (Bud) Cramer, Jr.
6. Spencer Bachus.
7. Earl F. Hilliard.

ALASKA

At Large

Don Young.

ARIZONA

1. Matt Salmon.
2. Ed Pastor.
3. Bob Stump.
4. John B. Shadegg.
5. Jim Kolbe.
6. J. D. Hayworth.

ARKANSAS

1. Blanche Lambert Lincoln.
2. Ray Thornton.
3. Y. Tim Hutchinson.
4. Jay Dickey.

CALIFORNIA

1. Frank Riggs.
2. Wally Herger.
3. Vic Fazio.
4. John T. Doolittle.
5. Robert T. Matsui.
6. Lynn C. Woolsey.
7. George Miller.
8. Nancy Pelosi.
9. Ronald V. Dellums.
10. Bill Baker.
11. Richard W. Pombo.
12. Tom Lantos.
13. Fortney Pete Stark.
14. Anna G. Eshoo.
15. Norman Y. Mineta.
16. Zoe Lofgren.
17. Sam Farr.
18. Gary A. Condit.
19. George P. Radanovich.
20. Calvin M. Dooley.
21. William M. Thomas.
22. Andrea H. Seastrand.
23. Elton Gallegly.
24. Anthony C. Beilenson.
25. Howard P. ''Buck'' McKeon.
26. Howard L. Berman.
27. Carlos J. Moorhead.
28. David Dreier.
29. Henry A. Waxman.
30. Xavier Becerra.
31. Matthew G. Martinez.
32. Julian C. Dixon.
33. Lucille Roybal-Allard.
34. Esteban Edward Torres.
35. Maxine Waters.
36. Jane Harman.
37. Walter R. Tucker III.
38. Stephen Horn.
39. Edward R. Royce.
40. Jerry Lewis.
41. Jay Kim.
42. George E. Brown, Jr.
43. Ken Calvert.
44. Sonny Bono.
45. Dana Rohrabacher.
46. Robert K. Dornan.
47. Christopher Cox.
48. Ron Packard.
49. Brian P. Bilbray.
50. Bob Filner.
51. Randy ''Duke'' Cunningham.
52. Duncan Hunter.

COLORADO

1. Patricia Schroeder.
2. David E. Skaggs.
3. Scott McInnis.
4. Wayne Allard.
5. Joel Hefley.
6. Dan Schaefer.

CONNECTICUT

1. Barbara B. Kennelly.
2. Sam Gejdenson.
3. Rosa L. DeLauro.
4. Christopher Shays.

5. Gary A. Franks.
6. Nancy L. Johnson.

DELAWARE

At Large

Michael N. Castle.

FLORIDA

1. Joe Scarborough.
2. Douglas ''Pete'' Peterson.
3. Corrine Brown.
4. Tillie K. Fowler.
5. Karen L. Thurman.
6. Cliff Stearns.
7. John L. Mica.
8. Bill McCollum.
9. Michael Bilirakis.
10. C.W. Bill Young.
11. Sam Gibbons.
12. Charles T. Canady.
13. Dan Miller.
14. Porter J. Goss.
15. Dave Weldon.
16. Mark Adam Foley.
17. Carrie P. Meek.
18. Ileana Ros-Lehtinen.
19. Harry Johnston.
20. Peter Deutsch.
21. Lincoln Diaz-Balart.
22. E. Clay Shaw, Jr.
23. Alcee L. Hastings.

GEORGIA

1. Jack Kingston.
2. Sandford D. Bishop, Jr.
3. Mac Collins.
4. John Linder.
5. John Lewis.
6. Newt Gingrich.
7. Bob Barr.
8. Saxby Chambliss.
9. Nathan Deal.
10. Charlie Norwood.
11. Cynthia A. McKinney.

HAWAII

1. Neil Abercrombie.
2. Patsy T. Mink.

IDAHO

1. Helen Chenoweth.
2. Michael D. Crapo.

ILLINOIS

1. Bobby L. Rush.
2. Mel Reynolds.
3. William O. Lipinski.
4. Luis V. Gutierrez.
5. Michael Patrick Flanagan.
6. Henry J. Hyde.
7. Cardiss Collins.
8. Philip M. Crane.
9. Sidney R. Yates.
10. John Edward Porter.
11. Jerry Weller.
12. Jerry F. Costello.
13. Harris W. Fawell.
14. J. Dennis Hastert.
15. Thomas W. Ewing.
16. Donald A. Manzullo.
17. Lane Evans.
18. Ray LaHood.
19. Glenn Poshard.
20. Richard J. Durbin.

INDIANA

1. Peter J. Visclosky.
2. David M. McIntosh.
3. Tim Roemer.
4. Mark E. Souder.
5. Stephen E. Buyer.
6. Dan Burton.
7. John T. Myers.
8. John N. Hostettler.
9. Lee H. Hamilton.
10. Andrew Jacobs, Jr.

IOWA

1. James A. Leach.
2. Jim Nussle.
3. Jim Lightfoot.
4. Greg Ganske.
5. Tom Latham.

KANSAS

1. Pat Roberts.
2. Sam Brownback.
3. Jan Meyers.
4. Todd Tiahrt.

KENTUCKY

1. Ed Whitfield.
2. Ron Lewis.
3. Mike Ward.
4. Jim Bunning.
5. Harold Rogers.
6. Scotty Baesler.

LOUISIANA

1. Bob Livingston.
2. William J. Jefferson.
3. W. J. (Billy) Tauzin.
4. Cleo Fields.
5. Jim McCrery.
6. Richard H. Baker.
7. James A. Hayes.

MAINE

1. James B. Longley, Jr.
2. John Elias Baldacci.

MARYLAND

1. Wayne T. Gilchrest.
2. Robert L. Ehrlich, Jr.
3. Benjamin L. Cardin.
4. Albert Russell Wynn.
5. Steny H. Hoyer.
6. Roscoe G. Bartlett.
7. Kweisi Mfume.
8. Constance A. Morella.

MASSACHUSETTS

1. John W. Olver.
2. Richard E. Neal.
3. Peter Blute.
4. Barney Frank.
5. Martin T. Meehan.
6. Peter G. Torkildsen.
7. Edward J. Markey.
8. Joseph P. Kennedy II.
9. John Joseph Moakley.
10. Gerry E. Studds.

MICHIGAN

1. Bart Stupak.
2. Peter Hoekstra.
3. Vernon J. Ehlers.
4. Dave Camp.
5. James A. Barcia.
6. Fred Upton.
7. Nick Smith.
8. Dick Chrysler.
9. Dale E. Kildee.
10. David E. Bonior.
11. Joe Knollenberg.
12. Sander M. Levin.
13. Lynn N. Rivers.
14. John Conyers, Jr.
15. Barbara-Rose Collins.
16. John D. Dingell.

MINNESOTA

1. Gil Gutknecht.
2. David Minge.
3. Jim Ramstad.
4. Bruce F. Vento.
5. Martin Olav Sabo.
6. William P. Luther.
7. Collin C. Peterson.
8. James L. Oberstar.

MISSISSIPPI

1. Roger F. Wicker.
2. Bennie G. Thompson.
3. G. V. (Sonny) Montgomery.
4. Mike Parker.
5. Gene Taylor.

MISSOURI

1. William (Bill) Clay.
2. James M. Talent.
3. Richard A. Gephardt.
4. Ike Skelton.
5. Karen McCarthy.
6. Pat Danner.
7. Mel Hancock.
8. Bill Emerson.
9. Harold L. Volkmer.

MONTANA

At Large

Pat Williams.

NEBRASKA

1. Doug Bereuter.
2. Jon Christensen.
3. Bill Barrett.

NEVADA

1. John E. Ensign.
2. Barbara F. Vucanovich.

NEW HAMPSHIRE

1. William H. Zeliff, Jr.
2. Charles F. Bass.

NEW JERSEY

1. Robert E. Andrews.
2. Frank A. LoBiondo.
3. Jim Saxton.
4. Christopher H. Smith.
5. Marge Roukema.
6. Frank Pallone, Jr.
7. Bob Franks.
8. William J. Martini.
9. Robert G. Torricelli.
10. Donald M. Payne.
11. Rodney P. Frelinghuysen.
12. Dick Zimmer.
13. Robert Menendez.

NEW MEXICO

1. Steven Schiff.
2. Joe Skeen.
3. Bill Richardson.

NEW YORK

1. Michael P. Forbes.
2. Rick Lazio.
3. Peter T. King.
4. Dan Frisa.
5. Gary L. Ackerman.
6. Floyd H. Flake.
7. Thomas J. Manton.
8. Jerrold Nadler.
9. Charles E. Schumer.
10. Edolphus Towns.
11. Major R. Owens.
12. Nydia M. Velázquez.
13. Susan Molinari.
14. Carolyn B. Maloney.
15. Charles B. Rangel.
16. José E. Serrano.
17. Eliot L. Engel.
18. Nita M. Lowey.
19. Sue W. Kelly.
20. Benjamin A. Gilman.
21. Michael R. McNulty.
22. Gerald B.H. Solomon.
23. Sherwood L. Boehlert.
24. John M. McHugh.
25. James T. Walsh.
26. Maurice D. Hinchey.
27. Bill Paxon.
28. Louise McIntosh Slaughter.
29. John J. LaFalce.
30. Jack Quinn.
31. Amo Houghton.

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2. David Funderburk.
3. Walter B. Jones, Jr.
4. Fred Heineman.
5. Richard Burr.
6. Howard Coble.
7. Charlie Rose.
8. W.G. (Bill) Hefner.
9. Sue Myrick.
10. Cass Ballenger.
11. Charles H. Taylor.
12. Melvin L. Watt.

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At Large

Earl Pomeroy.

OHIO

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2. Rob Portman.
3. Tony P. Hall.
4. Michael G. Oxley.
5. Paul E. Gillmor.
6. Frank A. Cremeans.
7. David L. Hobson.
8. John A. Boehner.
9. Marcy Kaptur.
10. Martin R. Hoke.
11. Louis Stokes.
12. John R. Kasich.
13. Sherrod Brown.
14. Thomas C. Sawyer.
15. Deborah Pryce.
16. Ralph Regula.
17. James A. Traficant, Jr.
18. Robert W. Ney.
19. Steven C. LaTourette.

OKLAHOMA

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2. Tom A. Coburn.
3. Bill K. Brewster.
4. J.C. Watts, Jr.
5. Ernest J. Istook, Jr.
6. Frank D. Lucas.

OREGON

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2. Wes Cooley.
3. Ron Wyden.
4. Peter A. DeFazio.
5. Jim Bunn.

PENNSYLVANIA

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2. Chaka Fattah.
3. Robert A. Borski.
4. Ron Klink.
5. William F. Clinger, Jr.
6. Tim Holden.
7. Curt Weldon.
8. James C. Greenwood.
9. Bud Shuster.
10. Joseph M. McDade.
11. Paul E. Kanjorski.
12. John P. Murtha.
13. Jon D. Fox.
14. William J. Coyne.
15. Paul McHale.
16. Robert S. Walker.
17. George W. Gekas.
18. Michael F. Doyle.
19. William F. Goodling.
20. Frank Mascara.
21. Phil English.

RHODE ISLAND

1. Patrick J. Kennedy.
2. Jack Reed.

SOUTH CAROLINA

1. Marshall ''Mark'' Sanford.
2. Floyd Spence.
3. Lindsey O. Graham.
4. Bob Inglis.
5. John M. Spratt, Jr.
6. James E. Clyburn.

SOUTH DAKOTA

At Large

Tim Johnson.

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2. John J. Duncan, Jr.
3. Zach Wamp.
4. Van Hilleary.
5. Bob Clement.
6. Bart Gordon.
7. Ed Bryant.
8. John S. Tanner.
9. Harold E. Ford.

TEXAS

1. Jim Chapman.
2. Charles Wilson.
3. Sam Johnson.
4. Ralph M. Hall.
5. John Bryant.
6. Joe Barton.
7. Bill Archer.
8. Jack Fields.
9. Steve Stockman.
10. Lloyd Doggett.
11. Chet Edwards.
12. Pete Geren.
13. William M. ''Mac'' Thornberry.
14. Greg Laughlin.
15. E de la Garza.
16. Ronald D. Coleman.
17. Charles W. Stenholm.
18. Sheila Jackson-Lee.
19. Larry Combest.
20. Henry B. Gonzalez.
21. Lamar S. Smith.
22. Tom DeLay.
23. Henry Bonilla.
24. Martin Frost.
25. Ken Bentsen.
26. Richard K. Armey.
27. Solomon P. Ortiz.
28. Frank Tejeda.
29. Gene Green.
30. Eddie Bernice Johnson.

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2. Enid G. Waldholtz.
3. Bill Orton.

VERMONT

At Large

Bernard Sanders.

VIRGINIA

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2. Owen B. Pickett.
3. Robert C. Scott.
4. Norman Sisisky.
5. L. F. Payne.
6. Bob Goodlatte.
7. Thomas J. Bliley, Jr.
8. James P. Moran.
9. Rick Boucher.
10. Frank R. Wolf.
11. Thomas M. Davis.

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3. Linda Smith.
4. Richard 'Doc' Hastings.
5. George R. Nethercutt, Jr.
6. Norman D. Dicks.
7. Jim McDermott.
8. Jennifer Dunn.
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2. Robert E. Wise, Jr.
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2. Scott L. Klug.
3. Steve Gunderson.
4. Gerald D. Kleczka.
5. Thomas M. Barrett.
6. Thomas E. Petri.
7. David R. Obey.
8. Toby Roth.
9. F. James Sensenbrenner, Jr.

WYOMING

At Large

Barbara Cubin.

PUERTO RICO

Resident Commissioner

Carlos A. Romero-Barceló.

AMERICAN SAMOA

Delegate

Eni F. H. Faleomavaega.

DISTRICT OF COLUMBIA

Delegate

Eleanor Holmes Norton.

GUAM

Delegate

Robert A. Underwood.

VIRGIN ISLANDS

Delegate

Victor O. Frazer.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. YOUNG of Alaska: Committee on Resources. H.R. 1139. A bill to amend the Atlantic Striped Bass Conservation Act, and for other purposes; with an amendment (Rept. 104–105). Referred to the Committee of the Whole House on the State of the Union.

Mr. SHUSTER: Committee on Transportation and Infrastructure. H.R. 1361. A bill to authorize appropriations for fiscal year 1996 for the Coast Guard, and for other purposes; with an amendment (Rept. 104–106). Referred to the Committee of the Whole House on the State of the Union.

Mr. QUILLEN: Committee on Rules. House Resolution 136. Resolution providing for the consideration of the bill (H.R. 655) to authorize the hydrogen research, development, and demonstration programs of the Department of Energy, and for other purposes (Rept. 104–108). Referred to the House Calendar.

Mr. SHUSTER: Committee on Transportation and Infrastructure. H.R. 1323. A bill to reduce risk to public safety and the environment associated with pipeline transportation of natural gas and hazardous liquids, and for other purposes; with an amendment (Rept. 104–110, Pt. 1). Ordered to be printed.

TIME LIMITATION ON REFERRED BILL PURSUANT TO RULE X

Pursuant to clause 5 of rule X the following action was taken by the Speaker:

H.R. 1323. Referral to the Committee on Commerce continued for a period ending not later than June 1, 1995.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. YOUNG of Alaska: Committee on Interior and Insular Affairs. H.R. 1141. A bill to amend the act popularly known as the ''Sikes Act'' to enhance fish and wildlife conservation and natural resources management programs, with an amendment; referred to the Committee on National Security for a period ending not later than June 1, 1995, (Rept. 104–107, Pt. 1). Ordered to be printed.

Mr. YOUNG of Alaska: Committee on Interior and Insular Affairs. H.R. 541. A bill to reauthorize the Atlantic Tunas Convention Act of 1975, and for other purposes, with an amendment; referred to the Committee on Ways and Means for a period ending not later than June 30, 1995, (Rept. 104–109, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. YOUNG of Alaska:

H.R. 1527. A bill to amend the National Forest Ski Area Permit Act of 1986 to clarify the authorities and duties of the Secretary of Agriculture in issuing ski area permits on National Forest System lands and to withdraw lands within ski area permit boundaries from the operation of the mining and mineral leasing laws; to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GILCHREST:

H. Con. Res. 64. Concurrent resolution authorizing the 1995 Special Olympics Torch Relay to be run through the Capitol Grounds; to the Committee on Transportation and Infrastructure.

By Mr. LUCAS (for himself, Mr. GINGRICH, Mr. ARMEY, Mr. GEPHARDT, Mr. BREWSTER, Mr. COBURN, Mr. ISTOOK, Mr. LARGENT, and Mr. WATTS of Oklahoma):

H. Res. 135. Resolution condemning the bombing in Oklahoma City; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 44: Mr. TRAFICANT, Mr. JEFFERSON, Mrs. CUBIN, Mr. EHRLICH, Mr. HYDE, Mr. MANZULLO, Mr. QUILLEN, Mr. SABO, Mr. PICKETT, Mr. BALLENGER, Mr. PETERSON of Florida, Mr. QUINN, Mr. WAMP, and Mr. LAUGHLIN.

H.R. 46: Mr. KLECZKA.

H.R. 393: Mrs. KENNELLY and Mr. TORRICELLI.

H.R. 408: Mr. BURTON of Indiana.

H.R. 580: Mr. CLINGER, Mr. LEWIS of Kentucky, Mr. SMITH of Texas, Mr. MANTON, Ms. FURSE, Mr. SHAW, Mrs. FOWLER, and Mr. SISISKY.

H.R. 656 : Ms. MOLINARI and Ms. LOWEY.

H.R. 858: Mr. MCDERMOTT, Ms. WOOLSEY, Mr. MARTINEZ, Ms. LOFGREN, Mr. STUDDS, Mr. BERMAN, Mr. CLEMENT, Mr. MANTON, Mr. LEACH, and Mr. FOGLIETTA.

H.R. 863: Mr. EHLERS.

H.R. 922: Mr. ENGEL and Mr. ROMERO-BARCELO.

H.R. 961: Mr. MCDADE, Mr. GEKAS, and Mr. LINDER.

H.R. 967: Mr. BISHOP, Mr. MANTON, Mr. GORDON, and Ms. FURSE.

H.R. 972: Mr. STUMP.

H.R. 991: Ms. LOWEY and Mr. ENGEL.

H.R. 1005: Mr. PORTER.

H.R. 1021: Mr. DEFAZIO, Ms. SLAUGHTER, Mr. BORSKI, and Mr. SHAYS.

H.R. 1023: Mrs. JOHNSON of Connecticut, Mr. DEFAZIO, Ms. PELOSI, Mr. FOX, Mr. ACKERMAN, Mr. ABERCROMBIE, Mr. SOLOMON, Mr. NEAL of Massachusetts, Mr. BARCIA of Michigan, Mr. KING, Mr. BORSKI, Mr. MOAKLEY, Mr. MEEHAN, Mr. COYNE, Mr. HOLDEN, Ms. NORTON, and Mr. FOGLIETTA.

H.R. 1024: Mr. GANSKE, Mr. COOLEY, and Mr. SMITH of Texas.

H.R. 1026: Mr. ALLARD, Mr. MCINNIS, Mr. SCHAEFER, Mrs. SCHROEDER, and Mr. SKAGGS.

H.R. 1033: Mr. GUTIERREZ, Mr. ZIMMER, Ms. LOWEY, and Mr. BAKER of California.

H.R. 1120: Mr. PORTMAN and Mr. HOSTETTLER.

H.R. 1232: Mr. LEWIS of California and Mr. DOOLEY.

H.R. 1235: Mr. MEEHAN, Mr. FRANK of Massachusetts, and Mr. BARRETT of Wisconsin.

H.R. 1248: Mr. YATES.

H.R. 1272: Mr. GENE GREEN of Texas.

H.R. 1274: Mr. PORTER, Mr. REED, Mr. BROWN of Ohio, and Mr. VISCLOSKY.

H.R. 1448: Mr. BUNNING of Kentucky.

H.R. 1469: Mr. RANGEL.

H.R. 1496: Mr. SOLOMON, Mr. DELLUMS, and Mr. EHLERS.

H.R. 1506: Mr. BONO.

H.J. Res. 41: Mr. LUTHER.

H.J. Res. 72: Mr. LIVINGSTON.

H. Res. 21: Mr. MASCARA, Mr. LAZIO of New York, and Ms. LOFGREN.

H. Res. 118: Mr. KLUG, Ms. PELOSI, Mr. DOOLEY, Mr. GEJDENSON, Mr. BENTSEN, Mr. HILLIARD, Ms. RIVERS, Mr. THOMPSON, Mr. WARD, Mr. EVANS, Mr. CARDIN, Mr. MILLER of California, Mr. ABERCROMBIE, Mrs. ROUKEMA, Mr. KOLBE, Mrs. KELLY, Mr. HINCHEY, Ms. SLAUGHTER, Mr. ACKERMAN, and Ms. FURSE.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, MONDAY, MAY 1, 1995 No. 70

Senate

The Senate met at 11 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. The Chaplain will now deliver the opening prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Let us pray:

Almighty God, Sovereign of this land, Lord of our personal lives, and source of unity in the midst of diversity, enable us to show the true nature of loyalty to our Nation, the Office of the President, the Constitution, and our future. Help us to exemplify how to communicate convictions without censure of those who may not fully agree with us. Keep us from almighty tone and tenor. Free us from the false assumption that we ever have a corner on all the truth. Unsettle any pious posturing that pretends that we alone can speak for You.

You created us in Your image. Help us never to return the compliment. Break the cycle of judgment, categorization, and condemnation so prevalent in our land. Forgive us when we presume Your authority by setting up ourselves as judges of the worth of those who disagree with us.

At the same time, Lord, we know that You have not called us to flabby indulgence when it comes to seeking truth. Nor do You encourage us to buy into our age of appeasement and tolerance where everything is relative and there are no absolutes. What You do ask is that we humbly seek what is Your best for our Nation and work to achieve that together. To this goal we commit this day. In Your powerful name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

RESERVATION OF LEADER TIME

Mr. LOTT. Thank you, Mr. President. This morning the leader time has been reserved.

SCHEDULE

Mr. LOTT. Mr. President, at 12 noon today, we will resume consideration of H.R. 956, the product liability bill. There will be no rollcall votes during the session today. However, under the unanimous-consent agreement, all medical malpractice amendments to the product liability bill must be offered and debated today. Any votes ordered on those amendments will be stacked to begin at 11 a.m. on Tuesday.

MEASURE READ THE SECOND TIME—S. 735

Mr. LOTT. Mr. President, I understand there is a bill at the desk that is due to be read for a second time.

The PRESIDENT pro tempore. The clerk will read the bill for the second time.

The bill was read for the second time.

Mr. LOTT. Mr. President, I object to any further proceedings on this matter at this time.

The PRESIDENT pro tempore. The bill will be placed on the calendar.

MORNING BUSINESS

The PRESIDENT pro tempore. There will now be a period for the transaction of morning business not to extend beyond the hour of 12 noon with Senators permitted to speak for up to 5 minutes each.

Mr. LOTT. Mr. President, observing that no Senator is seeking to speak at this particular moment, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Wyoming is recognized.

Mr. THOMAS. I thank the Chair.

(The remarks of Mr. THOMAS pertaining to the introduction of S. 738 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

MEDICAL MALPRACTICE AMENDMENT

Mr. KYL. Mr. President, I would like to address for a few minutes the legislation which will be pending very shortly today, and specifically the amendment relating to medical malpractice that is before Members.

I speak, of course, of the legislation to reform our product liability tort system and the amendment which would also reform the medical malpractice component of that civil tort litigation system.

Some have said that we have, in effect, a tort tax in this country, a tax on all citizens by virtue of the increased costs of the products and the services, and in particular, I am speaking of medical services, that result from the fact that our tort system has become very expensive.

The costs of operating that system have had to be folded into the costs of the products and the costs of the services in order to pay for the liability insurance, the lawyers' fees and the other expenses that fund this tort system of ours. That tort tax ends up being a tax on all Americans.

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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In the Los Angeles Times, Thursday, April 27, Majority Leader BOB DOLE wrote an article, and it was published on this date, the title of which is ''Ignore the Lawyers, Help the People.''

Mr. President, I ask unanimous consent that this article be printed at the conclusion of my remarks this morning.

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

(See exhibit 1.)

Mr. KYL. Mr. President, in this article, the majority leader, I think, makes a very powerful point; among them, points that are in support of the amendment that is currently pending before the Senate, which I offered on Thursday afternoon, an amendment which would put some reasonable caps on attorney's fees.

As the majority leader notes in this article, the people who suffer the most from our current litigation system are, as he puts it, the little guy. He quotes a survey from the National Federation of Independent Business in a couple of States, Texas and Tennessee, which found that one-third to one-half of small businesses have been either sued or been threatened with suit to punitive damages.

Because of this kind of lawsuit abuse, the majority leader notes that the Girl Scout Council, for example, in Washington, must sell 87,000 boxes of cookies each year just to pay for liability insurance. The average Little League's liability insurance jumped 1,000 percent in a recent 5-year period.

Just a couple of examples of the fact that we are all paying the costs of this litigation system, the tort taxes, if you will.

If you are a woman and you need to go see your OB/GYN on January 2, be aware that on January 1, before that physician can even open the doors to see anyone, that physician is going to be paying medical malpractice premiums of probably a minimum of $30,000 and in many cases far more than that.

Neurosurgeons are up in the $60–$70,000 range or higher. In other words, before most physicians can even begin to treat us, at the beginning of the year, they have had to shell out in medical malpractice premium costs more money than most Americans make in a year.

The cost of those premiums is—just as the cost of the liability insurance premiums paid for by the Girl Scouts or the Boy Scouts or other organizations—the cost of those premiums is borne by everyone of us in the products that we buy, in the services that we receive.

The majority leader goes on to point out in this article that there are three myths, all of which get to the basic point that the person who suffers is the little guy, as he noted. And the persons who make out in this litigation lottery are the lawyers. I must say at the outset, I practiced law for 20 years and I have a deep and abiding respect both for my fellow lawyers and for our legal system. But in the past, where there have been changes that have required action to compensate, where it has gotten out of balance, the legal profession has been pretty well able to restore balance to the system. That has not been possible with respect to this litigation lottery. You have a large group of lawyers who make their living by charging contingency fees to clients and then recovering very large—sometimes enormously large—sums of money as a result of the cases that they settle or that they bring to trial.

One of the myths that the majority leader notes is that the trial lawyers protect the consumers. But the fact of the matter is that over half of the money recovered by the plaintiffs in these cases goes to the lawyers. As a matter of fact, let me cite—this is not just one or two studies. There are several different studies that make this point. For example, one of the studies was done by the Department of Commerce just last year, a 1994 study, which stated that 40 cents of each dollar expended in litigation is paid in attorney's fees.

On a recent edition of ABC's ''20/20,'' John Stossel reported that some trial lawyers are earning contingency fees that pay them the equivalent of $300,000 an hour. Think of that, Mr. President, $300,000 an hour. So this is not a matter of lawyers being properly compensated for taking cases. This is literally a matter of hitting the jackpot. It is not plaintiff who hits the jackpot, it is plaintiff's lawyer.

A 1994 study by the Hudson Institute found that 50 cents out of each litigation dollar went to attorney's fees. That, by the way, was reported on in the June 1994 article in the Wall Street Journal.

A study of the Rand Corporation also found that 50 cents out of each liability dollar goes to lawyers and transaction costs, rather than to injured victims. There are others.

The point I am making here is that study after study after study has made the point that about half of all of the recoveries go to the lawyers. That is not fair to the victims. That is not fair to the plaintiffs. And what the amendment which I have offered and is currently pending before us will do is to ensure that the victim, the claimant, plaintiff recovers his or her fair share of whatever recovery is obtained. Effectively, that means something in the order of 75 percent of it. I think most Americans would find it astonishing that we would even be having a debate about whether or not the person who is injured, who actually suffers, should be receiving on the order of 75 percent of what the jury has awarded to that individual. Yet that is what this is all about. Our amendment simply limits the attorney's fees to approximately 25 percent of the recovery.

I also note, when we talk about this first myth that the majority leader noted that the trial lawyers are just protecting consumers, one other example of the costs that get passed on. The American Tort Reform Association notes that half of the cost of a $200 football helmet goes to lawsuit-driven liability insurance. This is just one example of products in our society which have been the subject of these suits and which, therefore, are either not on the market or are on the market at a greatly increased cost, simply because of the litigation lottery.

Myth No. 2, trial lawyers protect workers and the poor. But as the majority leader notes in his article, the current system victimizes no group more than the working poor and disadvantaged. Lawsuits add a $1,200 litigation tax on every consumer in America. That is the cost we are all paying as a result of this litigation lottery. The trial lawyers, through contingency fees, as I said, can effectively earn $300,000 an hour in some cases. So I do not think it is true to say that trial lawyers protect workers, just workers and the poor.

Myth No. 3 that the majority leader points out is that the trial lawyers are the champions of safety; if they did not bring these lawsuits that, somehow, very dangerous products would still be on the market. There is some truth to the fact that high profile cases have helped to remove unsafe products from the market. But that exception to the rule should not be the basis for this lottery, this jackpot which results when people find they can recover astronomical sums for some perceived damage. It often, in fact, makes our lives less safe rather than more safe. One only has to look at the drugs that do not reach the market because the pharmaceutical companies are afraid if they produce some new drug without 30 years of testing on people that somebody might have an adverse reaction to it, sue the drug manufacturer, and make millions in punitive damages.

It is not just drugs. It is also designs of all kinds of new products which manufacturers have said over and over again they are reluctant to change because, if they do, there will then be the inevitable lawsuit that that change resulted in some harm to someone as a result of which there will be a new lawsuit.

All three myths, I think, need to be exploded. The bottom line of all three, as I said in the beginning, is that the lawyers are using this process not so much to create safety or protect the little guy—the little guy is the person who is actually hurt—but rather to earn a living which is far beyond what is necessary to protect the public. And that then gets to the amendment I have introduced and that is before us right now.

Very briefly, my amendment will be actually criticized as being too generous to the trial lawyers because we start with the premise that the underlying legislation, the McConnell-Kassebaum-Lieberman amendment, already

provides for lawyer's fees for the economic damages suffered. So a lawyer can recover either 33 percent of the first $150,000 and 25 percent of everything thereafter with no limit for the economic damages. So you can have a very large attorney fee just for the economic damage component of a lawsuit.

Then you have the noneconomic damage component. This is the pain and suffering that is supposed to go to the person who suffered the pain and suffering. All we say in my amendment is that the lawyer would be entitled to no more than 25 percent of the first $250,000 of that pain and suffering. So that is an additional up to $60,000-plus in attorney's fees for the pain and suffering component of the suit.

Then, if it is a suit in which punitive damages are sought and the lawyer believes that he should be entitled to a percentage of that as well, he may petition the court to have a percentage of the punitive damage award. The court would have to make that award based on what is reasonable and ethical. It should be based upon the amount of time the attorney put in; 25 percent would be presumed to be a reasonable fee but all of this is up to the court.

So you see, this is a limitation but it is a limitation which will enable attorneys to receive multithousands and tens of thousands and even hundreds of thousands of dollars in fees for the kind of case that would warrant it. So there is no question there would be an incentive for anybody who has a claim—be it a little claim or a larger claim—to have that case brought to trial because a lawyer would have an incentive to do so. But what it provides is a cap so the lawyer does not have a lottery here, so the lawyer does not have an incentive to bring these cases just to see if that lawyer can hit the jackpot and earn literally hundreds and hundreds of thousands of dollars or millions of dollars in attorney's fees when we think that money should go to the plaintiff or the claimant, the victim in the case. That is what it is all about. We are going to be voting on that shortly after 11 o'clock tomorrow morning.

I just urge all of my colleagues to view this issue in the light of what is best for the claimant, for the plaintiff, the injured party, and to view it in the light of what is best for the American people, who are paying a very large sum of money so that a lot of lawyers can get very rich. As I say, some people criticize this as not being tough enough on the lawyers. That is not what we are here for. We are not here to bash lawyers, but to put a cap on the big bonanza kind of recovery that we have all been reading about.

Finally, I want to take a minute to say that at shortly after noon, I will be offering a second amendment. This is an amendment which will put a cap on the noneconomic damages—so-called pain and suffering—in these medical malpractice cases. It will put a cap of $500,000 on these medical malpractice cases.

A lot of our colleagues have said the cap discussed earlier—a quarter of a million dollars—is just not quite big enough for that really exceptional case. In response to that, I think a lot of people have said, ''OK. We will provide for up to half a million dollars.'' Bear in mind that this is after the economic damages—after all of the bills have been paid, after all of the economic losses have been accounted for—there is the pain and suffering part of it. It does not relate to the punitive damages. There will be a different kind of treatment for that. This is just to say with respect to that noneconomic damage component, there will be a cap of half a million dollars.

So I will be proposing that amendment and asking support from my colleagues for that amendment, as well.

Mr. President, I yield the floor.

EXHIBIT 1

[From the Los Angeles Times, Apr. 27, 1995

IGNORE THE LAWYERS, HELP THE PEOPLE

(By Bob Dole)

During the current Senate debate over legal reform, you will hear from the trial lawyers and their allies that legal reform is nothing more than a boost to big business.

But the facts suggest otherwise. Who is hurt by lawsuit abuse? It's the little guy, according to recent surveys by the National Federation of Independent Businesses in Texas and Tennessee, which found that one-third to one-half of small businesses have been sued or been threatened with suit for punitive damages. Because of this kind of lawsuit abuse, the Washington-area Girl Scout council must sell 87,000 boxes of cookies each year just to pay for liability insurance, and the average local Little League's liability insurance jumped 1,000% in a recent five-year period. These are just a few examples of a problem that is big and getting bigger.

Who profits from lawsuit abuse? The trial lawyers.

As the Senate considers legislation to reform lawsuit abuses, the buzzing sound you hear is the trial lawyers swarming to the defense of their hive of honey: The lawsuit lottery.

This picture, needless to say, is not the one trial lawyers would paint. According to them, they are the best (perhaps only) friends of the poor, consumers and women. They have one of the most effective public-relations efforts going. It is a costly exercise, characterized by millions in contributions to politicians and judges. Now they are mounting a $20-million campaign to stop lawsuit reform in the U.S. Senate.

Why? Lost in the fog of propaganda is a fact well-understood by most Americans: Our legal system costs too much for everybody (except the trial lawyers) and has turned into a lottery where even the threat of outrageous damages with little or no connection to fault extorts money and time from charitable organizations, small businesses, blood banks and volunteer groups. But, like any effective gambling operation, the house always wins. And the house in this case is the trial lawyers and the system they so ardently defend.

We need a system that ensures that those harmed by someone else's wrongful conduct are compensated fully. And we need to ensure that the system is not twisted in ways that deter folks from engaging in activities that we ought to encourage. That's why I have offered an amendment that would extend the protections against outrageous punitive damages now being considered for manufacturers to include volunteer and charitable organizations, small businesses and local governments.

These reforms are an attempt to restore fairness and integrity to a system that has gone awry. But, given the distortions from the trial-lawyer lobby, it is clearly time to confront a few of their most cherished myths.

Myth No. 1: Trial lawyers protect consumers. The California Trial Layers Assn. recently changed its name to the Consumer Attorneys of California. Some consumer Attorneys of California. Some consumer champions. Across the nation, abusive lawsuits drive up the costs of all kinds of goods. As noted by the American Tort Reform Assn., half of the cost of a $200 football helmet goes to lawsuit-driven liability insurance.

Myth No. 2: Trial lawyers protect workers and the poor. The current system victimizes no group more than the working poor and the disadvantaged. Lawsuit add a $1,200 litigation tax on every consumer in America.

Meanwhile, some trial lawyers through contingency fees effectively earn $300,000 per hour.

The poor also pay in jobs. A RAND Corp. study estimates that wrongful termination suits have reduced the hiring levels in just one state by as many as 650,000 jobs.

Myth No. 3: Trial lawyers are champions of safety. Personal injury lawyers put out literature informing us that Americans live in the safest society in the world because of our civil justice system. The reality is that our legal system long ago crossed a critical threshold: It often makes our daily lives less safe. Lawsuits not only stop pharmaceutical research and new drugs. They cause industrial engineers to avoid safety improvements for fear that current designs, by comparison, will be interpreted as defective. They make all organizations fearful of the new—because in the hands of personal injury lawyers, ''new and improved'' has come to mean ''new and open season for lawsuits.''

Part of our heritage as a free people is a legal system where justice, not the search for a windfall, is the goal. Over the past 40 years, we have strayed from that path. The powerful trial-lawyer lobby must not be allowed to kill reform with a campaign of disinformation, distortion and delay. I am determined that this is the year that civil-justice reform will pass the Senate.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Minnesota [Mr. GRAMS] is recognized to speak for up to 15 minutes.

The Senator from Minnesota is recognized.

Mr. GRAMS. Thank you very much, Mr. President.

PRODUCT LIABILITY AND MEDICAL MALPRACTICE REFORM

Mr. GRAMS. Mr. President, I think most Senators would agree that health care reform was the most important piece of legislation we debated during the 103d Congress.

Throughout the health care debate, we heard from people here in Washington and across the Nation, and we learned what they valued most about our Nation's health care system. We

also heard their suggestions as to how the current system should be changed.

Fortunately, we also learned that the majority of Americans did not agree with the President's plan to turn the entire health care system over to the Federal Government.

But, while most Americans adamantly rejected his radical approach to health care reform, we also found tremendous support for reasonable and sensible reforms which will immediately improve our health care system.

In particular, we learned that the American people overwhelmingly believe we need to dramatically reshape our Nation's medical malpractice system.

Recent polls continue to show strong support for liability reform.

Eighty-three percent of Americans believe that the present liability system has problems and should be improved.

Eighty-nine percent believe that too many lawsuits are being filed in America today; and

Sixty-seven percent of American voters agree with the statement that ''I am afraid that one day I, or someone in my family, will be the victim of a lawsuit.''

Some of my colleagues might ask, why we are discussing medical malpractice reform during the product liability debate? Simple: many of the same problems facing American manufacturers also affect our doctors and health care providers.

During the last two decades, there has been an explosion of litigation that has saddled the health care industry with substantial costs wholly unrelated to providing medical care and services.

While I stand behind the right of every individual to right a wrong through the judicial system, this litigation bonanza does nothing to improve patient care or improve service delivery. It simply encourages frivolous lawsuits by creating an environment which is weighted in favor of the plaintiff's bar and against the world's best health care system.

Second, this ever-increasing tide of litigation has forced a large number of physicians to practice defensive medicine to protect themselves from lawsuits. This practice passes along greater costs to patients and insurers.

Lewin-VHI conducted a study in 1993, and discovered that the U.S. health care delivery system could save up to $76.2 billion over 5 years by eliminating defensive medicine practices.

Taxpayers also feel the pain of defensive medicine in their checkbooks since the physicians who treat America's poor and elderly are forced to practice defensive medicine which increases the costs of the Medicare and Medicaid Programs.

Defensive medicine is a drain on our Federal budget, and one we cannot afford.

In 1991, medical liability premiums for hospitals and physicians totaled $9.2 billion.

The current system has had a chilling effect on the ability of patients to access their doctors—especially those who live in rural areas.

For example, 70 percent of all obgyns will be sued during their careers. Many have decided to no longer offer obstetric services to their patients for fear of lawsuits. And obstetricians continue to pay the highest premiums of all health care providers.

From the standpoint of the victims, even when a lawsuit is justified and reasonable, they are often forced to wait up to 5 years between the time their injury occurred and the time they are compensated, under our current system.

More often than not, attorneys will only litigate cases with high award potentials, which tends to discourage attorneys from settling the cases early.

Finally, and perhaps most troubling, the medical malpractice system has placed a wedge between doctors and their patients; it undermines the mutual trust which is essential to the doctor-patient relationship.

Last year, after the relevant House committees failed to address medical malpractice reform, I introduced legislation very similar to the amendment offered today by Senators MCCONNELL, KASSEBAUM, and LIEBERMAN.

With this amendment, the Senate has the opportunity to do what the American people want—reform the system.

This amendment would do that by:

Ensuring full recovery for economic and noneconomic damages including lost wages, as well as compensation for pain and suffering;

Providing alternative dispute resolution;

Establishing the use of the collateral source rule;

Abolishing joint liability; and

Requiring periodic payment of future damage awards.

These reforms are the first steps toward addressing the failure of our medical malpractice system.

I came to the floor today to reaffirm my support for sensible improvements to our badly broken medical malpractice system. As many of my colleagues have noted—Democrats and Republicans alike—our current system is costly, slow, inequitable, and unpredictable. Our system has failed hospitals, doctors, and ultimately, it has failed its patients. The American people deserve better.

While this amendment has my full support and I recognize the many hours of hard work my colleagues spent on this legislation, I believe we should go further.

I strongly encourage the Senate to include the $250,000 cap on noneconomic damages.

In addition, we should extend protection to the manufacturers of medical devices by eliminating punitive damage awards if the device has received FDA approval.

According to Medical Alley, a coalition of Minnesota's entire health care industry, ''the current liability system has a negative effect on health care product innovation.''

They cite the fact that innovative products are not being developed, which has reduced our ability to compete in worldwide markets.

I urge my colleagues to ensure that significant changes are implemented. However, if the Congress and the President fail to secure fundamental reforms to our liability system, I will move forward and introduce legislation which will address the concerns of so many American doctors, consumers, and patients alike.

Mr. President, our medical malpractice system is in critical condition, but it is not too late to save it. The American people are demanding reform and the Senate must deliver.

We need a system that meets the needs of all Americans, not just the plaintiffs' bar. I believe this amendment is the prescription we have been looking for to cure this problem.

Thank you, and I yield the floor.

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. 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.

TAIWAN

Mr. THOMAS. Mr. President, as the chairman of the Subcommittee on East Asian and Pacific Affairs, I would like to share with my colleagues some developments concerning Taiwan which arose over the April recess.

As my friends are well aware, the State Department has for several years now prohibited the President of the Republic of China on Taiwan, Dr. Lee Teng-hui, from entering the United States. This prohibition extends not only to visits in his capacity as President, but to any visit even as a private citizen. The official rationale for this is that such a visit would offend the sensitivities of the Government of the People's Republic of China, which lays claim to Taiwan as a renegade province.

This stance is troublesome to me and many other Senators for several reasons. First, Taiwan has been our close friend and ally for several decades, and is presently our fifth largest trading partner. It is a moldel emerging democracy in an area not particularly known for strong democratic traditions. Regardless of these facts, however, we reward the Government of Taiwan by denying its elected officials even the most basic right to visit our country. The State Department policy has previously even been raised to the

ridiculous level of denying President Lee, in transit to another country, the ability to disembark from his aircraft during a stop-over in Hawaii.

Second, as I have previously noted on the floor, the only people to whom the United States regularly denies entry are terrorists, convicted felons, and people with certain serious communicable diseases. The Secretary of State has admitted Yasser Arafat, whom we denounced for years as a terrorist thug; he has admitted Terry Adams, the leader of the IRA's political arm Sinn Fein—a group responsible for terrorist attacks throughout the United Kingdom. Few of us in the senate can fathom how the State Department can possible exclude President Lee—the democratically elected leader of a friendly country—when it has admitted these gentlemen, and instead add him to a list of pariahs.

Third, the refusal to admit President Lee comes at the express behest of the Government of the People's Republic of China. In the almost slavish lengths to which the State Department has gone to honor that demand, it has done nothing but strengthen the perception on Capitol Hill that it is rushing to kowtow to Beijing. State has countered that the People's Republic of China has threatened grave ramifications if Lee were to be admitted—since the People's Republic of China claims Taiwan to be a province—and admitting President Lee would be tantamount to a country admitting Gov. Pete Wilson as the head of government of a sovereign independent California, thereby threatening the authority of the central government. Yet their own actions severely undercut the Department's position. The Secretary has repeatedly admitted his Holiness the Dalai Lama to the United States. The Dalai Lama purports—rightly in my view—to represent the legitimate Government of Tibet. Chinese troops occupied Tibet in the 1950's, displaced the Government and absorbed Tibet as a province—the Xizang Zizhiqu or Xizang Autonomous Region. Despite Beijing's warnings to the contrary—warnings similar to those on Taiwan—we have admitted the Dalai Lama. We have done this despite the fact that, like President Lee, the Dalai Lama claims to represent a country which the People's Republic of China considers to be a province. Why, then, the inconsistency in the State Department's position?

Fourth, attempts by the People's Republic of China to dictate our immigration policy to us strike many as presumptuous. To put it in terms which the Government in Beijing can understand: Who we admit to this country under our immigration laws is strictly an internal affair of the United States. Mr. President, the People's Republic of China is continually telling us to butt out of issues they consider to be their internal affairs—human rights abuses, for example; they would do well to listen to their own advice.

Congress has made it abundantly clear that it disapproves of the administration's position on this issue. Votes urging the Secretary to allow the visit have passed overwhelmingly in both Houses in past years. This year, Senate Concurrent Resolution 9 and its House counterpart both enjoy wide, bipartisan support. I expect that they will both come to a vote within the next week and pass with few, if any, detractors.

There have been some signs—albeit exceedingly subtle—that the administration may be considering some reworking of its past positions. In New York City on the 17th of this month, on the occasion of the visit of the People's Republic of China's Foreign Minister Qian, a senior State Department official made certain statements which may provide a small glimmer of hope that the administration may be coming around. Mr. President, you will note from the amount of qualifying words that I have just used that I consider the likelihood of them coming around to be rather slim.

That would be unfortunate, because I think that it would reflect an underestimation of the depth of the feeling in the Congress on this issue. Just so there is no mistaking what I believe the reaction of the Senate will be to a continued denial of a private visit by President Lee—even in the face of the two resolutions—let me point out the following for our friends in the administration. I have prepared legislation to require the Secretary to admit President Lee this year for a private visit, which already has seven original cosponsors. At least two other Senators I know of are poised to introduce similar legislation. Should the Secretary fail to accommodate a private visit by President Lee in the very near future, the three of us are prepared to act. I will ensure that any such legislation moves quickly through my subcommittee, and on to the floor.

Mr. President, it is unfortunate that this simple issue has had to come to this. If the parties had simply, we could have put this behind us and gotten on with the more serious issues that concern us. The obstinance of the State Department, and the People's Republic of China, only serves to harden Members' attitudes and to turn their attention toward other, more controversial, areas such as Taiwan's participation in the United Nations and WTO. We would all do well to remember the proverbial observation that the grass that bends with the wind survives the storm, while the branch that remains stiff and obstinate does not.

IN HONOR OF SOUTH DAKOTA'S 1995 TEACHER OF THE YEAR, BECKY EKELAND

Mr. DASCHLE. Mr. President, I want to congratulate the 1995 South Dakota Teacher of the Year, Becky Ekeland. I can attest to the fact that this is an honor she well deserves.

Being selected Teacher of the Year is a most significant accomplishment. It means you have gained the utmost respect of your colleagues and students. Becky Ekeland was nominated by her fellow teaching staff in the Brookings School District and ultimately selected by a committee of statewide officials.

Ms. Ekeland is an English teacher at Brookings High School. She has been an educator for 20 years. South Dakotans, especially the students of Brookings, are extremely fortunate to have Mrs. Ekeland in our State.

Mrs. Ekeland's dedication to her students is evidenced in a hundred different ways. One example is the grammar lessons she creates each year. Rather than relying on a textbook, she tailors her lessons to the specific needs of each class. It's her way, she said, of showing her students how the English language works and what it means in their day-to-day lives.

Schools have undergone enormous change in the 20 years since Mrs. Ekeland began her career. One of the most profound changes is the tremendous new demands placed on parents. Many children now come from single-parent families. In other families, two parents work two and even three jobs just to make ends meet.

A teacher's job is always demanding, but it become even more difficult when teachers have to fill in as parents, too.

Given the increasing pressure on our schools—and our increasing need for good schools, now is not the time to be cutting educational resources.

In coming weeks, as we debate next year's budget, let us remember what President Kennedy said: ''A child miseducated is a child lost. And let us pledge to give America's students and teachers the support they need to succeed. In a real sense, they are our future.''

I want to mention a few things Becky Ekeland is working to improve the teaching profession and make that future more secure.

First, she is a positive voice in the community, letting people know the good things that happen in the school.

She participates in professional organizations.

She takes seriously her responsibility to be a good example, demanding from herself what we all should be able to expect from our teachers.

she attends classes, workshops, seminars and conventions in an effort to constantly improve herself and her educational skills.

The greatest testament to Ms. Ekeland's skill comes from her fellow staffers and former students.

The counselor at Brookings High School describes her as ''self-motivated, conscientious, responsible, dependable, a professional individual, always willing to give 110 percent while at work; another 110 percent worth of quality time when at home with her family.''

Her principal at Brookings High School calls Mrs. Ekeland ''an outstanding educator. Becky is first and foremost a caring person,'' he says ''who places a high priority on helping others * * * she establishes relationships with students that serve to increase their motivation, confidence and achievement * * * Becky has always demonstrated strong classroom organizational skills and a commitment to instruction that causes students to be actively engaged in learning through ways that are meaningful to them.''

A former student writes, ''Rebecca Ekeland is truly one in a million. I have never come across anyone who dedicates so much energy to one task—educating the children of Brookings, South Dakota. She puts her heart and soul into the success of every single student that enters her classroom. To me this is what teaching is all about.''

Mr. President, I am honored to commend such an outstanding teacher and to congratulate her on her well-deserved recognition.

At this time, I would ask that Ms. Ekeland's essays and the letters of recommendations from which I read be printed in the RECORD.

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

BECKY EKELAND

PROFESSIONAL BIOGRAPHY

A. What were the factors that influenced you to become a teacher? Describe what you consider to be your greatest contributions and accomplishments in education.

As the daughter of a Lutheran minister and an English teacher, I grew up in a home where a career meant working with people and helping people. I could see that my parents' professions were very rewarding and that they had the love and respect of many people. I was very proud of them and wanted to be like them. they must have had the same effect on my siblings because my brother is a special education teacher and my sister is a social worker who works as a legal advocate for people with mental illness. We all feel a strong desire to serve others and in return gain great self-satisfaction.

When I was growing up, school was always a wonderful place to be, and I have fond memories of warm, caring, dedicated teachers, and so, even though I briefly entertained notions of being a missionary or a social worker, I guess I always planned on being a teacher. Someone said once that good teachers love both their students and their subject, so I guess I've got it made!

My greatest accomplishments in education have probably come from my dedication to my students. For example, for years I have written my own grammar units rather than relying on a textbook. I want my students to see the whole picture of how our language works and have them apply this knowledge to their own writing through exercises and lessons that are tailored for each class. I rewrite my grammar unit every year to meet my students needs.

Another example is how I have developed my yearbook class. When I started 10 years ago I had no experience and no staff! I took some workshops and recruited great students. Yearbook has evolved from a Monday night extracurricular activity into an accredited class with the students and the book consistently winning top awards in yearbook journalism. I am especially of this class because my role as a mentor and an adviser. The book is completely student produced. I love to see how the confidence and creativity blossom when kids are in charge of something they are proud of.

I am trying to use the lessons I have learned in this yearbook class in my English 9 class. By giving students some control in what they study and in how they tackle a task they have more success. One unit that has worked especially well is the I-Search paper. Students must pick their own topic, one that has personal value and meaning to them, and then research it, with their primary source of information being other people. The students conducted interviews and write letters to gain their information.

One thing that brings me great satisfaction is the relationships I have with many of my students. I encourage my students to come in and see me when they need someone to talk to. I think I'm someone they trust and find easy to talk to because many kids do come in. This is a very important part of my job—to be a compassionate, caring, good listener. I treat my students with respect and they, in turn, treat me with respect. I rarely have discipline problems because of this. I start every school year by explaining that the only behavior rule in my classroom is the Golden Rule. I tell the students that I want my classroom to be a friendly and safe place for everyone, including me, and that I want everyone to feel good about coming to English class. It generally works, and my classroom is truly a fun place to be!

One thing I'm proud of is that I have been employed for 20 years! I have moved five times to different states and communities following my husband's career. Competition for teaching positions has always been keen, but in each of these places I have been able to secure a teaching position. I am especially pleased to be teaching in Brookings.

My greatest professional joy is when graduates come back to tell me about their accomplishments and to thank me for whatever role I may have played. One of them recently wrote, ''You are my favorite teacher, I'll remember you always for being willing to listen to my problems and helping me out and putting up with me . . . I can not tell you how much better you have made my life.'' I work very hard to do the right things for my students—taking classes, writing units, experimenting with different styles, taking time to get to know them, etc.—but it's messages like that that make it all worthwhile. I am a very lucky person to have such a wonderful job.

COMMUNITY INVOLVEMENT

A. Describe your commitment to your community through service-oriented activities such as volunteer work, civic and other group activities.

Community and church activities are important because of the services they often provide and because they help me to grow as a person, but it is very important to me to have balance in my life. I have very strong feelings about maintaining quality family time in the evenings. When I'm at school I give 100% to my students and my job, but during evenings and weekends my family comes first. This is obviously important for my children, but I think it is also important for me and ultimately reflects on all aspects of my life. I am healthier and more energetic in the classroom because I am not spread too thin. I refuse to join too many organizations at one time because they take me away from my job and my family, so I pick and choose thoughtfully and say no when I have to. The organizations that I'm involved in are ones that I feel are important. I also hope to demonstrate to my children the worth of these organizations and role model for them the importance of getting involved in things that can make a difference.

Right now my outside activities are mostly in my church. I am a member of Ascension Lutheran where I am a Sunday School teacher and a member of the Rebekah Circle. I have also served as a Church Council member, a member of various boards, and as a choir member. In my former church I also served as a Confirmation teacher and as a Luther League adviser.

In the past I have been a college sorority adviser, a member of Alpha Delta Kappa (an honorary teachers' sorority), a United Fund committee member, and I have worked on various political campaigns for candidates who share the same views on education that I do. My goal for this coming year is to become involved in Habitat for Humanity here in Brookings.

PHILOSOPHY OF TEACHING

A. Describe your personal feelings and beliefs about teaching, including your own ideas of what makes you an outstanding teacher. Describe the rewards you find in teaching.

B. How are your beliefs about teaching demonstrated in your personal teaching style?

As a teacher, it is my goal to promote intellectual and character development in my students. I want each student to have a good understanding of the material in my curriculum, of course, but it is equally important to me that they enjoy the learning process so that it will continue long after they leave my classroom. It is my desire to help my students reach their highest goals and become productive citizens. I try very hard to be a role model, a mentor, a good listener, and a friend.

I start each school year with only one conduct rule—the Golden Rule. I discuss with the students what it means to treat others the way they would like to be treated and how important this attitude is. I want my students to feel comfortable in my room, to know that this is a caring, warm place where they can feel good about themselves and the subject. Generally that rule takes care of any discipline problems before they ever arise. A gentle reminder to ''be nice'' is usually all that is needed! This rule helps provide an atmosphere that encourages learning, and it also helps students achieve self-control.

In class discussions I try to draw responses from all students, encouraging higher-order thinking skills. I like to give compliments and positive feedback because I think this encourages students to participate. Everybody likes to be praised, and most kids like to talk if they don't feel threatened. I have also started using the portfolio as a means of assessment. It is a true indicator of a student's accomplishments and provides a means for each student to see his or her growth through the year.

I know all students can learn, so I try to provide for different learning styles. I also work very closely with the special education teachers to meet the needs of students on IEPs. For example, one year I had a blind student. Following guidance from the special education teachers, I had his worksheets Brailed, had him tape lectures, and provided a typewriter for him to use in the classroom. The special education teachers and I also work together on inclusion. These teachers help me not only with students on IEPs, but also with any students who are struggling or need some extra help.

I am constantly trying to improve my teaching through many diferent methods. I choose workshops and classes based on what I think my needs and my students' needs are.

I share ideas with fellow teachers and incorporate new ideas from them. I have worked on several curriculum committees and have often written my own units to meet my students' needs. I generally draw from many sources to organize and present an original approach to the subject matter.

Many of my students become my friends. They come to me for counseling or advice; I have been a member of Peer Natural Helpers for several years. Sometimes students need help with English or yearbook, and sometimes they need help with problems in their personal life. I don't always have the answers, but I think I'm easy to talk to, and the kids feel comfortable with me. They know I truly like them! It is from these relationships that I derive my greatest satisfaction. I also like to see ''light bulbs'' come on in kids' eyes as they begin to comprehend a grammar lesson or get involved in a story we are reading or solve a yearbook layout problem. I continue to work hard to establish a relationship with all my students so that I can recognize their needs and help them. I often get letters, phone calls, and visits from former students, sometimes just to talk and sometimes to thank me. They make me feel wonderful!

EDUCATION ISSUES AND TRENDS

A. What do you consider to be the major public education issues today? Address one, outlining possible causes, effects and resolutions.

It is an exciting time to be in education when one considers such issues as modernization and inclusion. Brookings has been involved in modernization now for two years and it is exhilarating to see the changes. Collaboration and cross-curricular classes are just two results of modernization that have excited and rejuvenated many of our staff members. I am involved in collaborating with special education teachers to include special-needs students in the regular classroom. It seems that special education is constantly evolving and the verdict is still out as to whether inclusion is the best method, but I find it very rewarding to work with a program that has such a humane philosophy toward all children. The dark ages of shunning special-needs children or sending them away is in the past to stay. It is better for all people to live in a society that accepts all people for what they are.

It is also scary to be in education when one considers the rise in violence in schools, the lack of funding, and the continual pressure by different interest groups to force their political agendas on schools.

But the issue that affects education today in the most profound way is the growth in the number of single-parent families. According to the Census Bureau, one-third of all families now are run by one parent. Right now 40 percent of all children under the age of 18 live in homes where their fathers do not live, according to David Blankenhorn of the Institute for American Values.

This change in the American family affects the classroom because it means less parental supervision over homework, fewer classroom volunteers, more latchkey kids, and more discipline problems. This makes our job more difficult, and it also changes our job because more and more the schools have to assume roles that traditionally belonged to the parents. The difficulties many schools are having now with discipline and violence are not because the school is failing but rather because the family structure is failing.

The soaring rise in single-parent families started in the 1970s when the divorce rate began to climb. The rise continued in the 1980s and 1990s with out-of-wedlock births. This is evident in many larger schools that now provide daycare for the children of the students. Out-of-wedlock births also increases the dropout rate, further complicating the education system which now must provide alternative education for many of these young parents.

Education is left to deal with the situation, but education may also hold the key to improving the situation. Young people need to better understand the consequences of their actions. They need classes that teach them the realities of life and help them prepare for the future. They need guidance in learning how to make right choices. Of course, schools can't and shouldn't have to do it alone, but I fear for our society if this trend continues. The social consequences could be devastating.

THE TEACHING PROFESSION

A. What can you do to strengthen and improve the teaching profession?

B. What is and/or what should be the basis for accountability in the teaching profession?

This is the question I struggled with the most. What can I do to strengthen and improve the teaching profession? This can be a very frustrating question because the profession is so big and I'm only one person. What can one person do? But upon reflection I realized that that is all anyone is—one person—and each of us can do things to strengthen the profession. The following are things I am doing to improve the teaching profession.

First of all, I am a positive voice in the community. Every chance I get, I speak up for education. I let my friends and neighbors know about the great things happening in our schools. I work in the community for political candidates who are advocates for strong public education. I attend school board meetings. Rather than bemoaning the things that are wrong with the system, I try to be positive.

I also join my professional organizations. If we teachers are unified, we can make a difference.

I am just one person in just one classroom, but in that classroom I can make a difference. I strive to be an example, to be the kind of teacher I want for my own children. I am professional, well-informed, well-prepared, dedicated, and caring. That is what we should expect from all our teachers, and it's what I expect in myself.

I can improve the profession by constantly improving me. I attend classes, workshops, seminars and conventions. It's important to keep up with the latest ideas and trends. I don't want to become complacent or stagnant. These learning opportunities also serve as inspiration. I am constantly rededicating myself to my profession and my students.

One very tangible way I have strengthened the teaching profession is through the work I have done at South Dakota State University. I am part of a group of teachers working through a grant to help rewrite the student training curriculum. In collaboration with the Education College we have developed the courses called Professional Semesters I, II, and III. The student teachers coming out of SDSU are the best prepared I have ever seen, and I think that SDSU can serve as a role model for other teacher training colleges. I am very proud to be a part of this group. In my classroom I work with PS I, II, and III students and take great pride in the mentoring and teaching I do. I feel very good about helping student teachers prepare to become part of a wonderful profession.

Teachers are accountable to their students, their administrators, their peers and themselves. Members of the profession need to abide by their master contract, adhere to the rules of the district and teach what is prescribed by the school's curriculum. It is also important to keep up with new trends and ideas. The best way to monitor a teacher's performance is through the building principal and a teacher/mentor program. The principal needs to screen carefully when hiring a teacher and then take the responsibility to document the strengths and weaknesses of that teacher. It is also part of his or her job to counsel and advise that teacher. He or she needs to do the same for veteran teachers. Some schools also assign a veteran teacher to serve as a mentor for a new teacher. That mentor can assist a new teacher to develop top-rate teaching skills.

NATIONAL TEACHER OF THE YEAR

A. As the 1995 National Teacher of the Year, you would serve as a spokesperson and representative for the entire teaching profession. How would you communicate to your profession and to the general public the importance of education to our society? As 1995 National Teacher of the Year what would be your message?

We must all recognize that ignorance is our number one enemy. Enemies such as hunger, disease, unemployment, violence, and prejudice cannot be eliminated if we don't eliminate ignorance first.

Parents must work as partners with the schools to improve the quality of their children's lives and keep our country free and strong. Parents play a critical role in teaching their children such things as values, morals, religion, respect, manners, etc. These areas should not be pushed off on the schools, although the schools should serve as a support system. Likewise, parents should be the support system for the schools. Parents need to be involved supervising homework, joining PTA, attending conferences, volunteering, etc. They should attend school board meetings and voice their desire to provide excellent education for all children.

Not only is it important to educate our citizens to ensure quality of life, it is also important to fight ignorance to keep our democratic way of life healthy. The United States is a country governed by all the people; therefore, the people must be able to make informed, wise choices when they select leaders. The citizens must be able to express themselves intelligently and they must be able to keep an informed eye on the government to prevent corruption. Dictators can rule only in a land where the citizens are uninformed and incapable of ruling themselves. We should never allow education to be something only for the elite or ''most promising.''

This country must continue to ensure quality education for all its citizens if it is to survive. It must also recognize that the quality of life for those citizens can be maintained or improved only through education. Our taxpayers must realize that the money that goes to education is money well-spent. Quality education is the most valuable thing we can give our country and its citizens.

BROOKINGS HIGH SCHOOL,
Brookings, SD, July 16, 1994.

TO TEACHER OF THE YEAR SELECTION COMMITTEE:

Becky Ekeland has asked me to submit a letter in support of her Teacher of the Year nomination.

As a counselor here at Brookings High School, I have seen many of our freshmen as well as 10–12 graders have opportunities to be challenged and develop further their skills in composition interpretation of their reading. Becky is able to use a variety of techniques to successfully communicate and to TEACH. She makes learning exciting and challenging for all her students. Becky teaches a diverse

group of students and they all respect her as an educator and as a person.

Students who take Becky Ekeland's English or yearbook classes grow in many ways. I've observed students who have become more confident and able through their interviewing processes in yearbook or through the 9th grade I-search paper; many of the students also develop a knowledge and respect for discipline, creativity, and the realities of deadlines. More importantly, students know that it is ok to ask any question because every question in Becky's eyes is important and well worth the time. This attitude opens up excellent lines for communication between student and teacher. These learned qualities carry over to the other academic areas and help develop a much more successful student. She helps those who would otherwise feel uncomfortable in an English class feel ok about being there and proud of their individual progress. Becky also works with our gifted coordinator to bring in enrichment and challenges, ensuring the extra added opportunities for those students who excel in her classroom.

Becky is also the yearbook director. Here too, she is dedicated, very organized, and willing to go out of her way to help her yearbook staff be the best they can be. BHS Yearbook has taken top honors at many state competitions. This excellent record is a direct result of Becky's dedication and desire to do her best always.

As a person, Becky is self-motivated, conscientious, responsible, dependable, a professional individual, always willing to give 110% while at work; another 110% worth of quality time when at home with her family.

I believe Becky is an individual who will continually look for new ways to stimulate interest for her students. She is one who is always open to change and willing to share and become part of educational group related efforts.

In my opinion, Becky is academically and personally superior. Her interest and determination will guarantee her continued success and keep her on the cutting edge of up and coming programs for her kids.

I sincerely believe Becky Ekeland is a most worthy candidate for Teacher of the Year. Any school anywhere would be proud to have her on staff. I highly recommend Becky Ekeland for South Dakota Teacher of the Year.

Sincerely,

LINDA K.S. PUMINGTON,
Counselor.

BROOKINGS HIGH SCHOOL,
Brookings, SD., August 10, 1994.

DEAR SOUTH DAKOTA TEACHER OF THE YEAR COMMITTEE: It is with great pleasure that I am writing this letter of support for Mrs. Becky Ekeland's nomination for South Dakota Teacher of the Year. Stating it simply, she is an outstanding educator.

I first became acquainted with Becky over a decade ago when she moved to Brookings. I was the assistant principal at Brookings Middle School at the time and Becky was employed as a substitute teacher. At the time of her hiring as an English teacher at Brookings High School, my only regret was that we did not have an opening for her at Brookings Middle School where I worked. Through her substitute teaching, she had proven to us that she was a very capable teacher. One year ago when I became principal at Brookings High School, I was fortunate to again work with Becky. I have come to appreciate even more than before, the many fine qualities that Becky possesses.

Becky is first and foremost a caring person who places a high priority on helping others. As a result of this, she establishes relationships with students that serve to increase their motivation, confidence, and achievement. Some specific examples of Becky's excellence as an educator are the outstanding results she has obtained as Brookings High Yearbook advisor, the quality of her preparation for classroom instruction, and her ability and willingness to work with special needs students.

In Becky's 10 years as yearbook advisor, she has developed an outstanding program, with our school's yearbook receiving statewide recognition on a consistent basis. Students are given much responsibility and control over the work with Becky serving a role of facilitator and advisor to them. In this capacity, Becky demonstrates the talent of bringing students to the realization of their full potential.

Becky has always demonstrated strong classroom organizational skills and a commitment to instruction that causes students to be actively engaged in learning through ways that are meaningful to them. She regularly updates her curriculum so that the particular interests and needs of each group of students are addressed.

In recent years, as we have moved in the direction of integrating special needs students into the regular education classroom, Becky has been a leader, showing both a willingness and an interest in working together with special education staff and students. Repeatedly, she has gone beyond what is expected of her to provide for the needs of students. She truly believes that all students can learn in her classroom.

Becky is, without a doubt, one of South Dakota's finest educators. It is without qualification that I recommend Becky Ekeland for South Dakota Teacher of the Year.

Sincerely,

DOUG BESTE,
Principal.

BROOKINGS, SD.

To whom it may concern:

It is with great pleasure that I begin this letter, because as I think back upon the six years I have known Rebecca Ekeland I realize how much she has given me, and I am thrilled that she is finally being recognized. She is an amazing individual, and she has touched my life in a very important way. She is my hero, my mentor, my role model, and my friend. I have a feeling that Mrs. Ekeland has touched many other lives in the same way, and I like to think that I speak for many people when I say that you will be hard pressed to find anyone more worthy of the title ''Teacher of the Year'' than Mrs. Ekeland.

Mrs. Ekeland was my freshman English teacher. I have always liked English, but the year I spent in her classroom was different from any other class I have ever taken. Right away it was obvious that she cared about her students and took a personal interest in the success of each of us. She was diplomatic and fair, and she respected her students. I remember leaving class the first day feeling about a foot taller and finally feeling like I was a ''grown-up''. What was more impressive was that at all times students respected Mrs. Ekeland and her authority. Rarely are there discipline problems in her classroom, and never have I heard students badmouthing her or complaining about her outside the classroom. Everyone loves Mrs. Ekeland. It is as simple as that.

For the next three years I was on the yearbook staff, and as Mrs. Ekeland was the adviser, I not only got the chance to learn from her again, but I became good friends with her. I think that I owe much of who I am today to the confidence that Mrs. Ekeland bestowed on me those in the course of those three years. She chose me to be the Editor-in-Chief for my senior year, and I learned so many valuable skills. I learned to be a good leader, a good writer, and a good mediator. I learned to be patient and fair. Essentially, I was attempting to mirror the one individual I admire more than any other person: Mrs. Ekeland.

Before I entered high school, I was without sense of direction. My greatest dream was to become a stewardess or a librarian. After the first week or so of my freshman year, I realized with 100% certainty that I wanted to be a high school teacher—just like Mrs. Ekeland. I am now entering my junior year in college, and in my education courses and in the classrooms in which I student teach, I constantly find myself making an example of Mrs. Ekeland's classroom. Whenever I find myself in a tough situation, the first thing I do is ask myself, ''What would Mrs. Ekeland do if she were in my position?'' We have remained close over the years, and I value her friendship and her advice. She has always been there for me in every capacity: teacher, counselor, mother-figure, best friend, mentor.

Finally, something needs to be said about exactly why Mrs. Ekeland qualifies for the honor of South Dakota Teacher of the Year. Besides her kindness, her fairness, and her ability to inspire, this woman is tireless. Her first priority is her students, and she is constantly working to make sure that their educational needs are met. She is always available to spend extra time on a difficult assignment. Her lectures and assignments are clear and concise and worthwhile. And most important in my mind, she is forever seeking a better way to do things. Just in the past few years she has revised and improved her curriculum, and she is working to coordinate a better curriculum throughout the English department. She is willing to try new methods and use new materials. Mrs. Ekeland will do whatever it takes to see that her students learn. She would go to the ends of the earth if it meant that even one student would catch on to grammar rules. She makes every student feel important. It takes a special person to be able to do that, and Mrs. Ekeland can.

Rebecca Ekeland truly is one in a million. I have never come across anyone who dedicates so much energy to one task—educating the children of Brookings, South Dakota. She puts her heart and soul into the success of every single student that enters her classroom. To me this is what teaching is all about. She exemplifies the ''Ideal Educator'' and is more deserving of this honor than any other person my imagination could conjure up. Nevertheless, I believe that Mrs. Ekeland's reward is watching students grow up to be successful, happy individuals. She does not need a fancy plaque or trophy to hang on her wall. In my mind and in the minds of many others, she is and always will be the ''Teacher of the Year'' this year and for many years to come.

JENNIFER LACHER.

MEMORIES OF EXPERIENCES ''BACK WHEN''

Mr. PRESSLER. Mr. President, April's Commerce Department magazine contains an article entitled ''Commerce Officials Knew Two Congressmen 'Back When'.'' As it happens, I am one of the Congressmen.

''Back then'' was Vietnam during the war when Paul London, now Deputy Under Secretary for Economic Affairs at the Department of Commerce, was in charge of a State Department unit involved with economic affairs and I

was a young Army lieutenant assigned to the unit. In the article, Paul reflects on a small research project I conducted for him involving the cost of fish in Saigon. It just goes to show that we never really escape the actions we take in this life.

At any rate, Mr. President, the piece brought back a great many memories and I am flattered Paul remembered such a small incident after all these years. I ask unanimous consent that the article be printed in the RECORD.

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

COMMERCE OFFICIALS KNEW TWO CONGRESSMEN ''BACK WHEN''

OLIA some time ago surveyed senior Commerce officials to determine if any had ever had any particularly memorable personal contacts with members of Congress. At least two of them most certainly had. One of our Commerce people had a hand in saving a Congressman's life. Another was a Senator's boss while both were young men serving in Vietnam.

Larry Irving, assistant secretary for communications and information, was a member of a delegation visiting Russia when Rep. Dana Rhorabacher, R-Calif., became quite ill. Irving administered some first aid procedures which helped bring him through the crisis.

Paul London, deputy under secretary, was a State Department aide seconded to the Agency for International Development when he first knew Larry Pressler, now a Republican Senator from South Dakota.

London recalls:

''I was head of a unit concerned with economic affairs and Larry was a young Army lieutenant assigned to us.

''One time, there were reports that the price of fish (a dietary staple in South Vietnam) might skyrocket because the Viet Cong were threatening to cut a coastal highway to Saigon. I had a feeling that most fish supplies to Saigon came from the Mekong Delta, rather than from the coast and I asked Larry to check it out.

''A couple of days later he reported that my surmise was exactly right. 'Far and away more fish on the Saigon market come from the Delta than from coastal fishing boats,' he reported.

''''How did you verify that,' I asked.

''''I got up before dawn, went down to the market and asked the people there where the fish were coming from,' he said.

''Right then, I thought: 'This guy is going to go places. He does things personally, doesn't depend on paper shuffling or second hand information to get to the heart of something.'''

The two have retained a cordial relationship ever since.

THE BUDGET

Mr. GRAMM. Mr. President, this week and next week, we are going to come down to the moment of truth on two issues. One issue has to do with putting the Federal Government on a budget like everybody else. The other issue has to do with fulfilling the Contract With America to let working people keep more of what they earn. I would like to briefly address both of these subjects.

In the 1994 election, in one of the most remarkable political occurrences in the postwar period, House Republicans did something that is very unusual in the political process and that is they set out in plain English what they promised America they would do if the American people gave them a majority in the House of Representatives for the first time in 40 years.

I would add that while many people have forgotten it, Republican candidates for the Senate put out a joint statement where virtually every Republican challenger for the U.S. Senate in the country came to Washington and released a ''Seven More In '94'' document, where we outlined seven things we would do if the American people gave us a majority.

Two of those promised items had to do with balancing the budget and with letting working people keep more of what they earned. The House of Representatives has done something even more remarkable than making all these promises—they have actually done it. The House of Representatives has adopted the Contract With America. They have adopted 90 percent of the things they promised to simply vote on. And at the best universities in the land, you would grade that as an ''A.''

We are now down to the moment of truth in the U.S. Senate and that moment of truth basically has to do with whether or not we are going to pass the Contract With America and whether we can make the tough decisions necessary in order to do that. To balance the Federal budget over a 7-year period and at the same time to accommodate the tax cut contained in the Contract With America will require us, over a 7-year period, to limit the growth in Federal spending to approximately 3 percent a year.

Over the last 40 years, Federal spending has grown at 2½ times the growth of family budgets in America. Over the last 40 years, the Federal Government has increased its spending 2½ times as fast as the average family in America has been able to increase its spending. Now what would America look like if those trends had been reversed? Well, if the average family in America had seen its budget grow as fast as the Government has grown for the last 40 years, and the Government's budget had grown only as fast as the family budget has grown over the last 40 years, the average family in America today would be earning $128,000 a year and the Government would be approximately one-third its current size.

I ask my colleagues, if you could choose between the America where the governments budget grew faster or an America where the family's budget grew faster—put me down as one who would favor having the average family in America make $128,000 a year and have the Federal Government one-third its size.

Here is our dilemma. We have some of our colleagues who say, ''I did not sign any Contract With America. That was the House of Representatives.'' As I am fond of saying in our private meetings, that is a subtlety that is lost on the American people. They do not see this contract as having been a contract between just the House and the American people. They see it as a Republican contract. And, quite frankly, it is a Republican contract. It embodies everything that our party claims to stand for.

But what I think is important for the Senate is not just that Republican candidates signed the contract, not just that every House Republican incumbent who signed the contract was reelected but I think what is significant to us is that the American people signed that contract when they gave us a majority in both Houses of Congress for the first time in 40 years.

The question that we are going to have to answer in the next 3 weeks is, are we willing to limit the growth of Government spending to 2½ percent a year so that we can, over a 7-year period, balance the Federal budget and so that we can let working families keep more of what they earn? I believe that we can and I believe that we should. I think there are many Republicans in the Senate who sort of have a problem, in that they have one foot firmly implanted in the dramatic changes in Government policy that we promised the American people in 1994, and they have the other foot firmly implanted in the status quo. And, as those two things have moved further apart, we have had the predictable result.

I think it is time for us to choose. I believe in the next 3 weeks we are going to basically decide whether or not we meant it in November of 1994 when we told the American people that we were going to dramatically change the way Government does its business. I think the American people are convinced that we can limit the growth of Government spending to 2½ percent a year so that we can let families and businesses spend more of what they earn.

I know if the President were here, he would say this is a debate about how much money we are spending on our children; or how much money we are spending on education; or how much money we are spending on housing or nutrition.

But that is not what the debate is about. Everybody in America wants to spend money on children, housing, education, and nutrition. The debate we are about to have is not how much money is going to be spent on those things, but who is going to do the spending. Bill Clinton and the Democrats want Government to go on doing the spending. They want Government spending to continue to grow 2½ times as fast as the family budget grows.

I want to put the Federal Government on a diet. I want to slow down the rate of growth in Government spending so that we can let working families keep more of their own money to invest in their own children, in their own businesses, and in their own future.

This is not a debate about how much money we spend on the things that all Americans believe we should spend money on. It is a debate about who ought to do the spending. Bill Clinton and the Democrats want the Government to do the spending. We want the family to do the spending. We know the Government, and we know the family. And we know the difference.

Since we are investing in the future of America, I want to invest the future of America in our families and not in our Government.

I know that there is a lot of anguish in the Senate, even on our side of the aisle. But I think it is time to choose. I wanted my colleagues to know that I am for a budget that does two things: No. 1, over a 7-year period, limit the growth of Federal spending to about 3 percent a year so we can balance the budget in 7 years and let our colleagues do something that no current Member of the Senate, save two, has ever done before; that is, vote for a real honest-to-God balanced budget. We literally have the power, by having a 7-year binding budget, to let Members of the Senate vote to stop talking about balancing the budget and to start doing it.

Second, in addition to the controls on spending necessary to balance the budget, I want to limit the growth of spending not to 3 percent a year, but to 2½ percent a year so that we can let families keep more of what they earn, so that we can cut the capital gains tax rate, so that we can eliminate the marriage penalty, so that we can let families have a $500 tax credit per child, so that, rather than having our Government spend our money for us, we can let working people spend their own money on their own children and on their own future.

As we look at this in perspective, let me give you three numbers. In 1950, the average family in America with two little children sent $1 out of every $50 it earned to Washington, DC, and thought it was too much. And it probably was. Today, that family is sending $1 out of every $4 it earns to Washington, DC, and if the Congress did not meet again for the next 20 years some people would applaud that prospect, but only because they do not understand our problems. If Congress did not meet again for the next 20 years and we did not start a single new program nor repeal any existing program, to pay for the Government that we have already committed to is going to require that in 20 years $1 out of every $3 earned by the average family in America with two children come to Washington, DC, to pay for the Government.

We are going to have to institute dramatic changes in spending simply to keep things the way they are. If we are to let working families keep more of what they earn, we are going to have to institute a dramatic change in Government policy. Mr. President, I am in favor of a dramatic change in Government policy. If our Budget Committee does not offer and adopt a budget that balances the budget and that provides for tax cuts for families and for job creation, I intend to offer a substitute for that budget. I think we have to stop cutting deals with America's future. I think we have to stand up and tell the American people we meant it in November 1994 when we said you give us a Republican majority in both Houses of Congress and we will change the policy of American Government.

I think we are now down to a moment of truth. Are we going to fulfill the commitment we made in that election, or are we basically going to defend the status quo? The status quo means less opportunity, future jobs, and an America that is not the America that I want my children and my grandchildren to have. I am ready to change the status quo. I am ready to cut the growth in Government spending, not just to balance the budget, but to cut taxes. And what I want my colleagues to know today is I want to work with the Budget Committee, I want to work with our leadership. I am hopeful that we can put together as a party position a budget that balances the budget over a 7-year period and that mandates tax cuts contained in the contract. But, if our leadership is not ready to bring that budget forward, if they cannot muster the courage to control Government spending to make it possible, I will muster that courage, and will offer a substitute and give my colleagues the opportunity to join me, and to join America in that process.

Finally, let me say, Mr. President, I simply want to remind my colleagues that the Contract With America was in fact signed by House Members, but there are two additional points. First, it was not distinctly different from the ''Seven More in '94'' contract that our candidates agreed to here on the north front of the Capitol. Second, the important part of that contract is not the fact that the House signed it. The important part of that contract is that America signed it. The important part of that contract is it was the document that defined what the 1994 election was all about.

The question now, the question that will be before us for the next 3 weeks is, Did we simply want to be for dramatic changes in Government at election time, or are we willing to put our votes where our mouth is? Are we really more wedded to funding for programs such as public television, or are we more wedded to letting working people keep more of what they earn? Do we really believe that Government knows best and that we need not only a $1.6 trillion Federal budget but that we need it to grow by 7.5 percent a year while the family budget is growing at less than half that rate?

I think that is the decision. I think the answer of every Republican in the Senate ought to be clear. And that answer ought to be we can change the status quo, we can limit the growth of Government spending, we can terminate programs, and we can and will not only balance the budget but let working families keep more of what they earn to invest in their own children, in their own businesses and their own future, and that we ought to cut taxes on American business to provide incentives for people to work, save, and invest. That is what I am for. I believe that is what America is for.

I thank the Chair.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator form Minnesota.

Mr. WELLSTONE. Thank you, Mr. President.

Mr. President, I thought I would take less than maybe 5 minutes to respond to my colleague from Texas.

First of all, Mr. President, I look forward to this debate that we are going to have because I think what we have seen too much of here is an attempt to dance at two weddings at the same time, and I think that citizens in this country are going to hold us all accountable.

As I said earlier, I do not understand how the arithmetic of this adds up, and I think there are colleagues on the other side of the aisle who would agree with me. It is very difficult to talk about broad-based tax cuts, with the estimates that maybe this is up to $700 billion over the next 10 years, and talk about no cuts in the Pentagon budget.

Mr. President, I hear precious little discussion of what we call tax expenditures. And for those who are listening to this debate, I am talking about various loopholes, deductions, sometimes outright giveaways—oil companies, tobacco companies, pharmaceutical companies, insurance companies. I see precious little discussion about any of that being on the table. We are going to pay the interest on the debt. We are going to put Social Security off the table, Mr. President. According to some of my colleagues, in addition, we are going to balance the budget by 2002.

I also hear the same colleagues saying but, students, do not worry about being able to afford higher education; veterans, do not worry, there will be no deep cuts there. I doubt whether senior citizens will take great comfort from the remarks of my colleague from Texas because it is quite one thing to talk about a 2-percent increase a year but when the trend line is in fact that more and more of our citizens are 65 years of age and over with more serious health care costs going far beyond 2 percent, then what we are really talking about is eroding again what I talked about earlier here, a contract with senior citizens, the Medicare Program.

Mr. President, first of all, let me make the point that to be proposing some rather deep cuts in some programs that are critically important to the concerns and circumstances of people's lives in our country all for the

sake of broad-based tax cuts flowing disproportionately to those on the top does not strike me as something that will meet the standard of fairness I think people demand of us.

Second of all, Mr. President, let me just simply say that this argument that when it comes to the most pressing issues of people's lives there is nothing the Government can or should do is a wonderful argument if you own your own large corporation, but as a matter of fact, there are certain decisive areas of life, education being one of them, where we have decided we make an investment as a people to make sure we do live up to our dream of equality of opportunity.

So I would simply say, Mr. President, because otherwise I will go on for hours and hours, if you want to talk about real welfare reform, the answer is good jobs and good education. If you want to talk about how to reduce poverty in this country—1 out of every 4 children are poor, 1 out of every 2 children of color are poor—then the answer is good education and good jobs.

If you want to talk about reducing violence in our communities, talk to your judges, talk to your police chiefs, talk to your sheriffs, much less talk to people in those communities, and they will tell you we will never stop the cycle of violence unless we invest in good education and there are good jobs for people.

If you want to talk about how to build community, the same thing—good education and good jobs. If you want to talk about how we have a democracy where men and women are able to think on their own two feet, they understand the world they live in, they understand the country they live in, they understand the community they live in, and they understand what they can do to make it a better community or a better country or a better world, then I am telling you, we have to invest in good education.

I have to tell you right now that when I travel around the State of Minnesota, a State which values education, I meet too many students who sell their plasma at the beginning of the semester to buy their textbooks; I meet too many students who are going to school 6 years because they are working 35 and 40 hours a week, and we hear proposals that they are going to have to start paying interest on their debt throughout their years of graduate or undergraduate work. In addition, we hear about proposals of cutbacks in work-study and various low-interest loan programs, Pell grant programs.

I could go on and on. I could just tell you, these are middle-class programs. These are programs that have made the United States of America a better country, a more just country, a country with more fairness.

So let us be crystal clear. The issue is, who decides who benefits and who is asked to sacrifice? The question will be asked, who decides to cut Medicare and who has health care coverage that is good coverage? All of us who are in the Senate. And who decides to cut some of the programs that enable students to be able to afford higher education and whose children get a decent education?

I could go right across the board, but I simply say to people in this country, hold us all accountable and make sure you are good at addition and you are good at subtraction and you are good at arithmetic, because I think it is a bit of a shell game here. We are going to have broad-based tax cuts and, in addition, we are not cutting the Pentagon budget, and we are paying the interest on the debt and not touching Social Security, but we are going to balance the budget, cutting, I do not know, $1.3 trillion, $1.7 trillion, by the year 2002. But, veterans, do not worry about your health care; you do not need to worry that you are waiting 2½, 3 years for just compensation right now with the veterans appeal board. And, students, do not worry because we are not going to cut into higher education and children. No, we would not do anything that would affect nutrition programs, but we are going to balance the budget by 2002. We are not going to make a distinction between operating budget and capital budget. We are not going to go after corporate welfare. Maybe we will. I hope we do. Everything should be on the table. But we are going to balance the budget.

I just simply say this argument about there is the Government and there is us, as a matter of fact, is a wonderful philosophy. When it comes to the issues important to your lives, what the Government should do or could do is great if you make $200,000 a year. It is great if you own your own large company. It is great if you are in the Senate and make $130,000 a year. It is not so great if you are a regular, ordinary American.

I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. I am so moved that I would like to just respond to that.

First of all, if you are rich, if you own your own corporation, you are not too much affected by these changes. And let me explain why. In 1950, rich people paid a lot of taxes. Rich people pay a lot of taxes today. In 1950, poor people did not pay any taxes. Poor people do not pay any taxes today.

What has happened since 1950 is that the tax burden on average working Americans has exploded to pay for all of this Government that our dear colleague from Minnesota sees as the salvation of the American people. We have spent more money on welfare since 1965 than we have spent in fighting all the wars the Nation has been involved in this century, and there are more poor people today than there were when we started this program. They are poorer today than they were when we started this program. They are more dependent today than they were when we started this program. The illegitimacy rate among the poor is three times what it was when we started this program. The crime rate has exploded. And by every index on the planet, they are worse off today than they were when we started the war on poverty.

But are my colleagues dismayed? Are they the least bit unhappy? No. If we could just spend another trillion, if we could just let Government do more, everything would be wonderful.

There is only one problem that our dear colleague has, and that is the American people do not believe it anymore. The American people have rejected that idea.

In terms of health care, our colleague last year, along with our President, had an opportunity to convince the American people it just made great sense to tear down the greatest health care system the world had ever known to rebuild it in the image of the Post Office. And remarkably, for a while, it looked as if that was going to succeed. But finally, a few Members—and I am very proud to be able to say I was one of them—stood up and said, ''Over my cold, dead, political body.''

When we reached that point in the battle when the American people came to understand that this was not a debate about health care and jobs, but instead a debate about freedom, that one little stone slew Goliath.

So I think we have had plenty of debate about health care. If I might say, I reintroduced my health care bill. Bill Clinton did not reintroduce his. Obviously, there was a belief that mine was supported by the American people; he concluded that his was not.

Now, in terms of this Pentagon budget issue, the plain truth, as we all know, is that since 1985, we have cut defense spending by over a third. If we had cut Government spending in total half as much as we cut defense budgets, we would have a Federal surplus.

Even the President says today that his defense budget will not fund the level of defense that he claims the Nation needs.

So this idea that we can go around talking about how can we write a budget without cutting defense, I remind my colleagues we have already cut defense. The problem is we did not cut anything else. We have already cut defense and raised taxes. The problem is we spent every penny of the tax increase so that now the Congressional Budget Office says that the underlying budget and the underlying deficit is no different today than it was before Bill Clinton imposed the largest tax increase in American history.

Now, how can you have the largest tax increase in the history of the country, the lowest levels of defense and not have the deficit go down? There is only one way. And that is you spend all the money, which is exactly what we have done.

In terms of Medicare, can anybody stand here and say that we are going to able to keep Medicare as it is? Last

year, Medicare spending grew by 10.5 percent a year. Last year, the average insurance policy held by a worker in the private sector did not have his premium go up. Competition improved efficiency. Cost consciousness meant that the private sector part of medicine saw no cost increase and yet the public sector part of medicine grew by 10.5 percent.

Does anybody believe that either the taxpayer or our senior citizens can sustain that rate of growth in a program that jointly they are paying for? Does anybody believe that we should not try to reform that program and bring efficiencies and economies and choices into it or that we cannot do it?

I remind my colleagues that the Medicare trustees, appointed by President Clinton to look at the financial problems of Medicare, concluded that Medicare was going to be broke by the year 2002, the year that we hope to balance the Federal budget. What we are asking is that we respond to the urgent call by the two independent members of the Commission who urge Congress to address this problem.

Now, as for the old tax-cut-to-the-rich song, let me remind my colleagues that we are talking about a $500 tax credit per child so that families can invest their own money in their own children. No one has failed to conclude that at least 75 percent of that tax cut will go to families that make $70,000 or less.

But look at the capital gains tax rate. I know my colleagues will say, ''Well, if you cut the capital gains tax rate, rich people are going to immobilize their capital and they are going to invest and they are going to create jobs and, if they are successful, they are going to earn profit.''

Welcome to America. Welcome to America. That is how our system works. If America is going to be saved, it is going to be saved at a profit.

I was thinking the other day, as I listened to our President make a similar statement to that our colleague has made, I have had a lot of jobs in my life. When I was growing up, I was very fortunate to have a lot of jobs. I worked for a peanut processor, I worked in cabinet shop, I worked in a boat factory, in addition to the same jobs we all had, throwing papers and working at the grocery store.

No poor person ever hired me. Never in my life has a poor person ever hired me. Every job I ever had, and I suspect the same is true for virtually every American, every job I ever had I got because somebody beat me to the bottom rung of the economic ladder, climbed up, invested their money wisely, created jobs, and made it possible for someone like me to get my foot on the bottom rung of the economic ladder and climb up.

What is wrong with encouraging people to invest to create jobs, growth, and opportunity?

In terms of corporate welfare, if my colleague means by that subsidizing corporate America to invest in a technology the Government chooses or subsidizing American business to invest in areas that the Government chooses, one of the things that I want to do in the budget, and one of the things I will do if I have to offer a substitute, is dramatically cut the $86 billion of Government spending where Government tells business where to invest. That is how I would like to fund cutting the capital gains tax rate and indexing so that we can let the market system and not the Government decide where that investment will occur.

As far as children, it is interesting to me that after all these years of exploding Government, after all these years of the failure of Government, that we still see Government as the solution to every problem involving the American child.

In fact, American Government is doing such a great job that now President Clinton wants the United Nations to get into the act. His administration has now signed the U.N. Convention on the Rights of the Child and he is going to ask us to ratify it. And it supersedes State law. So now not only are we going to help raise every child in America by the Federal Government, but we are going to let the United Nations do it. We are doing such a great job now, I guess we think the United Nations can help us do even better.

Forgotten in this whole argument is that child rearing is a parental concern. Parents ought to make decisions about children. And part of our problem is over the last 40 years we have taken more and more money from parents, we have spent their money on their own children, and we have done a much poorer job than they would have done had we simply allowed them to spend their own money on their own children.

In terms of good jobs, where do good jobs come from? Does anybody believe that Government can create jobs? Does anybody believe, as Bill Clinton says, that Government can empower people? Freedom empowers people. Government entraps people.

Finally, in terms of this whole debate about Government, we are not talking about eliminating the Government. We are talking about a budget that, if we fulfill the Contract With America, Government will spend about 2½ percent more each year for the next 7 years.

Now I know, for those who want Government spending to grow at three or four times as fast as the family budget, that that is cruel and unusual punishment. It means Government has to make decisions.

But there are a lot of businesses in America that have had to make a lot tougher choices than limiting their budgets to 2½ percent growth a year. And they have had to do it just to keep their doors open. There are a lot of families in America that make much tougher choices than that.

All we are asking Government to do is to live in the real world with everybody else where you have to make tough decisions.

So, I think that we can see that this is going to be an interesting debate. And it is a defining debate. I respect my colleague from Minnesota because, basically, his view is the view of his party. Not all the members of his party are so honest as he is to basically point out that they believe that Government is the answer; that they really believe that if we can make Government bigger, if Government could make more decisions, if we could spend more money at the Federal level, that America could deal with every problem we have.

I do not believe that. I believe that if we can put the Federal Government on a budget, if we can let working people keep more of what they earn, if we can make hard choices at the Federal level, if we can reform welfare to demand that people, able-bodied people riding in the wagon get out of the wagon and help the rest of us pull, if we can demand that we end this situation where we are subsidizing people to have more and more children on welfare, and if we can end the absurdity where millions of people are getting more money riding in the wagon than millions of other Americans are getting for pulling the wagon, then I think we can make America right again.

The point is, we have two distinct visions for the future of America. Our dear colleague from Minnesota and most Democrats, including the President, believe that the vision that leads us home, the vision that brings back the American dream, the vision that shares the dream with people who missed it the first time around is more Government, more spending at the Federal level on education, more spending at the Federal level on health, more spending at the Federal level on nutrition and housing and training.

Of course, how are we going to pay for it? Well, of course, we are going to raise taxes. And who are we going to raise taxes on? Rich people. And who are rich people? Anybody who works. That is their vision.

My vision, the vision of most Republicans, is exactly the opposite. We want less Government and more freedom. In fact, I would not want the Government we have today even if it were free. If you could give us this Government, I would not want it because I think the Government is too big and too powerful. It makes too many decisions.

Free people should make more decisions for themselves and they should not have their Government making decisions for them. And we are not just talking about freedom and efficiency, we are talking about virtue.

It is not good that people turn to the Government to fix every problem they have, to indemnify every mistake they make because in turning to Caesar, they turn away from God, they turn away from their family, they turn

away from themselves as problem solvers for themselves. As a result, they become dependent, and when they become dependent, they become less free. That is what this debate is all about.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I actually promised my colleague from Illinois that I would limit my response to 5 minutes, but I am so moved by what my colleague from Texas had to say, I would like to respond.

Mr. President, I hardly know where to start, but I can assure my colleague that it is quite possible to turn toward God and to turn toward religion and to have values and spirituality in your life and believe, as the Committee on Economic Development believed, a business organization which issued a report a few years ago, that one of the ways that we do well with an effective, successful private sector is to make sure that we invest in our children when they are young.

It is simply the case that if we do not invest in our children when they are young, making sure that each and every child has that equality of opportunity, which is what my parents taught me was what America was all about, then we pay the interest later on with high rates of illiteracy and dropout and drug addiction and crime and all of the rest.

Mr. President, when we talk about will there be a higher minimum wage, the answer from my colleague from Texas is no. From what I think I just heard my colleague say, when we talk about whether or not higher education will be affordable, for some sort of reason there is nothing the Government can do, we do not really need to have Pell grants or low-interest loans or work study, but, Mr. President, what has made this country a greater country is to make sure that each and every young person has that opportunity.

Nobody talked about the Government doing everything. That is a caricature. That is just sort of political debate.

We have a strong private sector, and that is what makes this country go round, but we also think there is a role for the public sector, and that is to make sure that we live up to the promise of this Nation, which is equality of opportunity.

I do not think the people in the United States of America believe that whether or not you receive adequate health care or not should be based upon whether or not you have an income. I think people believe that each and every citizen ought to have decent health care. I heard my colleague criticize the post office. I can tell you one thing, at least they do not deliver mail according to your income. Everybody gets their mail regardless of their income.

I heard my colleague talk about welfare. My God, you would think AFDC families caused the debt, caused the deficit. I was not here during the years some of my colleague served here, but if my memory serves me correctly, in the early 1980's, we were told what you want to do is dramatically reduce taxes—that was euphemistically called—I ask my colleague from Illinois, I think I am correct—the Economic Recovery Act. What happened was we eroded the revenue base and moved away from any principle of progressivity, I say to my colleague. I am sorry he is not here.

Poor people do pay taxes. Many people are poor in the United States of America, work 40 hours a week, if not more, 52 weeks a year, and they pay Social Security taxes. More wage earners, more ordinary Americans pay more in Social Security taxes than in taxes. We have dramatically reduced the corporate rates and, indeed, there has been too much of a pressure on middle-income and working families. But this argument that the problem is that we have relied too much on an income tax just simply does not hold up by any kind of standard if you look at it with any rigor.

I think the welfare benefits, the AFDC benefits in some States—I cannot remember Texas—are about 20 percent of poverty. People in the United States of America believe the children have a right to be all that they can be. People in the United States of America believe we should invest in higher education. People in the United States of America believe that an educated, high-morale work force is critical to economic performance. And people in the United States of America believe that it is a combination of a strong private sector and also a Government that can effect good public policy that can lead to the improvement of lives of people in our communities that makes the difference. That is what this debate is about.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

BATTLE AGAINST POVERTY

Mr. SIMON. Mr. President, I will try not to strain the patience of my colleague from Washington.

First, in response to the dialog that has just taken place between the Senator from Texas and the Senator from Minnesota, the Government clearly is not the answer for all of our problems. But I would point out that when we had what was called a war on poverty—which was really not a war on poverty, but at least a battle against poverty—we ended up at one point with 16 percent of the children of America living in poverty, down from 23 percent. We are now back up to 23 percent, and we ought to do better. That is Government policy, it is private sector, it is all of us working together.

PEACEKEEPING CONTRIBUTION

Mr. SIMON. Mr. President, Sunday's New York Times has an article entitled ''Poll Finds American Support for Peacekeeping by U.N.,'' written by Barbara Crossette. It is a poll conducted of 1,204 people by the Center for International and Security Studies at the University of Maryland and by the Independent Center for the Study of Policy Attitudes in Washington.

Let me just read a couple of paragraphs:

> There was a general perception among those polled that about 40 percent of United Nations peacekeeping troops are American, and that this should be halved to 20 percent. In fact, 4 percent of peacekeepers are American.

I do not know where the 4 percent figure in the Times comes from. The last figure I saw was as of March 6 and at that point, the United States was No. 20 in its contribution and less than 4 percent. Jordan, with 3 million people, was contributing more than twice as many peacekeepers as the United States with 250 million people. Nepal was ahead of us at that point.

The article also says:

> Asked about the cost of the Federal budget of international peacekeeping, half of the sample in the poll gave a median estimate of 22 percent. Less than 1 percent of the military budget is actually spent on these operations . . .

Mr. President, we do have a choice here, and that is whether we are going to work with those countries or whether we are not. To use the old overworked phrase, if the United States is not going to be the policeman of the world, we have to work with other countries.

Here let me add that one of the things that we get all emotionally hung up about is whether U.S. troops can be under a non-U.S. commander. The reality is that back since George Washington had troops under a French commander, we have had troops under foreign commanders. I do not know why we get so hung up on this. It does not bother me, frankly, if the next NATO commander should be a Canadian, or a Brit, or an Italian, or one of the other NATO countries. I think that is a perfectly plausible thing.

If we want other countries to work with us around the world, we will, on occasion, have to have American troops under foreign commanders.

Mr. President, I ask unanimous consent to have printed in the RECORD the New York Times article.

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

[From the New York Times, Apr. 30, 1995]

POLL FINDS AMERICAN SUPPORT FOR PEACEKEEPING BY THE UNITED NATIONS

(By Barbara Crossette)

UNITED NATIONS, April 28.—As Congress considers making significant cuts in contributions to United Nations peacekeeping, the findings of a new study show that Americans may not only be supportive of such operations but are also willing to see missions

become more aggressive, even when Americans are involved.

The study also found that about 80 percent of those questioned believed that the United Nations had the responsibility to intervene in conflicts marked by genocide. But Americans in the poll and in group discussions indicated that they knew little about the extent and cost of United States participation in peacekeeping.

There was a general perception among those polled that about 40 percent of United Nations peacekeeping troops are American, and that this should be halved to 20 percent. In fact, 4 percent of peacekeepers are American. The absence of television reporting of operations that do not have a substantial American involvement may at least in part explain this misperception.

Asked about the cost to the Federal budget of international peacekeeping, half of the sample in the poll gave a median estimate of 22 percent. Less than 1 percent of the military budget is actually spent on these operations, although Washington is assessed 31 percent of the costs of United Nations peackeeping operations. Total costs amount to about $2 billion, the assessment plus supplemental costs, of the $270 billion Federal military budget.

The study was based on a poll conducted by the Center for International and Security Studies at the University of Maryland and by the independent Center for the Study of Policy Attitudes in Washington.

The results of the study did show some ''softening'' in support for peacekeeping generally, said Steven Kull, of the Program on International Policy Attitudes at the center. A little more than a year ago, 84 percent of those polled indicated strong support for United Nations peacekeeping. This year, that figure was 67 percent.

But 89 percent of the people polled said that when there was a problem requiring military force, it was best for the United States to work with other countries and the United Nations in dealing with it.

The study questioned 1,204 people through a method known as a random-digit-dial sample, with a margin or error of 3 to 4 percentage points. It also drew on focus-group discussions in Maryland, Michigan, New Mexico and Virginia.

At the Heritage Foundation in Washington, Larry DiRita, deputy director for foreign policy and defense, expressed skepticism of polls that ask about issues like peacekeeping in very broad terms.

''The American people are basically very generous and want to do good,'' he said in an interview, adding that citizens are quick to respond when faced with images of starvation, violence and displacement. But he said he believed that this changes markedly when people are presented with concrete choices about sending Americans into one dangerous situation or another, especially when they have seen disturbing images on television.

''A general American optimism comes out in polls,'' he said. ''But when faced with reality, they take a more skeptical view.''

In the questioning and discussions, a majority of people voiced frustration with the peacekeeping operation in Bosnia and suggested that it eroded the long-term reputation of the United Nations. Mr. Kull said a focus-group comment that ''the United Nations has no clout'' seemed to reflect the widespread sense that the real problem with peacekeeping was its ineffectiveness.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, more than 3 years ago I began making daily reports to the Senate making a matter of record the exact Federal debt as of the close of business the previous day.

As of the close of business Friday, April 28, the exact Federal debt stood at $4,852,327,350,096.60, meaning that on a per capita basis, every man, woman, and child in America owes $18,419.52 as his or her share of the Federal debt.

It is important to note, Mr. President, that the United States had an opportunity to begin controlling the Federal debt by implementing a balanced budget amendment to the Constitution. Unfortunately, the Senate did not seize their first opportunity to control this debt—but rest assured they will have another chance during the 104th Congress.

If Senators do not concentrate on getting a handle on this enormous debt, the voters are not likely to overlook it next year.

THE MONTGOMERY COUNTY SEARCH AND RESCUE TEAM'S WORK IN OKLAHOMA CITY

Ms. MIKULSKI. Mr. President, I rise today to praise the members of the Montgomery County Maryland Search and Rescue Team for their work in Oklahoma City. This team worked among the death and destruction of Oklahoma City, driven by the hope that they would find another survivor within the tons of debris of the Alfred P. Murrah Federal Building.

I cannot stress the gratitude that I feel as the Senator for Maryland to this group of dedicated heros, who worked 12 hours a day, for days on end, in their search for survivors. This group concentrated on search and rescue, ignoring the danger of falling debris and the mental agony of this tragedy.

Mr. President, I feel the dedication this team and others like it displayed in Oklahoma City exemplifies the American spirit, a spirit of helping those in need to overcome a crisis. The brave men and women of the Montgomery County Search and Rescue Team placed their lives on the line for their fellow Americans; this is nothing less than an act of heroism.

The Montgomery County team worked at the center of the blast zone of the Alfred P. Murrah Federal Building by shoring up and removing giant slabs of concrete as members of the Oklahoma City Fire Department removed bodies. Working at the center of the blast zone, at ground zero, was dangerous duty. I know that I speak for all of my colleagues as I recognize this Montgomery County team because they were an example of the many dedicated Americans who came from all across the Nation to lend a helping hand in the wake of this disaster.

Mr. President, I conclude my remarks today by passing along to the Montgomery County Search and Rescue Team a much deserved thank you for a job well done. Thank you for restoring the notion that the American spirit is still alive and well. Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 956, which the clerk will report.

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 consideration of the bill.

Pending:

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

(2) McConnell amendment No. 603 (to amendment No. 596) to reform the health care liability system and improve health care quality through the establishment of quality assurance programs.

(3) Thomas amendment No. 604 (to amendment No. 603) to provide for the consideration of health care liability claims relating to certain obstetric services.

(4) Wellstone amendment No. 605 (to amendment No. 603) to revise provisions regarding reports on medical malpractice data and access to certain information.

(5) Snowe amendment No. 608 (to amendment No. 603) to limit the amount of punitive damages that may be awarded in a health care liability action.

(6) Kyl amendment No. 609 (to amendment No. 603) to provide for full compensation for noneconomic losses in civil actions.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, the balance of the day will be used to debate the McConnell amendment which proposes to add detailed provisions with respect to medical malpractice legislation to the substitute which is currently before the Senate, primarily on the subject of product liability.

All amendments, except for leadership amendments, that deal with medical malpractice under the order are to be offered today and debated throughout the day. There will also be approximately 1 hour for debate on all of those amendments tomorrow before 11 o'clock in the morning, when there will be votes on everything leading up to and including the McConnell amendment, after which time, with certain narrow exceptions, medical malpractice will no longer be discussed as a part of this bill.

So I want to express the hope that Members who wish to speak on the subject of medical malpractice or to offer additional amendments to the McConnell amendment will come to the floor and debate those issues today. Nothing in the order prohibits speeches or discussions on the legislation broader than medical malpractice, but this is

primarily going to be a medical malpractice day.

So we are open and ready for business for any Member who wishes to discuss that issue or to offer an amendment relating to that issue.

With that, for the time being, 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. GREGG. 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. GREGG. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business for approximately a half hour.

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

OUR NATION'S BUDGET

Mr. GREGG. Thank you, Mr. President.

I want to take this opportunity today to talk a little bit about what is going to happen relative to the budget of this country as we move forward through the next couple of months when we are taking up key issues involving the budget, and to talk a little bit about Medicare, which is obviously an issue of considerable concern for our senior citizens and of equal concern for those of us who served in the Senate and in the House of Representatives as we move through the process of trying to restructure, first, the budget of the country to put us into solvency and, second, to make sure that the Medicare system remains solvent, and that our seniors will be able to benefit from this, the largest insurance program in the Nation.

As I think everybody knows, this country faces some fairly significant crises in the coming years over the issue of the deficit. In fact, if we continue on our present course, it is projected that by about 2015, or thereabouts, this Nation will essentially end up in bankruptcy. It will be a bankruptcy which had been generated primarily by the fact that we, as a Government, have failed to address the spending side of the ledger of the Federal budget. It will also be a bankruptcy which passes on to our children a Nation where their chances for opportunity, their chances for a lifestyle which is prosperous, is essentially eliminated.

Unfortunately, if we do not take action soon, we will end up like Mexico is today; we will be a Nation unable to pay its bills. This is not fair or right, as I have said on a number of occasions on this floor. In fact, the way I have characterized it is—and I have talked about the postwar baby boom generation, the Bill Clinton generation—we will be the first generation in the history of this great and wonderful country to pass less on to our children than was given to us by our parents. Such an action cannot occur and should not occur. It is not right and it is not fair.

We need to address the issue of the deficit. In order to do this, it is, I think, informative to look at some of the proposals that are on the table and which have been evaluated by various agencies which review the deficit.

Each year, the Congressional Budget Office subjects the President's budget to its own independent analysis. It then publishes the analysis in a little book, the latest version of which was released last week. It is this blue book here. This is a very significant document because, as you will recall, when the President was elected, during his first speech to the Congress he stated he would use CBO as the fair and honest arbiter of the numbers of his budget.

This year, CBO has found some highly significant differences between what the President said will happen under his budget and what CBO believes will actually occur.

If you will recall, in February, when the President's budget was shown—when it was first delivered—it showed basically a steady state of deficits of $200 billion each year for as far as the eye can see; $200 billion a year, basically until the end of the budget cycle and beyond, with no progress toward a balanced budget, but at least no deterioration from the present position, which was pretty bad. It would have added, for example, a trillion dollars of new debt to the Federal deficit over the next 5 years.

CBO, however, says that this is not true; the President's budget is not accurate. CBO's analysis found that the President's budget proposal would actually cause the deficit to climb by $100 billion over the next 5 years. From $177 billion in the year 1996 to $276 billion in the year 2000.

This chart here shows this problem. This is the President's budget as he proposed it. This would be balanced down here. There would be $200 billion deficits for as far as the eye could see. But CBO has taken a look at the President's budget and found that not only is he giving us a $200 billion deficit for as far as the eye could see, it appears that it is now on an upward trend and well above $200 billion. In other words, the President's budget will actually result in adding $1.2 trillion of new debt to the national debt over the next 5 years.

That is on top of the $4.8 trillion which we already owe as a country, and it is debt which our children will have to pay. It is debt which is going to finance current expenses which we are undertaking.

The President's budget, it seems, was subject to some unfair criticism back in February, in fact. Republicans—and I must include myself among them—and some Democrats criticized it as a do-nothing budget. Well, now it appears that it is not a do-nothing budget, it is a make-things-worse budget.

Congress also received some additional information which is fairly significant in the last couple of weeks. It received a report from the trustees of the Social Security and Medicare trust fund. That is this report here. This is important because the trustees of the Medicare trust fund are independent individuals who are given the obligation of managing the Social Security and the trust fund program and who are theoretically, outside the political process, although three of them are political appointees.

For those who do not know that, the trustees include, for example, the Secretary of the Treasury, the Secretary of Labor and Human Resources, the Commissioner of Social Security, the Administrator of Health Care Financing Administration. In addition, there are two public trustees. These two are not administration officials, but private citizens, who were appointed to their positions.

The alarming nature of this year's report results from the trustees' telling that the Medicare system is in a full-blown crisis, that it will go bankrupt in just 7 years if we do not take decisive action to fix it.

Let me show another chart which reflects the seriousness of this situation. This is the hospital trust fund, Medicare. As we see under the present scenario, it is solvent. Beginning in about the year 1997, it starts to have a negative cash flow, and by the year 2002, 2003, or 2004 it goes into deficit. In other words, it becomes bankrupt.

This is the most important trust fund after Social Security that we deal with as a nation. The Medicare trustees are saying that the trust fund will confront a negative cash flow in just 2 years. This means that the Medicare program will be spending more than the Medicare payroll tax brings in.

The Medicare will go insolvent in 7 years, or the year 2002. That is, the trust fund will not only have a negative cash flow, but that it will also have spent all the surplus reserves that it has accumulated. In other words, it will be bankrupt.

''It is important to remember,'' the trustees said, ''that under present law there is no authority to pay insurance benefits if the assets of the hospital trust fund are depleted.'' That means at this point, when we cross this line, there will be no money to pay for health care for senior citizens. Medicare benefits would simply be cut off, or seniors would have to fend for themselves for their health care. While Congress would probably do something about that, right now the state of the law is that in the year 2002 senior citizens will have no health care insurance.

How big is the Medicare financial problem? The trustees report says the following:

Short term, to restore actuarial balance over the next 25 years, an immediate payroll

tax of 1.3 percent would have to be imposed or benefits would have to be reduced in a comparable fashion. That 1.3 percent translates into $263 billion over 5 years or $387 billion over 8 years.

In the long term, to restore balance over a 75-year period, the payroll tax would have to be hiked 3.5 percent immediately or a cut in benefits would have to be made that is comparable. That translates into $565 billion over 5 years or $1.1 trillion over 7 years.

These are the numbers required to restore actuarial balance. But these figures give an idea of the magnitude of the problem that Medicare confronts.

Another important element of this year's Medicare trustees report is that the public trustees—the citizen trustees, not the Clinton administration trustees—took the highly unusual step of including their own message, a dissent, in the statement. This statement sounds much more urgent and alarming than the overall report. Remember, it was given by the independent folks who serve in this commission. And the overall report is pretty severe.

The public trustees begin the message by saying there has been an acceleration of the deterioration of the trust fund. They say that the deterioration results from some unforeseen events, but also from the absence of prompt action in response to clear warnings that changes are necessary.

Here they are basically scolding the Congress. They are saying, ''We have been telling you of this problem for some time but you have ignored it. But you have a major crisis on your hands now and you can't delay any longer.''

The trustees also go on to say two things which are rather striking, and I have had them reproduced here because they are so significant.

They say: ''The Medicare Program is clearly unsustainable in its present form.'' Unsustainable in its present form.

They also say, and this is the independent trustees speaking: ''We strongly recommend that the crisis presented by the financial condition of the Medicare trust funds be urgently addressed on a comprehensive basis, including a review of the program's financing methods, benefit provisions, and delivery mechanisms.''

In other words, the Medicare Program is insolvent, is bankrupt, and it is unsustainable in its present form. It has to be restructured.

In light of these two reports, the CBO report and the Medicare trustees report, Congress really confronts what I would call a political gut check. Are we going to try to save the Medicare system and balance the budget despite the political demagoguery that will surely result? Are we going to do these things in the face of a President who has basically washed his hands of both problems and taken the Pontius Pilate approach to budgeting, Pontius Pilate approach to Medicare, washed his hands and said there is no problem and walked off the stage? Or are we going to pursue politics as usual and just pretend for another year there is no problem at all?

For my part, I believe we must reject the politics as usual and move decisively to restore this country's fiscal standing. We must do so to save the Medicare trust fund and to assure our seniors that they have a health insurance plan that is solvent, and we must do so to balance the budget, whether or not we get the President's help.

Why? Because it is the right thing to do. It is the necessary thing to do. Quite simply, it is our job to do it.

First, we must save the Medicare trust fund from bankruptcy. To do this we must pursue two tracks. We must make some changes to head off the bankruptcy in the year 2002 and restore the short-term solvency, and we must also undertake some structural improvements so that the Medicare trust fund remains sustainable into the next century.

This involves some immediate adjustments, and it involves opening up the system to market-based incentives. We must follow the lead of the private sector and allow senior citizens to choose from a wide variety of health care plans, including traditional Medicare.

If we allow seniors to have a wide variety of choices similar to those that we have as Members of Congress or as Federal employees, then the Medicare inflation will come under control and we will be able for bring this system into solvency.

This can be done by giving our seniors choice. We can do it not by cutting Medicare. We do not have to cut spending on Medicare. All we need to do is reduce its rate of growth.

Last year, the Medicare trust fund and the Medicaid fund, which is a separate fund and is a welfare fund, both grew at 10.5 percent, three times the rate of inflation in the economy. It happens to be 10 times the rate of inflation in the private sector health care arena, which actually dropped last year as a rate of growth. They had a minus 1.9 percent inflation rate.

Obviously, we cannot sustain double-digit inflation rates in the Medicare accounts. But we could sustain a growth rate which was as high as 7-percent, or twice the rate of inflation, and seven times the rate of inflation in the private sector health care accounts.

We can obtain that goal of reaching a 7 percent rate of growth in Medicare by giving seniors more choice and creating a market-place incentive for them to move into health care provider proposals which are more cost efficient. I have laid out a fairly significant program to do that, and have talked about it before on the floor.

Along with moving to resolve the bankruptcy of the Medicare system, we also must act decisively to resolve the problem with the deficit and the Federal budget. We must not only save Medicare but we must reform the rest of Government as well, because we must be able to pass on to our children a country which is solvent. This can be done by improving the way the Government delivers its services. Welfare, including Medicaid, has some of the fastest growing programs of the Federal Government but they are also some of the areas where the Federal Government has had its biggest experiences of failure. In fact, if there is one item you can point to in the liberal welfare state as having been a failure over the last 40 years, it is welfare itself. It has created generations of dependency and despondency: People who are locked into a system from which they cannot escape; people who should not be in the system who are in the system; people who should be getting assistance who are not getting assistance.

We must admit that the status quo of the welfare system, and the Medicaid system, for that matter, which is part of it, is indefensible. We must move the responsibility for these programs and the power to administer these programs back to the States through using flexible funds and returning the dollars and the authority over these programs to the States.

This loss of power on the Federal level will upset a lot of people around here and there will be a lot of shrill rhetoric. But the basis of that rhetoric will be the concern for loss of power. We will hear it couched in terms of compassion. We will hear this outrageous statement, which is so often made by some of my colleagues on the left, that State Governors and State legislatures and town governance individuals do not have the compassion or the knowledge to manage these programs; that somehow, the knowledge to manage these programs is uniquely retained in a few bureaucrats here in Washington and their assistants here on the floor of the Senate and in the House of Representatives.

But that argument of compassion is, as we all know, a smokescreen for the real argument or the real concern, which is one of power. Controlling the dollars and controlling the programs means controlling people and having power. There are many Members around this arena who do not wish to give up the power of the purse or the power of the programs. But if we are to get better programs—better managed, more efficiently managed, delivering better services—the way to do that is to return the responsibility to the States and to the communities along with the dollars that support those programs.

So in the welfare and Medicaid accounts, we can do both. In fact, the Governors have come forward and suggested to us that they will take over these programs and they will take them over at a fixed price. They will deliver these programs and deliver them even better than we do because they know how to deliver them and they have the flexibility to deliver them if we will simply give them the authority to do that. And, in doing

that, we can save a lot of money and produce a better program.

We also need to address other entitlements. For example, the Federal retirement program is one of the largest categories of entitlements. It cannot escape reform as we undertake a fair and balanced approach to entitlement reform. The American taxpayers bear the full cost of Federal retirees' annual COLA adjustments, a feature that virtually no private pension plan shares and that was not part of the Government's original retirement contract with Federal workers, and we must do something to control that growth.

There are innumerable—literally hundreds—of smaller entitlement programs, including some popular ones in the area of agriculture, unemployment compensation, and a variety of others. But all of these should be put under the microscope of review and we should ask the questions: Do they work? Should they continue to exist? Can they be improved? If we ask those questions, we will find in all instances the answer is they can be improved, and they can be delivered more efficiently and for less cost.

While balancing the budget will mean examining the operation of some sacred political cows, it can be done. While in some cases we will decide that the Federal Government just cannot afford to continue funding some activities, in most cases entitlement reform will simply result in better Government being delivered, probably, to more people.

Unfortunately, however, it appears that the Congress will have to go it alone. The President is offering absolutely no help. In fact, as the CBO report and the President's recent appearances tell us, his actions seem to be just making things worse. Just when the national predicament calls out for strong fiscal leadership, the President is doing exactly the opposite. He is telling every interest group he appears before that they deserve more money. He just told the Iowa farmers that they need to spend more money on pigs, more pork. It really is outrageous.

Still, Congress must forge ahead. We must act to preserve the Medicare system so our seniors are not faced with a bankruptcy, which cannot be debated, and which has been predicted by their trustees, so that they will have an insurance trust fund that is there for them and for the next generation. We must act to preserve our children's future by moving to balance the budget by the year 2002.

These will not be an easy 2 months as we go through the process of accomplishing these goals. We will have to make serious and difficult decisions. But I hope this Congress will not take the course that the President has and walk away from the matter. We need to undertake this issue of bringing solvency into the Medicare fund for the benefit of our seniors. We need to undertake balancing the budget for the benefit of our children.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

HEALTH CARE

Mr. WELLSTONE. Mr. President, I know the Senator from Arizona is here. He is going to wish to lay down an amendment and speak about it. I have an amendment that I laid down on Thursday that I want also to speak on. But I thought we might stay in morning business just for a few minutes and I might respond to my colleague from New Hampshire and then we will go back on the bill. I do not come with any well-rehearsed remarks, but as I was listening to the presentation of my friend from New Hampshire, I did want to respond in a couple of different ways.

First of all, I was immersed in the health care debate in the 103d Congress. Of course, at the very end, we were deadlocked and there was, on the part of a good number of Senators, I think, a very strong commitment to blocking any legislation from being passed and therefore we were not able to pass any kind of health care reform. I point out to my colleague that many of us made the argument that the only way we were going to be able to contain costs—and that included looking at Medicare and Medicaid, which are two very big Government programs—was within the context of overall health care reform.

I take exception to what I heard my colleague from New Hampshire saying in a couple of different areas. First of all, let me just be crystal clear. I think the proposition that on the one hand—at least some Senators have proposed this, and many in the House of Representatives have proposed this—we go forward with broad-based tax cuts which amount to about $700 billion over the next 10 years, of revenue we would have to make up, and on the other hand go forward with cuts—some say just decreasing the rate of increase of Medicare—I think that proposition just will not be credible. It will not be credible with a lot of senior citizens, but that is not even the point. It will not be credible with their children and their grandchildren.

You cannot, on the one hand, say you are for deficit reduction and then move forward on broad-based tax reduction to the point where you have to figure out how to offset $700 billion before you even go forward with deficit reduction, and at the same time be proposing fairly draconian cuts in Medicare.

I have said all along I actually feel quite credible on this issue because from the very beginning of this debate about balancing the budget by 2002 I have raised the question, ''Why 2002?'' I have raised the question of how you can do it without separating capital and operating budgets. I have tried to be intellectually honest about this. I have talked about dancing at two weddings at the same time.

I have said to citizens in Minnesota, beware of any breed of politician—Democrat, Republican, Independent—and others who say: On the one hand, you are going to have broad-based tax cuts, on the one hand you are not going to cut the military budget, on the one hand you are going to pay interest on the debt because we have to, on the one hand Social Security is going to be put in parenthesis and not touched, on the one hand now we are not going to really cut Medicare—but we are going to balance the budget, cut $1 trillion, by 2002.

But students, it is not going to be higher education. Veterans, do not worry. And children, it is not true that we are going to cut the nutrition programs. The arithmetic of this does not add up. My colleagues are discovering that they are in this context—talking about balancing the budget—are going to have to propose deep and significant cuts in Medicare and Medicaid. Please remember about 75 percent of Medicaid payments do not go to AFDC mothers, or what we view as welfare, but actually go toward long-term care for the aged. It is not just older people we are talking about. We are talking about older people; we are talking about their children and grandchildren; we are talking about families in this country.

Now we have a new wrinkle where colleagues come out and say the trust fund is in trouble, and they talk about this as an actuarial issue. This is a benefits program. You can use all of the insurance language you want to about trust funds and talk about actuarial assumptions and all the rest. The fact of the matter is that in 1965 we passed the Medicare and Medicaid Programs in the U.S. Congress. It was an inadequate installment of universal coverage but nevertheless it was significant. From my family having had two parents with Parkinson's disease, let me just say one more time that Medicare, imperfections and all, was probably the difference between disaster and being able to at least live the end of your lives with some dignity. Both my mother and father have passed away.

Even so, with Medicare, Mr. President, elderly people pay four times as much out of pocket as people who are not elderly. Please remember one more time, since we have this stereotype of older Americans being rich and not having to really worry about any economic squeeze, that the median income for men 65 years of age and older is $15,000; for women it is about $8,000. This is no small issue.

Mr. President, last Congress we talked about how we could move forward on long-term care in such a way that we could have more home-based care. We, I think, reached some consensus, except, when we got to the point where we will have to dig into our pockets and figure out how to fund it, that elderly people and people with disabilities ought to be able to live as

near in normal circumstances as possible with dignity. They ought not to have to go to institutions when they could live at home. We put real emphasis on home-based care with a wonderful program in Minnesota, a block grant program not adequately funded. But we are funding it. It is wonderful. It makes all of the difference in the world, and it enables someone who is elderly to live at home. But we did not take any action on that.

We were also talking about some legislation. I introduced the single payer bill covering the catastrophic expenses. Medicare does not cover the catastrophic expenses of what happens to you when you are in a nursing home. Nor does it cover prescription drugs.

My colleagues are not in any of these proposals talking about any of that. They are talking about cutting Medicare. And they want to make the argument it is not really a cut, that it is just a lessening of the rate of increase. Well, why is it such a big surprise to my colleagues that a larger and larger percentage of our population are 65 years of age and over, and a larger and larger percentage of that population tends to be in their eighties? Of course, it costs money. That is what Medicare is about; the commitment to elderly citizens, and that we will fund a decent level of health care for elderly people in our country. This should not come as any shock. And it is a benefits program. It is a contract. It is a commitment we made.

Mr. President, there are, I think, steps that we can take. In some cities and some States you find that the cost of providing coverage is much greater than, for example, what it is in Minnesota. I am sure there are ways that we can move toward more efficiency.

But, Mr. President, I must say that all of a sudden this discussion about now what we are going to do is talk about the trust fund, we are not going to really say this is part of deficit reduction although it was always proposed before as part of deficit reduction. And in addition, we are going to give people all of these kinds of options. So they are really not options because managed care is the place in which you can have the savings but in many parts of the country, especially outside your metro areas, it is not a real option. And in addition, we say, if there are any savings by enabling people to develop to purchase vouchers or all the rest, then in fact we will be OK. But, if they are not, then we are going to have to make the deep cuts. There are not going to be any because, if there are savings, by definition they go to those individuals. They do not go to the Government. We are talking about public expenditures here and how to cut down on the public expenditures.

So I think that some of my colleagues are trying to dance at two weddings at the same time. There was all this bold rhetoric about how we were going to balance the budget by 2002, no question about it. I saw projections of quotes from colleagues that we were going to be cutting Medicare by $400 billion between now and the year 2002. That figure has gone down. But make no bones about it. That is what is being proposed.

Mr. President, I think what we ought to do is move forward on good health care reform, and there are three critical ingredients to that. First, universal coverage; and I promise my colleague from Arizona that I will be finished within 2 minutes. Second, cost containment—and, by the way, the Congressional Budget Office said really the way you can contain costs is you put some sort of limit on what insurance companies can charge. Third, we need to deliver care in some of our underserved communities like, for example, rural areas where we have to put much more emphasis on primary care, on family doctors, on advanced nurse practitioners, on nurses, getting health care out of the communities backed up by specialization.

It is in that context that we contain Medicare costs. But, if we just target Medicare, you are going to have the same irrational charge shifting. You are going to have true rationing by age, income, and disability. You are going to be hurting a lot of citizens in this country. And, we are going to be moving away from a basic commitment that we made in 1965.

So, I look forward to what I think is going to be an extremely important debate but I did want to respond to my colleague from New Hampshire. I am sorry he had to leave.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. KYL. I thank my colleague.

Mr. President, at this time, I ask unanimous consent to lay aside the pending amendment.

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

AMENDMENT NO. 611 TO AMENDMENT NO. 603

(Purpose: To establish a limitation on noneconomic damages)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 611 to amendment No. 603.

Mr. KYL. 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 appropriate place, insert the following new section:

SEC. . LIMITATION ON NONECONOMIC DAMAGES.

(a) IN GENERAL.—With respect to any health care liability action, in addition to any award of economic or punitive damages, a claimant may be awarded noneconomic damages, including damages awarded to compensate the claimant for injured feelings such as pain and suffering, emotional distress, and loss of consortium.

(b) LIMITATION.—The amount of noneconomic damages that may be awarded to a claimant under subsection (a) may not exceed $500,000. Such limitation shall apply regardless of the number of defendants in the action and the number of claims or actions brought with respect to the injury involved.

(c) NO DISCLOSURE TO TRIER OF FACT.—The trier of the fact in an action described in subsection (a) may not be informed of the limitation contained in this section.

(d) AWARDS IN EXCESS OF LIMITATION.—An award for noneconomic damages in an action described in subsection (a), in excess of the limitation contained in subsection (b) shall—

(1) be reduced to $500,000 either prior to entry of judgment or by amendment of the judgment after entry;

(2) be reduced to $500,000 prior to accounting for any other reduction in damages required under applicable law; and

(3) in the case of separate awards of damages for past and future noneconomic damages, be reduced to $500,000 with the initial reductions being made in the award of damages for future noneconomic losses.

(e) PRESENT VALUE.—An award for future noneconomic damages shall not be discounted to present value.

Mr. KYL. Mr. President, this is the noneconomic damages limitation amendment that many of us have been talking about for some time. I indicated earlier this morning that I would be introducing it. It works in tandem with the limitation on lawyer's fees to ensure that the victims of negligence are properly compensated and that neither the public needs to end up continuing to pay this tort tax that we talked about earlier nor that lawyers or others in the system become enriched at the expense of the victims of negligence.

This particular amendment would place a limitation of $500,000 on noneconomic damages that are awarded to compensate a claimant for pain, suffering, emotional distress, and other related injuries.

Mr. President, every day in America, physicians take care of over 9 million patients. These are professionals who are dedicated to the service of their fellow citizens. They do a tremendous job. They serve in times of crisis and natural disasters often at great personal risk. A good example is the heroic service of the doctors in the aftermath of the bombing in Oklahoma City.

The medical profession is dedicated to doing everything possible to ensure that the practice of medicine conforms at all times with both Government rules and regulations and, of course, with the high standards that are inherent in the profession itself.

But physicians are not God. They are human like all the rest of us, and occasionally mistakes are made and sometimes patients suffer injuries as a result. When this occurs, injured patients must be awarded full and fair compensation for their injuries should they choose to pursue a legal remedy. But in today's litigious climate, roughly one-third of all physicians, 50 percent of all

surgeons, and 75 percent of all obstetricians will be sued in their careers.

Let me go through those figures again: 50 percent of all surgeons and 75 percent of all obstetricians will be sued in their careers.

Courts determine that roughly three-fourths of these cases have no merit, and they are ultimately dismissed with no payment being made to the claimant, but the psychological and financial costs of defending these cases, oftentimes frivolous, but these unpredictable situations are staggering. Defending against meritless lawsuits has in effect become an occupational hazard of practicing medicine and, of course, these costs are passed on to all the rest of us in the form of higher medical costs, diminished quality, and access to health care.

Mr. President, as we in the Congress address legal reform, we should not miss the opportunity to rationally address the overly litigious nature of medical liability actions. The Kyl amendment would limit noneconomic damages to $500,000. The amendment would apply only to noneconomic damages, known sometimes as pain and suffering.

No other country compensates victims of health care injuries as generously as $500,000 for noneconomic damages. For example, in Canada, there is a cap on noneconomic damages of $180,000. In a 1994 report to Congress, the Physician Payment Review Commission, which is the Federal Commission established to review Medicare payments, said:

> Much of the unpredictability and inconsistency that characterizes today's malpractice awards is because of noneconomic damages, which account for 50 percent of total payments. Reducing the unpredictability and eliminating the potential for unreasonably high awards would improve decisionmaking during the course of a lawsuit and would promote settlement.

In other words, Mr. President, in order to encourage settlement rather than litigation, we should address this ''lottery mentality'' of awarding arbitrary and unpredictable noneconomic damages.

According to a September 1993 report by the Office of Technology Assessment, and I am quoting now:

> Limits on noneconomic damages is the single most effective reform in containing medical liability premiums.

Let me repeat that, because all of us are concerned now about what kind of health care reform we will be adopting later this year, and in the context of both legal reform and health care reform, this is a startling statement. It is the OTA, 1993.

> Limits on noneconomic damages is the single most effective reform in containing medical liability premiums.

Without a reasonable limitation on these nonquantifiable losses, medical liability insurance premiums and medical product liability costs will continue to skyrocket. Physicians are forced to drop insurance coverage or, in order to minimize the risk, to stop performing high-risk procedures such as delivering babies.

According to a book published by the respected Institute of Medicine called ''Medical Professional Liability and the Delivery of Obstetrical Care,'' the most comprehensive, authoritative study of rural health care access, the delivery of obstetrical care in all rural areas of America is seriously threatened by professional liability concerns: 12.3 percent of the ob/gyn's nationally have given up obstetrics totally due to liability pressures—12.3 percent; 22.8 percent of ob/gyn's nationally have drastically decreased the amount and level of obstetric care they provide. In some States, the problem is much worse than nationally.

In rural Arizona, the most recent study shows that 21 percent of the ob-gyn's have totally stopped providing obstetric care. The reason? The cost of malpractice insurance and threats of suits in Arizona.

Mr. President, how is this system enhancing medical care in our country? Somehow, this system is protecting people in need of medical care? It is precluding physicians from serving the patients, and in the rural areas in particular the kind of care that women delivering babies are getting is less than it could be, less than it should be, because you do not have that obstetrician there helping with the delivery.

There is an impact on the minority community. The National Council of Negro Women believes that ''a cap on noneconomic damages is an essential part of comprehensive legal reform legislation.'' This is in a letter dated just February 14 of this year, from Eleanor Hinton Hoytt, director of national programs of the National Council of Negro Women.

The council realizes that low-income minority communities are facing increasing shortages of physicians who can afford to pay liability insurance premiums.

We know, Mr. President, of many examples of physicians who, on the very first day of the year, January 1, either have to have a liability insurance policy costing them anywhere from $30,000, $40,000, $50,000, $60,000, and even upward of $70,000 before they can see their very first patient, much more than most people in this country make in a year.

The argument may be made that limiting noneconomic damages would restrict the right of an injured patient to sue and collect for economic damages and that, of course, is not true. My amendment does not prevent filing suit and recovering all economic damages for past and future medical expenses, loss of past and future earnings, loss of consortium, loss of employment or any other business opportunity, nor does my amendment limit suits that seek damages for malicious acts for which punitive damages are warranted. A cap on noneconomic damages such as the Kyl amendment does not discourage the filing of lawsuits. In California, which has a cap just half the cap that I am proposing here, a cap of $250,000 as opposed to $500,000, there were 16½ percent more cases filed in 1993 than in 1992, the year before the limit in California went into effect. So it did not preclude the filing of actions.

Moreover, in California, the cost of liability premiums has been reduced in part because of this cap. Prior to imposition of the $250,000 cap in California, the State had the highest liability premiums in the Nation. Premiums are now one-third to one-half the rate in States like New York, Florida, and other States that have not established a limit.

Mr. President, as part of the Contract With America, the House has passed a more restrictive cap of $250,000 on noneconomic damages, the same limit as in some other States, including California. Some in the Senate said, in response to that, that the $250,000 cap may be fine in most cases, but there are always those few exceptional egregious cases that should have a greater limit. So we doubled it. We increased it 100 percent to $500,000. And bear in mind, this would be on top of all of the economic damages awarded, in other words, all of the sums of money required to make the victim whole, to pay for all of the economic losses, losses of future employment opportunities, whatever it might be, including all of the bills, of course. And, as I said, in the case of punitive damage awards, those are not limited by this particular amendment. So we are only talking about the noneconomic damages, those unquantifiable damages. No one can put a dollar amount on how much pain and suffering it is when someone is injured. What we are saying is there should be a predictable sum that at least represents the absolute top.

There is a lot of public support for some kind of cap here. For example, a very recent poll conducted by the Health Care Liability Alliance indicated that 17 percent of the public supports a cap on common noneconomic damages.

So we think, Mr. President, this is an amendment which will strengthen the bill. It will strengthen the Kassebaum-McConnell-Lieberman amendment, which has to do with medical malpractice, and therefore at the appropriate time, I guess sometime after 11 o'clock tomorrow, we are going to call for a vote on this amendment, and I hope it will pass.

I wish to conclude with two arguments that have been made in opposition to this amendment. The first is that the people who are injured by some kind of negligence need to keep the lion's share of the money they win, and the point with respect to these caps is do they not ordinarily keep what they win? And the answer to that, of course, is that that is not true.

According to the Rand Corp., plaintiffs keep only 43 cents of every dollar

spent on medical liability. Over 50 cents goes to the lawyers.

So, Mr. President, what we are trying to do here is to put two amendments in tandem. There is already an amendment which I have offered which would limit the attorney's fees in these kinds of cases. By limiting the attorney's fees, we enable the claimant to keep more of the award. So, at the same time that a cap would be placed on the noneconomic damages, a cap of a half million dollars, the claimants would be able to keep more of that half million dollars because of the limits on attorney's fees.

So the net result is that the claimant will not be hurt, will not have recovery reduced by this cap on noneconomic damages. The claimant will do as well, if not better, by virtue of the fact that we would also limit the attorney's fees. The loser will be the attorney who is trying to get the great jackpot here, the big bonanza, of earning something like $300,000 for 1 hour of work. That will be the loser, not the claimant, with this particular cap.

The bottom line is that the claimants will do as well or better if we combine this with the limitation on attorney's fees.

Second, there is a question that I have heard: Is it not true that a $500,000 cap on noneconomic damages will keep deserving patients from getting million-dollar settlements when they really need them? And the answer is, of course, no.

One of the reasons for increasing the cap to $500,000 rather than $250,000 is to ensure that in that very exceptional cases, in addition to all of the economic damages awarded, there will be an opportunity to get up to a half million dollars.

But the point is that patients with valid claims are today collecting millions of dollars in States with caps, such as California, despite the cap on noneconomic damages there of $250,000. In California, the number of million-dollar verdicts and settlements has hovered around 30 per year throughout the 1990's, with the average indemnity in these cases over $2 million. These million-dollar-plus cases included awards for wrongful death, birth injuries diagnosed in related areas, failure or delay in treatment, and substandard post-surgical care.

So, Mr. President, despite the fact there has been a limit on noneconomic damages in California of only half the amount we are suggesting here, there have still been settlements and awards that far exceed $1 million. So we are not limiting those cases, and everyone acknowledges they are the very small exceptions to the rule here. But we are not limiting those particular recoveries.

In conclusion, Mr. President, there are two amendments that I have offered to the underlying medical malpractice amendment offered by Senators KASSEBAUM, LIEBERMAN, and MCCONNELL. The first is a limitation on attorney's fees, essentially, at 25 percent, although there are some nuances to it, of any recovery. And second is the limitation on noneconomic damages. The two of these amendments, working in tandem, ensure that people will be able to bring claims, that they will be able to recover more of the award either in settlement or by jury verdict themselves, that the attorney will receive less but attorneys will still receive a perfectly adequate compensation, and there will be no disincentive for them to actually bring the lawsuits because the attorney's fees cap is actually high enough so that there is not a disincentive.

The combination of that with the cap on noneconomic damages will enable the plaintiffs to be fully compensated, but also reduce the cost to society as a whole in the form of increased medical malpractice premiums and, therefore, in the form of higher costs charged for medical care generally because those costs have to be passed on by the physicians and the hospitals that have to acquire the insurance.

We believe these are two important and necessary amendments to the underlying legislation. I ask my colleagues to support these amendments.

I yield back my time.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Minnesota.

Mr. WELLSTONE. I wonder whether I would have time to ask a few questions that I would like to ask my colleague from Arizona.

I am not a lawyer, but as I understand it, the whole concept of compensation is to make the individual whole, and there is the economic and then the noneconomic. With this cap of $500,000, how many of the plaintiffs, as we project to the future, how many plaintiffs would lose how much by way of dollars in compensation to make them whole again? What are the projections on what impact this is going to have on those individuals that have been injured in a malpractice?

Mr. KYL. Mr. President, I say to my colleague that the information that we have, according to a study that was recently done, is that less than 2 percent of the cases would be affected by the $500,000 cap. But, of course, because of the large amount of money involved, it would have a very large impact on constraining costs.

Mr. WELLSTONE. Mr. President, my next question would be: If it is less than 2 percent—and I gather that that, as you say, may focus on a few cases where there are large dollars involved—then I would ask my colleague from Arizona, do you have any projections on what impact this will actually have on more doctors? How many more doctors would be practicing medicine in underserved areas, be they rural or inner city, as a result of this cap? Do you have any projections?

Mr. KYL. I would be happy to continue to respond to my colleague, because they are very good questions. They go right to the heart of the issue.

Obviously, by proposing the reform, we are hoping to have an impact pact on the problem. Part of the problem, as I indicated, is the fact that, particularly in rural areas but not limited to rural areas, and in particular ob-gyn's have either stopped practicing or have cut back their practice just to the gynecological services rather than obstetrical services. If you go by the numbers I cited, you have an indication at least of what these physicians were able to do before this litigation system got to the point that it is today.

It is impossible, of course, to predict precisely, but I will go back to the numbers that I stated just a moment ago, because the study was very recent. I think it was either 1993 or 1994. Nationally, 12.3 percent of the ob-gyn's have given up obstetrics totally, due to liability pressures. That is in a book, as I said, that was written by the Institute of Medicine called Medical Professional Liability and the Delivery of Obstetrical Care. Nationally, 22.8 percent of the ob-gyn's have drastically decreased the amount of care they have provided because of this.

So one could conclude that, if we were able to put a cap on these damages, at least some of this problem would go away. But, obviously, because you would still be able to recover up to $500,000 in noneconomic damages, I am not contending that all of these physicians would go back to practicing. Of course, this does not relate either to the increases in costs of the medical malpractice premiums for those physicians who do choose to stay in practice or for those who are involved in other areas of specialty.

So, it is impossible to say with precision, but I think it is safe to say that at least it would reduce medical costs and get some of these rural areas better covered by physician services.

Mr. WELLSTONE. By the way, in the 2 percent of the cases that the Senator mentioned, how much does that translate to in terms of dollars?

Mr. KYL. Let me see if I can get that for you. I do not have that in my prepared remarks.

Mr. WELLSTONE. I guess what I am struggling with here, Mr. President, as I try to figure out the logic of this, if my colleague had said, ''Look, there are lots of cases that this would affect all across the country,'' then I would have said, ''Well, then I understand what you are doing in terms of the negative impact on plaintiffs.'' Many times we are talking about people who have been injured.

But my colleague's response was, it is a relatively small percentage, in which case then the flip side of the coin is, I am wondering—and I wrote it down—if it is 12.3 percent, the figure on ob-gyn's who talked about the problems of excessive payments, I am not at all sure that there would be—I mean, by definition, if there are very few cases, then why would any of us

have any reason to believe that, by putting this cap on, this would have any significant impact on the number of ob-gyn, if you follow me, practitioners in these underserved communities?

Mr. KYL. I think my colleague raises a good point. The mere fact that half of the physicians will, half of the surgeons in the country will be sued for medical malpractice has a great deal to do with the malpractice premium problem as well.

So it is very difficult to tell how much of the problem is due to the large number of cases that will be filed and have to be defended, regardless of whether they have merit or not—three-fourths of them actually being thrown out—and how many problems, on the other hand, are due to very large awards. Because it is impossible to divide those numbers out, it is impossible to say precisely how much good we will do with this amendment.

But this amendment is just one narrow piece of a much larger underlying amendment, as my colleague knows, that is being offered by Senators LIEBERMAN, KASSEBAUM, and MCCONNELL, that hopefully will also deal with the number of claims that are filed.

So we are trying to get at it in three different ways: We are trying to limit the circumstances under which these cases are filed and trying to get them into alternative dispute rather than going all the way through trial, No. 1; second, we are trying to limit the nonessential costs, and in this case, we are saying some of the attorney's costs are just not necessary, we want to give more of that money to the claimants; and third—and I think this goes directly to the point of the Senator from Minnesota—there may not be very many cases where you have these astronomical awards but those few cases do represent a lot of money and they represent a lot of psychological horror to the insurance companies and to the physicians. They are the ones everybody knows about. That is the McDonald's coffee that burned the claimant and all of the other cases that we are very familiar with.

Of course, that is not a medical malpractice case, but it is those kinds of awards that get put into people's minds and it is that which probably, in the case of the insurance companies, ends up causing them to, in effect, dictate to their insured, the physician, that a case be settled, even though I heard a lot of physicians saying, ''I wanted to fight that case because I knew I was not negligent, I knew we didn't cause this damage, or at least it was not negligence,'' but the insurance company said it was cheaper to settle because of the potential for one of these astronomical awards.

Because that is the sense of it, it is probably impossible to tell precisely what effect it will have. But I think a combination of all three of those approaches together will have a significant impact on bringing the costs down.

Mr. WELLSTONE. Mr. President, there are two issues I will address, and I would be very interested in the response of my colleague. One is, and, again, I do not know what the exact amount of money is, my colleague says a small number of cases but there is a significant amount of money involved. If I do not know exactly how many plaintiffs are going to be hurt or denied what I think should be fair compensation, and I do not know exactly what impact this is really going to have on the problem that my colleague identifies—ob-gyn's practicing in some of our underserved communities—then I find it difficult to support this, especially since I struggle with two questions:

One—and I will present both to my colleague so he can respond at once—I can remember, for example, when I was in North Carolina and we had our first son, David, there was a guy I was very close to, a graduate student, who had a son and went in for what was supposed to be regular surgery. Because of malpractice, his son was paralyzed in a wheelchair for the rest of his life. He was a student, he did not have a lot of money, but would anything above and beyond $500,000 for noneconomic damages be too much? That is my first question, and I am not willing to give up on that principle, especially when I do not really have any precise way of knowing what the benefits are of the amendment. And second, I say to my colleague from Minnesota, in 1986, the Minnesota Legislature enacted a $400,000 cap on intangible loss which was defined to mean embarrassment, emotional distress, so on and so forth, and we repealed it the following year because we felt it did not work at all.

This may be good in Arizona, but why should this be applied to the State of Minnesota? We have tried something different. We have some of our own alternative dispute mechanisms, et cetera, et cetera. If it is good for Arizona, fine, but why the Federal preemption on this?

Two questions, if you follow me: A, in all due respect—and, by the way, there is a lot of respect—I still feel like my colleague has not been able to spell out what exactly will be the pluses and the minuses of this, the losses and the benefits, who would benefit, who would not; and, B, therefore, I am a little reluctant to—more than a little reluctant—to give up on two principles, which are, I do not know why, in some cases, we say $501,000 is too much, and why preempt what Minnesota is doing?

Mr. KYL. I will be happy to try to respond to my colleague. First of all, by its very nature, these noneconomic damages are not quantifiable, so no one can say a particular amount is or is not warranted, which is to say of course, except we have put this decision in the hands of the jury. They are no more capable of divining a figure than the rest of us. We ask them to do it. We charge them with that responsibility, and they discharge their responsibility and, in many cases, do so very, very well. But these are very emotional cases, by their very nature. Ordinarily, the jury is well within the bounds of reason when it fixes the damage amount. We are only talking about those very, very exceptional cases, the less than 2 percent which exceed the half of a million dollars.

So no one can say in one case it should have been $501,000 and in another case $499,000. But I think we should be guided by two or three different principles.

First of all, we should understand that all of the economic damages are unaffected by this, so that with regard to the young man who has been confined to a wheelchair there would have to be a question about the loss of his earning power throughout the rest of his life, and he would receive damages for that entire sum of money. If he was building houses or something of that sort, his economic damages would be tremendous at that point, they would probably be in the millions and millions of dollars. In other cases, because of the nature of the economic loss, it would not be. If you are talking about a 65-year-old person who is about at the end of the earning part of their career, the economic damages would not be quite as large. We are already compensating for the economic loss.

Second, since we cannot know precisely how much pain and suffering should be compensated, I think we ought to fix it at a level that is adequate to compensate an egregious case but not such as to permit all of the rest of society to pay a very large price as we are paying.

What kind of a price do we put on the poor woman in rural Minnesota or rural Arizona who loses a child because there is not an obstetrician there to help deliver her baby because the high cost of medical malpractice premiums prevented that person from practicing? I know several communities in Arizona where every one of the OB's have left town because they cannot make it with the high premiums that they have to pay. I have cited these statistics here.

So when we talk about how many millions of dollars should one person receive for being injured, I turn that around and say, how many millions of dollars worth of damage are being caused by the fact that physicians are not able to practice the way we all would like to have them practice and the way they used to practice.

Finally, I note that our amendment does not provide for reduction in present value, therefore, in the case of the young man, the example the Senator cited, that $500,000, since he already received the economic damages—he has been made whole in that sense—this $500,000 can generate maybe several millions of dollars, many millions of dollars of income during that person's lifetime. We are enabling the person to collect the entire sum rather than having it to be reduced to present value.

As to the question why preemption, it is a very good question, because ordinarily we would like to have the experimentation at the State level, and that certainly has been a part of my philosophy over the years. But we found in many areas from standards we have established on health care delivery, from the FDA, in welfare, in so many different areas we have found we want to have some kind of at least minimal national standards.

In the case of people trying to do business and provide insurance so that hospitals and physicians can provide care to people so that they will receive the kind of health care that they need, in order for them to do that, they are going to need to have some kind of standard by which they can operate.

If there is a different standard in every State, it is going to be very difficult—in fact, they have said it—it is very difficult for these insurers to insure against the different standards in different States. So some predictability and a maximum level of exposure, we think, would go a long way toward enabling companies around the country to reduce the overall cost of health care which, of course, would tie into our efforts to try to establish some kind of health care reform later in the session in Congress.

Mr. WELLSTONE. I see other colleagues on the floor. I wanted to speak briefly about an amendment that I have offered.

Mr. KYL. May I say, before my colleague leaves the floor, I appreciate his questions. They are all very good. I wish we had more of an opportunity to engage in colloquy. I think we would get to the bottom of some of these things.

Mr. WELLSTONE. I thank my colleague, too. I think ultimately where I come down on this question is—while some of my objections I have tried to be clear about—I guess I still do not find the argument about the jury being swayed on a motion to appeal that persuasive—and you know what I am going to say. These are the people who vote for us in elections. I will tell you that my State has struggled with this question, and we have passed some significant reform. You may want to do this in Arizona. I think the Senator from Massachusetts ultimately will have the State-opt-out amendment. It seems that States—the Federal preemption bothers me to no end and not trusting juries, which are citizens, to make these decisions when we trust them to elect us to office, I think is a curious irony. I think that is one of the flaws in the proposal.

I know the Senator presents this in very good faith. I agree with the Senator—not on his amendment, but I agree and we share a very strong common commitment and interest—and I look forward to working with you on this—about how we can make sure that some of our underserved areas, where we have men and women that can deliver dignified and affordable health care. In rural Minnesota, the issue is not any longer whether you can afford a doctor but whether you can find one. I do not think the cause of that is what you think is the cause. But I think we can work together. I thank my colleague.

I want to briefly speak about a ''Dear Colleague'' letter I have sent out on an amendment I introduced on Friday. This amendment deals with what is called the national practitioner data bank, which was created in 1986.

Mr. President, this data bank provides information in two decisive areas that are extremely important to provide this. One is the area of what is called adverse actions. When an adverse action has been taken against a doctor by a hospital or by a medical board, essentially saying to that doctor, ''You cannot practice medicine at this hospital any longer because of a pattern of negligence,'' or ''you cannot practice medicine in the State any longer,'' then that information—very important information—goes into this data bank.

Mr. President, the second kind of information that is critically important that goes into that data bank is information that deals with malpractice payments. When in fact a doctor has made a malpractice payment, then going into this national practitioner data bank is very important information on how many times this has happened and what amount has been paid.

Mr. President, this is, I think, the bitter irony to it. This information in the national practitioner data bank is available to hospitals; it is available to doctors; it is available to managed care plans; it is available to just about everybody but the consumers. It is not available to the consumers.

Now, Mr. President, what we do in this amendment is a couple of different things. First of all, we really strengthen the disclosure of this information in a couple of different ways. What this amendment calls upon is for the Secretary of Health and Human Services, over a 6-month period—every 3 months he comes to Congress, and 3 months later promulgates rules as to the best way to make sure that this information gets to consumers. Understand, Mr. President, there are 80,000 deaths a year for medical malpractice, from negligence, and 300,000 people injured.

Now, I want to be clear for colleagues that tomorrow when I speak on the floor when all of our colleagues are back, in summarizing this amendment, I am going to make this point again. We are very clear that what goes into this data bank is not when someone complains about the doctor—that is not part of the data bank. It is only when there has been an adverse action taken or a malpractice payment has been made. That is all there is. I mean, for example, if you go to a dentist and you do not like the dental work, you are pretty angry about it and you feel like you were put in a lot of pain and you say, ''Look, I want to get my money back,'' and he says, ''I do not want to deal with you, here is your money back,'' that is not in this data bank. It is only when an actual adverse action has been taken or there has been a malpractice payment. That is very important. That is the only information.

Moreover, Mr. President, in response to what I think were some fairly legitimate questions from the providers, we have done a couple of other things in this amendment which I think are important. First, we list the norms, we were just talking about obstetricians, and we were talking about that in terms of rural areas. We list the norm for each subsection of the health care profession so that, for example, if you were to see there had been a malpractice payment, one or two with an obstetrician, you might think that is bad. But if you saw the norm for obstetricians and it looked pretty good, you would not be nearly as worried. We make sure the norms are listed for each part of the medical profession that a consumer would have access to.

Second, since insurance companies sometimes say to a doctor, ''Look, just settle,'' and the doctor really does not want to, does not feel he or she did anything wrong but that is the best thing to do, we make sure that is part of that data bank, that provider's perspective analysis of what happened and why it is a part of the data bank. This is available as part of the data base.

Fourth of all, Mr. President, we deal with what is a very serious problem. Maybe tomorrow, because I see my colleague from Ohio and I promise I am going to try and finish within 5 minutes—maybe tomorrow I will give examples which are very heartrending. But all too often what happens is—and we are not talking about, thank God, many doctors—but all too often what happens is that you have a doctor who has had an adverse action taken against him—and I know my colleague from Ohio is interested in this question—and he actually leaves the State, changes his name, and commits the butchery again. What we make sure of—and we have examples of this in a number of different States, and this has been a proposal that Health and Human Services has made for some time—as a matter of fact, the Social Security number is entered into this data bank, so it is much easier to track those individuals—so that, Mr. President, if you had to have back surgery in Minnesota and you wanted to check—and God forbid there had been somebody who came from Ohio who literally had an adverse action taken against him, and he no longer was able to practice in the State, changed his name in Minnesota—you could track that person. You could have access to that kind of information.

Mr. President, I really believe that this amendment is extremely important. Here we are talking about malpractice reform—med-mal amendments. I am saying that one of the

ways we can prevent this malpractice or this negligence from happening in the first place is to make sure consumers have this information. I really find it a very weak argument, and weak arguments were made as to why we cannot do it. Some say, ''Let us study it,'' or ''We need to improve the data.'' We have, as a matter of fact; we have plugged some of the loopholes.

In any case, it is far better that we make sure the consumers have access to this information. I am a little startled at some of the opposition to this. If in fact this information is available—and you could go to a court in any State and get it. But it is not readily available to consumers. It is readily available for hospitals, for doctors, medical boards, medical societies, and managed care plans. The only people that do not have access to this information are the consumers.

So it seems to me that this amendment strengthens what we are trying to do here, especially if what we are trying to do here does, I hope, in part, prevent this kind of negligence from happening in the first place.

I do not think there is any reason why a Senator should vote against what is a strong consumer protection amendment. Tomorrow morning, I will, if there are any Senators who want to debate this, be pleased to debate it. Or later on today, we will do so, as well.

I yield the floor.

AMENDMENT NO. 612 TO AMENDMENT NO. 603

(Purpose: To clarify that the provisions of this title do not apply to actions involving sexual abuse)

Mr. DEWINE. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I may offer an amendment.

Mr. WELLSTONE. Mr. President, reserving the right to object, is this a medical malpractice amendment?

Mr. DEWINE. It is, indeed.

Mr. WELLSTONE. Mr. President, I no longer object.

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

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE] proposes an amendment numbered 612 to amendment No. 603.

The amendment is as follows:

In section 12(5) of the amendment, add at the end thereof the following new sentence: ''Such term does not include an action where the alleged injury on which the action is based resulted from an act of sexual abuse (as defined under applicable State law) committed by a provider, professional, plan or other defendant.''.

Mr. DEWINE. Mr. President, the underlying amendment that we are considering, the McConnell medical malpractice amendment, would place a cap on the punitive damages that may be awarded by a jury against a doctor or against other medical providers.

My amendment would except out from this cap sexual assault and sexual abuse.

The underlying amendment, Mr. President, does set this cap. By setting the cap, it also sets a cap on all medical malpractice cases, including cases where the doctor has committed a sexual assault, some form of sexual abuse, against the patient.

Mr. President, I find no logical reason for this Congress, as we debate the issue of medical malpractice, to impose our will on the States and say to each State no longer can a person have unlimited punitive damages against those who a jury has found or an individual who a jury has found has sexually abused his patient.

I find no logic behind that, and I think it would be, quite frankly, morally wrong for this Congress to impose such a limit.

Mr. President, the amendment I have just sent to the desk would add, at the end of the relevant section, the following new sentence:

Such term does not include an action where the alleged injury on which the action is based resulted from an act of sexual abuse (as defined under applicable State law) committed by a provider professional, plan, or other defendant.

Mr. President, it is not my intention at this time to talk about the underlying merits of the amendment. What I will try to do, instead, is make absolutely certain by my amendment, that this legislation does not have a truly disastrous, if unintended, consequence, one that may well occur if we do not make the legislation absolutely crystal clear.

Mr. President, sexual abuse is a horrible problem in this country. Two and a half percent of all medical malpractice cases involve sexual abuse.

In the last reporting period, Mr. President, it was reported that this totaled 173 cases of not only medical malpractice, but of sexual abuse.

Clearly, Mr. President, there are a few doctors out there who are engaging in very reprehensible conduct. These cases involve a brutal violation of one of the most sacred relationships that exist; that is, the relationship between a doctor and his or her patient.

When a person goes to a doctor, that person establishes that sacred relationship. That person goes to a place where she or he can be healed and certainly not hurt. The patient goes to a doctor in a spirit of trust, someone who is bound by a sacred oath not to violate that trust.

Mr. President, tragically, at least 173 women have recently discovered that they had misplaced that trust. They trusted someone who posed as a healer but who it turns out was, in fact, a predator. When they entered the doctor's office, they certainly did not expect that it would turn into an outrageous, humiliating, criminal nightmare.

Let me talk about a few cases that have been in the news recently. Let me talk about a woman in Virginia who went to a doctor because she and her husband wanted to have children. They asked the doctor, because they had that problem, to help them start this pregnancy. The doctor led them to believe that the husband's semen would be implanted in the wife by artificial means.

The woman became pregnant, all right. But tragically, it turned out that the semen was not her husband's but was, rather, the doctor's. It was later revealed that the doctor had literally made a practice of impregnating his own patients.

Mr. President, what words can we summon to express the rage that we all feel when we hear about this kind of outrageous conduct?

Mr. President, it has been said that one of the problems we have in this country today in our society is that we accept too much, we tolerate too much; we see so much on TV that is sad and brutal that we just pass it off and say that that is just the way it is.

I think, Mr. President, we need to really recapture a spirit of outrage, a sense of deep shame, a sense that we are not going to tolerate this anymore, that we are really going to succeed in deterring this kind of intolerable behavior. It is that sense of outrage that we must have.

Would it be right, would it be just, for this Congress to impose a cap and tell the State of Virginia to tell that jury in Virginia, ''You cannot impose punitive damages above a certain amount in this particular case''? I think the answer is, clearly, no.

We cannot tolerate what happened to a woman in Connecticut. She had been going to a dentist for about 10 years. She was going to get a molar filled. The dentist sedated her with nitrous oxide. She woke up, Mr. President, three times in the next hour and 15 minutes.

The first time, she found the dentist kissing her and she felt pain in her breasts. She attempted to resist and saw the doctor turn up the concentration of nitrous oxide so that she would pass out again, which she did. The second time she woke up, she found the dentist on top of her, and the third time she woke up the dentist was still on top of her.

She felt very scared and very sick. The dentist realized she was awake. He helped her out of the chair. He grabbed her and kissed her. The woman did not remember any dental work ever having been done in that visit.

During her excessive exposure to the nitrous oxide, some obviously went into her lungs. And stomach acid had actually gone into her lungs, leaving her with a permanent asthma condition and permanent loss of 30 to 40 percent of her lung capacity.

Would it be right to tell the jury in Connecticut, ''No, in this case, there will be a cap on the punitive damages

that can be awarded''? I do not think so.

In another case, a Florida woman thought she was receiving periodontal treatment. She awoke from the anesthesia the doctor had given her and found the doctor touching her private parts. Would it be right, in that particular case, Mr. President, to impose a cap? Again, I think not.

Mr. President, according to a recent study, in one-third of the sex abuse cases—in one-third—the doctor was permitted to go on practicing medicine. Patients today are being treated by those doctors, totally unaware of the doctors' history of obscene conduct.

Sometimes, tragically, it takes time for justice to be done. An investigation by ABC News revealed that a gynecologist in southern California sexually abused as many as 200 women over a 30-year period. It took almost 20 years after the first complaint for California authorities to start proceedings against him. But in that case, the very first complaint really told the whole story. The victim wrote that while the doctor was examining her pelvic region he began sexually abusing her and using foul language. My amendment would exclude this kind of behavior from the changes contemplated in the bill we are considering. This medical malpractice amendment should not have caps which would affect sexual abuse.

The Senate may decide to cap damages in case of medical malpractice. But there certainly is no logical reason to extend that protection to individuals who sexually abuse their patients. It would, I believe, be morally wrong. Indeed, I believe it would be outrageous for this Congress to protect, by the use of a cap on punitive damages, individuals who sexually molest or abuse their patients. Under my amendment, all of the remedies currently available for victims of this kind of sexual abuse will continue to remain available to them under the applicable State law.

Punitive damages are historically used to punish and to deter. Let us not limit the punishment of these sex offenders. Let us not limit the deterrent effect on these sex offenders. Let us allow juries the full latitude they need to punish and the full latitude they need to deter these offenders. That is what this amendment would do.

The vast majority of doctors in this country do a fantastic job. We rely on them for literally the most precious thing in our lives, which is the health and welfare of our family members. Each one of us has had, we hope, great experiences with these doctors. This amendment should not in any way reflect on these doctors. All we are saying by this amendment is let us not have the U.S. Congress interfere with a jury, interfere with a State, interfere with the people's right to punish and deter the small minority of doctors who violate the sacred trust that the patient has given them.

The same amendment I am offering today was offered by Senator KENNEDY in the Labor and Human Resources Committee. The committee passed that amendment and it is my hope the full Senate will, tomorrow, do the same.

The American jury speaks with the voice of America's deepest conscience. That is why I want to make sure the jury keeps the power, the power to punish fully these horrible violations of trust by some truly warped and dangerous individuals.

Mr. President, I yield the floor.

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

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

BASHING BUSINESS/HELPING LAWYERS

Mr. HATCH. Mr. President, during debate on the products liability bill last week, some of our colleagues who defend the status quo made comments on the punitive damages issue to which I would like to say a few words.

I heard one comment to the effect that, ''if a multibillion-dollar corporation makes a mistake in building a bus and the bus explodes, to punish a multibillon-dollar corporation $250,000 or three times economic damages is not going to cut it.''

First, let us understand that punitive damages were not conceived for application in cases of mere mistake, mere negligence. They are intended for application in cases of much, much more serious conduct. The underlying bill, which speaks to conduct carried out with a conscious, flagrant indifference to the safety of others is the kind of standard usually employed before punitive damages are found appropriate.

Second, given today's regime of compensatory damages, the cost of litigation, and adverse publicity, punitive damages infrequently are needed to punish and deter such misconduct. In the case of the exploding bus, if it had resulted from the kind of conduct triggering a right to punitive damages under the law today, all of these factors would combine as a powerful incentive for the company to reform its practices. But, the underlying bill hardly does away with punitive damages, it simply places rational limits on their award.

Third, the current, largely uncontrolled nature of punitive damages is anticonsumer. The threat of these awards must be built into the cost of services and products today, even before we get to the impact on prices when runaway awards are handed down. Punitive damage reform is proconsumer.

I will have more to say about this subject when Senator DOLE offers his amendment on punitive damages to broaden the scope of the provision now in the bill. I believe my colleagues might be interested in the testimony of George L. Priest before the Judiciary Committee on April 4, 1995. Mr. Priest is professor of law and economics at Yale Law School and has taught in the areas of tort law, products liability, and damages for 21 years. He has served as director of the Yale Law School Program in Civil Liability since 1982.

He appeared before the committee as a private citizen, and not as a representative of any interest or lobbying group. His scholarship has led him to the conclusion that the kind of reform on punitive damages that Senators GORTON and ROCKEFELLER are talking about, and which Senators DOLE and I and others would like to extend beyond products liability, would be beneficial to consumers. He also concluded that punitive damages do not serve a deterrent purpose. He testified:

> I have never once seen a careful study in a specific case showing that a punitive damages judgment of some particular amount was necessary to deter some particular wrongful behavior.

Professor Priest unhesitatingly stated that the view—

> That ever-increasing civil liability verdicts, including punitive damage verdicts, would serve to reduce the number of accidents * * * has been totally discredited today, and I know of no serious tort scholar publishing in a major legal journal who could maintain it.

He added:

> It is widely accepted—and it is a routine proposition of a first year modern torts course—that compensatory damages * * * serve as a complete deterrent in addition to their role in compensating injured parties.

I ask unanimous consent that Professor Priest's testimony be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HATCH. Thank you, Mr. President.

Now, Mr. President, let me address another point made on the floor last week. It was asked, how can Congress know how to limit judges and juries in making punitive damage awards, how can we lay down a rigid law?

Mr. President, I find the criticism odd in the extreme. These same Senators would not dream of imposing punishment, be it jailtime or criminal fines or both, on some violent thug, without according that criminal a full panoply of procedural protections, clarity in the law as to what constitutes criminal conduct, and certainly, a defined set of punishments. That is what we do before we seek to punish anyone in our society for criminal misconduct.

But, because some of the opponents of change in our civil justice system like to mischaracterize the issue before us as a matter involving only businesses, they apparently could not care less if defendants are punished in a civil case in an almost totally uncontrolled fashion. It is OK I guess in their

eyes to bash business. It is OK to unload on large, medium, and small businesses. What the heck, some of our Nation's lawyers make out just fine. Forget about the fact businesses, especaily small businesses, provide the jobs in this country. Forget about the fact they bring new products and services to the American people. Who cares if runaway punitive damage awards stifle innovation, curtail products and services, hurt employment, and deplete company assets for use in compensating other victims of the company's wrongdoing? Let us just bash American business and watch some of the Nation's lawyers laugh all the way to the bank. I am not being critical of all lawyers by a long shot and I understand the crucial role lawyers play in vindicating individual rights. But, today, the biggest beneficiaries of the stubborn defense of the status quo are some of our Nation's lawyers—not consumers.

And the opponents of change can wave around lists of consumer organizations that also oppose change. But the American people for whom they claim to speak, favor change. They know the civil justice system is broken.

EXHIBIT 1

TESTIMONY OF PROF. GEORGE L. PRIEST BEFORE THE SENATE COMMITTEE ON THE JUDICIARY

Mr. Chairman, I am grateful for the opportunity to testify on the subject of punitive damages reforms being considered by your Committee. I am the John M. Olin Professor of Law and Economics at Yale Law School, and have taught in the areas of tort law, products liability and damages for 21 years—the last 15 years at Yale. I have served as the Director of the Yale Law School Program in Civil Liability since 1982.

Over the course of my career, I have written broadly on the fields of tort law and damages. A major area of my interest has been jury verdicts in civil litigation. I have published many empirical studies of jury verdicts, including verdicts involving punitive damages. I was one of the original organizers of the now-famous Rand Corporation studies of jury verdicts that began in the early 1980s.

The concern of my scholarship universally has been how the civil justice system can be reformed to benefit consumers in our society and low-income consumers most of all. I have no particular concern to define what is beneficial to manufacturers or to other corporate entities, except as their activities provide benefit to consumers. I wish to emphasize that I am testifying today at your invitation, solely in my capacity as a private citizen interested in the effects of tort law and punitive damages on American consumers. The views presented here are mine alone and do not represent those of any interest or lobbying group.

As an academic, my job is to study and define the ideal world and the system of laws that would most benefit American citizens. The reform of punitive damages alone—even reforms that would cap punitive damages or introduce a proportionality cap—will help consumers, but will not achieve the ideal. I believe consumers in this country would be benefitted all the more if Congress (or our courts) were to modify substantive standards of civil liability, reducing the scope of liability and cutting off at the source a great deal of what today is needless and counterproductive litigation. Indeed, if such reforms were introduced, changes in punitive damages might not be necessary because punitive damages awards would nearly disappear. That world, however, is the ideal, and we should not allow hope for the ideal to discourage support for true reform. As I hope to convince you, sharp yet reasonable Congressional limits on punitive damages will constitute true reform to the benefit of all American citizens.

THE INCREASING COMMONALITY OF PUNITIVE DAMAGES

Forty years ago, punitive damages verdicts were exceptionally rare and were available against only the most extreme and egregious of defendant actions. The world of civil litigation is surely different today. But the number and, especially, magnitude of punitive damages judgments have increased dramatically. Indeed, the frequency of claims for punitive damages has increased to approach the routine. These claims affect the settlement process, both increasing the litigation rate[1] and, necessarily, increasing the ultimate magnitude of settlements even in cases that are settled out of court.

I recently participated in an empirical study of punitive damages verdicts that illustrates the point. The study reviewed claims and verdicts for punitive damages in several counties in Alabama—a state in which it has been alleged that punitive damages verdicts have skyrocketed over the past decade.

The study first addressed the extent to which tort actions filed included claims for punitive damages. Many commentators have dismissed concerns about punitive damages on the grounds that there are very few ultimate punitive damages verdicts reported. In the American system of civil justice, of course, very few verdicts of any kind are reported, relative to the number of claims filed, since only 2 to 5 percent of civil cases filed ever proceed to a verdict.[2] The better test of the frequency and impact of punitive damages, thus, derives from a study of claims.

Here are the results: Bullock, Lowndes, and Barbour Counties in Alabama are relatively rural locales, with small populations and without substantial industry. We studied all tort actions filed in these counties for several fiscal years to determine the numbers in which punitive damages were claimed. To summarize the most recent statistics, we found that, in the fiscal year 1992–93, of all tort cases filed in Bullock County, 76.5 percent included a punitive damages claim; 65.1 percent in Lowndes County; and 78.3 percent in Barbour County.[3]

The exceptionally high proportion of punitive damages claims and the universality of such high proportions over each of the counties are striking and nearly incredible. Again, the study was not limited to only claims involving high dollar amounts or product liability claims or, even, claims against corporate defendants; the study addressed all tort claims. Anyone familiar in the slightest with our civil justice system knows that most tort actions involve relatively routine forms of accidents, including traffic accidents. That 65 to 78 percent of all tort actions over a fiscal year include punitive damages claims starkly challenges the notion that punitive damages are an infrequent and seldom invoked remedy in American civil law.

Yet, incredible as these numbers may seem, in the succeeding fiscal year, the proportion or number of tort cases including a punitive damages claim actually increased in each of the counties. During the 1993–94 fiscal year, an extraordinary 95.6 percent of tort cases filed in Bullock County included a punitive damages claim; 78.8 percent in Lowndes County. In Barbour County, the proportion of tort cases including a punitive damages claim decreased from 78.3 to 72.1 percent, but the absolute number of punitive damages claims increased during 1993–94 by over 40 percent.

Much of the debate over punitive damages proceeds in the form of battle by competing anecdote in which a defender of our modern regime will present a case of exceptionally egregious defendant behavior deserving of punitive damages, and a supporter of reform will present an opposite example. (Indeed, I present an anecdotal case—though a telling one—below.) The Alabama numbers belie anecdotes. No one can plausibly claim that 72.1 to 95.6 percent of all accident cases over an entire year in any county of the U.S. involve the form of exceptionally egregious defendant behavior that might merit substantial punitive damages. In contrast, these numbers show that the role of punitive damages has changed dramatically in our civil justice system, from an occasional remedy invoked against outrageous action to a commonplace of tort law practice.

These numbers also belie the commonly-heard defense that actual punitive damages verdicts are rare and that many of those awarded by juries are later reduced on appeal so that there is no substantial effect. Debate can be had on what is meant by the term ''rare'' and what constitutes in terms of magnitude of verdicts a ''substantial'' effect. The impression is often suggested, however, that even for the Nation in its entirety, punitive damages claims amount to nothing more than a handful.

Our Alabama study demonstrates that this is a great misimpression. Again, we did not select the largest cities in Alabama or industrial or manufacturing centers; in fact, just the opposite: The counties that we studied in Alabama are rural, with modest populations, and a relatively non-urbanized citizenry. For example, Bullock County has a total population of only 11,042, 4,040 of whom are employed, and a per capita income of $9,212; Lowndes, a total population of 12,658, 5,300 employed, and a per capita income of $10,628. Barbour County is somewhat larger, with a total population of 25,417, 12,400 employed, and a per capita income of $12,100. None of these counties, however, resembles in the slightest metropolitan areas such as Miami, Los Angeles, or Dallas.

What did we find? In 1993–94, despite these small populations, punitive damages claims constituted far more themselves in these rural counties than the claimed nationwide ''handful''. In Bullock County, 43 of 45 tort actions included a punitive damages claim; in Lowndes County, 52 of 66; and in Barbour County, 93 of 129. Are punitive damages in Alabama insignificant? The claims reported above, of course, are quite recent and remain still in the litigation pipeline. Looking to much earlier claims, however, our study in Alabama showed that the magnitude of punitive damages judgments affirmed by the Alabama Supreme Court from 1987 through the first half of 1994 equalled $53.2 million,[4] equal to roughly $13 per Alabama citizen.

This study demonstrates that the number and magnitude of affirmed punitive damages verdicts is only the very small tip of an extraordinary iceberg. Again, it is universally conceded that only 2 to 5 percent of cases filed ever proceed to verdict. Thus, it is not surprising that the systematic observation of any single type of verdict is relatively rare. What the Alabama numbers show is that the availability of unlimited punitive damages affects the 95 to 98 percent of cases

Footnotes at end of article.

that settle out of court prior to trial. It is obvious and indisputable that a punitive damages claim increases the magnitude of the ultimate settlement and, indeed, affects the entire settlement process, increasing the likelihood of litigation. Thus, as shown in the Bullock, Lowndes, and Barbour County figures, our modern rules with respect to punitive damages impose these effects on 95.6 and 72.1 percent of even settled cases. Punitive damages reform—especially if it extends to all state and federal litigation, not simply products liability—is desperately needed.

DO PUNITIVE DAMAGES SERVE A NECESSARY DETERRENT PURPOSE?

Virtually every supporter defends punitive damages on grounds of deterrence, accompanied by an anecdote or anecdotes involving persons who suffered serious losses in contexts in which most observers would agree that the respective defendant should have prevented the accident. Generally, the anecdotes are allowed to speak for themselves: I have never once seen a careful study in a specific case showing that a punitive damages judgment of some particular amount was necessary to deter some particular wrongful behavior. Instead, the argument proceeds by implication. The basic defense of punitive damages—and I believe that it is the only serious defense—is the implication that large, unlimited punitive damages verdicts are necessary to control injurious activities in the society. Put slightly differently, it is implied that, without the availability of unlimited punitive damages awards, potential defendants, especially corporate defendants, would face no deterrent threat to prevent them from causing injuries.

Forty years ago, in a tort law regime that provided little in the way of consumer remedies, it might have been believed that ever-increasing civil liability verdicts, including punitive damages verdicts, would serve to reduce the number of accidents.[5] That view, however, has been totally discredited today, and I know of no serious tort scholar publishing in a major legal journal who could maintain it. Instead, it is widely accepted—and it is a routine proposition of a first-year modern torts course—that compensatory damages—economic losses and pain and suffering—serve a complete deterrent purpose in addition to their role in compensating injured parties. Compensatory damages impose costs on defendants who wrongfully fail to prevent accidents, costs equal in amount to the injuries suffered. Compensatory damages internalize injury costs to defendants where some action has wrongfully injured an innocent party.

Indeed, the strongest theory in the modern tort academy is that full compensatory damages generate exactly the optimal level of deterrence of accidents—not too little and not too much.[6] For purposes of deterrence or accident prevention, given full compensatory damages, there is no need for punitive damages of any dimension, not to mention unlimited punitive damages. Of course, this is a theoretical conclusion, and there remains dispute in the academy as to whether as an empirical matter court or juries calculate compensatory damages exactly perfectly in every case or in every context. Thus, substantial academic attention has been given to the refinement of liability so that the deterrant effects of compensatory damages may be sharpened.

Given the role of compensatory damages as a deterrent, however, the analysis of punitive or other exemplary damages becomes substantially different. The only justification on grounds of deterrence for any exemplary award beyond the compensatory is that compensatory damages are inadequate for some reason, say, that juries award damages too low in some dimension or that some set of injuries go undetected or are perhaps too insignificat individually to justify litigation.[7] The only plausible defense of punitive damages on deterrence grounds, thus, is to restore aggregate damages to a level equal to that that is fully compensatory.

Opponents of punitive damages reform in current Congressional debates avoid this issue, but this failure to confront it suggests the ultimate weakness of their opposition. Again, anecdotes involving individuals suffering serious serious loss are not generally helpful to the analysis. I am extremely sympathetic—as all of us are—to individuals suffering serious injuries. We all wish that the wrongfully injurious action might have been avoided. Given a wrongful injury, we all want the victim to receive full compensation for economic losses and pain and suffering.

The question for punitive damages tort reform, however, is: Given full compensation to the victim, is there some affirmative deterrent purpose served by awarding further damages? Is there some reason to believe that the payment of full compensatory damages will fail to deter the defendant, such that some further multiple of punitive damages is absolutely necessary? For corporate defendants, the answer surely is no. Corporate defendants who must maximize profits net of costs must necessarily take the prospect of compensatory damages into account in determining how to invest in accident prevention. Again, this analysis presumes full compensation. If there were some reason to believe that juries were systematically undervaluing economic losses or pain and suffering, punitive damages might be necessary to make up the shortfall. (Of course, the opposite is true; many, including myself, believe that juries overvalue compensatory damages, especially pain and suffering, justifying Congressional limits on pain and suffering awards.) Barring such a shortfall, however, there is no justification for punitive damages on deterrence grounds.

The analysis is, perhaps, somewhat different in the context of individual noncorporate defendants who are less subject to cost constraints and, perhaps, more inclined to behave unconscionably. This is the reason that exemplary or punitive damages are often awarded in cases involving intentional harms such as assault.

As administered by juries, however, our current civil liability regime approaches the issue exactly backwards. In our current regime, large punitive damages verdicts are seldom awarded against non-corporate defendants. And I know of no one objecting to a punitive damages cap on the grounds that it will impair the deterrence of private individuals. Instead, large punitive damages verdicts are most typically awarded against corporate defendants who, as profit maximizers (a motivation often irrationally held against them), will be carefully responsive to compensatory damages. Corporate defendants need no punitive damages verdict to encourage them to take all cost-effective precautions to prevent injuries; compensatory damages alone achieve that result. Thus, the increasingly commonplace plaintiff lawyer's charge to a jury to ''send the defendant a signal'' ignore entirely the universally accepted academic view that, to a corporate defendant, full compensatory damages are not only an effective signal, but also the only and entire signal needed.

DO PUNITIVE DAMAGES HELP OR HURT CONSUMERS?

If the effect of punitive damages were to benefit consumers or if their effect were even neutral to the consumer interest, we might be unconcerned that punitive damages are unnecessary to deter corporate defendants from injurious behavior. The central problem of punitive damages, however, is that, except in the rare cases of jury undervaluation of damages or underlitigation, punitive damages settlements and verdicts affirmatively harm consumers, and low-income consumers most of all.

Where punitive damages become a commonplace of civil litigation as in Alabama, or even where they become a significant risk of business operations, consumers are harmed because expected punitive damages verdicts or settlements must be built into the price of products and services. The effect of the greater frequency and magnitude of punitive damages recoveries of modern times has been to increase the price level for all products and services provided in the U.S. economy. To observe this phenomenon is not to say that injured consumers should go uncompensated. If a consumer suffers an injury that can be attributed to some wrongful activity of a defendant, whether manufacturer or service provider, that consumer should receive compensation for economic losses and for reasonable non-economic losses, such as pain and suffering.[8] In contrast, punitive damages, by definition, go beyond the compensatory. The problem with the increasing commonality of large punitive damages verdicts and settlements, such as those we see in Alabama, is that the awards to some consumers of greater than compensatory damages must be built into the prices paid by all other consumers.

It is an obvious implication of this proposition that low-income consumers are most seriously harmed by our current damages regime. First, low-income consumers have less money generally and, regardless of the product or service, are more seriously affected in terms of the purchasing power of their limited resources where the price level increases. Secondly, and most importantly, low-income consumers are not the typical beneficiaries of large punitive damages verdicts or settlements, surely not on a systematic basis. Again, research of my own currently in progress shows that low-income consumers, if injured, are less likely to seek an attorney; even with an attorney, are less likely to sue; less likely to recover; and, again by definition, less likely to recover large damage judgments since their lost income is typically low and pain and suffering awards, which are highly correlated with lost income, equally low.

Put more simply, where punitive damages verdicts and settlements are frequent and large, low-income consumers are forced to subsidize the high-incomes as expected punitive damages awards are built into the prices of products and services. Occasionally, a low-income individual will receive a punitive damages windfall, but the far more systematic effect is to harm the low-income as the prices of products and services generally are increased as producers must adjust for the expectation of future punitive damages payouts.

Although these Hearings are chiefly directed to punitive damages reforms, it is important to recognize that the current effect of the doctrine of joint and several liability is similar. Joint and several liability has its most general effect on organizations or entities which engage in a large scope of activities, such as state and municipal governmental entities, public utilities, and the like. It has become a commonplace of modern civil litigation for plaintiffs' attorneys to join as defendants any governmental entity or utility remotely associated with an injury. Thus, state governments and municipalities are joined as defendants on claims

that roads were misdesigned or poorly maintained or that a guard rail or telephone pole could have been placed in a better position. Forty years ago, attorneys would not have thought to include entities whose causal relationship to the harm was so low or, if they had attempted to join such entities, the claim would have been dismissed. Today, such litigation is routine and imposes substantial litigation expenses upon our state and municipal governments and liability expenses, only infrequently, but chiefly under operation of the doctrine of joint and several liability where the truly responsible defendants have gone bankrupt, leaving our governments and utilities to suffer the remaining judgment.

It is clear that, for very similar reasons, operation of the doctrine of joint and several liability harms citizens in general, but low-income citizens most of all. Damages judgments must be paid from state and municipal financial sources. It is well-established that state and, especially, municipal finance is seriously regressive in effect, charging more to middle- and low-income citizens, proportionate to income, than to the relatively high-income. This effect, most obviously, is not limited to the product manufacture context and provides an important independent reason why the reforms the Senate is considering should be expanded beyond application to products manufacture to all civil litigation.

These propositions about the effect of punitive damages and joint and several liability on the poor and low-income may appear abstract, though I believe that they are generally accepted within the academic community. To illustrate their import with greater salience, however, I would like to present one recent example of a punitive damages verdict in Alabama, indeed, a case that inspired the research presented above. The case will both show the pressing need for punitive damages reform, again, not limited to products liability, but expanded to all state and federal litigation.

In the case Gallant v. Prudential, decided this past April 1994, Iran and Leslie Gallant sued Prudential Life Insurance Company based on the actions of a Prudential agent. The Gallant's had purchased a combination life insurance-annuity policy with a $25,000 face value at a monthly premium of roughly $39.00. At the time of sale, the agent had told them that the value of the annuity was roughly twice what in fact it was; the agent had added together the table indicating ''Projected Return'' with the table indicating the lower ''Guaranteed Return.'' A jury found this action fraudulent and held the agent liable and Prudential separately liable for failing to better supervise the agent.

Fortunately, the problem was discovered before either the policyholder had died or had retired to receive the annuity. Thus, to the time of trial, there was no true economic loss beyond the failed expectation of the larger future return. I have carefully read the transcript of the testimony, and the Gallants testified that, between the time that they discovered the misinformation and Prudential called them to offer a remedy (Prudential offered to return their premiums or to discuss adjusting the policy), they had suffered roughly two weeks of sleepless nights and substantial anger at having been misled. That was the extent of their ''mental anguish''.

Twenty years ago, I taught cases of this nature in a course entitled Restitution, in which the appropriate remedy was restitution of all paid premiums or out-of-pocket costs. On very rare occasions such as especially egregious actions by a defendant, some courts considered awarding plaintiffs the benefit of the bargain, say, by increasing their annuity benefits.

Our modern world has changed: After a one and one-half day trial, an Alabama jury awarded the Gallants damages equal to $30,000 in economic loss; $400,000 in mental anguish; and $25 million in punitive damages. Again, the face value of the insurance policy was only $25,000.

I do not wish to minimize the harm to the Gallants, especially the indignity of the misrepresentation, nor to condone the fraudulent actions of the agent, apparently perpetrated on several other Alabama citizens who recovered separately. Nevertheless, there is not a single person to whom I have described this case—not an attorney, whether plaintiff or defendant; not a liberal or a conservative; not even a radical or idealistic Yale Law student (or faculty member)—who has not been shocked by the outcome or who could defend it as a rational or sensible verdict in the context of the harm. Again, many defenders of punitive damages argue that exceptionally large verdicts are usually overturned on appeal. Alabama provides a review procedure for punitive damages verdicts that the U.S. Supreme Court has approved.[9] In the Gallant case, however, the judge conducting the review affirmed the $25 million award in its entirey, though directing part of the amount to be paid to the State.

What will be the effect of a punitive damages verdict of this nature? The Gallants appear to be persons of modest means (before the verdict). Does a verdict of this nature help middle- or low-income consumers? Totally, the opposite. The insurance policy in question—face value, $25,000—was the cheapest form of life insurance/annuity available on the market; again, its monthly premium was only $39.00. Obviously, at such a premium, the insurance carrier could not be expecting to make a substantial profit on the policy. Indeed, an expert in the case estimated that over the entire life of the policy, the premiums net of payouts paid by the Gallants would increase Prudential's assets by only $46.00.[10] Prudential, like most other life insurance companies, profit more substantially from large dollar, rather than small dollar policies. The expert estimated that the verdict reduced dividends to every Alabama policyholder (Prudential is a mutual carrier) by $323.

How do we analyze a case like this in terms of whether punitive damages serve a necessary deterrent effect? In his closing arguments, the (highly effective) attorney for the Gallants asked the jury to determine a level of damages that would send a ''message'' to the giant Prudential Life Insurance Company that fraudulent behavior on the part of an agent will not be tolerated.[11] What kind of damages message is necessary to achieve that effect? Obviously, if the insurer stood to gain no more than $46 over the life of the policy, any damages judgment greater than $46 sends the insurer a message by making the policy unprofitable. (Of course, I ignore entirely Prudential's defense costs plus the reputational harm from the lawsuit.) The jury in the Gallant case went substantially beyond that amount, however, in awarding compensatory damages of $30,000 for economic loss and $400,000 for the mental anguish of the two weeks' lost sleep and anger. It certainly cannot be argued that the jury has undervalued the Gallant's compensatory loss—indeed, the $400,000 mental anguish award is extreme. Furthermore, there is no reason to think that the agent's behavior in other contexts would go undetected. (Prudential later settled other cases brought by the agent's clients.) As a consequence, there is no justification for a punitive damages award whatsoever.

What will be the effect of punitive damages verdicts such as that in the Gallant case? In the face of such a verdict, what is the rational response of an insurer like Prudential or other insurers selling similar policies? Regrettably, but necessarily in a competitive industry, the rational response is to quit selling such low value policies altogether. It makes very little sense to expose the company and its policyholders to the risk of such a damages verdict given the very small gain from the sale of such a policy.

Is this the type of product that our civil liability system should drive from the market? Obviously, not, and low-income consumers in Alabama are directly harmed as a result. Here, the dramatically differential effects of such verdicts on high-income versus low-income consumers are made clear. In my own view, it is far more important to our society to have our insurance industry provide life insurance coverage to low-income than to high-income citizens, since the relatively affluent of our society have other means of providing financial security for their families. The availability of financial protection and security at relatively low cost will be substantially diminished if such low premium policies, as here, are no longer available.

More generally, where expected punitive damages verdicts are added to the price of products and services, the first to feel the effect will be low-income consumers. And where the magnitude of punitive damages verdicts rise, imperiling the continued provision of the product or service, the first to be affected will be those products and services with the lowest profit margins, most attractive to the low-income. The Gallant case provides a dramatic example of the effect. Following Gallant and other large punitive damages verdicts, several insurers have quit offering coverage in Alabama altogether.

Punitive damages reform would cure that ill to the benefit of all Americans and especially low-income Americans. As the Gallant case shows, however, to fully cure the problem, punitive damages reform must extend beyond the products liability context to all civil litigation. The Gallant case involved insurance, not product manufacture, Punitive damages verdicts such as the $25 million verdict in the Gallant case encourage wasteful litigation. (Indeed, litigation seeking punitive damages judgments against financial service companies has become an industry in Alabama.) By increasing the prices of all products and services, punitive damages verdicts and settlements reduce the purchasing power of all Americans, again, especially the poor.

MUST CONGRESS IMPLEMENT PUNITIVE DAMAGES REFORM?

Many defenders of our current regime question why the Congress should become involved in civil liability reform, rather than leaving reform initiatives to the courts or to the state legislatures. The question is particularly appropriate with respect to punitive damages reform, given that the Supreme Court has addressed the issue of the excessiveness of punitive damages in several recent cases.[12]

I have been involved in the tort reform effort for many years and have testified in favor of tort reform before various state legislatures (California, Louisiana, New Jersey) and in various judicial proceedings evaluating state tort reform statutes (Alabama, Florida, New Mexico). I have organized several conferences addressing tort reform for state legislators and judges, and have directed much of my writing on tort reform to the judiciary.

This varied experience has convinced me that only Congress is in a position to implement effective civil liability reform and, especially, punitive damages reform. First, it is evident, after many opportunities, that the Supreme Court has great difficulty proceeding beyond what might be called a ''procedural'' approach to the punitive damages problem. The Court's various options suggest clearly that a majority of Justices are concerned about the excessiveness of modern punitive damages verdicts. To date, however, the only form of punitive damages control that the Court has adopted has been procedural: approving a set of procedures at the state level for judicial review of punitive damages verdicts (Haslip, supra) or disapproving a state judicial procedure as not providing sufficient review (Oberg, supra).

In my view, a merely procedural approach to the punitive damages problem will never be successful. Indeed, we have stark evidence of its failure. In 1991 in the Haslip case, the Supreme Court specifically approved the procedure for reviewing punitive damages verdicts for excessiveness adopted by the Alabama Supreme Court.[13] Viewing the Alabama procedure on its face, few can contest that the review procedure appears reasonable. In practice, however, as the Gallant case proves and as the statistics from the rural Alabama counties strongly suggest, the punitive damages problem in Alabama, under the procedures approved by the U.S. Supreme Court, has grown to epidemic proportions.

Upon reflection, it is not surprising that the Supreme Court has found it difficult to deal with excessive punitive damages. The Supreme Court's job, in general, is to define rights. Few would contest—I do not contest—that punitive damages may be appropriate in some contexts. I would not support a Constitutional right of immunity from punitive damages (though that may well be an important improvement over the current state of the law).

What is needed for punitive damages reform is a prudential judgment of the appropriate cap or limit to punitive damages that will allow some room for punishing egregious behavior, but constrain the deleterious effects of unlimited punitive damages judgments on consumers and on the low-income. A proportional limit of three times economic losses or $250,000 is a prudential judgment of that nature. (Personally, I would support a lower figure absent a definitive finding of malice.) But that prudential judgment is a uniquely legislative, not judicial, exercise.

With respect to reform by the states, the question is somewhat different. Punitive damages verdicts implicate both interstate and foreign commerce in a manner that only the federal Congress can address. Some have argued that a state without a significant manufacturing or interstate service sector could actually benefit its citizens by adopting an expansive civil liability regime at the expense of citizens of other states. Only the federal Congress can address this issue.

Secondly, there is one further effect of our modern damages regime that should not go unnoticed in Congress: an effect on the competitiveness of American manufacturers and producers. Some have argued that large punitive damages verdicts in the U.S. are neutral with respect to competitiveness since foreign courts do not award such verdicts against U.S. producers with respect to sales abroad and because foreign producers are equally subject to such verdicts for sales in the U.S. Thus, for U.S. sales, foreign producers, just like U.S. producers, must add expected punitive damages and joint and several liability verdicts into the prices of products and services. (It is often lost on these observers that an increase in prices on account of punitive damages—even if operating neutrally—is not an affirmative argument on behalf of consumers.)

This analysis, however, is only partially correct. Increasingly, foreign courts are refusing to enforce extraordinary judgments from U.S. courts against foreign defendants. For example, very recently the German Federal Court of Justice (Germany's highest court for civil and commercial matters) refused to enforce a $400,000 punitive damages verdict obtained in an American court by an American plaintiff against a German defendant on the grounds that the punitive damages verdict was inconsistent with German public policy.[14] In the same case, an intermediate court had reduced the pain and suffering damages component from $200,000 to $70,000 on the same grounds.

Foreign judgments of this nature should be alarming both to Congress and to U.S. courts. First, they are strong evidence that the current course of American law does not command wide assent—itself another reason for Congress to enact general punitive damages reform. Secondly, however, such judgments suggest an increasing competitiveness problem facing U.S. producers here in the U.S. To the extent that U.S. verdicts must be enforced abroad, foreign producers need not add the costs of the U.S. civil justice system, including punitive damages and excessive pain and suffering awards, into the prices of products and services sold in the U.S. Thus, foreign producers can underprice U.S. producers in sales to American consumers here in the U.S.

Ironically, although U.S. producers and their employees are harmed by this effect, U.S. consumers benefit because they can obtain products and services at lower prices, without the effects of our punitive damages verdicts built in. Put slightly differently, the refusal of foreign courts to enforce large punitive damages or pain and suffering awards from U.S. courts represents a type of tort reform, regrettably however, only available—prior to federal punitive damages reform—to foreign, rather than to U.S., producers.

For these various reasons, I endorse punitive damages reform. May I emphasize again the necessity of extending reform to all civil litigation, state and federal, rather than limiting it to products liability or some other subset, in order to spread the benefits of reform most broadly.

There are a wide range of punitive damages reforms that the Senate might consider. Most important would be a proportionality limit on available punitive damages. The proposed limit of three times economic losses or $250,000 is a reasonable first start, though strong arguments can be made for lower limits or more rigorous standards requiring a finding of actual malice before any exemplary damage award can be made. It would also be helpful to provide for the bifurcation of trial as between the compensatory and punitive damages phase, in order that the often highly-inflammatory evidence concerning defendant (most often, corporate) wealth does not taint a jury's evaluation of the basic evidence with respect to liability. It is also important to place limits on or give credit to defendants facing multiple punitive damages awards. The tragic modern experience in the asbestos litigation demonstrates the problem. Here, because of multiple punitive awards to sets of plaintiffs reaching court first, many subsequent claimants have been unable to collect basic compensatory damages of any amount.

These comments address only current proposals. Again, I have studied the reform of modern tort law for many years and would be happy to respond to any questions concerning the full range of modern tort law reform.

FOOTNOTES

[1] See, e.g., Richard A. Posner, An Economic Approach to Legal Procedure and Judicial Administration, 2 J. Legal Stud. 399 (1973); G.L. Priest, Selective Characteristics of Litigation, 9 J. Legal Stud. 399 (1980).

[2] G.L. Priest, Private Litigants and the Court Congestion Problem, 69 B.U.L. Rev. 527, Table 1 at 540 (1989).

[3] These data were collected under a research project organized and directed by myself and Professor James R. Barth, Auburn University for the case *Gallant* v. *Prudential.* Publication is in process; the data are available from the author.

[4] This figure excludes wrongful death awards which are denominated ''punitive'' in Alabama. If such awards were included, the amount equals $109 million, equal to $26 per capita.

[5] For a discussion of the development of modern tort law, G.L. Priest, The Invention of Enterprise Liability: A Critical History of the Intellectual Foundations of Modern Tort Law, 14 J. Legal Stud, 461 (1985).

[6] Richard A. Posner, Economic Analysis of Law (4th ed., 1992).

[7] Of course, this is also a justification for the class action.

[8] I have written widely on the subject of appropriate pain and suffering awards, and would strongly endorse limits on pain and suffering, though this issue is somewhat beyond the focus on punitive damages here. See, e.g., G.L. Priest, The Current Insurance Crisis and Modern Tort Law, 96 Yale L.J. 1521 (1987).

[9] *Pacific Mutual Life Insurance Co.* v. *Haslip,* 111 S.Ct. 1032 (1991).

[10] Testimony of Professor James R. Barth, Auburn University.

[11] *Gallant* v. *Prudential,* Barbour County, Alabama, Trial Transcript at 647, April 6, 1994.

[12] See, e.g., *Pacific Mutual Life Insurance Co.* v. *Haslip,* 111 S.Ct. 1932 (1991); *TXO Production Corp.* v. *Alliance Resources Corp.,* 113 S.Ct. 2711 (1993), *Honda Motor Co.* v. *Oberg,* 114 S.Ct. 2331 (1994).

[13] *Pacific Mutual Life Insurance Co* v. *Haslip,*. 111 S.Ct. 1032 (1991).

[14] Judgment of June 4, 1992, BGH Gr. Sen. Z., discussed in G.L. Priest, Lawyers, Liability and Law Reform: Effects on American Economic Growth and Trade Competitiveness, 71 U. Denver L. Rev. 115 at 146–47 (1993).

MCCONNELL AMENDMENT TO H.R. 956, PRODUCT LIABILITY FAIRNESS ACT

Mr. HATCH. Mr. President, there is a subtle implication in this whole debate on the McConnell amendment—an amendment which I strongly support—that somehow health care providers are a bunch of greedy so and so's, motivated solely by dreams of maximizing profit.

If they ask for relief from liability, it must be because they want to escape responsibility, to make a quick buck, not because it would make our health care delivery system better.

What is ironic is that this body has spent countless hours over the past 2 years debating proposals on health care reform, all of which were based on a system which places the utmost trust in the health care professional, whether it be a doctor, a nurse, a chiropractor, or a lab technician.

In fact, we spent countless hours here in this very Chamber, debating how to improve our health care delivery system. We spent 54 days in the Labor and Human Resources Committee—46 days in hearings and 8 days in markup—and 40 days in the Finance Committee—36 days in hearings, and 4 days in markup. And that does not even count the countless hours of work outside the committee and on the floor.

There was no disagreement over the need for medical liability reform. Indeed, the Clinton proposal, the Labor

Committee bill, the Finance Committee bill, the ensuing Mitchell bill—all contained medical liability provisions, as I will discuss later. The only question was over what those proposals should be.

When we get sick, who do we see? A doctor, a nurse practitioner, or another health care professional. Not an attorney.

When our children get sick, who do they see? A pediatrician, a physician assistant, or another health care provider. Not an attorney.

Our entire medical system—which everyone knows is heralded as the best in the world—is based on a total reliance on the abilities of the health care professionals who treat us, professionals who have scarified immeasurably to get the requisite training and credentialing. These are professionals who spend long and hard hours in school and at work to make our system the best in the world.

Will there be mistakes?

Of course there will. After all, we are only human. And while we must drive for perfection, that by definition cannot be.

My heart goes out to each and every person who has suffered an adverse medical event, whether it were caused by the delivery system or not.

I wish we could have a perfect health care delivery system, where everyone was healthy and no one ever was ill or suffering.

I wish this could be a perfect world in which children never suffered adverse reactions from the very vaccines designed to protect them.

I wish this could be a perfect world in which a surgeon never removed the wrong eye, or the wrong kidney. But it is not a perfect world, nor can it ever be.

I was a trial attorney before I came to the Congress.

I saw heart-wrenching cases in which mistakes were made. I saw heart-wrenching cases in which mistakes were not made, and doctors were forced to expend valuable time and resources defending themselves against frivolous lawsuits.

I have litigated these cases, both as an attorney for the plaintiff and as an attorney for the defendant.

No one in this body knows better than I—perhaps with the exception of our colleague from Tennessee, Senator FRIST—what the defects are in this system.

Mr. President, there are over 260 million people in these United States. I wish we could design a system which would protect each and every one of them from harm, but that is not possible. Our job is to design the best system we can.

Several of our colleagues came to the floor last week and gave very heart-felt statements, citing specific cases in which patients had not had the outcome we all would have liked.

I pray that these cases could have turned out for the better. I fervently wish that such problems never occur again.

But in a country as large and as diverse as this one, problems are inevitable. The task before us is to make sure the system minimizes those problems.

I ask my colleagues: ''Do we have the best system possible?''

I do not believe any one in this Chamber would argue that is so.

Thus, the question before is how to design a system which protects both the patient and the provider. I do not believe that a protracted war between trial attorneys and health care professionals is the way to accomplish that goal.

My experience indicates that the best way for us to pass solid legislation which really solves a problem is for both sides to come together and negotiate a solution. Unfortunately, that has not been the case to date. And I think our debate, and indeed our country, has suffered because of this.

Nevertheless, the intransigence of one or more parties is no reason that we should cast aside consideration of one of the most important issues that has faced this body since I came to the Senate.

Indeed, I first introduced a medical liability bill in this body in 1978. Many of the approaches embodied in my legislation are also contained in the McConnell-Kassebaum amendment before us today.

THE NEED FOR HEALTH CARE LIABILITY REFORM

What are the problems which give rise to the need for the McConnell amendment? Let me list them for my colleagues:

First, medical liability costs are out of control. A significant portion of our gross domestic product is devoted to tort costs, of which medical torts are a large part. This number is growing.

As our distinguished House colleague, Representative DAVE MCINTOSH, noted in an April 1994 ''Hudson Briefing Paper,'' the United States has the most expensive tort system in the world, with direct tort liability costs of 2.3 percent of the gross domestic product. Our colleague went on to note that whereas U.S. economic output grew 100 percent between 1933 and 1991, tort costs grew almost 400 percent. In other words, over the past 58 years, tort costs have grown almost four times faster than the U.S. economy.

In that briefing paper, which I commend to my colleagues, Mr. MCINTOSH found that 7 percent of America's tort costs—$9.1 billion—are associated with medical malpractice claims. As Senator MCCONNELL, the author of this amendment, said last Thursday, according to the AMA physician masterfile and other AMA liability data, the average rate of claims has increased every year since 1987. In fact, as Senator MCCONNELL noted, the AMA data show that in 1992, 33,424 medical professional liability claims were filed. The next year, 1993, 38,430 claims were filed, a 28-percent jump from one year to the next.

Second, liability insurance costs are having a direct impact on health care spending. Professional liability insurance rates are rising in response to our runaway tort system. The estimated annual cost of liability insurance for physicians and health care facilities, for example, was calculated at more than $9 billion in 1992, and it continues to grow.

We have all heard the statistics cited in our debate on the amendment by our distinguished colleague from Wyoming, Senator THOMAS.

The costs of ob-gyn malpractice claims in particular are having a very serious impact on both professional liability costs and the patient's bill. Statistics from the American College of Obstetricians and Gynecologists show that one out of eight ob-gyn's has dropped obstetrical practice due to liability concerns. A 1990 OTA report indicated that more than half a million rural residents are without any ob services at all, a number which has undoubtedly grown since the report was issued.

Third, health care liability costs raise the costs of health care. The explosion in medical liability claims diverts resources which could be used for patient care, and it raises the per patient cost of health care.

As Federation of American Health Systems President Tom Scully noted at a March 28 Labor Committee hearing, the total yearly cost of medical liability insurance is $9.2 billion. He went on to relate that that, added to Lewin-VHI estimates of defensive medicine, as I will discuss in a minute, plus the liability costs borne by manufacturers of drugs and devices—$10.8 billion a year—could total up to $45 billion a year. And that does not even include settlements. Clearly, even if these estimates are off a bit, we are talking about a substantial sum involved in the cases.

Fourth, defensive medicine contributes to increased health care spending. Health care professionals, fearing lawsuits, perform more services and order more tests than they would otherwise would.

I know about that. As a former medical malpractice lawyer, one of the bits of advice I would give to doctors was you cannot afford to not list every possibility in your health history. You cannot afford to not try everything you possibly can to make sure that that simple cold is not a respiratory disease, blood disorder or any number of other things. You have to make sure of your history because no longer can you get by just meeting the standard of practice in the community. You better be way above and beyond that. And in the process, the cost of health care has gone up exponentially because doctors must now protect themselves, against medical liability cases, and I cannot blame them. The only way to stop it is to get some reason into the system.

This issue has been one of the more hotly contested in the medical liability debate.

In fact, a few years ago, Ways and means Chairman BILL ARCHER and I asked the Office of Technology Assessment to conduct a study on defensive medicine. The results embodied in a July 1994 report were not as conclusive as we would have liked. As OTA admitted, ''Accurate measurement of the extent of this phenomenon (defensive medicine) is virtually impossible.''

However, Lewin-VHI, one of the leading analysts in the whole field, has estimated that the combined cost of hospitals' and physicians' defensive practices was $25 billion in 1991, and that study was based on what was considered to be a very conservative definition of ''defensive.''

In fact, the Hudson Institute Competitiveness Center study I cited earlier found that liability premiums and defensive medical practices contributed $450 per patient admitted to a large urban hospital in Indiana, an average of 5.3 percent of the patient's hospital bill. Of that amount, $327 went for defensive medicine practices, and $123 went for insurance and administrative costs.

But, Mr. President, I do not believe you need the results of a study to realize that there is defensive medicine and that it costs a lot of money.

I have a very simple gauge. Ask your doctor or other health care professional the next time you have an office visit. They will confirm: defensive medicine is real.

In fact, you do not have to even wait for your next visit. Ask our colleague from Tennessee, Senator FRIST. In a very compelling statement before this body last week, he said:

> As a physician, I have seen first-hand on a daily basis the threat of litigation and what it has done to American medicine.
>
> I have watched my medical colleagues order diagnostic tests that were costly and unnecessary to the diagnosis or to the care of the patient, and they are ordered for one purpose: To create a trail—in many cases a paper trail—to protect them in the event a lawsuit were ever to be filed.
>
> It is called defensive medicine and it happens every day in every hospital in America. It alters the way medicine is practiced, and it is wasteful.

He could not have said it better. In fact, some scholars and leaders say that if the American Medical Association admits to $25 to $30 billion a year in defensive medicine, can you imagine how really high it must be? We have to get a handle on this.

Fifth, a significant portion of these tort awards never make it to the plaintiff. Despite all these tremendous litigation costs, the beneficiaries seem to be lawyers, not patients.

Lawyers should be compensated and they should be fairly and reasonably compensated. But studies have shown anywhere from 28 to 43 percent of every dollar spent on liability litigation ever reaches patients. That is a strong indication that our liability system has been turned squarely on its head.

There are lawyers in some States who set up separate corporations to provide for documentary evidence or exhibits or designs and pictures and other matters. Sometimes total costs taken out of these suits can go as high as 60 percent of the money before any of it ever reaches the patient. Now, I think that is outrageous in some of these States. But I am aware of some of these things that go on. These lawyers are just making a killing off some of these cases. I will never deny or begrudge any lawyer the right to make a fair compensation for what happens to be a very difficult and skillful trial or even a case. But there are limits to everything, and that is why this bill is providing some additional limits that would help all of us to save and conserve on medical costs.

Sixth, the liability crisis has limited the public's access to, and confidence in, health care. An Insurance Information Institute report in May of last year cited that a 1992 survey of obstetricians and gynecologists showed that 80 percent has been sued. Is it likely that 80 percent of obstetricians and gynecologists are committing malpractice? I do not think so.

The results of this are obvious. A survey conducted by the American College of Obstetricians and Gynecologists showed that one out of eight physicians specializing in pregnancy-related services stopped delivering babies because of liability concerns, and, I might add, the cost of malpractice insurance.

A New York Times article from July of 1993 said that as many as 17 percent of obstetricians and 70 percent of family practitioners who once delivered babies in New York no longer do so.

I ask my colleagues, is the goal of access to care helped by a system that drives providers out of certain areas or types of practice?

I ask my colleagues, does a system which creates these disincentives to patient care instill public confidence in providers?

In each case, I think the answer is a resounding ''no.'' Senators MCCONNELL and KASSEBAUM have provided us with a solution.

The vulnerability of both health care payers and health care providers to claims arising from the liability morass is not an abstract proposition.

According to Lewin-VHI, comprehensive medical liability reform would save $4.5 billion in year one, and an estimated $35.8 billion over 5 years, by curbing both the costs of premiums and of defensive medical practices.

The McConnell amendment, modeled after the Health Care Liability Reform and Quality Assurance Act of 1995 (S. 454), which I strongly support, would instill a much needed measure of stability into our legal lottery and benefit both patient and provider. How?

Statute of limitations: First, the proposal includes a 2-year statute of limitations for health care liability actions. A claim must be filed within 2 years of the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered the injury and its cause. This is similar to a provision contained in S. 672, my Civil Justice Fairness Act.

It is also similar to the law in Utah, which provides for a 2-year statute of limitations, with a 4-year maximum.

Punitive damages reform: Second, the McConnell amendment sets standards for punitive damages awards. In order for a claimant to receive such damages, he or she must prove by clear and convincing evidence that:

The defendant intended to injure the claimant for a reason unrelated to health care;

The defendant understood the claimant was substantially certain to suffer unnecessary injury and yet still deliberately failed to avoid such injury; or

The defendant acted with a conscious, flagrant disregard of a substantial and unjustifiable risk of unnecessary injury, which the defendant failed to avoid in a manner which constitutes a gross deviation from the normal standard of conduct.

Further, the amendment precludes punitive damages awards only if compensatory damages are more than nominal.

One of the strong points of the amendment is that it sets up standards for punitive damages. Any defendant may request separate proceedings on either punitive damages liability or the amount of the award. There is a proportionality requirement, so that no award will exceed three times the amount awarded for economic damages or $250,000, whichever is greater.

Finally, there is an important safeguard contained in the McConnell amendment, so that it is made clear the language does not imply a right to seek punitive damages if none currently exists under Federal or State law.

Again, this language is very similar to the language in my bill S. 672.

Periodic payments: Under the McConnell amendment, periodic payment of future damages can be made at the request of either party if the award exceeds $100,000. This is an important provision which ensures that the injured party will receive more of the award, and the attorney less. It also makes it easier for insurers to judge their appropriate reserves.

This provision was also contained in my Civil Justice Fairness Act. I would note that in Utah law, periodic payments for awards of over $100,000 are mandatory.

Limits on attorney fees: The amendment before us limits attorney fees to 33⅓ percent of the first $150,000, based on after tax-recovery, and 25 percent of any amount in excess of $150,000. Although my bill this year addresses attorney fees from a different perspective, I would note that last year the

Labor and Human Resources Committee adopted an amendment I offered to cap attorney's fees at 25 percent across the board.

I have to say, I am concerned about any limitation on attorney's fees, but there have been some colossal rip-offs in this area and this appears to be a reasonable approach in the McConnell-Kassebaum amendment.

Finally, I want to mention two other important provisions in the McConnell-Kassebaum amendment.

Alternative dispute resolution [ADR] mechanisms: I have long felt that our fault-based liability system may not be the most equitable or the most efficient. It is expensive, time consuming, and unpredictable.

The McConnell-Kassebaum bill encourages States to establish or maintain alternative dispute resolution systems. It also requires the Attorney General, in consultation with the Administrative Conference of the United States, to develop guidelines for State ADR procedures, including:

Arbitration; mediation; early neutral evaluation; early offer and recovery mechanisms; certificate of merit; and no-fault.

Further, the provision authorizes the Attorney General to provide States with technical assistance in establishing and maintaining such ADR systems. The AG is required to monitor and evaluate the effectiveness of these systems.

I believe that these provisions will be very helpful in encouraging alternatives to our current system. However, I am concerned that the language does not go far enough in encouraging the development of such systems.

For example, at least two States, Colorado and Utah, are developing no-fault liability systems. No-fault may hold great promise in rectifying many of the problems with a fault-based system, such as its unpredictability and cost, but we are far from designing a system which will work perfectly.

Later in this debate, I plan to offer an amendment authorizing the Attorney General to assist States to help develop the ADR programs which are authorized in the McConnell amendment.

On measures to improve quality; when I began this statement, I talked about efforts to improve our health care delivery system, and, in particular, the quality of care that patients receive.

There are myriad safeguards in our system to ensure that we strive for quality care.

Physicians are credentialed by the hospitals at which they practice to ensure that the medical staff both has the appropriate training, experience, insurance coverage, and is utilizing their skills appropriately. Peer review protects against problems with patient care as do the many activities of local and State medical societies.

All U.S. medical schools are accredited by one of three organizations sponsored and supported by the American Medical Association. In addition, all medical school graduates must pass the U.S. Medical Licensing Examination and almost all voluntarily choose to become board certified.

The Joint Commission on the Accreditation of Healthcare Organizations [JCAHO] accredits most of the hospitals in the United States. Hospital insurors monitor the care at the facilities they cover as well.

Finally, I would also note that according to statistics provided to me by the Federation of State Medical Boards, State medical board authorities disciplined 3,685 physicians in 1994, representing an 11.8-percent increase over the previous year. Almost 86 percent of those actions involved loss of license or some restriction of license.

By the way, I want to recognize that the States are also moving to improve health care quality.

In my own State of Utah, the legislature in January of this year enacted the second phase of Governor Leavitt's HealthPrint health reform program.

The act established a 2-year demonstration program to promote and monitor quality health care. Specifically, the law requires that the project include a collaborative public-private effort to promote clinical quality and cost effectiveness through community-wide continuous quality improvement methods. It also requires a process for evaluating the effectiveness of health care continuous quality improvement in the State of Utah.

Some have alleged that this system is not tight enough to guard against problem practitioners.

That may be the case. For example, there is an impediment to physicians self-regulating themselves which is posed by our antitrust laws; that obstacle is something Chairman ARCHER and I attempted to address in our antitrust legislation last year. It is an issue I intend to pursue again this year.

But, obviously, out antitrust laws are not the entire answer.

The McConnell-Kassebaum amendment provides additional resources for State health care quality assurance and access activities. One-half of all punitive damage awards will be used for licensing, investigating, disciplining, and certifying health care professionals in a State or for reducing the malpractice-related costs for health care volunteers in medically underserved areas.

This is a common sense provision, and one which I believe should be adopted.

BIOMATERIALS LIABILITY

A very important provision contained in Senator MCCONNELL's original medical liability bill, S. 454, is not contained in this amendment as it is contained in the underlying Gorton substitute product liability bill. I am referring to the biomaterials liability legislation sponsored by my colleagues from Arizona, Senator MCCAIN and from Connecticut, Senator LIEBERMAN.

I am very supportive of this legislation. There is a real need for the Congress to take action to relieve raw materials suppliers from liability in finished medical products.

Last month, I received a letter from Dr. Don B. Olsen, director of the University of Utah Artificial Heart Laboratory. He cited a situation which points out precisely why the McCain-Lieberman language is needed.

In his letter to me, Dr. Olsen said:

> Perhaps you were informed about the recent patient at LDS Hospital who is on one of our devices awaiting cardiac transplantation. The patient is doing very well, after having been bed-ridden for about 11 days awaiting a heart transplant. ''As his health continued to deteriorate, he received an intraaortic balloon pump (manufactured from one of the polymers now pulled off the market) and this device was inadequate to support his failing heart. Dr. Long, Dr. Doty and myself then elected to replace his heart with the CardioWest pneumatic artificial heart developed at the University of Utah.

CardioWest is a not-for-profit corporation that has 42 of their pneumatically powered artificial hearts implanted in patients as a bridge to cardiac transplantation.

The problem is that large polymer manufacturers, who make the raw materials needed to produce the artificial heart, have stopped marketing the polymers due to liability concerns.

A large device manufacturer, facing similar liability concerns, has set up its own polymer plant to produce the materials needed for its own devices. They are working with the university in an attempt to reach an agreement to provide the polymers for the artificial heart. However, they are understandably reluctant to provide the materials without some liability protection. There again the liability problem has reared its head.

Here we have a renowned university designing literally lifesaving products which cannot be used because of liability concerns. This is a travesty.

The McCain-Lieberman language is needed to obviate such problems. Enactment of it cannot come to quickly.

HEALTH CARE REFORM REDUX?

In closing, Mr. President, I want to outline for my colleagues the road we have traveled in the past 2 years.

When the President and Mrs. Clinton transmitted their Health Security Act to Congress, they acknowledged that we do have a health care liability problem in this country.

The Clinton bill, while it did not contain caps on damages, contains provisions on collateral source reform, periodic payment of future damages, limits on attorneys' fees, and alternative dispute resolution mechanisms.

In the Labor Committee, we adopted provisions on collateral source reform, periodic payment of future damages, limits on attorneys' fees, and grants for alternative dispute resolution mechanisms, including no-fault.

Subsequently, in the Finance Committee, we adopted a measure which

contained a $250,000 cap on noneconomic damages indexed to inflation, joint and several liability reform, use of punitive damage awards for quality improvement, limits on attorneys' fees, mandatory ADR, and grants for no-fault demonstration programs.

Obviously, none of these measures included all of the provisions of the Mcconnell proposal; at the same time, it is obvious that much of the ground we have covered in the past 2 weeks we have covered before, in that many of these provisions been advocated, indeed endorsed, by significant parties in our past health care reform debate.

CONCLUSION

Mr. President, what we are talking about here is improving our health care delivery system, by ending the legal lottery which threaten both patients and providers.

Some in this body have expressed opposition to the very fundamental changes espoused by my colleague from Kentucky and Kansas.

What I find ironic is that when the shoe is on the other foot, that is, the Government is the deep pocket not a practitioner, this body can move quickly to enact tort reforms far more radical than those we are discussing today.

I am referring to the 1992 amendments to the Federal Tort Claims Act—FTCA—amendments I supported, indeed helped pass—which relieved Community health centers from burdensome malpractice premiums.

In placing community health centers under the FTCA, Congress endorsed prohibiting punitive damages, allowing liability to be determined by a judge, not a jury, and capping contingency fees at 25 percent of a litigated claim or 20 percent of a settlement.

And, while we are on the subject of community health centers—a program I support fervently and which I hope can be expanded to help address the uninsured problem—I might mention another irony.

Many have stood in this Chamber and cited the statistic that malpractice claims only amount to 1 percent of our total health care bill.

With a national health care bill approaching almost $1 trillion, 1 percent amounts to almost $10 billion.

Think how we could expand access to health care by using those billions of dollars for a program so much more productive than litigation.

With current funding of $757 million, community, migrant and homeless centers provide care to almost 9 million people in 2,200 communities. They estimate that, incrementally, each additional $10 million they are provided would extend services to 100,000 people in 30–40 new communities.

Reforming our medical liability system and using those savings in community health centers would truly be health care reform in the first order of magnitude.

In closing, I wish to commend Senator MCCONNELL, Senator KASSEBAUM, and Senator LIEBERMAN for their efforts on this important topic.

I intend to continue working with them closely on this issue, as it is extremely important to health care in America.

AMENDMENT NO. 613 TO AMENDMENT NO. 603

(Purpose: To permit the Attorney General to award grants for establishing or maintaining alternative dispute resolution mechanisms)

Mr. HATCH. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside, and I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 613 to amendment No. 603.

Mr. HATCH. 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:

In section 20(d)(1), strike ''with technical assistance'' and insert ''with grants or other technical assistance''.

Mr. HATCH. Mr. President, one thing is clear from our debate over the past week.

While there are both proponents and opponents of the medical liability amendment before us, we all agree that the system is not perfect.

Specifically, many commentators have criticized our current liability system as compensating very few of those entitled to recovery and punishing the wrong providers.

And most of the money spent on liability goes to lawyers.

By a RAND estimate, 57 cents of every liability dollar goes to lawyers, leaving only 43 cents for injured patients.

Injured patients can wait years for a final judgment and eventual payment of the small percentage of their awards left to them by the lawyers and the system.

And doctors can have their reputations destroyed or lose their livelihood by a single lawsuit or even mere insurance costs. The results of tort litigation, particularly in jury cases, is so unpredictable that it has been called the liability lottery.

There must be a better way of compensating injured patients and punishing bad doctors without wasting so much time, money, and effort while getting such unpredictable and inconsistent results. There must be a more rational and efficient liability system.

As with so many things, innovative ideas are coming from the States. And, I believe, many more interesting new ideas can be developed in the States if we will allow them to experiment.

One idea, which some in Utah, and in other States like Colorado, have been investigating is the development of innovative no-fault medical liability systems. A no-fault system could compensate more injured patients more quickly than the litigation system.

It could be more effective at punishing those providers who do act culpably. It may be that a no-fault system could be not only more equitable, but more inexpensive.

Researchers at Harvard University, who have been working in this for years and who are working with those in Utah and Colorado suggest that these systems hold substantial promise on all these fronts.

But we need more experience with different alternative dispute resolution systems, such as no-fault, before we can be sure.

There are many other approaches being tried in various parts of the country that might help make the system more rational. In the last few years we have heard about innovative dispute resolution systems that encourage quick and fair settlements like early intervention and early offer models.

Practice guidelines and enterprise liability are also options that should be watched and studied to see if they will yield helpful results elsewhere.

Enhancing the evidentiary status of clinical practice guidelines could help the tort system move to judgment more quickly and efficiently, with more uniform results. And practice guidelines could also be an interesting method of developing more uniform standards of medical practice.

There are many forms of each of these approaches, and I think we can learn much from experimenting with various approaches in the States. I believe we should encourage the States and entities in the States to experiment so that we can see what approaches are most likely to lead to a more fair and efficient liability system.

The amendment I am offering to the McConnell-Kassebaum provision on medical liability is very simple.

In section 20, State-Based Alternative Dispute Resolution Mechanisms, the current language in subsection (d) authorizes the Attorney General to provide States with technical assistance in establishing or maintaining alternative dispute resolution mechanisms.

My amendment would expand that slightly, so that the Attorney General may provide grants or technical assistance to States in establishing or maintaining alternative dispute resolution systems.

The only change is the addition of the words ''grants or'', and I note that this would be entirely permissive.

While minor, it is an important change, because it will allow States, or their designees, to work on ADR alternatives, without time-consuming work which is potentially duplicative at the Federal level.

I hope this amendment can be adopted.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I know my colleague from Illinois is shortly going to introduce an amendment that I will support, which gives States the right to opt out. I am in profound disagreement with this Federal preemption. I think I will respond to my colleague from Utah just with a somewhat different perspective for the record, if you will, Mr. President.

Mr. President, I remember last year during the health care debate when we had talked about the cost of medical malpractice premiums that both the Congressional Budget Office—I did not say Democrat or Republican—and the Office of Technology Assessment, which gets high remarks for its very rigorous work—indicated that the medical malpractice premiums account for less than 1 percent of the overall health care costs. A trillion-dollar industry, less than 1 percent.

As I remember, there were some other reports that said even if you were to take into account defensive medicine, altogether it was 2 percent of the total cost. By the same token, Mr. President, when the Congressional Budget Office, for example, and the General Accounting Office scored a single payer bill, where there was one single payer at each State level, as I remember, the estimates were that we could save up to $100 billion a year. But that challenged the power of the insurance industry. My understanding, Mr. President, is that medical malpractice insurance is the single most important profitable line of property casualty insurance and generated $1.4 billion in profit in 1992.

So we do not talk about insurance reform, record profits being made; we do not talk about how to really contain costs. The Congressional Budget Office also said, Mr. President, that the best single way of containing health care costs would be to put some limit on what insurance companies can charge. We do not do that at all. We go the path of least political resistance. Those folks have entirely too much economic and political power. We dare not confront them.

But, Mr. President, instead, we are going to go after those people who have been hurt, those people who have been injured, that have lost loved ones and take away some of their protection and take away some of their rights to seek redress of grievance.

Mr. President, I am going to go back to an example—I am sorry my colleague is not on the floor right now. I have a practice of not debating colleagues directly if they are not here. I do not think there is a standard of fairness to that. So I will be more general.

Let me raise the question about these caps on punitive damages. For example, I think my colleague wants caps across the board, as I understand it. Let me put a face on this question. Think of Lee Ann Gryc from my State of Minnesota who was 4 years old when the pajamas she was wearing ignited, leaving her with second- and third-degree burns over 20 percent of her body. An official with the company that made the pajamas had written a memo 14 years earlier stating that because the material they used was so flammable, the company was ''sitting on a powder keg.'' When Lee Ann sued for damages, the jury awarded $8,500 in economic damages and $1 million in punitive damages. By the way, children—earlier we were talking about this in debate, and one of my colleagues was making projections for economic damages for children—children do not get much by way of economic damages.

Let me ask you, Mr. President, as I cannot ask my colleague, was the jury wrong? Should the company have gotten away with a cap of $250,000 in punitive damages, as this bill would require? Unless you are comfortable answering the question yes, unless you are willing to say that Lee Ann Gryc was entitled to no more than $250,000 in punitive damages, when the company knew that the pajamas were flammable, then you should not be supporting this bill.

This legislation is going to have a very negative effect on consumers. I think it is unconscionable.

Now, Mr. President, I do not get a chance to ask the question, but I get a chance to present another perspective on the floor of the Senate right now in response to my colleague. The question I would raise is—I do not think my colleagues have an answer to this question—No. 1, if we have this cap on punitive damages, what is the projection on how many citizens are going to be denied, how much by way of compensation, over the years to come? And No. 2, what implications does this have toward weakening the deterrent effect?

Like it or not, Mr. President, the company that made those pajamas had a memo written 14 years earlier stating that it was sitting on a powder keg. But for this company the bottom line was the only line. Unfortunately, there are some companies like that—thank God, not too many. For those companies that produced these pajamas that are flammable that burn children, or products that injure or kill people, one of the ways we know they will not do it again is when they are slapped with such a stringent punitive damages suit that they know they cannot do it again. What is the effect of taking away that deterrent? What is the projection on how many innocent people are going to be injured, maimed, or killed by defective products in the foreseeable future? Give me near-term figures. Give me middle-term figures. Give me long-term figures.

Mr. President, what we have before us is an agenda that is an extreme. First of all, there is this agenda to, on the one hand, weaken some of the agencies which have as their mandate to protect the health and safety of consumers in this country. Then, on top of that, we try and take away from citizens their right to receive fair compensation.

I might add, when it comes to the cap on punitive damages, I think we essentially severely undercut the deterrent effect of this. That is why they are there. I mean, you have the economic and noneconomic damages to make the victim whole. In addition, you have punitive damages to say to a company: By God, you need to understand this is so egregious in what has been done that you really are slapped with a major damage which will prevent you from ever, ever doing this again and will prevent other companies from doing this again.

That is what we are attempting to overturn. That is what is so dangerous, no pun intended, for consumers in this country.

Mr. President, again, No. 1, for Lee Ann Gryc from the State of Minnesota, 4 years old when the pajamas she was wearing were ignited, leaving her with second- and third-degree burns over 20 percent of her body. Is $250,000 too much? Is any Senator willing to say it was too much? I do not think so.

Then my colleagues say, we cannot leave it up to a jury to decide. They are too swayed by emotion. The juries are the citizens that elect Senators.

Then, in addition, when my State of Minnesota decides that a cap on noneconomic damages did not work, we may not have any choice in the matter because we have legislation that preempts States. Whatever happened to decentralization? Whatever happened to the idea of States making some of these decisions?

Finally, Mr. President, again, on the medical malpractice part, I can simply say that I am not aware of any independent study done by CBO or Office of Technology Assessment since last year that went through the whole question of a $1 trillion industry, that went through medical costs, went through an analysis of health care costs.

What CBO and OTA said is 1 percent—medical malpractice premiums account for less than 1 percent of overall health care costs. Medical malpractice premiums account for less than 1 percent; adding defensive medicine, maybe 2 percent. Those are my figures as I remember.

When, in the name of controlling health care costs, are we going to pass a piece of legislation which is profoundly anticonsumer, which tips the scales of justice away from people who were seeking redress of grievance in behalf of negligent companies or negligent doctors? It is just outrageous. We take away from people some of the basic legal rights they have, some of the basic consumer protection they count on.

On the other hand, I would say to my colleagues, if we want to control health

care costs, great, I will give my colleagues an opportunity. Sometime I hope to bring an amendment on the floor that talks about putting a limit on insurance company premiums. Then we will see whether or not we are interested in controlling health care costs. According to the Congressional Budget Office, that is the way to control health care costs.

And I will say to my colleagues, if my colleagues are interested in having more health care in rural or urban communities, I am extremely interested in how we encourage more family doctors, nurse practitioners, and how we deliver health care in a humane, affordable way in underserved communities. But do not use these medical malpractice amendments as a reason to do that. We do not have to take away from citizens in this country protection when it comes to their health and safety. We do not have to take away from them their rights in the court system in order to make sure that we provide dignified, affordable health care. That is not a choice.

Mr. President, I hope on both the underlying product liability, and much less, some of these medical malpractice amendments—ones with caps—that colleagues will vote no. I yield the floor.

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. SIMON. 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. SIMON. Mr. President, I ask unanimous consent that amendment No. 613 be laid aside.

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

AMENDMENT NO. 614 TO AMENDMENT NO. 603

(Purpose: To clarify the preemption of State laws)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself and Mr. WELLSTONE, proposes an amendment numbered 614 to amendment No. 603.

Mr. SIMON. 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 appropriate place insert the following:

SECTION . STATE OPTION.

(a) A provision of this subtitle shall not apply to disputes between citizens of the same State if such State enacts a statute—

(1) citing the authority of this section; and

(2) declaring the election of such State that such provision shall not apply to such disputes.

(b) If a dispute arises between citizens of two States that have elected not to apply a particular provision, ordinary choice of law principles shall apply.

(c) For purposes of this section, a corporation shall be deemed a citizen of its State of incorporation and of its principal place of business.

Mr. SIMON. Mr. President, this is word-for-word the amendment that the Presiding Officer offered in our Labor and Human Resources Committee, a very thoughtful amendment, which says we will permit the Federal Government to establish these standards, and if there is a litigation between a citizen of one State and a physician or hospital from another State, or whatever the circumstances may be, then these Federal standards apply. But if a State wishes to differ from this, a State can do that. That is all this amendment does. It was carried, as the Presiding Officer will recall, in a bipartisan vote in the Labor and Human Resources Committee. I hope it can pass in a bipartisan vote here.

I have some concerns about the basic product liability bill, but there can be a very cogent argument made for it, because if a manufacturer in Illinois or Michigan, or in some other State, manufactures a product, that goes interstate. So having some national standards makes some sense.

But in the case of medical malpractice, in all but a few cases we are talking about litigation within a State. And the argument made by Senator ABRAHAM in the committee seems to me to be a very logical argument, and that is, let us establish the Federal standards, but if a State wishes to vary from those standards, a State can do that. That is all the amendment does. It is not complicated. I will, at an appropriate time tomorrow, ask for a rollcall vote on the amendment.

I see my colleague from Washington is off the floor right now.

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. 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, I would like to speak for a few moments on the underlying bill on product liability—the debate on which began a week ago today—on some aspects of the amendments which are before us at the present time on medical malpractice, and respond to two questions raised by the Senator from Minnesota during one of his sets of remarks on product liability earlier during the course of the day.

But I can begin in no better fashion than to share with you, Mr. President, and with my colleagues, a remarkably eloquent essay which appeared in last Friday's Washington Post. Its author, Bernadine Healy, was Director of the National Institutes of Health during most of the Bush administration and is a senior policy advisor at the Cleveland Clinic Foundation.

Mr. President, rather than simply to put that essay into the RECORD, in order that our Members, in making their judgments on the important votes they are going to cast tomorrow and the rest of the week, I intend to read that essay, because I was so moved by it, with simply the caveat in the beginning. The essay, entitled ''Tort Tax on Women's Health,'' is primarily about the impact of this bill and these amendments on women. And I trust, Mr. President, that you will remember, as I read it, that it speaks from Dr. Healy's female perspective. I am quoting and I will be until I bring this to an end:

As the move to fix the broken tort system gains steam in the Senate, we're hearing a tired refrain: Legal reform will hurt women. This political gimmick to paint women as victims is precisely the opposite of the truth: Perpetuation of the litigation lottery, not its reform, hurts most women in the long run.

In dire need of reform is the current system's imposition of massive and arbitrary fines under the guise of ''punitive damages.'' In product liability cases, punitive damages are intended to punish a company that manufactures a dangerous product. In medical malpractice cases, these fines are cloaked as non-economic damages, such as those for ''pain and suffering.''

Juries are asked to impose these damages on a purely subjective, emotional basis. They are in excess of the amounts needed to pay for the harm actually done. One juror told the Legal Times her reasons for awarding $10 million against a Washington, D.C. doctor and hospital: ''[Q]uite honestly, I think it had something to do with sounding like a round figure.''

It is this open-ended freedom to punish that creates a legal lottery, one in which many trial lawyers scoff at smaller claims in favor of the winning ticket of a million-dollar contingency fee.

How could reforming this system hurt women? Protectors of the current system claim that, because society places women at a lower economic value, economic compensation for an injury will never be enough. They point to lower wages for women than men in comparable jobs, as well as to the pathetically low wages identified for women who care for the children and home in a family.

Women always must stand firm for equal wages for equal work. We also must fight for economic respect for our work within the family unit. (This might even include calculating compensatory damages based on the total income of the family unit, not just the market value of domestic services). But our struggle for economic equality should not be used as a smokescreen to justify a liability system that threatens women's health.

Women live longer and suffer from chronic diseases (such as osteoporosis) to a greater extent than men. More than men, we will rely on new drugs and therapies to combat these debilitating diseases. Unfortunately, unpredictable and excessive product liability costs are forcing drug and medical device companies to withdraw needed products, or even to decline to develop them.

Some products used exclusively by women—namely, those for pregnancy and contraception—are particularly susceptible to withdrawal by companies fearing lawsuits. For example, the price of Bendectin, a drug approved by the FDA for morning sickness, skyrocketed 250 percent after lawsuits

alleged birth defects. Although no causal link to birth defects was ever found, the manufacturer withdrew the drug from the market. There are no other drugs for morning sickness.

Improvement to contraceptive products also have been stalled by the product liability system. While there was a need to compensate women for problems associated with the Dalkon Shield intrauterine device (which physicians—not lawsuits—first called to the attention of the FDA), the lengthy, hyperadversarial and profit-oriented stream of lawsuits seriously wounded the development and acceptance of an improved version. The same may become true for Norplant. Liability intimidation over minor problems in the first generation of this useful contraceptive may foreclosure the development of an updated version.

Another threat to women's health comes from the current medical malpractice system. The American College of Obstetricians and Gynecologists found that malpractice premiums increased 237 percent between 1982 and 1991. Added on are the indirect costs of defensive medicine (like too many Cesarean sections) and fewer doctors choosing to go into obstetrics.

No one pays a higher price for this system than the poor. The Institute of Medicine reports that physicians' fear of lawsuits has left many rural communities without obstetrical care. The National Council of Negro Women reports the same for urban low-income areas.

Who gains from this tort tax on women's health? Only 40 percent of malpractice insurance premiums goes to injured patients, while the remaining 60 percent goes to lawyers' fees and administrative costs.

Instead of health care by lottery, women need good science and the aggressive pursuit of medical advances by the NIH, academia and the private sector. We don't need women's advocates who protect a liability system that limits our health care choices by turning businesses away from women's health.

Nor do we need the same people who rightly argue for women to pilot F–16s then to characterize us as too delicate to weight our health risks. It is time to recognize that women, armed with solid research and medical information, can make their own intelligent choices about their health, from choosing a contraceptive to getting breast implants.

During the House debate, a congresswoman characterized liability reform as a male conspiracy, comparing the ''second-class status'' of non-economic damages under a reformed system to what she viewed as a ''second-class status'' for women. But just as women's health has finally been upgraded to first class, we cannot abide a liability system that holds women back in the dark ages of medicine.

Mr. President, two principal points in Dr. Healy's essay, I think, deserve special emphasis.

The first has almost been ignored entirely since the opening salvos in this debate. That is, the tremendous cost of the present system, a tremendous cost which does not go to victims under any set of circumstances.

Dr. Healy speaks of medical malpractice as producing 40 percent of all the insurance premiums that go into medical malpractice insurance to victims and 60 percent to lawyers and to administrative costs, the rest to the costs of the system itself.

Mr. President, that figure is not limited to medical malpractice. It is endemic across the board in product liability litigation. I am astounded that we have not been met with an outrageous attack on this system by the very Members of this body who, instead, are arguing for its preservation without change.

They who speak of victimization, they who speak of appropriate compensation seem overwhelmingly content with a system where 60 percent of the money that goes into it ends up in the pockets of people who are not victims but who are lawyers or expert witnesses or insurance investigators or the like.

In almost any other aspect of our lives, we would be outraged by a 60-percent administrative cost. If anything, Mr. President, that 60 to 40 percent split underestimates the cost of the system. That is only what is reflected in medical malpractice premiums. It does not reflect at all the unnecessary defensive medicine that is practiced in order to try to prevent such claims from coming up in the first place.

If there were no other reason for change, to make more effective compensating the actual victims of negligence, either in product liability or medical malpractice, we should be demanding reform instead of fighting that reform.

At the same time, Mr. President, if this split in favor of overwhelming administrative costs is shocking, it seems to me especially shocking is the other principal point made by Dr. Healy and by others, the tremendously adverse impact of the present system on research, on the development of new products, whether National Institutes of Health related, machine tools—a wide range of products and the marketing of those products.

First, of course, is that the price of every such product includes an insurance premium, a product liability insurance premium. More significant than that—more significant than that—are the choices made by companies faced with this lottery system.

My distinguished friend and colleague from New Mexico last Friday read a statement by retired U.S. Supreme Court Justice Lewis Powell, which I can only paraphrase here, saying that the most irrational form of business regulation is the product liability system.

We have in this Government a large number of regulatory bodies, many of which are devoted to the safety and effectiveness of the kinds of articles, the kinds of products that we use in our lives every day. Those agencies, of course, are not infallible. By comparison, a jury system dealing with a specific instance only, in every case is a pure lottery. The argument that somehow or another this system, which on identical facts can come up with a verdict for a defendant after a huge investment in the costs, or a multi-million-dollar punitive damage claim for actions deemed by the jury to have been deliberate or close to deliberate, is exactly that; it is a lottery.

What is the rational response of a small business or, for that matter, a very large business in the field of producing new and improved items, especially related to our health? Well, the response is, in many cases, the flame is not worth the candle. Why should we as a company subject ourselves to tens of millions of dollars in attorney's fees, even in cases in which we are successful, and the possibility, however remote, of multi-million dollar judgments and terrible publicity in punitive damages in connection with a product which sells for a relatively low profit margin? Companies will, under those circumstances, not so much weigh the question of the safety of a particular device or medicine or product, they will weigh their potentials for successful business against the potential of all of these large attorney's fees and potential punitive damage awards.

And what happens? What happens is many companies simply get out of the business; 90 percent of all of the companies manufacturing football helmets, for example, have abandoned the business during the course of the last 20 years. Major national laboratories and developers have abandoned the search for drugs that will have a positive impact on the AIDS epidemic because their calculation was that the legal costs of introducing such drugs, even with the approval of the Food and Drug Administration, vastly exceeded any profit that they can make on them. Other companies have gotten out of the business, as Dr. Healy says in one particular case here, ''. . . have gotten out of the business of producing traditional immunizations and the like because of the potential cost of either verdicts or even the cost of successfully defending lawsuits.''

We have discussed on this floor the dramatic impact of product liability litigation against companies manufacturing piston driven aircraft, a 95-percent reduction in the production of that kind of aircraft in the United States over a 20-year period all because of product liability litigation. Not successful lawsuits, Mr. President; in the overwhelming majority of these cases, the lawsuits were unsuccessful. But the costs of a successful defense are often more than the costs of a judgment. So that industry was practically destroyed until a modest change was made by this Congress last year and we have, in that one industry, the beginning of a recovery.

Mr. CRAIG assumed the chair.

Mr. GORTON. The goal of product liability legislation is the recovery and development of those industries which make our lives better, which provide new and more effective treatment for medical conditions to which all of us are subject, more and better products for our enjoyment, for our transportation, for every other aspect of our lives. And when we can do that without

denying a single claimant the right to go into court and the right to recover all of the actual damages that a jury awards to that plaintiff—all of the actual damages—and when we can do that at so low a cost to anyone except those who benefit from the litigation itself, it would not seem to me that this debate should have lasted as long as it did or that its result should still be so highly unpredictable.

So, I congratulate Dr. Healy on her particular insight into this question, and say that insight can be expanded across the entire scope of the legislation with which we are dealing here and urgently speaks for its passage.

I did want to remark briefly on two questions which were propounded by the Senator from Minnesota to the supporters of this legislation an hour or so ago. The Senator from Minnesota asks, and I hope I paraphrase him accurately, ''What projections are there for how many people will be denied how much money as a result of the cap on punitive damages included in this legislation?'' The second question was, ''What is the extent of adverse effects of the bill on the deterrent effect of uncapped punitive damages?''

In a sense, each of those questions is the same. Ironically, the answer to the first question, how many people will be denied how much money by some kind of limitations on punitive damages, has probably been answered most eloquently by the opponents to the bill. Opponents to the bill have been at great pains to say that there is no litigation explosion with respect to product liability litigation. That is an interesting argument, since the contrary argument has never been made on the floor of this Senate during the course of the last week. And that only a relative handful of punitive damages judgments had been entered in the last 10 to 12 to 20 years in product liability litigation.

Of course, not all of those awards would be affected by this cap. A number of them are less than the cap is in the bill in its present form. So the answer is, ''Not very many people directly through the litigation system will be denied very much money by the passage of this bill in this form.''

But what is not asked in the question is, no one, not a single individual, will be denied $1 of the actual damages that they suffer and have proved to a judge and jury by this litigation because punitive damages, by its very definition, is an award above and beyond the damages suffered by a claimant in a particular case.

The importance of this legislation in connection with punitive damages is not so much in connection with actual awards as it is with the effect of the threat of potential awards against sound business judgment about the marketing, particularly of new and improved articles, items, and products; and the fear of losing such a lottery on the settlement of lawsuits for more money than can justly be found due to a given claimant in order to prevent that lottery from going against a particular defendant.

While we can probably come up with an accurate and relatively low count of the number of major punitive damage judgments in product liability cases, it is impossible to come up with the number of product liability cases in which punitive damages have been alleged for $1 million, for $10 million, for $100 million. It costs very little for the word processor to add another zero to the prayer in a complaint for damages. And in every case, that complaint must be taken seriously by a potential defendant. There is no way to predict the outcome and therefore many settlements are made for claims which are not justified, in significant amounts of money, and it is that uncertainty which has so constricted the desire of many businesses to make valid business judgments, not only from the point of view of the businesses themselves but to the great gain of the people who would otherwise have used those new products.

Again, we can simply go back to the one area in which we know what the impact has been and will be, piston driven aircraft, 95 percent destroyed by the system, significantly restored already last year since the modest reform in the system has been made.

That, too, answers the second question propounded by the Senator from Minnesota. What is the extent of the adverse effects of the bill on the deterrent effect of uncapped punitive damages? Again to paraphrase Justice Powell, this is the most irrational system of business regulation that can be imagined. It lacks any general principle whatsoever. It lacks any certainty whatsoever. It is utterly arbitrary.

Mr. President, I am sure that the Senator from Minnesota would not for 1 minute countenance our changing the Criminal Code to one in which no matter what the crime the jury could impose whatever sentence it thought appropriate—capital punishment for an assault, life imprisonment for running a stop sign. Yet, that is by analogy exactly what we do with a punitive damages system, unlimited in every case except by the judgment of the jury itself.

Moreover, the criminal justice system at least requires proof beyond a reasonable doubt, something not required as far as I know by any State having punitive damages. The deterrent effect: Well, Mr. President, the State I represent in this body does not now and never has allowed punitive damages in the bulk of civil litigation, nor have four or five other States. And there is no evidence that there is any greater carelessness or willfulness on the part of business enterprises in that State in dealing with consumers in our State because of the entire absence of punitive damages.

So my answer to the question, ''What is the extent of the adverse effects of the bill on the deterrent effect of uncapped punitive damages?'' is: None. Not a conditional answer whatsoever; the answer is none. We have far better and far more just ways of dealing with rogue business enterprises than to deal with any such businesses in this fashion and in a fashion which deter the State's legitimate businesses and those who would wish to use such, to benefit from what those businesses will produce in the way of products and treatments and the like.

So, Mr. President, I think we are perhaps winding up our day on this subject. I repeat once again, for the benefit of all of my colleagues, that today we must have all of the amendments introduced to the McConnell amendment, the amendment seeking to limit malpractice to a product liability bill. There will be a brief time of debate, approximately 1½ hours and a half tomorrow in the morning and then a series of votes on all of those amendments, after which we will go on to other amendments dealing with the general bill itself.

Seeing no Member who wishes to offer an amendment or a comment on the floor at the present time, 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. KYL. 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. KYL. Mr. President, I have been trying to watch the proceedings on the floor all day. I was here twice before talking about amendments that are pending before the body on the issue of malpractice reform. I have been disappointed, frankly, that there has not been more debate joined on two very, very critical questions, except for a brief colloquy which the Senator from Minnesota and I had earlier today, I have heard virtually no refutation of the points that I have set forth regarding the two amendments. I wanted to spend 5 minutes this evening summarizing my views prior to the time that we will have votes on these two issues tomorrow.

Mr. President, you know that we have before us the product liability legislation by which we are going to try to reform this Nation's product liability laws. Pending is also an amendment—the McConnell-Lieberman-Kassebaum amendment—which will add the medical malpractice area to that reform. There are a couple of specific amendments pending to that which we hope will help to further reform our tort law relating to medical malpractice; specifically, an amendment that would limit attorney's fees and, secondly, one that would put a cap on noneconomic damages.

The point of these two amendments is to try to return more of the recoveries of these cases to the victims, to the plaintiffs or claimants in the cases. In the past, the claimants received—in fact, today the claimants receive on the order of 40 to 50 percent of the recoveries, and the attorneys receive most of the rest.

In fact, several studies demonstrate that at least half of the recovery in these kinds of cases go to the attorneys. Let me cite two or three of those studies, Mr. President. There is a Rand study which demonstrates that about 50 percent of the money goes to lawyers, and less than 50 percent goes to the claimants. Some of it goes to administration. There are other studies that show somewhere in the neighborhood of between 40 and 50 percent. The bottom line is that the claimants are not getting the recovery; the attorneys are.

As a result, what we have sought to do is to limit the recovery of the attorneys in the noneconomic damage area to 25 percent of the first $250,000. That is over $60,000. In addition to that, the attorney, under the McConnell amendment, would be getting either 33⅓ percent of the first $150,000, or 25 percent of everything thereafter, on all economic damages.

So let us take a very large recovery for the sake of argument. Let us take a million-dollar recovery. The attorneys could easily get between a quarter of a million or more in their contingent fee from that. Then, of course, if punitive damages are further sought, an attorney, under my amendment, could go to the court and ask for a reasonable fee. Twenty-five percent would be presumed to be reasonable, and the court would have to determine it based on reasonableness and the ethics standards to apply to attorney fees. We are not limiting attorneys from recovering their fees. We are saying in a great big recovery, where it is a multimillion-dollar recovery, the bulk is not going to go to the attorneys. About 75 percent would go to the claimants.

The adjunct to that is a limitation on the noneconomic damages themselves. By giving the claimants more of the money that they get and giving less of it to the attorneys, we can afford to put a cap on the noneconomic damages. That is what the second amendment I have introduced would do. The House-passed cap is $250,000. But a lot of our colleagues in the Senate said $250,000 was just too stringent in that exceptional case. They are rare, but in those exceptional cases where you would want to give an award of more than a quarter of a million dollars, you can provide an award of up to $500,000 under my amendment. It could not be discounted at the present value. So that is a lump sum of money. Invested over a period of time, it could make millions of dollars. That is on top of the economic damages, which would be collected to totally recompense the plaintiff for all out-of-pocket expenses as well as lost earning power and any other economic damages.

So you do not limit the totality of the award so much as you provide that the claimant gets the award by putting a limit of $500,000 on the noneconomic damages. By having a limit on the attorney's fees, the claimants get essentially the same thing. But the attorney's fees are reduced to a more reasonable level. So these two amendments fit hand-in-glove. We are going to be voting on them tomorrow.

I urge my colleagues to support the limit on attorney's fees and the limit on noneconomic damages. Some of my colleagues says the limit on attorney's fees is not strong enough. It does not really whack the lawyers. That is not my objective. My objective is to make sure there is a fairness and a balance here and that some reason is restored to the system. With respect to the noneconomic damages limit, there is a question about really whether that will do any good. I just want to cite to my colleagues the Office of Technology Assessment report of 1993 which said:

> Limits on noneconomic damages is the single most effective reform in containing medical liability premiums.

We all suffer by virtue of medical expenses going out of sight, of physicians having to close down their practices or decline to serve certain kinds of patients because of the escalating costs of medical malpractice premiums. This is one of the cost-drivers in this whole health care reform debate. We have to get that under control. When a group like the OTA notes the fact that this is one of the most significant reforms we can pass, it seems to me important to do so.

So again, I urge my colleagues, when we vote on these two amendments tomorrow to, of course, support the McConnell-Kassebaum-Lieberman amendment and to support my amendment on attorney's fees and on limiting noneconomic damages. I think if we do all three of those things, we will have strengthened the bill and will be better able to go to conference and come out with a really strong bill that, as a result, we can tell the American people we have done something in this area of medical malpractice and tort liability reform.

Thank you, Mr. President.

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. KENNEDY. 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. KENNEDY. Mr. President, for 2 days during the consideration of the product liability bill the Senate has been debating fundamental change to the system under which victims of medical negligence are compensated for their injuries. I regret that the subject of malpractice reform is before the Senate as a rider to product liability legislation. We should not begin to tinker with the malpractice liability system except as a part of a more comprehensive effort to reform the Nation's health care system.

As we have pointed out at other times in the debate, tomorrow we will have an opportunity to give consideration to a proposal that deals with malpractice insurance that represents the best judgment of the Human Resources Committee of a year ago and which will reflect a bipartisan effort to come to grips with that particular issue. We are not in that situation at the present time.

That particular proposal was also accompanied by a variety of proposals to try to avoid medical malpractice, to try to enhance the quality of health care so that we were not going to have the incidence of malpractice. But we do not have included in this legislation the provisions to try to enhance quality health care, nor do we have this measure as a part of a comprehensive health care proposal.

The health care crisis in this country continues to be extremely serious. Last year, the number of Americans without health insurance increased by more than 1 million people, 800,000 of whom were children. Costs are spiraling out of control. Our health care system needs urgent repair, and malpractice reform is at most one small part of such reform.

Proponents of malpractice reform speak of a crisis, but they are ignoring the real health care crisis. By the year 2000, only half of working Americans and their families will be protected by health insurance through an employer. As recently as 1987, two-thirds had this protection. Forty million Americans have no coverage today and, by the year 2000, 50 million will have no coverage. If current efforts to cut Medicaid and Medicare are successful, the number could be much higher. Eighty-five percent of those who have no insurance are members of working families. They face a health care crisis every day. But even those who currently have coverage cannot be complacent because, if they lose their job or change jobs or become seriously ill, their health insurance is in jeopardy.

This is the point, Mr. President. Here we are taking one small phase of the whole health care issue that effectively is going to protect negligent doctors and substandard hospitals as being the principal measure to be considered as health care reform when we have these other kinds of issues and challenges which we are facing as a country, and we are not addressing them. We are not addressing them. We are not addressing the serious, continued decline of the coverage of working families. Eighty-five percent of those not covered are from working families.

Where are their interests covered in this legislation? They are not. And

what we have seen is the fastest growing group of individuals who are not being covered end up being children in our society. Working families and children, their interests are not being attended to with this particular measure that is before us because it is just dealing with the issues affecting negligent doctors and substandard treatment.

Senior citizens have no coverage for prescription drugs. This is another problem. Coverage for long-term care is grossly inadequate—another health care problem. Last year, the average senior citizen had to spend one-quarter of his or her income on health care, and that does not count those who are in nursing homes and hospitals.

Health care costs are out of control. We have the problem with access, the coverage of people, and we have the issue of health care costs. Those are essential elements. We have the other additional issue of quality health care that has to be attended to and other measures in the health care debate. But we have the access issue and the cost issue. And the costs are out of control. The Nation spent $1 trillion on health care last year and that number will double in 10 years. Health care costs are devastating to the Federal budget and to the family budget. And this is the health care crisis we should be talking about and these are the people who need the protection.

Getting the handle on health care costs in Medicare and Medicaid ought to be a part of health care reform. Many of us are strongly committed to that particular challenge. That will make a difference in terms of the quality of health care for senior citizens. And for the rest of Americans, it can make a difference in terms of the escalation of health care costs and it can make an important difference for the families in this country.

But are those the issues that we are debating here on health care this evening? Absolutely not. We are dealing with a very narrow issue of profit for the medical insurance industry, $1.4 billion in 1991 profits. And who pays for that? It is the American consumer. And that is what is happening on the floor of the Senate.

Instead, the proposals before the Senate offer protection to substandard doctors and substandard hospitals. Limits on malpractice liability will be a windfall for them—and also for an insurance industry already reaping record profits. The crude limits in this amendment are an insult to hundreds of thousands of patients injured or killed every year as a consequence of medical negligence.

Medical malpractice is the third leading cause of preventable death in the United States. According to researchers at the Harvard School of Public Health, 80,000 Americans die in hospitals each year from the negligence of physicians or other health providers, and an additional 1.3 million are injured. As many as a quarter of all patient deaths could have been prevented but for negligent medical care.

It is ironic that one of the first pieces of health legislation considered by the Senate this year would actually hurt patients by protecting negligent doctors and their insurance companies. In fact, the current malpractice compensation system already offers too much protection to doctors and insurance companies.

Fewer than 2 percent of malpractice victims ever file suit. The rate of medical malpractice claims has declined steadily since 1985. Patients won fewer than one-third of the malpractice verdicts in a 1994 study. The size of malpractice awards has dropped significantly in the last year alone, according to the New York Times.

The legal system pays only 1 malpractice claim for every 15 torts inflicted in hospitals, according to Business Week. According to Business Week, the legal system pays 1 malpractice claim for every 15 torts inflicted in hospitals.

That is what is happening. It is not just the studies at the Harvard School of Public Health. This is Business Week that is demonstrating the inadequacy of the system—the fact that there are hundreds of thousands of Americans who are not compensated, that the total number of claims are going down, that the premiums are going down, and that the insurance industry's profits are soaring up through the roof. That is what we are dealing with here on this particular issue.

And Business Week points out, rather than a surplus, the article concludes, there is a ''litigation deficit because so many injured people wind up undercompensated.''

That is the true problem that we are facing. Are our fellow citizens, who are subject to malpractice, unable to have any kind of compensation, unable to get any kind of help and assistance? That is what we are talking about.

Those are the issues that we addressed in a bipartisan way in the Labor and Human Resources Committee last year to try to work through alternative dispute resolutions and other kinds of measures in order to make sure that people are going to receive at least some benefit.

Part of the reason for this litigation deficit is that the legal system is inaccessible to so many citizens. That problem will be exacerbated by the proposals now before the Senate. The deficit is also attributable to the malpractice reforms already adopted in many States under pressure from the powerful medical insurance lobbies.

I do not know how many of our fellow colleagues turned on the television over the period of this weekend. I was back in Washington on Friday evening. Just after suppertime, I watch television to see the news for a couple of hours. I tried to watch it again on Saturday for a couple of hours. Eight times I saw—eight times—including twice on Sunday morning between 6 and 7 a.m. I do not know who the buyers of time are for those insurance companies and I do not know how much value they are getting for that particular purchase time, but you could not turn on the television programs all week long and not see those insurance industry spokesmen trying to replicate the television ads of last year that distorted the health care debate, talking about California, what is happening out in California.

Well, it is interesting. They were talking about how California had worked so well. Well, we find out, of course, that California has had a number of the kinds of changes in their tort legislation that is included in the McConnell amendment.

Here is a news release entitled ''AMA Propaganda False on Tort Law Restrictions, Report Shows.'' It says:

> A 1975 California law that limits the legal rights of victims of medical malpractice—the model for Federal tort law proposals before the U.S. Congress—has failed to deliver what its backers have promised, according to a study released today by a California nonprofit insurance watchdog organization.

What they pointed out is health care costs rose in California 343 percent between 1975 and 1993. The president-elect of the new AMA says that the No. 1 issue in the United States is access to health care—we can say that is true, along with increased costs—and then says the access to health care costs is malpractice reform, and urges us to go ahead with the McConnell amendment. And here we have an example of what happens with the McConnell amendment in one particular State, the State of California.

It shows that rather than having any impact in terms of slowing escalation of costs down, it has not. As a matter of fact, it has not done that in the other States.

I hear my friend from Indiana, Senator COATS, talk about the changes they have had in Indiana. The health care costs, in terms of health care in Indiana, have not gone down. They have not gone down in the other six States that have implemented many of the suggestions that are included in the McConnell amendment.

> Health care costs in California rose 343 percent between 1975 and 1993, faster than the inflation rate in California. Since 1985, the California Medical Consumer Price Index has grown nearly twice as fast as the inflation rate . . .
>
> Compensation paid to medical malpractice victims, as estimated by insurers, is a tiny fraction—about one-fifth of 1 percent.

One-fifth of 1 percent. That is what we are talking about. I mean, for anyone to look over, as I did the other day, the findings of this legislation, where they have the findings of the problem of access to health care, findings there is a problem of costs and therefore we have to enact this legislation, and you put that against what the real facts are and that is, if you just look at one State that has capped some damages

and has other changes in their malpractice law, they talk about the estimate by insurers on compensation of medical malpractice, one-fifth of 1 percent in 1993 of all health care costs in California, and the fraction has been dropping.

Medical malpractice liability insurance premiums paid by physicians and hospitals are a negligible components—about half of one percent in 1993—of California's total health care expenditures, and the percentage has been falling.

The idea that it is less than half of 1 percent and to think that is going to be able to leverage a health care system just reaches, I think, the impossible to imagine.

''Insurance companies have not reduced malpractice liability premiums commensurate with the drop in malpractice claims payments''—one might expect, if the insurance companies are giving less in terms of payments out in terms of injured individuals, one might think that the cost of that insurance might go down; that is not what is happening, not in California—''in recent years in both California and the nation. Insurance companies have reaped excessive profits from MICRA—in 1993, insurers paid out only 38 cents of every premium dollar.'' The rest of it goes in terms of administration, advertising and profits. That is what we are talking about this evening, because the McConnell amendment tracks very closely what has happened in California and in the five other States that have enacted measures which are similar to the McConnell amendment.

Despite the claims of the backers, such reforms have not lowered health care costs. The cost of medical care grew faster in California. And in Indiana, malpractice reforms have not caused health care costs to decrease. Compared to neighboring States, consumers derive no benefit from malpractice reform. In fact, they are harmed. If they fall victim to medical negligence, they are likely to be undercompensated for their injuries.

Malpractice reforms in States have been greeted enthusiastically by insurance executives. The General Accounting Office surveyed six States that enacted limits on recoveries in malpractice cases similar to what is before the Senate in terms of the McConnell amendment. And this is what the General Accounting Office—this is not the trial lawyers, this is the General Accounting Office. When I mentioned the other fact, it was not trial lawyers, it was Business Week talking about the fact of the few tort cases that are actually brought in our health care system.

This is what the General Accounting Office has said about the six States that have enacted limits in terms of awards in malpractice cases:

Insurance companies in those States were enjoying profits that averaged 122 percent above the national average. Nationwide, insurers reaped $1.4 billion in malpractice-related profits in 1991, but in those six States, the return was so great that the National Insurance Consumer Organization labeled it ''insurance profiteering.''

Insurance profiteering. Here we have the States themselves taking action, and I have a letter from some of the medical profession in the State of Michigan. This is true in many other States. Other States are taking action to try and deal with this problem that has changed dramatically since 1985 when we saw the rather dramatic increase in the number of malpractice cases, particularly with regards to obgyn's. We have seen those numbers go down dramatically in the period of the last 2 years. I included those in the RECORD at the end of last week.

Here we have the States themselves dealing with this issue. In the hearings that we had in our Health and Human Resources Committee, we did not have State attorneys general that were in there testifying saying, ''Look, we need a Federal preemption law.'' We did not hear from them on that issue, not from a Republican or Democrat. We did not have letters from Governors saying, ''Help us out, bail us out, get a preemptive law. We haven't got one.''

Maybe someone has a letter to that effect. We never saw it. It was never referred to, never commented on, never quoted. We do not have the Governors asking us for this action. We do not have the States attorneys general asking for this action. We do not have the State legislators saying, ''Please, bail us out, we can't handle this problem.'' We do not have that. We do not have that at all.

What we have is the medical insurance industry looking over what has happened in the States where they have been effective on wanting to preempt the States and to do it not in a single piece of legislation, not even taking the bill that was reported out of the committee, not even giving reference to that with the modest adjustments that were made to try and strengthen the quality provisions of this with the Jeffords amendment; to recognize that in the areas of punitive damages, when they have been utilized in the past, it has been against primarily women who have been the beneficiaries as a result of sexual exploitation at the hands of corrupt doctors.

We did not even have the chance to consider what was actually reported out of the committee. The medical malpractice industry insisted on the whole thing. They wanted the whole bill before it went to the committee and not what was acted on, either Republican amendments that were accepted or even Democrat amendments that were accepted, with support from different sides of the aisle. No, no, they wanted the whole thing.

This is in an area that is different from product liability. This is in an area that involves the most personal relationship between the doctor and the patient. What could be more local, what could be more within a State's jurisdiction more completely?

We can understand products produced in Massachusetts and shipped to California, those in Michigan are sent to Florida, we understand that there is a case to be made in terms of product liability. But we are talking about a doctor in a community dealing with a patient in that community and do we need a Federal solution for that?

The McConnell amendment says yes. The McConnell amendment has a one-size-fits-all. How many times have we heard that on the floor of the Senate? What we do not want is all knowledge in Washington. The solution to the problems in Boston are going to be different than in Pocatello, ID. How often do we hear that?

Here my friends say, ''Except when it affects the medical insurance industry on medical malpractice.'' Sure, the States have been acting. Sure, the States have been dealing with their particular problems that they are facing that are as diverse in some of the rural States or the mountain States as they are in some of the industrial States. Sure, they have been trying to deal with those particular issues. But here we say on the floor of the U.S. Senate, we are going to preempt those States, we are preempting, we know better on the issue of malpractice affecting a doctor and their patient in that particular community.

Mr. President, I find that it is an extraordinary extension of political philosophy that indicates a demand for this kind of standardization is so compelling. I think when you reach a situation where we are dealing with a total reform of a health care system that includes, for example, the 10 million Federal employees that are being covered by health insurance, expanding the Federal employees insurance to pick up people in all parts of the country that you say, ''OK, in those circumstances, we ought to permit the States to develop alternative dispute resolutions and permit the States to experiment with no-fault liability, pools with enterprise challenges and to permit experimentation, all of which we did last year.'' But, oh, no, we have a preemption of those States which may, according to the medical insurance industry, may be more sympathetic to the consumers than they are to substandard doctors, and that is where we are.

So we end up with a situation as we have heard now from the Michigan State Medical Society:

DEAR SENATOR KENNEDY: On behalf of our more than 12,000 physician members, the Michigan State Medical Society wishes to appraise you of our concern that the Michigan law of joint and several liability applicable to medical malpractice not be affected by Federal legislation. We have fought hard to retain joint and several liability in medical malpractice cases in Michigan, for the reason that its abolition would cause substantial increase in physicians' premiums and resultant health care costs. . .

Malpractice carriers in Michigan advise us the premiums would increase by 64 percent if the coverage was increased to $1 million,

which would be even more unaffordable but essential for the physicians' personal protection. . .

The dynamics of malpractice litigation . . . virtually require we retain the common law doctrine of joint and several liability in malpractice cases. . .

It is critical that Federal legislation not preempt State joint and several liability laws.

Twelve thousand doctors in Michigan say they do not need the preemption that is in the McConnell amendment. The list goes on.

I daresay, as more and more of them begin to understand what is really going on here, and the fact that we have rushed to judgment on this issue—2 days after we take the action in the committee, we have the amendment right here on the floor. Generally, you have a reporting out of 10 days, you have a report that points out the reasons and the justifications for those provisions. You have the opinions of those that might differ that are published and circulated by the various groups that are interested in this, and had a chance to review that. Oh, no, not on this measure. We have to put it right on the product liability without a report, without even printing—I do not know whether today it is available, but last week it was not—even the printed changes in the legislation, based upon the amendments that we had included.

You are going to find out, my friends and colleagues, how many other doctors are going to get a chance to finally have a chance to sit down and look this over and say, woe, how did we get into this? The president of the Michigan State Medical Society, Jack Barry, sent a carbon copy of a letter he sent out. I wish he sent it to colleagues on our committee. He sent it to his colleagues in the medical community.

I ask unanimous consent that the letter be printed in the RECORD.

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

MICHIGAN STATE MEDICAL SOCIETY,
East Lansing, MI, April 20, 1995.

Senator EDWARD M. KENNEDY,
Ranking Member, Senate Labor and Human Resource Committee, Washington, DC.

DEAR SENATOR KENNEDY: On behalf of our more than 12,000 physician members, the Michigan State Medical Society wishes to apprise you of our concern that the Michigan law of joint and several liability applicable to medical malpractice cases not be affected by federal legislation. We have fought hard to retain joint and several liability in medical malpractice cases in Michigan, for the reason that its abolition would cause substantial increases in physicians' premiums and resultant health care costs.

As you undoubtedly know, medical malpractice litigation in Michigan has been out of control. Premium costs for malpractice coverage in Michigan virtually exceed all other states. Malpractice insurance in Michigan is typically $200,000 per occurrence, with an annual aggregate of $600,000. The annual premium cost to obstetricians and surgeons in southeastern Michigan often exceeds $80,000. Even with this substantial cost, the coverage is still insufficient to provide comfort to physicians. Malpractice carriers in Michigan advise us that premiums would increase by 64 percent if the coverage was increased to $1 million, which would be even more unaffordable but essential for the physicians' personal protection if joint and several liability was abolished.

As a result of this unique problem in Michigan, the Michigan legislature adopted malpractice reform legislation which took effect on April 1, 1994. This legislation has not yet had any effect upon premiums for the reason that it essentially applies prospectively and is being constitutionally challenged in the state appellate courts. We are helpful that this legislation will cause malpractice costs to fall into line with other states when this legislation becomes fully applicable to malpractice cases. Until then, we will continue to have the unique and costly problem in Michigan.

The dynamics of malpractice litigation in our state virtually require that we retain the common law doctrine of joint and several liability in malpractice cases. The potential for joint liability causes hospitals and other corporate defendants to more readily settle cases where the greater liability might potentially be imposed upon individual physicians. This provides at least some protection to the physician in engaging in the higher risk practices and also has a beneficial effect upon the legal system and the public generally in that cases are more likely to settle. Michigan law has, therefore, retained joint and several liability.

We urge you to protect the current status of joint and several liability in Michigan. It is critical that federal legislation not preempt state joint and several liability laws. Any federal legislation enacting malpractice reform should have a provision clearly making the federal legislation inapplicable to the extent that state statutes retain joint and several liability in medical malpractice cases.

The Michigan State Medical Society fully supports the federal legislation in malpractice reform, including a $250,000 limitation on noneconomic damages. We urge you to support this federal legislation, but request that you protect the interests of physicians and their patients in Michigan by assuring that any federal legislation will not preempt joint and several liability in medical malpractice cases in this state.

Thank you for your help. If you have any questions, please feel free to contact Kevin A. Kelly, Managing Director, Michigan State Medical Society at (517) 336–5742.

Sincerely,

JACK L. BARRY, MD,
President.

Mr. KENNEDY. If enacted, the proposals before the Senate today may well fatten the profit margin of malpractice insurers nationwide. But malpractice reform will not address the fundamental problems facing our health care system. It has not in California, or Indiana, or elsewhere. In any event, the cost of medical malpractice premiums amounts to only six-tenths of 1 percent of the Nation's health care costs.

Nor will legal reforms make a dent in the prevalence of malpractice itself. Instead, we need more effective means to discipline the few bad apples in the medical profession who cause upwards of 45 percent of all of the unnecessary injuries. Today, a negligent auto mechanic or a negligent funeral director is more likely to be disciplined by a State licensing board than a physician.

That is really saying something, Mr. President. Are we here attempting to discipline? No, we are not even beginning to go down that road. We are not even in the legislation that is being provided giving the full information. That is a matter of public record, included in the data bank to consumers. It can be collected. I understand my friend from Minnesota, Senator WELLSTONE, has addressed this issue. There is already the assemblage of that kind of information, but it is not done in a comprehensive way as I think it should be. Hospitals can find out certain information with regard to disciplinary conduct with regard to professions. HMO's can find that out but the consumers cannot.

There was no real effort or attempt—there was a good faith expression that we ought to get after this issue and we will revisit it later. But we are still moving ahead with the legislation.

First, Mr. President, here are the four major flaws of the McConnell amendment:

First, it sets an impossibly high standard for awarding punitive damages and then imposes a cap on such damages, even in cases involving sexual abuse of a patient and other outrageous conduct. Sixty-eight percent of all punitive damage awards in malpractice cases are awarded to women, so the impact of this provision is discriminatory.

Now we know that those punitive cases are only a small number of cases. We did not include, for example, in the markup, other kinds of cases, for example, when doctors go in and practice a medical procedure when they are on illegal drugs. We did not include that in the legislation, in the amendment. Or when hospitals knowingly and willfully destroy records with regard to the treatment of patients. We did not even include that in it. We did not even include the punitive damages situations where doctors lost their licenses in a State and fraudulently practice in another State. I would think that any Member of this body who was concerned about what is happening to any member of their family wrote would think that in those circumstances, and in some others, punitive damages would be justified. We did not. We included one reference in our Senate markup to permit punitive damages if the standard was to be met in terms of the intent standards, which is extremely high, and in the Dodd amendment, which gave the jury the power to establish whether punitive damages should be awarded and the judge, with guidelines, to set the amount. But that has been effectively set aside.

Second, the amount severely limits the longstanding legal doctrine of joint and several liability, leaving the patients vulnerable to inadequate compensation. For at least 100 years, it has to be recognized as unacceptable to force an innocent patient to bear the cost of other people's negligence if one or more of the wrongdoers are available to provide compensation. That is a sensible rule to protect patients, and

we should not undermine it for the benefit of guilty malpractice defendants.

I point out, Mr. President, that we are talking about an individual who has been wrongfully treated. I think we can understand the circumstances of what might appear to be unfair and unjust, payments by those who are brought into the compensation awards through joint and several. There are many here that are enormously sympathetic to anyone that would be so included.

The fact of the matter is, Mr. President, we are talking about circumstances where there has been malpractice and where, if they do not collect it, they are not given any kind of adequate remedy for the malpractice. It is interesting. Effectively, this legislation is immunizing the medical insurance companies, and as we do that, make no mistake about who pays for all of the other care for those individuals. It ends up being the taxpayers—to the tune of about $60 billion a year.

So here we go in and set up a program that has windfall profits when this has been adopted in the six States, and we are going to do it nationwide and you are going to see—even according to Business Week and the business insurance publication—the benefits that are going to the insurance industry. Who is left holding the bag? On the one hand, it is the victims, and on the other hand it is the taxpayers. They are going to be the ones that are going to be left paying for the care of this individual rather than the wrongdoer. That is wrong and unfair.

Third, the amendment denies consumers access to the information about the fitness of their doctors, even when those doctors have repeatedly committed malpractice or have been repeatedly disciplined. The Wellstone amendment addresses this flaw and I hope that will be accepted.

Finally, the McConnell amendment unjustifiably preempts a wide array of the State malpractice laws.

The preemption language in the proposal before us is not balanced. It strikes down State laws that are of benefit to consumers. I think it is not appropriate. If preemption of State tort laws were appropriate, and I think it is not, it should at least be accomplished in a fair and even-handed manner. The one-way preemption in the amendment ensures the absence of the national standard that the proponents say they want.

For these reasons, I urge defeat of the McConnell amendment. But rejection of that proposal does not mean we should not take some action. There are a series of steps Congress should take to assist the States and improve the efficiency of the malpractice system in a way that will benefit both doctors and patients.

Last year, the Labor and Human Resources Committee favorably reported a health care reform bill which contained sensible malpractice reforms. We required alternative dispute resolution to provide for streamlined consideration of malpractice claims. We capped attorneys' fees to make sure that patients get fair compensation for their injuries, and that they get early resolutions for these claims, and to permit the States themselves to develop alternative dispute resolutions.

Let them develop those measures—they had to meet certain minimum standards—but permit the States to develop their own. That was one part of it.

We capped attorney's fees to make sure the parties get fair compensation for their injuries. We provided seed money to let the States experiment with innovative models such as enterprise liability, no-fault funds, and medical malpractice guidelines.

Medical malpractice guidelines—there is a case we could say if a person would establish the medical malpractice guidelines and doctors follow those, that ought to be a basic presumption against the malpractice and would permit what would be the basis of the evidence to be able to rebut that. I think there is a great deal that commends that concept. When we talked about it last year as part of the health care reform, it got labeled as ''cookbook medicine,'' that we will have medicine by the numbers.

So, there are legitimate public policy issues with regard to this issue that we ought to address seriously. That is not unimportant in terms of this whole debate. We ought to give serious consideration to that kind of an action, not just dismiss it completely as we have in this legislation. It is just not correct. It is a concept that can make an important difference in terms of quality health care and should not be dismissed out of hand, as it has been effectively in this legislation.

Some of last year's reforms have been included in the McConnell amendment, but in other ways that I have described, the amendment goes too far. I will offer a substitute amendment tomorrow that contains the reasonable reforms proposed by the Labor Committee last year.

I will also offer an amendment to strike the preemption provisions in the McConnell amendment. If the Federal Government is to involve itself in this area of the law, it should do this cautiously and with respect to State prerogatives.

For example, we received a strong request from the Michigan Medical Society urging that we not preempt that State's law, and joint and several liability. Federal malpractice reforms should only apply in those situations where no State statute is applicable. That was the concept which had bipartisan support. The legislation that was reported out of our committee was unanimous—unanimous—Republicans and Democrats alike on that issue. It will be that provision which I will offer with regard to preemption.

In urging ill-considered malpractice reforms, a hypocritical Congress is violating the Hippocratic oath, first, to do no harm. Some of the proposals before the Senate will cause great harm to large numbers of our fellow citizens if we reduce the ability of the legal system to deter negligent medical care. If we deny adequate compensation to severely injured patients, we violate basic principles of federalism. The Senate will have committed legislative malpractice.

Mr. President, I see the Senator from Maine, who has been extremely patient. As I understand, under the previous agreement—and I want to comply with the parliamentary situation that exists at the current time in order that my amendments be eligible—as I understand it, is it the desire of the Chair that we call them up and have them set aside? Is that the procedure which has been agreed on or is that the satisfactory procedure?

The PRESIDING OFFICER (Mr. FRIST). The Senators have been following that procedure by unanimous consent.

AMENDMENT NO. 607 TO AMENDMENT NO. 603

Mr. KENNEDY. Mr. President, I will follow that same procedure. I ask unanimous consent that the pending amendment be set aside, and I will call up amendment No. 607 and ask it be considered.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 607 to amendment No. 603.

Mr. KENNEDY. Mr. President, I ask unanimous consent further reading be dispensed with.

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

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medical Liability Reform Act of 1995''.

TITLE I—LIABILITY REFORM

SEC. 101. FEDERAL TORT REFORM.

(a) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in section 102, this title shall apply with respect to any medical malpractice liability action brought in any State or Federal court, except that this title shall not apply to a claim or action for damages arising from a vaccine-related injury or death to the extent that title XXI of the Public Health Service Act applies to the claim or action.

(2) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE OF LAW OR VENUE.—Nothing in this title shall be construed to—

(A) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(B) waive or affect any defense of sovereign immunity asserted by the United States;

(C) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976;

(D) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(E) affect the right of any court to transfer venue or to apply the law of a foreign nation

or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

(3) FEDERAL COURT JURISDICTION NOT ESTABLISHED ON FEDERAL QUESTION GROUNDS.—Nothing in this title shall be construed to establish any jurisdiction in the district courts of the United States over medical malpractice liability actions on the basis of section 1331 or 1337 of title 28, United States Code.

(b) DEFINITIONS.—In this Act, the following definitions apply:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of medical malpractice claims in a manner other than through medical malpractice liability actions.

(2) CLAIMANT.—The term ''claimant'' means any person who alleges a medical malpractice claim, and any person on whose behalf such a claim is alleged, including the decedent in the case of an action brought through or on behalf of an estate.

(3) HEALTH CARE PROFESSIONAL.—The term ''health care professional'' means any individual who provides health care services in a State and who is required by the laws or regulations of the State to be licensed or certified by the State to provide such services in the State.

(4) HEALTH CARE PROVIDER.—The term ''health care provider'' means any organization or institution that is engaged in the delivery of health care services in a State and that is required by the laws or regulations of the State to be licensed or certified by the State to engage in the delivery of such services in the State.

(5) INJURY.—The term ''injury'' means any illness, disease, or other harm that is the subject of a medical malpractice liability action or a medical malpractice claim.

(6) MEDICAL MALPRACTICE LIABILITY ACTION.—The term ''medical malpractice liability action'' means a cause of action brought in a State or Federal court against a health care provider or health care professional by which the plaintiff alleges a medical malpractice claim.

(7) MEDICAL MALPRACTICE CLAIM.—The term ''medical malpractice claim'' means a claim brought against a health care provider or health care professional in which a claimant alleges that injury was caused by the provision of (or the failure to provide) health care services, except that such term does not include—

(A) any claim based on an allegation of an intentional tort;

(B) any claim based on an allegation that a product is defective that is brought against any individual or entity that is not a health care professional or health care provider; or

(C) any claim brought pursuant to any remedies or enforcements provision of law.

SEC. 102. STATE-BASED ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.

(a) APPLICATION TO MALPRACTICE CLAIMS UNDER PLANS.—Prior to or immediately following the commencement of any medical malpractice action, the parties shall participate in the alternative dispute resolution system administered by the State under subsection (b). Such participation shall be in lieu of any other provision of Federal or State law or any contractual agreement made by or on behalf of the parties prior to the commencement of the medical malpractice action.

(b) ADOPTION OF MECHANISM BY STATE.—Each State shall—

(1) maintain or adopt at least one of the alternative dispute resolution methods satisfying the requirements specified under subsection (c) and (d) for the resolution of medical malpractice claims arising from the provision of (or failure to provide) health care services to individuals enrolled in a health plan; and

(2) clearly disclose to enrollees (and potential enrollees) the availability and procedures for consumer grievances, including a description of the alternative dispute resolution method or methods adopted under this subsection.

(c) SPECIFICATION OF PERMISSIBLE ALTERNATIVE DISPUTE RESOLUTION METHODS.—

(1) IN GENERAL.—The Board shall, by regulation, develop alternative dispute resolution methods for the use by States in resolving medical malpractice claims under subsection (a). Such methods shall include at least the following:

(A) ARBITRATION.—The use of arbitration, a nonjury adversarial dispute resolution process which may, subject to subsection (d), result in a final decision as to facts, law, liability or damages.

(B) CLAIMANT-REQUESTED BINDING ARBITRATION.—For claims involving a sum of money that falls below a threshold amount set by the Board, the use of arbitration not subject to subsection (d). Such binding arbitration shall be at the sole discretion of the claimant.

(C) MEDIATION.—The use of mediation, a settlement process coordinated by a neutral third party without the ultimate rendering of a formal opinion as to factual or legal findings.

(D) EARLY NEUTRAL EVALUATION.—The use of early neutral evaluation, in which the parties make a presentation to a neutral attorney or other neutral evaluator for an assessment of the merits, to encourage settlement. If the parties do not settle as a result of assessment and proceed to trial, the neutral evaluator's opinion shall be kept confidential.

(E) CERTIFICATE OF MERIT.—The requirement that a medical malpractice plaintiff submit to the court before trial a written report by a qualified specialist that includes the specialist's determination that, after a review of the available medical record and other relevant material, there is a reasonable and meritorious cause for the filing of the action against the defendant.

(2) STANDARDS FOR ESTABLISHING METHODS.—In developing alternative dispute resolution methods under paragraph (1), the Board shall assure that the methods promote the resolution of medical malpractice claims in a manner that—

(A) is affordable for the parties involved;

(B) provides for timely resolution of claims;

(C) provides for the consistent and fair resolution of claims; and

(D) provides for reasonably convenient access to dispute resolution for individuals enrolled in plans.

(3) WAIVER AUTHORITY.—Upon application of a State, the Board may grant the State the authority to fulfill the requirement of subsection (b) by adopting a mechanism other than a mechanism established by the Board pursuant to this subsection, except that such mechanism must meet the standards set forth in paragraph (2).

(d) FURTHER REDRESS.—Except with respect to the claimant-requested binding arbitration method set forth in subsection (c)(1)(B), and notwithstanding any other provision of a law or contractual agreement, a plan enrollee dissatisfied with the determination reached as a result of an alternative dispute resolution method applied under this section may, after the final resolution of the enrollee's claim under the method, bring a cause of action to seek damages or other redress with respect to the claim to the extent otherwise permitted under State law. The results of any alternative dispute resolution procedure are inadmissible at any subsequent trial, as are all statements, offers, and other communications made during such procedures, unless otherwise admissible under State law.

SEC. 103. LIMITATION ON AMOUNT OF ATTORNEY'S CONTINGENCY FEES.

(a) IN GENERAL.—An attorney who represents, on a contingency fee basis, a plaintiff in a medical malpractice liability action may not charge, demand, receive, or collect for services rendered in connection with such action (including the resolution of the claim that is the subject of the action under any alternative dispute resolution system) in excess of—

(1) 33⅓ percent of the first $150,000 of the total amount recovered by judgment or settlement in such action; plus

(2) 25 percent of any amount recovered above the amount described in paragraph (1); unless otherwise determined under State law. Such amount shall be computed after deductions are made for all the expenses associated with the claim other than those attributable to the normal operating expenses of the attorney.

(b) CALCULATION OF PERIODIC PAYMENTS.—In the event that a judgment or settlement includes periodic or future payments of damages, the amount recovered for purposes of computing the limitation on the contingency fee under subsection (a) may, in the discretion of the court, be based on the cost of the annuity or trust established to make the payments. In any case in which an annuity or trust is not established to make such payments, such amount shall be based on the present value of the payments.

(c) CONTINGENCY FEE DEFINED.—As used in this section, the term ''contingency fee'' means any fee for professional legal services which is, in whole or in part, contingent upon the recovery of any amount of damages, whether through judgment or settlement.

SEC. 104. REDUCTION OF AWARDS FOR RECOVERY FROM COLLATERAL SOURCES.

(a) REDUCTION OF AWARD.—The total amount of damages recovered by a plaintiff in a medical malpractice liability action shall be reduced by an amount that equals—

(1) the amount of any payment which the plaintiff has received or to which the plaintiff is presently entitled on account of the same injury for which the damages are awarded, including payment under—

(A) Federal or State disability or sickness programs;

(B) Federal, State, or private health insurance programs;

(C) private disability insurance programs;

(D) employer wage continuation programs; and

(E) any other program, if the payment is intended to compensate the plaintiff for the same injury for which damages are awarded; less

(2) the amount of any premiums or any other payments that the plaintiff has paid to be eligible to receive the payment described in paragraph (1) and any portion of the award subject to a subrogation lien or claim.

(b) SUBROGATION.—The court may reduce a subrogation lien or claim described in subsection (a)(2) by an amount representing reasonable costs incurred in securing the award subject to the lien or claim.

(c) INAPPLICABILITY OF SECTION.—This section shall not apply to any case in which the court determines that the reduction of damages pursuant to subsection (a) would compound the effect of any State law limitation on damages so as to render the plaintiff less than fully compensated for his or her injuries.

SEC. 105. PERIODIC PAYMENT OF AWARDS.

(a) IN GENERAL.—A party to a medical malpractice liability action may petition the court to instruct the trier of fact to award any future damages on an appropriate periodic basis. If the court, in its discretion, so instructs the trier of fact, and damages are awarded on a periodic basis, the court may require the defendant to purchase an annuity or other security instrument (typically based on future damages discounted to present value) adequate to assure payments of future damages.

(b) FAILURE OR INABILITY TO PAY.—With respect to an award of damages described in subsection (a), if a defendant fails to make payments in a timely fashion, or if the defendant becomes or is at risk of becoming insolvent, upon such a showing the claimant may petition the court for an order requiring that remaining balance be discounted to present value and paid to the claimant in a lump-sum.

(c) MODIFICATION OF PAYMENT SCHEDULE.—The court shall retain authority to modify the payment schedule based on changed circumstances.

(d) FUTURE DAMAGES DEFINED.—As used in this section, the term ''future damages'' means any economic or noneconomic loss other than that incurred or accrued as of the time of judgment.

SEC. 106. CONSTRUCTION.

Nothing in this title shall be construed to preempt any State law that sets a maximum limit on total damages.

PART 2—OTHER PROVISIONS RELATING TO MEDICAL MALPRACTICE LIABILITY

SEC. 201. STATE MALPRACTICE REFORM DEMONSTRATION PROJECTS.

(a) ESTABLISHMENT.—The Secretary shall award grants to States for the establishment of malpractice reform demonstration projects in accordance with this section. Each such project shall be designed to assess the fairness and effectiveness of one or more of the following models:

(1) No-fault liability.

(2) Enterprise liability.

(3) Practice guidelines.

(b) DEFINITIONS.—For purposes of this section:

(1) MEDICAL ADVERSE EVENT.—The term ''medical adverse event'' means an injury that is the result of medical management as opposed to a disease process that creates disability lasting at least one month after discharge, or that prolongs a hospitalization for more than one month, and for which compensation is available under a no-fault medical liability system established under this section.

(2) NO-FAULT MEDICAL LIABILITY SYSTEM.—The terms ''no-fault medical liability system'' and ''system'' mean a system established by a State receiving a grant under this section which replaces the common law tort liability system for medical injuries with respect to certain qualified health care organizations and qualified insurers and which meets the requirements of this section.

(3) PROVIDER.—The term ''provider'' means physician, physician assistant, or other individual furnishing health care services in affiliation with a qualified health care organization.

(4) QUALIFIED HEALTH CARE ORGANIZATION.—The term ''qualified health care organization'' means a hospital, a hospital system, a managed care network, or other entity determined appropriate by the Secretary which elects in a State receiving a grant under this section to participate in a no-fault medical liability system and which meets the requirements of this section.

(5) QUALIFIED INSURER.—The term ''qualified insurer'' means a health care malpractice insurer, including a self-insured qualified health care organization, which elects in a State receiving a grant under this section to participate in a no-fault medical liability system and which meets the requirements of this section.

(6) ENTERPRISE LIABILITY.—The term ''enterprise liability'' means a system in which State law imposes malpractice liability on the health plan in which a physician participates in place of personal liability on the physician in order to achieve improved quality of care, reductions in defensive medical practices, and better risk management.

(7) PRACTICE GUIDELINES.—The term ''practice guidelines'' means guidelines established by the Agency for Health Care Policy and Research pursuant to the Public Health Service Act or this Act.

(c) APPLICATIONS BY STATES.—

(1) IN GENERAL.—Each State desiring to establish a malpractice reform demonstration project shall submit an application to the Secretary at such time and in such manner as the Secretary shall require.

(2) CONTENTS OF APPLICATION.—An application under paragraph (1) shall include—

(A) an identification of the State agency or agencies that will administer the demonstration project and be the grant recipient of funds for the State;

(B) a description of the manner in which funds granted to a State will be expended and a description of fiscal control, accounting, and audit procedures to ensure the proper dispersal of and accounting for funds received under this section; and

(C) such other information as the Secretary determines appropriate.

(3) CONSIDERATION OF APPLICATIONS.—In reviewing all applications received from States desiring to establish malpractice demonstration projects under paragraph (1), the Secretary shall consider—

(A) data regarding medical malpractice and malpractice litigation patterns in each State;

(B) the contributions that any demonstration project will make toward reducing malpractice and costs associated with health care injuries;

(C) diversity among the populations serviced by the systems;

(D) geographic distribution; and

(E) such other criteria as the Secretary determines appropriate.

(d) EVALUATION AND REPORTS.—

(1) BY THE STATES.—Each State receiving a grant under this section shall conduct ongoing evaluations of the effectiveness of any demonstration project established in such State and shall submit an annual report to the Secretary concerning the results of such evaluations at such times and in such manner as the Secretary shall require.

(2) BY THE SECRETARY.—The Secretary shall submit an annual report to Congress concerning the fairness and effectiveness of the demonstration projects conducted under this section. Such report shall analyze the reports received by the Secretary under paragraph (1).

(e) FUNDING.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(2) LIMITATIONS ON EXPENDITURES.—

(A) ADMINISTRATIVE EXPENSES.—Not more than 10 percent of the amount of each grant awarded to a State under this section may be used for administrative expenses.

(B) WAIVER OF COST LIMITATIONS.—The limitation under subparagraph (A) may be waived as determined appropriate by the Secretary.

(f) ELIGIBILITY FOR NO-FAULT DEMONSTRATION.—A State is eligible to receive a no-fault liability demonstration grant if the application of the State under subsection (c) includes—

(1) an identification of each qualified health care organization selected by the State to participate in the system, including—

(A) the location of each organization;

(B) the number of patients generally served by each organization;

(C) the types of patients generally served by each organization;

(D) an analysis of any characteristics of each organization which makes such organization appropriate for participation in the system;

(E) whether the organization is self-insured for malpractice liability; and

(F) such other information as the Secretary determines appropriate;

(2) an identification of each qualified insurer selected by the State to participate in the system, including—

(A) a schedule of the malpractice insurance premiums generally charged by each insurer under the common law tort liability system; and

(B) such other information as the Secretary determines appropriate;

(3) a description of the procedure under which qualified health care organizations and insurers elect to participate in the system;

(4) a description of the system established by the State to assure compliance with the requirements of this section by each qualified health care organization and insurer; and

(5) a description of procedures for the preparation and submission to the State of an annual report by each qualified health care organization and qualified insurer participating in a system that shall include—

(A) a description of activities conducted under the system during the year; and

(B) the extent to which the system exceeded or failed to meet relevant performance standards including compensation for and deterrence of medical adverse events.

(g) ELIGIBILITY FOR ENTERPRISE LIABILITY DEMONSTRATION.—A State is eligible to receive an enterprise liability demonstration grant if the State—

(1) has entered into an agreement with a health plan (other than a fee-for-service plan) operating in the State under which the plan assumes legal liability with respect to any medical malpractice claim arising from the provision of (or failure to provide) services under the plan by any physician participating in the plan; and

(2) has provided that, under the law of the State, a physician participating in a plan that has entered into an agreement with the State under paragraph (1) may not be liable in damages or otherwise for such a claim and the plan may not require such physician to indemnify the plan for any such liability.

(h) ELIGIBILITY FOR PRACTICE GUIDELINES DEMONSTRATION.—A State is eligible to receive a practice guidelines demonstration grant if the law of the State provides that in the resolution of any medical malpractice action, compliance or non-compliance with an appropriate practice guideline shall be admissible at trial as a rebuttable presumption regarding medical negligence.

AMENDMENT NO. 615 TO AMENDMENT NO. 603

Mr. KENNEDY. Mr. President, I ask that the pending amendment be temporarily set aside, and I send an amendment to the desk and ask that it be considered.

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

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 615 to amendment No. 603.

Mr. KENNEDY. Mr. President, I ask unanimous consent further reading be dispensed.

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

The amendment is as follows:

On page 8, line 20, insert after ''subsection'' the following: ''(b) and''.

Strike the material from page 9, line 4 through page 10, line 17, and insert in lieu thereof the following: ''The provisions of this subtitle shall not be construed to preempt any state statute but shall govern any question with respect to which there is no state statute.''

Mr. KENNEDY. Mr. President, I will include the two statements, one on the substitute which I referred to briefly now and in great detail last week, which I will expand on in my extended remarks, and the other deals with the preemption amendment.

As I understand from the leadership, we will consider those in a timely fashion in our procedure outlined by our leader tomorrow. I thank my colleagues. I yield the floor.

Mr. COHEN. Mr. President, I wish to address a few comments on the underlying bill, the Product Liability Fairness Act, which attempts to address some of the abuses that have occurred in the civil justice system. Unfortunately, the cure being offered is worse than the disease itself.

I am struck by the irony that many, particularly on this side of the aisle, have been calling for the deregulation of our economy, for returning power to the States, for empowering the people, and for trusting the judgment of our citizens. They invoke the 10th amendment as if remembering the Alamo—remember the 10th amendment.

Yet, at the very same time we are calling for this deregulation, this demassification—if I can use Toffler's phrase —of the power structure in Washington by returning power back to the States and local communities, we are now calling for the passage of another Federal piece of legislation.

At a time when we are searching for ways to streamline the civil justice system and to make litigation less cumbersome and costly, this bill is going to complicate the law and make litigation even more expensive.

At a time when we are trying to improve the lives of hard-working middle-class Americans, this bill is going to make it more difficult for these citizens to obtain compensation when they are injured, at work or at home, from defective products.

I am well aware that there have been cases involving abuse of our civil justice system. We have seen cases of outrageous jury awards and frivolous lawsuits, and they have undermined public confidence and interest in our legal institutions. Unfortunately, the bill before the Senate is not narrowly tailored to root out these abuses. Rather, it is an unprecedented and unwarranted Federal takeover of a core State responsibility.

Our system of federalism is based on the principle that the national government should address problems that confront the Nation as a whole, and State governments, which are closer to the people in both distance and temperament, should be responsible for local concerns.

Writing of ''Our Federalism'' almost 25 years ago, Justice Hugo Black stated that:

The concept . . . represents . . . a system in which there is sensitivity to the legitimate interest of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

No less of a proponent of a strong national government than Alexander Hamilton fully understood the genius of a system that divided powers between the national and State governments. He wrote in Federalist No. 17 that ''Commerce, finance, negotiation and war,'' should be the prerogatives of the national government, while ''the administration of private justice . . . [is] proper to be provided for by local legislation.''

There are few areas of law that are more appropriate in State legislation than the law of torts. In essence, tort laws deal with the duties and responsibilities that members of a community have toward one another. Tort law is, as Alexander Hamilton put it, ''private justice.'' It is an inherently local issue. That is the reason, for the past two centuries, from the beginning of our Republic, that we have delegated this responsibility of tort law to the State legislatures and courts.

The same is true of the product liability law, which emerged as a key element of tort law in the 1960's. Through time-tested methods of common law adjudication and legislative adjustments, the courts and legislatures in each State have worked together to develop laws that strike the appropriate balance between the needs of plaintiffs and defendants and those of consumers and business.

Over the past decade, many States have begun to reform their tort systems by experimenting with alternative dispute resolution, limiting punitive damages, and changing liability standards. The States continue to experiment with product liability reforms to achieve a balance between the demands of the modern economy and the need to ensure the products that enter that marketplace are safe. This is the way the Federal system is supposed to work. As Justice Louis Brandeis noted, ''It is one of the happy incidents of the Federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel, social, and economic experiments without risk to the rest of the country.''

The bill before Congress would bring the experimentation that is taking place in our States to a grinding halt by wiping most of the State product liability laws off the books and replacing them with one-size-fits-all Federal law developed right here in Washington. This is the same Washington that has been so demonized as late for passing too many Federal laws.

Now, suddenly, it is in the interests of manufacturers to have a one-size-fits-all piece of legislation. It appears as if Congress, which has had virtually no experience in legislating in this area over the past two centuries, believes it has found the single answer to the ills of the civil justice system. It has decided to impose that system on the entire Nation.

Ironically, it is occurring at a time when the Federal Government is already said to be too large. The public already resents its intrusion into affairs that properly belong before the States.

Congress ought to be focusing on health care reform, the budget deficit, and entitlement reform, not to mention terrorism and nuclear proliferation. These are appropriate concerns of Congress. The time Congress spends wading in the minutiae of product liability law, a subject the States are fully capable of regulating, will be time that should be spent on more pressing national concerns.

The supporters of this legislation maintain that a national product liability law is necessary to provide uniformity and to increase predictability. I believe this bill will have precisely the opposite effect. Litigants are no longer going to be able to rely upon well-established State law. Instead, they will be faced with the uncertainty of a Federal statute loaded with undefined, untried, and untested legal principles.

This bill is going to make the law more complicated. Since certain aspects of the State laws are going to be preempted and others are not, litigation is going to proceed under an amalgam of State and Federal law.

I will give you an example, Mr. President. S. 565 creates a new standard of liability for product sellers but does not change the law pertaining to the manufacturers of those products. So in a case brought both against a manufacturer and a seller of an allegedly defective product, the court is going to be required to apply the Federal law to one defendant and the State law to another. This unnecessary complexity will lead to greater litigation expenses, not less.

Mr. President, one of the great legal scholars of this century, Prof. Herbert Wechsler of Columbia University, once wrote that ''national action has * * * always been regarded as exceptional in our polity, an intrusion to

be justified by some necessity, the special rather than the ordinary case.''

This presumption against Federal involvement in local affairs has not been overcome by the evidence that has been presented to this body. The so-called litigation crisis that is often cited by the sponsors of this legislation simply does not exist.

The most comprehensive study to date of product liability suits indicates that they comprise 0.36 percent of all civil filings—hardly a litigation explosion. If you take away the asbestos cases, which I think are unique in our history, the number of Federal product liability cases declined by over 35 percent during the late 1980's.

Proponents of the bill also claim that there is an explosion of punitive damages and rely heavily upon horror stories of irresponsible jury awards as a justification for Federal preemption. Putting aside the fact that for every punitive damage horror story, there is a more compelling story of manufacturer misconduct, we should not legislate on the basis of anecdote. Listen to the Wall Street Journal, an open advocate of reform, which reports that the debate is largely ''driven by anecdote'' and ''truth [has been the] first casualty of tort-reform.''

I think the case for punitive damages has been overstated. The objective facts demonstrate there have been few punitive damage awards in product liability cases in the recent past. One widely cited study indicates that only 355 punitive damage awards were entered by juries during the years 1965 to 1990. And 25 percent of these verdicts were reversed or remanded on appeal.

So there is no evidence that runaway punitive damage verdicts have wreaked havoc, certainly not in my State of Maine. Punitive damages were imposed in only three product liability cases during a 25-year period—just three cases. The juries in Maine have acted responsibly. They have applied State law in a commonsense fashion and reserved the sanction of punitive damages for extreme cases in which there has been either malicious or wanton disregard for public safety on the part of some companies. Maine does not need a Federal solution for a problem that does not exist in our State. Yet, this is precisely what this law would do—force Maine to abandon its law.

Our product liability laws have been subject to sweeping criticism, but it cannot be denied that the system has been a very important protection for American consumers. From the Ford Pinto to the Dalkon shield, product liability laws and suits have caused dangerous products to be taken off the market, products that have caused horrific injuries and multiple deaths. Without product liability, including the threat of punitive damages, American consumers would be at far greater risk than they are today.

Let me recall a program I saw that involved a lobbyist for tobacco companies. He indicated that he would stop at nothing whatsoever. It did not matter what study was concocted; it did not matter whether it was truthful or untruthful. He used every conceivable trick in the book in order to defeat any legislation that would protect the American people from the effects of tobacco. This man is now suffering from cancer. I believe he had cancer of the throat and it spread to his hip. This may account for his change of heart in terms of revealing the kinds of tactics that have been applied by the company. I do not know if the allegations he made on this program are true. But if they are—if companies have deliberately lied, deliberately falsified documents, and concocted studies in order to defeat consumer protection legislation—is that not a case in which we want to see punitive damages that are not limited by the amounts set forth in this bill?

Let me give another example. Suppose a manufacturer of children's toys learns that a product has a dangerous defect that is likely to cause, let us say, 10 deaths over the lifetime of the product. Under current law, the company would probably recall the product. It would fix that defect, regardless of the cost, because it could not possibly risk the punitive damage award or suits that might follow.

But under this bill, that company would know that, since children have little or no wages, the maximum punitive damage award would be $250,000 per fatal injury. If the toy makes $20 million to $30 million in profit, the company might well decide that it makes economic sense not to recall a dangerous product.

I suspect this may have been the line of thinking by Ford Motor Co. when it put the Pinto on the market. And without punitive damages, many other dangerous products may be unleashed on the unsuspecting American consumer.

This does not mean the system is free of abuses. In a recent case from Alabama, a jury awarded $4 million in punitive damages because BMW failed to disclose that a car sold as new had in fact been damaged, and then repainted on the way from the factory to the showroom. Even though BMW may have acted wrongly in this case, in my judgment this punitive award was well out of proportion to the seriousness of the misconduct on the part of the company.

So we have examples of excessive jury awards that are outrageous from time to time. They undermine public support for the civil justice system. A narrowly tailored bill designed to curb runaway jury verdicts may be deserving of support. This bill, however, is not targeted at this problem. It uses a sledgehammer where a scalpel may be more appropriate.

Regardless of the outcome of this debate, I think the legal profession has to undertake a concerted effort to address a major premise that underlies this legislation—that the law and the legal profession no longer serve a valid public interest.

Lawyers are no longer held in as high regard as some once were. Books, plays, and movies were written about Clarence Darrow for his dedication to providing justice for the common man. Lawyers like Thurgood Marshall and Ruth Bader Ginsburg are revered for striking down legal barriers based on race and gender.

However, the esteem which the legal profession once held has fallen quite substantially in recent years. Attorneys are often portrayed as being more interested in making profits than promoting the interest of justice.

I believe that it is a minority of the profession that casts aspersion on the broad majority of lawyers who are dedicated to the best tradition of the profession and volunteer much of their time to public service. It is up to a majority of the profession to discipline those who file frivolous lawsuits, who sue parties only because they have a deep pocket, or who run up the cost of litigation solely to induce a settlement.

One of the great virtues of our civil justice system is that everyone has a right to have his or her grievance heard before a court of law. When that principle is abused, the very foundations of the system are called into question. So I think the legal profession has to take swift and meaningful action in order to rebuild the public's confidence in our civil justice system.

The legislation now pending before the Senate is not the right answer to these problems. It is a one-size-fits-all Federal solution that will end State experimentation in tort reform. It will impose uniformity on regions of the country with different needs and values. The entire bill, in my judgment, is an affront to the principle of federalism. State governments have demonstrated the capability of both developing and reforming product liability law. There is no need for the Federal Government to infringe on yet another area of State sovereignty.

Mr. President, over the weekend, I, like the Senator from Massachusetts, saw many advertisements on television, some dealing with medical malpractice, others with the impact of product liability litigation on small businesses. Of course, small companies as well as large companies have the ability to purchase insurance to cover themselves for liability suits. Manufacturers have the ability to purchase insurance to cover their exposure to liability. But when companies put into the stream of commerce a product that is inherently dangerous or has a defect and that defect causes an injury to the citizens of this country, the manufacturer should bear that responsibility, not the consumer.

This bill seeks to put a limitation on the ability of consumers to recover for the damages that have been inflicted

upon them and, yes, for punitive damages to discourage companies that either act willfully or in wanton disregard for public safety. These cases demand that punitive damages be imposed in order to discourage and deter manufacturers and the distributors of dangerous products from continuing to inflict harm upon the public.

Commercials that I saw over the weekend said we are addressing this problem of medical malpractice in California. The State legislature passed a medical malpractice reform law and guess what? Those lawsuits have now declined. We have also passed a medical malpractice reform law in the State of Maine. We have prelitigation screening panels. We set statewide standards for doctors and hospitals. States can—in fact, have—adopted changes in their tort law to deal with their particular problems. But in a State like Maine, which, over a 25-year period, has actually awarded punitive damages in three product liability cases, do we need a Federal law to tell us what to do?

It is an insult to the people of this country to say that the 12 men and women sitting in the jury cannot be trusted to weigh the evidence and decide to impose or not impose damages. This legislation sets a uniform national standard for damage awards. It says: You juries cannot go above this, your judgment cannot be trusted. We are saying that no matter how egregious the offense, no matter how defective the product, no matter how wanton the disregard for public safety, we do not trust you, ladies and gentlemen of the jury, to do what is right, to exercise common sense. And we here in the Halls of Congress we are going to tell you exactly how far you can go.

To me, Mr. President, it is an insult to all the people of this country to say that we no longer have faith in their judgment, that only Congress can determine exactly how high they can go in terms of compensating citizens of their community who have been injured by defective products. I think this contravenes everything that is being said on this side of the aisle about limiting the scope of government, reducing the power of Washington, returning power to the people, deregulating the economy, and revering the 10th amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I have sought recognition to comment about punitive damages in our legal system as they apply to tort reform. I have spoken before on this bill and have noted that I have had experience representing both plaintiffs and defendants in personal injury cases and had one very involved product liability case which I described in a floor statement a week ago today. I have noted my concern that there is room for reform of product liability tort law. But my concern is that it be done very, very carefully because the body of law in the United States, common law development is slow, laborious, careful. Common law builds up by accretion or encrustation over a long period of time and is very different from the kind of processes which we have in legislation where there are frequently only one or two Senators present at hearings and where markups are done without the kind of background or careful evidentiary study which marks development of the law, case law and common law.

There is a very erudite analysis of punitive damages in the Iowa Law Review, volume 78, appearing at page 1, published in 1992, by Prof. Michael Rustad and there are a number of aspects of that article about which I would like to comment.

Even though this is a lengthy law review article, it is worth printing in full in the CONGRESSIONAL RECORD because of the importance of tort liability generally and product liability specifically and punitive damages as it impacts on the legislative consideration which we have before the Senate.

My comments will be relatively brief compared to the scope of the article.

I start by referring to four empirical studies of punitive damages in product liability cited in Professor Rustad's law review article.

The first is by the Rand Institute for Civil Justice, which studied 24,000 jury verdicts in Cook County, IL, and San Francisco, CA, between 1960 and 1984. The Rand study stated that the ''punitive damages picture in personal injury cases has changed very little in 25 years.''

As noted in this law review article, the Rand study states: ''Product liability cases have been of special concern to many critics, but our analyses indicate that punitive damages were awarded in only four product liability cases in San Francisco and two in Cook County from 1960 through 1984.'' It further notes that, ''The rarity of punitive damage awards in products liability cases suggests that there is little need for tort reform.''

The second empirical study noted in this law review article is by the American Bar Foundation, which examined 25,627 jury verdicts handed down from 1981 to 1985, drawn from State jury verdict reporters in 47 counties in 11 States. This study found that in 5 percent of the verdicts there was an inclusion of punitive damages and that products liability accounted for 3.8 percent of the 25,627 verdicts. Of the 967 products liability verdicts, the study found 34 cases in which punitive damages were awarded. The researchers concluded that the awards were generally quite proportionate to the actual damages, and they concluded that ''the median punitive damage award is not at a level that is likely to 'boggle the mind.'''

The third empirical study noted in the Iowa Law Review article is the GAO study on the frequency and size of punitive damage awards in product liability cases in five States between 1983 and 1985. There was a review of court records for 305 product liability cases resolved through trial in Arizona, Massachusetts, Missouri, North Dakota, and South Carolina. The GAO supplemented official court records with posttrial interviews with attorneys. The General Accounting Office found that punitive damage awards were neither routine nor excessively large and that posttrial appeals and settlements substantially reduced the amount of punitive damage awards.

The fourth empirical study noted in the Iowa Law Review was conducted by Judge Richard Posner, a distinguished court of appeals judge in the Federal system, and Prof. William Landes of the University of Chicago, who examined all products liability cases ''reported in the 10 most recent volumes of each of the West Publishing Company's regional reporters'' and all ''product liability cases in the federal courts of appeals from the beginning of 1982 to November 1984.'' This study found '''punitive damages were awarded in the trial court in 10 of 172 cases.' The award was affirmed in whole in only one of the ten cases. Appellate judges reversed and remanded six of the cases for further proceedings.''

Mr. President, in an era when we are looking toward less Federal regulation, I think it is very important that we take a close look at what private actions import. This is an area which has attracted my attention since law school days, when, as a member of the board of editors of the Yale Law Review, I wrote an article on private prosecution, which is a somewhat different line, on the need when there was unwarranted inaction by the public prosecutor. In the Senate, I have authored legislation to establish a private right of action for people who are damaged by unfair foreign competition, where goods come in the United States either as a result of subsidy or dumping because of the insufficient resolution of proceedings in the International Trade Commission.

At this point, I am going to refer to a number of cases, some of which are cited in the Iowa Law Review article and some of which are found in other places.

One case of considerable interest was Richardson-Merrell's concealment of side effects of MER/29, an anticholesterol drug. In a case litigated, Toole versus Richardson-Merrell, Inc., in the California court of appeals, the evidence was that there had been fictitious reports filed by the company, that none of the abnormal

blood changes encountered in experiments was disclosed and that there was a falsified chart prepared under protest by one of company's employees which was included in the application. One advertising brochure stated that MER/29 was ''virtually nontoxic and remarkably free from side effects, even on prolonged clinical use.''

The evidence further showed evidence of high-level management with knowledge of the concealment of MER/29's known defects. There were 1,500 civil suits filed after there were guilty pleas by the company's executives. Three scientists pleaded nolo contendere to criminal fraud charges and were fined a total of $80,000 in the context of the criminal conduct which seriously injured an estimated 5,000 consumers.

Of the 1,500 civil cases which were filed in the wake of those criminal pleas, juries awarded punitive damages in three of those cases.

Another case of some concern noted in the Iowa Law Review article is one involving the Dalkon shield put out by A. H. Robins, in a case captioned Plaintiff versus A. H. Robins Co. The Supreme Court of Colorado found evidence upholding a punitive damage award with the following statement:

> Robins' marketing program which occurred over a long period of time was directed to a vast array of unwary consumers and was accompanied by false claims of safety and a conscious disregard of a life-threatening hazard known by it to be associated with its product. Robins accumulated gross revenues which exceeded $11 million from the shield alone and its net worth nearly doubled during the marketing period of this device.

Another case worthy of special note, although there are many cited in this law review article, is a case captioned Duddleston versus Syntex Labs, Inc., which involved the company's failure to test a soy-derived baby formula which resulted in thousands of infants suffering brain damage. The company had removed salt from its product without considering the effect on child development, and that was a causative factor in brain damage and learning disabilities.

Another case worthy of special note is captioned Batteast versus Wyeth Laboratories in which there was an assessment of substantial punitive damages for failure to warn physicians of certain propensities dangerous to children in the chemical composition of a drug, and the basis for the punitive damages was the company's failure to market the suppository in compliance with Federal Drug Administration adverse-reaction guidelines.

Among many of the other cases cited, my final reference is to the Minnesota Supreme Court decision in a case captioned Gryc versus Dayton-Hudson Corp. as follows:

> In April 1968, a letter from an official of [the defendant] explained that satisfactory runs were made with flame-retardant flannelette using various chemicals, but that [the defendant] was not going to use these products until Federal law so required because of the cost factor. . . [T]he decision not to use flame-retardant cotton flannelette was merely an economic one for the benefit of [the defendant]—

This gave rise to the imposition of punitive damages.

In reviewing a number of cases, and these are only illustrative, Mr. President, of what exists in the field of tort liability, the famous case involving the Pinto automobile which had the gas tank in the rear and was justified in a letter from Ford Company to the Administrator of the National Highway Traffic Safety Administration which sought to justify the dangerous condition, because it was more cost-effective to suffer 180 burn deaths with 180 serious burn injuries and 2,100 burned vehicles at a total cost of $49.5 million, contrasted with the cost of repairing 1.5 million light trucks, 11 million cars at a unit cost of $11 per car, which would cost $137 million. This has already been placed in the RECORD, Mr. President, so I will not further burden the RECORD by asking that it be printed.

Another matter of some notoriety involved the American Motors Corp. and its product, the Jeep, when there was an internal American Motors Corp. memo dated January 7, 1982, acknowledging a defect with the shackle system of the Jeep, which was known for many years to the company, and the following sentence from the memo is of some significance:

> Not to retrofit will subject Jeep Corporation to possible punitive damages on a component which has previously been the subject of several causes of action.

I ask unanimous consent that this intracompany correspondence be printed in the RECORD for its probative value in showing that the possibility of punitive damages is something to be considered in retrofitting a vehicle to make it safer.

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

INTRACOMPANY CORRESPONDENCE

From: Mr. J.E. MacAfee,
To: R.M. Huffstutler
Subject: C.J. Shackles,
Location—Ext: AMTEK/33223
Date: January 7, 1962
Copy to: C.S. Sklaren, W.C. Jones, C.E. Merritt.

Confirming our telephone conversation of this P.M., we understand that vehicle 1609 will soon be tested. This test will be the fourth in the series of 1461, 1477, and 1484, a test we presume will meet with the complete satisfaction of you and your engineering staff.

Upon successful completion of testing on the new shackle design, we would appreciate the ECR being with obsolescence and the new design being incorporated at the earliest possible time. Assuming the shackle is released for CJ–5, CJ–7, Scrambler, and various export models, I will press for retrofit of all CJ–7 and Scrambler vehicles produced in the 1982 model year. This action I believe is warranted since the FMYSS 101–75 movable barrier 20 mon test which indicated a problem was completed July 22, 1981, three weeks prior to the 1982 production. Not to retrofit will subject Jeep Corporation to possible punitive damages on a component which has previously been the subject of several causes of action. Our legal staff has, to date, not seen the merits of testing the current design before a jury; it is my belief that the new design will have to be tried and thus Jeep Product Engineering should have a sufficient data file to convince not only engineers but lay persons as well.

Any action by Engineering to our purchasing group to forestall their dilatory tactics in this matter would be appreciated. An early warning to them that the design will be changed may preclude Jeep Corporation from having to pay for stock ahead of our production requirements.

R.M. HUFFSTUTLER.

Mr. SPECTER. Mr. President, an internal memo from the Cutter Co., which was involved in manufacturing blood factors for hemophiliacs, is of considerable interest. To the extent that an internal Cutter memorandum dated December 29, 1982, recommended several steps to warn about AIDS transmission through its factor concentrate product, this memo reads as follows, from one Ed Cutter to Jack Ryan and others:

> It appears to me to be advisable to include an AIDS warning in our literature for certain factors.

And there is a second document by a Dr. Bove, January 1983:

> This case increases the probability that AIDS may be spread by blood. Further, the CDC—

That is the Centers for Disease Control.

> continues to investigate the current cases aggressively and may even have a few more. While I believe our report reacts appropriately to the data at hand, I also believe that the most we can do in this situation is to buy time.

Until these documents were disclosed, the Cutter Co. argued that the obligation to warn did not arise until the spring of 1984. This same case has a cost/benefit analysis by the American Red Cross which concluded that it would cost more to make a correction than to treat the AIDS patients, with the testing costs being in the range of $13 to $67 million, whereas an evaluation of each AIDS case at $500,000 would require the prevention of some 30 to 134 AIDS claims to be cost-effective. This suggests to me, Mr. President, a wholly inappropriate evaluation of cost analysis dealing with a deadly subject like AIDS.

I ask unanimous consent that these internal corporate documents be printed in the RECORD.

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

CUTTER

To: Jack Ryan, Carolyn Patrick, Wayne Johnson, Ralph Roussall, George Akin
From: Ed Cuttar
Date: December 25, 1982
Copes To: Arnold Laong
Subject: AIDS.

It appears to me to be advisable to include an AIDS warning in our literature for Factor IX and Factor VIII. I realize that very little is known about AIDS and the relationship the products we manufacture have in causing

the syndrome. However, litigation is inevitable and we must demonstrate diligence in passing along whatever we do know to the physicians who prescribe the product. In my opinion, three steps are called for, once we agree on the wording of our message.

1. Include it in the package insert.
2. Educate the sales force.
3. Since MDs won't be reading the package insert in most cases, send a letter to hematology specialists informing them of the warning we are putting in the insert.

ED CUTTAR.

To: AIDS Working Group, Dr. Dood, Ms. Baum
From: Dr. Cumming
Date: 3/20/84
Subject: Meeting request and report on: Progress on AIDS marker testing marketing research.

SUMMARY

Our review of AIDs marker testing issues to date brought into question the value or continuing to proceed along lines or developing a non scientific opinion research survey. Specifically:

Objectively it is difficult to make a case for adoption of AIDS marker testing,

Plasma industry projected adoption or such a test is a rather obvious marketing initiative which will serve to increase pressure on us, and

ARCBS decision-making criteria are complicated by considerations of ethics and public welfare as distinct from competitive response.

This last issue can be summarized nicely by reference to ''false positives''. Essentially all anti core test results are likely to be false positives. Specifically, it is estimated that over 6,000,000 annual units are donated by 4,000,000 persons. With 5% normal population incidence of anti core positive results this means 200,000 people may be labelled as likely to get AIDS. Contrast this with a possible 50 cases per year of AIDS avoided (0.00025 of all positives). Assuming these 200,000 people have additional testing done, costs to society may be from $20,000,000 to $100,000,000 (based on $100 to $500 per false positive). And this does not ascribe any value to mental anguish, time off work, etc. These figures and issues make the direct cost of testing minimal in comparison.

It is from this perspective that we question the value of continuing to develop a non projectable sampling effort and request a meeting to clarify as precisely as possible where we are heading and why.

BACKGROUND

Attached for your information, review, and comment are:

(1) A background document summarizing various marker tests for AIDS, and estimating effectiveness and costs, and

Three draft questionnaires designed to elicit the opinions of various interest groups on marker tests for AIDS.

The background document explores some of the costs and benefits of implementing screening marker testing for AIDS amongst blood donors. On the descriptive matrix, characteristics such as effectiveness, ease of use, availability, etc. are estimated, as well as other potential advantages and public relations effects.

The latter is an area of grave importance which must be further explored. As you are aware, the possibility exists of creating panic in the (normal) donor population from positive test results, and incurring unnecessary costs to the health care sector as these donors pursue further medical evaluation, as well as reducing the size of the donor pool. These effects must be carefully weighed against the possible benefit of reassuring the blood recipient population and the hypothetical benefit of reducing the incidence of transfusion-associated AIDS (trx-AIDS).

The cost matrix addresses the potential costs associated with implementation of the various marker tests. Review of this matrix indicates that costs for testing in all ARC Blood Service regions would range from $15 million to $67 million. If we assume that each average AIDS case has a value of $1M, then to justify use of one of the tests would require an expected reduction in trx-AIDS from ARC blood of 15 to 67 cases. Since trx-AIDS patients have averaged 50 years of age, average earnings per worker are approximately $20,000 per annum, and treatment for AIDS victims has averaged about $80,000 * * * about $500,000. This lower benefit would indicate a need to prevent 90 to 134 trx-AIDS cases from ARC blood to justify use of a marker test exclusively on economic considerations. In addition, these averted cases would have to be over and above the number of cases prevented by currently implemented screening measures.

As an example, to economically justify anti-HBc testing in all Blood Service regions, we would need to demonstrate an anticipated rate of trx-AIDS (not prevented by screening measures) of 1.75 cases per week, assuming an 88% effectiveness rate of the test. This rate is considerably above previous and current rates.

PROPOSAL

To summarize the background document, implementation or any AIDS marker test will be extremely expensive. Given the fact that tax-AIDS is still a hypothesis, that there has been no effective measurement or the success of the screening procedures which have already been implemented, and that cost justification or testing would rest on a considerably higher incidence or tax-AIDS than is currently being observed, the following recommendations are proposed for further exploration.

(1) Implement the confidential self-exclusion procedure, currently used by New York Blood Center (NYBC), in all ARC Blood Service regions.

(2) Implement one of the marker tests in Los Angeles and any other regions where there is reason to suspect a high concentration of AIDS carriers.

(3) Continue to evaluate the non-economic considerations inherent in implementing one of the marker tests systemwide.

It is in keeping with the last recommendation that the three questionnaires are attached. The non-economic considerations are primarily the opinions and beliefs of the various publics which are served by ARC Blood Services. The questionnaires which are attached are targeted at physicians who prescribe blood, the general public including blood donors and recipients, and third party payers such as Medicare/Medicaid agencies and insurers. We intend to modify or add to these questionnaires to also target hospital administrators and other signatores of annual hospital/blood region contracts.

Relative to these questionnaires, we would appreciate information or comments on the following:

Decision making criteria given results of the survey, i.e. what influence will the results of the survey have on a decision whether or not to implement marker testing?

Method of sampling and sample sizes

Content and phrasing of questions

Target audiences

PURPOSE OF MEETING

Answers to this first question are essential for further development of the survey. Admittedly if public opinion could determine that ARC implement testing, a very large sample would be required, whereas if the questionnaires are designed merely to ''test the waters'', a small screening sample would suffice. At this point, we really can't see too much value in a small, non-scientifically projectable sample. For such a sample to be useful for other than field testing of an instrument, we would have to observe a high degree of unanimity or opinion. Given the subject matter this is unlikely. For a large and statistically valid and reliable sampling effort to be most useful, we need to be very specific as to how we intend to use results from each likely outcome of the sampling. I suggest that a meeting of the group plus Dr. Doda and Ms. Baum is in order to gain this specificity or select another course of action.

REPORT TO THE BOARD COMMITTEE ON TRANSFUSION TRANSMITTED DISEASES

The major report of your Committee on Transfusion Transmitted Diseases has been issued as our recommendations to the Association. These few additional paragraphs are more my current views and concerns than a formal committee report. Nonetheless, because of my recent experiences I am anxious to share some thoughts with you.

The report that we have submitted to our members is, in my view, appropriate considering the data at hand. Since we met, however, an additional child with AIDS has been admitted to a Texas hospital. At birth the child had received seven transfusions, one of which came from a donor who now seems to have AIDS. This case increases the probability that AIDS may be spread by blood. Furthermore, the CDC continues to investigate the current cases aggressively and may even have a few more. While I believe our report reacts appropriately to the data at hand, also believe that the most we can do in this situation is buy time. There is little doubt in my mind that additional transfusion related cases and additional cases in patients with hemophilia will surface. Should this happen, we will be obliged to review our current stance and probably to move in the same direction as the commercial fractionators. By that I mean it will be essential for us to take some active steps to screen out donor populations who are at high risk of AIDS. For practical purposes this means gay males.

The matter of arranging an appropriate screening program is delicate and difficult. We have had excellent cooperation from individuals in the gay community and our deliberations have been made easier by their knowledge and ability to help us. I have no doubt that they will continue to support us and, should we need to be more aggressive in this area, will help us do it in a way that is socially responsible.

Blood banks that wish to sell plasma for further fractionation already face the need to do something. Perhaps our Committee should prepare guidelines with suggested wording for them to use. We are reluctant to do this since we do not want anything that we do now to be interpreted by society (or by legal authorities) as agreeing with the concept—as yet unproven—that AIDS can be spread by blood.

All in all this is a knotty problem and one that we will not solve easily.

I want to make a few comments about the process by which our joint document developed. We spent a great deal of time and energy and did the best we could in attempting to reach a consensus. The difficulty was to get AABB,ARC, CCBC and all the other groups to adopt a position which was acceptable to each other. It was impossible to have a small meeting; everybody wanted to attend. When we got the group together we were able to hammer out a statement that pleased the attendees. Unfortunately, the

statement had to go through several iterations with our own Board and the Boards of the other involved organizations. In all probability these modifications resulted in a better statement, but the process of getting these changes incorporated and run back and forth through the three organizations was difficult. We have had a good start at working together on this and we hope to keep it up. The mechanism was a little less smooth when it came to releasing the statements and the public relations that went with it.

I hope that we are equipped psychologically to continue to act together. I have been in contact with ARC (Dr. Katz) and CCBC (Dr. Menitove) and believe that the three of us can, together, work out whatever new problems may arise. We plan frequent conference calls to keep each other informed.

I want to comment about the Committee. They worked well together and I was particularly pleased with the input of advisory members. Having individuals who are not associated with the blood banks nor a traditional part of the blood banking community proved most useful to us. Their comments and suggestions were excellent. In a like manner, we were helped by participants from the National Gay Task Force. As we continue to react to the various challenges before us, I am sure that their help will be essential. Finally, let me acknowledge the help from the Central Office and, in particular from Lorry Rose.

No immediate end to the publicity is in sight and we will get continued calls for us to act more aggressively. We need to do whatever is medically correct. In addition, we may have to do a little more, since we are accused of burying our heads in the sand. We are not being helped by the spate of publicity about this illness, but will continue to react responsibly to whatever scientific and medical information we have.

JOSEPH R. BOVE,
Chairman, Committee on Transfusion Transmitted Diseases, American Association of Blood Banks.

Mr. SPECTER. Mr. President, another very important product involved the Bjork-Shively heart valve where internal company documents show the company was notified by the inventor in 1982 of the manufacturing defect, with the handwritten notations on the memo by the inventor to try to ''settle him down,'' a defect which was not fixed for years resulting in damages to thousands of people who used these heart valves.

Again, I ask unanimous consent that this corporate document be printed in the RECORD.

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

15242 SHILEY 64,
March 24, 1982.

Attn: Paul Morris.

Last night a 60 year old man, with a double valve (mitral and aortic valve) replacement performed—August 24, 1981 with a * * * degree, 25 mm in aorta and 31 mm in mitral, had rupture of the smaller strut and pulmonary edema.

During the night, I re-operated the broken mitral valve and the * * * strut was localized in the pulmonary vein. The patient has now woken, but has neurological seguele.

It is evident by now that the manufacture of the prosthetic valve is not acceptable. The small strut must be made in one piece and much more effort and priority must be put on this than has been done so far.

Your programmed conferences, in Atlanta and California in the end of August, are extremely ill timed—before an acceptable production can be achieved.

Dear friends, I am serious.

VIKING O. BJORK.

P.S. By airmail I am sending you the piece.

HANDWRITTEN NOTES BY RECIPIENT

* * * also suggested we go to Sweden to talk to Bjork.

I'd like to avoid if possible as it won't help solve problem.

Paul * * *

Kjell called to discuss * * *. Wants us to call Bjork and attempt to settle him down and convince him we are oing everything possible to get the monostrut faster—I suggest we use the ''double side'' EB Wolf method to get him valves fast! They have to be stronger than the welded strut on 70° cc.

BRUCE.

P.S. I have all employee meetings at 10 a.m. and 11 a.m.—Please call Bjork and try to settle him down and convince him that we are doing everything possible.

BS.

Mr. SPECTER. Mr. President, some of the cases disclosed procedures which would result in additional safety which were left uncorrected for very considerable periods of time, and I refer now to an intracompany memorandum of the Ford Motor Co., dated September 19, 1967, which reports:

When properly worn, the three-point diagonal shoulder belt system has been demonstrated to offer much greater protection to the vehicle occupant than does a single-lap belt alone since it prevents injuries from jack-knifing.

And in the same document:

A properly worn three-point system clearly protects the occupant better than a lap-belt-only system.

But it was not corrected until 1987 as reflected in intracompany correspondence of Ford. This is dated May 2, 1986:

I believe we should consider optional rear seat shoulder belts for reasons described in the attached memo to you from Al Slechter as a defense against future product liability claims.

These are a series of internal memos, Mr. President, which have come to public light in the course of litigation and show that litigation of product liability cases with the potential for punitive damages is a significant factor leading to product safety, which I think has to be evaluated as we consider this legislation. Further evaluation of the cost benefit occurred by General Motors in a memo dated June 29, 1973, where as a result of their cost analysis, they made a substantial change, showing that where there was concern about fatalities and damages, safety features were added.

I ask unanimous consent that this document be printed in the RECORD.

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

VALUE ANALYSIS OF AUTO FUEL FED FIRE RELATED FATALITIES

Accident statistical studies indicate a range of 650–1,000 fatalities per year in accidents with fuel fed fires where the bodies were burnt. There has been no real determination of the percent of these people which were killed by the violence of the accidents rather than by fire. The condition of the bodies almost precludes making this determination.

Based on this statistic and making several assumptions, it is possible to do a value analysis of automotive fire related fatalities as they relate to General Motors.

The following assumptions can be made:

1. In G.M. automobiles there are a maximum of 500 fatalities per year in accidents with fuel fed fires where the bodies burnt.

2. Each fatality has a value of $200,000.

3. There are approximately 41,000,000 G.M. automobiles currently operating on U.S. highways.

Analyzing these figures indicates that fatalities related to accidents with fuel fed fires are costing General Motors $2.40 per automobile in current operation.

500 fatalities times $200,000 per fatality divided by 41,600,000 automobiles equals $2.40 per automobile.

This cost will be with us until a way of preventing all cash related fuel fed fires is developed.

If we assume that all crash related fuel fed fires can be prevented commencing with a specific model year another type analysis can be made.

Along with the assumptions numbered above the following assumptions are necessary:

1. G.M. builds approximately 5,000,000 automobiles per year.

2. Approximately 11% of the automobiles on the road are of the current model year at the end of that model year.

This analysis indicates that for G.M. it would be worth approximately $2.20 per new model auto to prevent a fuel fed fire in all accidents.

500 fatalities times 11 percent new model autos equals 55 fatalities in new model autos.

55 fatalities times $200,000 per fatality divided by 5,000,000 new model autos equals $2.20 per new model auto.

This analysis must be tempered with two thoughts. First, it is really impossible to put a value on human life. This analysis tried to do so in an objective manner but a human fatality is really beyond value, subjectively. Secondly, it is impossible to design an automobile where fuel fed fires can be prevented in all accidents unless the automobile has a non-flammable fuel.

E.C. IVEY,
Advance Design

Mr. SPECTER. Mr. President, another similar modification occurred by the Pitman-Hutsik Co., relating to boom tip contacts used on cherry pickers with an analysis that a large number of accidents occurred with these boom tip contacts, and as a result of the jury awards in product liability cases, the design was changed.

I ask unanimous consent that the last item be printed in the RECORD.

TYPICAL ACCIDENTS

1. *Boom tip contact:* Metallic portion of upper boom contacted a line, and the operator touched these metal parts as well as another line.

2. *Boom contact or crane contact:* A non-insulated boom or lower boom of an insulated device contacted a line, resulting in injury to personnel on the ground.

3. *Phase/phase contact:* Operator in the bucket personally touched two phases or a phase and ground, resulting in an injury, but the machine carried no current.

4. *Tipovers:* Machine turned over because of: (1) improper outrigger placement; (2) outrigger malfunction or breakage; (3) outriggers were not used; (4) driving accident; (5) overload; (6) et al.

5. *Controls contacted foreign object:* Controls malfunctioned or contacted foreign object, forcing machine to continue to move against the object.

6. *Leveling cable failures:* Bucket leveling system broke for some reason, causing operation to fail.

7. *Boom collapse:* Component in boom system broke due to overload, poor maintenance, etc., allowing the boom to collapse.

8. *Boom collision:* Boom collided with personnel during operation of the machine. Boom collision is sometimes the result of a boom collapse, also.

DISCUSSION OF PERTINENT DATA

Electrical accidents account for 29 percent of the total number of accidents, but account for 77 percent ($21,500,000.00) of the active claims.

The largest single type of electrical accident is ''Boom Tip Contact.'' It accounts for 40 percent of the number of electrical accidents and 67 percent of the total dollar value of the active claims. ($18,500,000.00) Those electrical accidents involving metal boom machines usually do not lead to lawsuits and represent only 9 percent ($2,500,000.00) of the dollar value of our active claims. The same is true for ''Phase-Phase'' contacts, which account for only 1.5 percent ($500,000.00) of the active claims.

Contractors have fewer numbers of accidents than utilities, but contractors have a higher accident rate per machine. (This statement may be somewhat inaccurate, because it is felt that utilities, in some cases, tend to hide some of their accidents.)

Contractors account for 76 percent ($21,200,000.00) of the active claims against the A.B. Chance Company, while utilities account for only 15 percent of the active claims ($4,300,000.00). Of the $21,200,000.00 claims from the contractors, $18,000,000.00 resulted from electrical accidents, $15,000,000.00 of which was attributed to ''Boom Tip Contact.''

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

COST TO IMPLEMENT TECHNICAL RECOMMENDATIONS

(A) Estimated cost to design a machine with the following features:

1. Insulated boom tip.
2. Insulated lifting attachments.
3. Boom interlock system.
4. Tip-over warning system.
5. Improved leveling system.
6. Improved hydraulic control system.
7. Improved placards.

Estimated time: 2 years:

Design Prototype Test, Document; $200,000.00.

Tooling: $10,000 to $25,000.00.

(B) Estimated Cost Increase of Machine: $2,000.00.

(C) Dollar value of active lawsuits as result of ''Boom Tip Contact'': $18,500,000.00.

(D) Assuming average awards paid out equal to 2.5 percent of total claims dollar value (.025 18,500,000): $462,500.00.

CONCLUSION

If $225,000.00 could be spent to alleviate the liability exposure due to ''boom tip contact'', it would appear that this expense could be justified.

Mr. SPECTER. Mr. President, finally, in a confidential legal opinion on a matter involving the Clark Equipment Co., Hancock Division, is the following statement.

* * * the lack of a back-up alarm presents a substantial product liability exposure to Clark that far exceeds any requirements of State safety laws or OSHA. In every case in which we have had an injury involving a person struck by a machine, the absence of a back-up alarm has been very crucial.

* * * The customer is not in the same position as the manufacturer and Clark must take all steps necessary to protect itself—

Showing the safety and precaution taken as a result of the liability imposed in product liability cases.

I ask unanimous consent that the full text of that document be printed in the RECORD.

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

BUCHANAN, MI,
August 29, 1974.

CONFIDENTIAL LEGAL OPINION

To: Phil Hoel, Hancock Division.

I have received your memo concerning making back-up alarms standard on all scrapers. I disagree with you that the decision concerning making back-up alarms standard should be made by the Sales Department.

Although there are many states that do not require a back-up alarm at this time, and, in fact, OSHA would make it optional since you can also provide a flagman to signal when to back up, the lack of a back-up alarm presents a substantial product liability exposure to Clark that far exceeds any requirements of state safely laws or OSHA. In every case in which we have had an injury involving a person struck by a machine, the absence of a back-up alarm has been very crucial. I must conclude that it is a very substantial fact in the mind of any juror that if the machine had had a back-up alarm, the injury might have been prevented. This thought must be in the minds of the jurors no matter how great the evidence is that the back-up alarms are not required by state safety laws or are not effective because the engine noise is too loud.

I think this must be an overall management decision and should not be left to the Sales Department since that department only gives basically a reflection of what the customer wants. The customer is not in the same position as the manufacturer and Clark must take all steps necessary to protect itself, whether the customer wants it or not. Accordingly, I again strongly suggest that you consider making back-up alarms standard on all scrapers. I was informed yesterday by Walt Black that Benton Harbor has decided to make such alarms standard on all loaders, and I applaud them for that decision. I would hope you could reach the same conclusion.

STEVE ANDERSON,
Assistant Counsel.

Mr. SPECTER. Mr. President, in the Iowa Law Review article that I have referred to, there is a lengthy listing of protective measures which were taken after litigation disclosed a substantial problem. They have a special probative value in showing that when product liability litigation occurs, there is a very practical impact on safety for the consumers.

For example, when the CJ–7 Jeep was found to have inadequate roll-over protection on the off-road vehicle, punitive damages caused a safety measure to be taken to redesign the product and add a new warning.

When the Toyota Corona was found to have a fuel integrity problem due to the placement of tanks with injuries and deaths, there was a redesign.

When power lines were found to have uninsulated components causing electrocutions, there was a multi-million-dollar safety program.

When there was a television manufacturer with tubes made of wax and paper which posed a fire risk, despite the company's knowledge of numerous house fires, it did not warn or redesign until the litigation in effect compelled a redesign.

There is a long list which appears at pages 81 and 82 of the Iowa Law Review article, which I shall not take the time to read now, but are worthy of special note, because once there is an aggravating factor determined in the litigation of product liability cases, there are safety measures which are taken.

Mr. President, I have taken this time to put into the RECORD some concrete cases, where the presence of liability and the presence of punitive damages has had a profound effect on influencing the conduct of the producers. I think these are matters which have to be taken into account that I have included in the RECORD so my colleagues will have access to this information when the CONGRESSIONAL RECORD is printed tomorrow. That will be in ample time for consideration of this kind of material in their legislative judgments.

Mr. President, I see that my colleague, Senator DEWINE, has come to the floor, so I will yield the floor to him and also the duties involved in wrap-up, which I have agreed to undertake thinking I would be the last speaker.

I yield to my colleague, Senator DEWINE, at this time.

Mr. DEWINE. Mr. President, 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. DEWINE. 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. DEWINE. Mr. President, I rise today to discuss in general terms the underlying product liability this Senate has now been debating for several days, and to also discuss the medical malpractice amendment that is pending before the Senate.

I intend to discuss tonight some of the concerns that I have with these bills, but also I hope to talk a little bit about some of the hopes that I have in regard to the things that I hope a well-crafted bill can, in fact, achieve, and some improvements that we can make in our current legal system.

Mr. President, I do not pretend to be an expert in this area. I have spent a considerable period of time in the last 2 to 3 months reading, talking, and more importantly, listening—listening to business men and women, listening to others who have concerns about our

current system, and some who have concerns about this particular bill.

Some people, Mr. President, have been, I think, surprised, some amazed, that this Senator from Ohio did not automatically jump on this bill, saying we will approve everything in it just because it was labeled a ''reform'' piece of legislation.

We do need reform. I think the question before the Senate today, tonight, tomorrow, next week, will be what really constitutes reform? What will truly help the small companies, small manufacturers in Ohio and other States who are threatened by the current system? But what reform, also, will we utilize that will not take away the victim's rights, nor will it stop the deterrent effect that I find to be an essential part of our system today?

I believe that we have to approach this debate cautiously and carefully. Let me first start tonight by listing a few reasons why I believe we do have to approach this very serious, very important debate from a point of view of caution. Let us make no mistake about it, even the relatively narrowly drafted bill that was introduced, that we began this debate with, even if it was passed and nothing more—no amendment, none of the amendments that we have heard about to expand the bill—if the bill was passed in its original form, it would still constitute the most radical, the most dramatic change in our civil justice system in the history of this country.

For over 200 years the tort law in this country, the civil justice system, has developed not primarily at the Federal level. Rather, it has been a homegrown product. It has been developed in State after State—in Ohio since 1880—both by statute, by action taken by the State legislature, but also in court case after court case after court case. We have developed a fairly fine-tuned tort system to handle disputes between individuals, to handle tortious conduct.

Clearly the system does not work perfectly. By and large it does work. The proposal before us is, for the first time, to federalize that tort system. The only example I can think of where this Congress really became involved in the tort law, civil justice law, was when Congress passed—and I think it was a correct decision—a bill to give help to the general aviation industry in this country. Congress acted only after it was clear that general aviation had been driven overseas. The results of that bill have been positive. We have seen jobs come back to this country. That industry now, instead of contracting in this country, is expanding. But with that exception, Congress has never gotten into this area.

I believe there are some very sensible reasons for this past reluctance on the part of the U.S. Congress. A simple way to express Congress' concern is to invoke the concept of Pandora's box. Once you open up this area of law to congressional interference, congressional control, where does that stop? Where does the debate stop?

If anyone doubts this is a legitimate concern, I ask them to look at some of the amendments that have already been offered or will be offered in the next few days. Should there be a Federal cap for lawyers' fees? What should be the contractual relationship between employers and employees? What sort of evidence should be admissible at trial? That is just the beginning.

Having said this, that it is a dramatic change and we should proceed with caution, that does not necessarily mean we should not proceed at all. But what it does mean is that we should go into this debate with our eyes wide open, and we should understand what we are tackling, and we should understand how significant a change in our law this will be.

Let me next turn to another reason I think we, particularly in the year 1995, need to approach this debate with caution. There is some irony that this historic Congress, a Congress which is devoted to thinking and talking about State prerogatives and States rights and the value of returning power to the people, the value of returning power to the States, that this Congress should today be debating a bill that does just the opposite, that really says the U.S. Congress in certain areas—product liability, medical malpractice—will impose its will, will impose a national, uniform standard on all the States in the Union.

Merely because it is strange, again, Mr. President, does not mean we should not necessarily do it. But, again, I think it points up how cautious we have to be as we begin this task. It is somewhat ironic that the very qualities we value, particularly those of us on this side of the aisle—self-help, market forces, local as opposed to national authority being better—are basically present in our current system. But they would in fact be changed and be compromised by this legislation.

Let me cite what to me is an interesting example. We have been considering in committee a regulatory reform bill. One of the complaints I have heard from business men and women, particularly small businesses, as I travel across Ohio, is how overregulated they are. I totally agree. If there is one thing this Congress needs to do it is to get the Federal Government off the backs of small business men and women. The bill we have reported out of our committee makes an attempt at doing that and I think it will improve the law. I think the bill as we report it could actually be improved. I am going to work to do that when it reaches the floor.

But there is, again, some irony here. The bill that this Congress has proposed to help business men and women get the Federal Government to back off and to stop overregulating puts more power in the hands of business men and women to sue the Federal Government, to sue the regulators. It is almost a self-help, self-enforcing provision. And the basic principle behind this bill, I believe, is that if you really want to get control of the Federal regulators, about the only way you can do it—you cannot do it by changing the law and changing the regulations—the most effective and efficient way to do that is to open up the court system and to rely on business men and women to go into court and sue the bureaucrats, sue the regulators. Again, back to some of the basic principles I talked a moment ago, self-help being one of them.

This bill, in a sense, does move in the other direction. So, again, another reason to be cautious.

This bill in its various forms, depending on which amendment we look at, caps punitive damages. I believe we need to have a very, very fine balancing test as we approach this particular issue. Punitive damages have been with us for a long time. Punitive damages—let us be very plain about it—are intended to punish. There have been some Members who have talked on the floor almost in surprise that punitive damages are used to punish. That is what they are intended to do. That is what the definition of punitive damage is.

But the real benefit to society in regard to punitive damages is not the punishment inflicted on the wrongdoer. The real value to society is that punitive damages in some cases, and in some very important cases, serve as a deterrent for some small minority of people in this country who put a product into circulation and then who, in spite of evidence to the contrary, evidence that should indicate to them they should either make a change in that product or withdraw the product or notify consumers, still go ahead and do none of the above. Punitive damages, the threat of punitive damages in some cases can serve as a deterrent.

When a jury awards punitive damages in a product liability case, that jury may in fact be saving lives. The historic purpose of punitive damages is to punish and also to deter. Here is what the Supreme Court said. I quote:

> The purposes of punitive damages are to punish the defendant and protect the public by deterring the defendant and others from doing such wrong in the future.

Let me read it again:

> . . . protect the public by deterring the defendant and others from doing such wrong in the future.

The purpose of punitive damages is to deter conduct that hurts people, but the product liability legislation we are considering does seek to limit the jury's use of that vitally important deterrent. Now, the real question, though, Mr. President, for this Senator at least, is what kind of cap, what dollar amount will achieve the legitimate, desired results that the proponents of this bill want to achieve without really hurting or eliminating this deterrent effect? That I think is one of the key

and most important questions that this Senate faces.

Let us talk a minute about how punitive damages work in real life. A tampon manufacturer received studies and medical reports that linked high absorbency tampon fibers to toxic shock syndrome. Other tampon manufacturers responded to the warning by either altering or withdrawing their product. But the manufacturer in question that I am talking about did not do that. This manufacturer tried to profit from the disadvantage of its competitors and, frankly, tried to profit from the good works of its competitors and the fact that they did the right thing. This manufacturer advertised how effective this product was at a time when its competitors were reducing the absorbency of their products because of this health warning.

The court in this particular case came to the following conclusion:

> Our review of the record reveals abundant evidence that [they] deliberately disregarded studies and medical reports linking high-absorbency tampon fibers with increased risk of toxic shock at a time when other tampon manufacturers were responding to this information by modifying or withdrawing their high absorbency products . . . that [they] deliberately sought to profit from this situation by advertising . . . [And this] occurred in the face of [their] awareness that [their] product was far more absorbent than necessary for its intended effectiveness.

The jury in the case awarded $10 million in punitive damages. The manufacturer then withdrew the product. Tragically, Mr. President, that is what it sometimes takes—a small minority of cases—to deter people. It takes punishment. It takes punitive damages. So I think we need to proceed very carefully in this area.

The Senator from Maine has offered I think a very appropriate amendment. The Snowe amendment is an attempt to preserve the punitive and deterrent function of punitive damages while at the same time placing a cap, a cap that will, in fact, bring some predictability to business decisions that are made by manufacturers, by other business men and women, a cap that will achieve a goal of not only bringing predictability but allowing the manufacturer to expand and allowing them to move into other markets and to do things that will benefit the public that they would not be able to do but for the cap.

Mr. President, I support the Snowe amendment. If for some reason this Senate would vote down the Snowe amendment and proceed to adopt the product liability legislation in its current form, then I believe the punitive and deterrent effect of these damage awards could be seriously weakened. By basing punitive damage awards only on economic damages, the product liability legislation does an injustice, the current bill does an injustice in those cases where the plaintiffs suffer only minor monetary losses but—but—severe and other permanent harm of a nonmonetary kind. The Snowe amendment would rectify that. That is why I intend to vote for it.

That being said, I should mention that I do have a concern about the equity of the Snowe formula as regards small companies versus large companies; that while in fact this cap may be appropriate for the huge companies, it may not be appropriate in regard to small companies, and we may need to provide them more assurance and more protection. I am concerned that under this particular formula small companies are punished somewhat disproportionately. A small company may well be destroyed outright by a damage award that would serve merely as an appropriate deterrent to a much larger company. This is a concern that we might want to address during the amendment process.

In fact, one way of looking at it was expressed to me by a small businessman from Ohio several weeks ago. This is what he told me: A punitive award that might just be a serious deterrent to a big company might really be a death penalty for a smaller company.

Let me list some other concerns that I do have about this bill. Earlier today on this floor, I offered an amendment concerning the civil penalties for sex abuse by doctors. I am sure that even those who strongly favor the passage of this bill will join me in making it clear that we do not want to cap damages in cases in which a doctor sexually abuses a patient. I think it would be wrong for this Senate, for this Congress to impose a national cap and to tell each State in the Union to tell the juries of each State in the Union that there is a limit on the punitive damages you can award against a doctor once you have already found that doctor has sexually abused a patient.

Let me talk about another area of concern. I intend to offer another amendment to preserve the right of juries to consider the financial status of defendants in product liability cases.

As currently written, the product liability bill would forbid juries from considering the assets of the corporation while considering what the proper punitive damages should be. This provision would drastically weaken the punitive and deterrent effect of damage awards, and that is why I will be working to amend that part of the bill.

I can find no logical reason, Mr. President, why this Congress should, in this particular case, override the settled law in virtually every State in the Union that does, in fact, allow a jury to take that into consideration.

If the jury, in the punitive, as is their job, is trying to make a punishment and is trying to deter, then it seems to me it would be wrong to deny the jury the knowledge of exactly what assets that company does in fact have, because, Mr. President, if that knowledge is denied to the jury, the jury could err either way. They may assume, incorrectly, that a company has a lot of assets and it may turn out the company does not have a lot of assets. And so when they impose that award to get the company's attention, to deter future conduct, it may not be an appropriate amount. It may be too much. It may impose an unbelievable burden on that company; or, on the other hand, it may not be enough.

Mr. President, let me make it very clear. The current system is not all good. It is not perfect. If it were, I do not think we would be here today. If it were, I would not have heard from so many people that I have heard from in Ohio about this particular problem.

What we are really doing, Mr. President, and what we should be doing, I think, ultimately, is a balancing test. That is what I think we have to do. We have to balance the benefits and costs of the current system versus the benefits and costs of this bill; or, maybe a better way of saying it, the benefits and costs of the bill that we finally do, in fact, pass.

Mr. President, I am concerned that the current system in some cases deters innovation. And I think one of the strongest—no, I think the strongest—argument for changing the current system, and the strongest argument for imposing some caps in regard to punitive damages is that the current system does deter innovation.

We all know and are aware, Mr. President, of products that have been kept off the market because of our current law. We have all heard how no company will make an antinausea drug for pregnant women. I talked yesterday to a lawyer from a major company who said no one is going to do it; simply not going to do it. ''We have the technology; we could put it on the market. But we are not going to take the risk. We are not going to accept the risk that we have to accept because of lawsuits.''

So if we can give some relief in this area, then products such as the antinausea drug for pregnant women may be able to come onto the market.

Another example, in 1992, a company stopped testing a vaccine for preventing the transmission of the AIDS virus from an infected mother to her unborn child. Think of that. I have no idea, Mr. President, whether or not that product would have made it onto the market. I have no idea whether that product would have worked. But heavens, the last thing in the world we want to do is to stop innovation in the research in regard to AIDS. What a tragedy it would be if we had the ability to move forward and to develop this particular vaccine that would keep that unborn child from being infected. That is another, I believe, argument for some change.

Also, liability concerns have hindered the development of microbicides used to prevent the spread of AIDS.

Mr. President, during this debate, we have all heard and will continue to hear provisions about lawyer's fees. There are going to be several other amendments also offered. I may support some; some I may not. I am not

too concerned about the lawyers. Lawyers can generally take care of themselves.

But, Mr. President, I think what we have to look at when we look at some of these limitations on fees is what impact it will have on the market, what impact it will have on poor people's ability to get into the ball game. And in this case, getting into the ball game means getting into court.

If some of these well-intentioned, well-sounding amendments do in fact hinder poorer people from having access to the courthouse door, then I think the right thing to do would be to oppose them. We need to preserve access to the courtroom for people who have been harmed. We should do this to their benefit, not for the benefit of the lawyers.

Last week, Mr. President, I voted for an amendment that would force lawyers to disclose their fees. I think that is a good idea. I voted for another amendment that would make sanctions mandatory in cases when lawyers bring lawsuits that are legally determined to be frivolous by a trial judge. I think that is a good idea, too.

But I do part company with the proponents of this legislation when they do things that would limit the legal rights of indigent plaintiffs. I believe that that is precisely what some of these amendments would have the effect of doing.

Mr. President, over the last 4 months, I have had more than 55 meetings with concerned Ohioans and others about the faults and merits of this legislation. I intend, Mr. President, to be working over the next couple of days and probably weeks to improve the system—to improve the system, but also to make sure we do not abandon some of the extremely positive effects of the legal system we have built up over the last 200 years.

Mr. President, that concludes my statement this evening on this issue.

Mr. President, at this point, on behalf of the leader, I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENT NO. 616 TO AMENDMENT NO. 603

(Purpose: To provide for uniform standards for the awarding of punitive damages)

Mr. DEWINE. Mr. President, I send an amendment to the desk on behalf of Senator DODD.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE], for Mr. DODD, proposes an amendment numbered 616 to amendment No. 603.

Mr. DEWINE. 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:

Strike section 15 of the amendment and insert the following new section:

SEC. 15. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Notwithstanding any other provision of law, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in an action that is subject to this Act if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) BIFURCATION AND JUDICIAL DETERMINATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in an action that is subject to this Act in which punitive damages are sought, the trier of fact shall determine, concurrent with all other issues presented, whether such damages shall be allowed. If such damages are allowed, a separate proceeding shall be conducted by the court to determine the amount of such damages to be awarded.

(2) ADMISSIBLE EVIDENCE.—

(A) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A BIFURCATED PROCEEDING.—Notwithstanding any other provision of law, in any proceeding to determine whether the claimant in an action that is subject to this Act may be awarded compensatory damages and punitive damages, evidence of the defendant's financial condition and other evidence bearing on the amount of punitive damages shall not be admissible unless the evidence is admissible for a purpose other than for determining the amount of punitive damages.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in a separate proceeding conducted under paragraph (1) shall include evidence that bears on the factors listed in paragraph (3).

(3) FACTORS.—Notwithstanding any other provision of law, in determining the amount of punitive damages awarded in an action that is subject to this Act, the court shall consider the following factors:

(A) The likelihood that serious harm would arise from the misconduct of the defendant in question.

(B) The degree of the awareness of the defendant in question of that likelihood.

(C) The profitability of the misconduct to the defendant in question.

(D) The duration of the misconduct and any concealment of the conduct by the defendant in question.

(E) The attitude and conduct of the defendant in question upon the discovery of the misconduct and whether the misconduct has terminated.

(F) The financial condition of the defendant in question.

(G) The total effect of other punishment imposed or likely to be imposed upon the defendant in question as a result of the misconduct, including any awards of punitive or exemplary damages to persons similarly situated to the claimant and the severity of criminal penalties to which the defendant in question has been or is likely to be subjected.

(H) Any other factor that the court determines to be appropriate.

(4) REASONS FOR SETTING AWARD AMOUNT.—

(A) IN GENERAL.—Notwithstanding any other provision of law, with respect to an award of punitive damages in an action that is subject to this Act, in findings of fact and conclusions of law issued by the court, the court shall clearly state the reasons of the court for setting the amount of the award. The statements referred to in the preceding sentence shall demonstrate the consideration of the factors listed in subparagraphs (A) through (G) of paragraph (3). If the court considers a factor under subparagraph (H) of paragraph (3), the court shall state the effect of the consideration of the factor on setting the amount of the award.

(B) REVIEW OF DETERMINATION OF AWARD AMOUNT.—The determination of the amount of the award shall only be reviewed by a court as a factual finding and shall not be set aside by a court unless the court determines that the amount of the award is clearly erroneous.

Mr. DEWINE. Mr. President, I have only offered this amendment for Senator DODD so that it would qualify under the consent agreement, in that Senator DODD, at this point, is unable to be on the floor.

MORNING BUSINESS

Mr. DEWINE. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 5 minutes each.

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

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time and placed on the calendar:

S. 735. A bill to prevent and punish acts of terrorism, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–746. A communication from the Assistant Secretary of Defense (Economic Security), transmitting, pursuant to law, the report on the Metric Transition Program; to the Committee on Commerce, Science, and Transportation.

EC–747. A communication from the Secretary of Transportation, transmitting, a draft proposed legislation entitled ''The Commercial Space Launch Act Amendments of 1995''; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THOMAS (for himself, Mr. MURKOWSKI, Mr. HELMS, Mr. LAUTENBERG, Mr. GRAMS, and Mr. CRAIG):

S. 738. A bill to amend the Helium Act to prohibit the Bureau of Mines from refining helium and selling refined helium, to dispose of the United States helium reserve, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. PACKWOOD:

S. 739. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel SISU, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HATCH:

S. 740. A bill for the relief of Inslaw, Inc., and William A. Hamilton and Nancy Burke Hamilton; to the Committee on the Judiciary.

By Mr. PRESSLER:

S. 741. A bill to require the Army Corps of Engineers to take such actions as are necessary to obtain and maintain a specified maximum high water level in Lake Traverse, South Dakota and Minnesota, and for other purposes; to the Committee on Environment and Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THOMAS (for himself, Mr. MURKOWSKI, Mr. HELMS, Mr. LAUTENBERG, Mr. GRAMS, and Mr. CRAIG):

S. 738. A bill to amend the Helium Act to prohibit the Bureau of Mines from refining helium and selling refined helium, to dispose of the U.S. helium reserve, and for other purposes; to the Committee on Energy and Natural Resources.

HELIUM ACT AMENDMENTS

Mr. THOMAS. Mr. President, I rise today to offer legislation that would reform the Federal helium program and the helium refining and marketing aspirations of the U.S. Bureau of Mines.

Mr. President, we are in the process, I think happily, to be reforming Government, to be changing some of the things that have gone on for a very long time, which is a tendency of the Federal Government. Things that started for good reason and with meritorious purpose, as time goes by, often change.

I think everyone admits it becomes very difficult that despite the changing conditions, programs seem to continue. I understand that. They start with a purpose. Often the remnants of that purpose at least remains, and of course, there is always a constituency built around that activity; in this case, an economic one. I understand that as well.

However, the more important thing is that we do have a chance to change, indeed, a responsibility to change. If there is anything, it seems to me, that this Congress is about, what this election was about in November, it is to really finally make some of the alterations in Government that need to be made, try to deal with some of the things that do not contribute to the well-being of this country and contribute to the well-being of this Government so that those resources being used in that manner can be shifted and changed to something more useful, to do something that is appropriate for this Government to be doing.

I think the Federal helium program, Mr. President, is one of those activities. This helium recovery program began in 1925. At that time, helium conservation was deemed to be a matter of national security. At that time, I think, people saw the future of defense, the future of aviation, as being lighter-than-air—machinery of that kind, and there was no private helium industry that existed.

Today, on the contrary, the private sector has a thriving helium industry that produces 90 percent of the world's helium demand and supplies it. There are 11 privately owned plants throughout the country, modern plants, as opposed to the Government plant, which is some 50 years old.

A private company can deliver helium cheaper, better, and more efficiently than the Federal Government. Unfortunately, the Federal Government continues to process helium in a burdensome and outdated fashion. The program was designed for the 1920's and certainly is failing in the 1990's. Not only has the program been inefficient, but it has cost millions of dollars each year.

Beginning in 1960, the Federal Government contracted with private companies to supply helium to the Bureau of Mines. To finance these purchases, the Bureau borrowed $252 million from the Treasury. Although it was planned that future sales would cover the costs of this loan, this has not occurred. The agency has paid back the loan, and it continues to accumulate. Today the Bureau of Mines owes the Treasury roughly $1.3 billion on the loan.

The legislation that I am introducing, along with several cosponsors, including the chairman of the committee and the chairman of the subcommittee, would end the Federal helium program within 1 year. Then, importantly, it would phase out the sale of the Federal crude helium reserve. I think it is very important that we do phase it out over a period of time so that this private-sector industry that has developed will not be demolished by simply dumping all this surplus supply on the market. It would end the program and the Federal Government's direct competition with the private sector.

The Congressional Budget Office estimates that this bill will save American taxpayers approximately $7 million annually, between $26 and $36 million over 5 years. The measure would allow the Bureau of Mines to contract with the private sector for services to purchase and distribute crude helium. There is some requirement in the Government for it. NASA is a customer, as well as the Department of Energy. It would be provided by the private sector.

Most importantly, this legislation phases out the sale of the official helium stockpile over several years and requires that all of these reserves be disposed of by the year 2015. This would allow the helium fields to be probably close to depleted, the ones that currently are there. It would ensure that when the stockpile is sold, the return to the Treasury would be at a level that makes this a valuable asset. If it were dumped immediately, it would not be valuable. The taxpayers would lose a considerable amount of asset value.

Mr. President, we are faced, of course, with some most difficult times on the budget. We are faced with seeking to balance this budget over 6 or 7 years. I think it is an imperative that we do that.

We are faced, as well, with programs that we do want to continue to provide services. We do want to help people who are in need. We do want to help them get back into the workplace. We do want Medicare to continue to provide those benefits.

Frankly, if we do not do something, none of those things will happen. it is not a question of whether we make some changes; it is a question of what changes we make and how soon we can make them.

Somehow, there has been kind of a presumption developed by our friends on the other side and by the administration that these programs are simply designed to take away benefits and that we should not do that, we ought to continue doing what we have been doing.

Let me say that that is not one of the choices. If we continue to do what we have been doing with the revenue we have, by the year 2010 we will be able to afford only the entitlements and interest on the debt. None of the other discretionary spending will be able to be provided.

We have talked about this in the past, Mr. President. There was considerable discussion last year when I was in the House Interior Committee. I think there is general acceptance to the notion, but we did not get it done. Now it is time to take action to shut down the Federal helium program, and I hope the Senate will take swift action on this bill so that we can begin to end this wasteful and inefficient and unnecessary Federal program.

By Mr. HATCH:

S. 740. A bill for the relief of Inslaw, Inc., and William A. Hamilton and Nancy Burke Hamilton; to the Committee on the Judiciary.

INSLAW PRIVATE RELIEF ACT

Mr. HATCH. Mr. President, today I am introducing two pieces of legislation regarding the matter of Inslaw, Inc.

Inslaw sold the Department of Justice a software program it alleges was improperly shared with other Federal agencies. In 1986, Inslaw sued the Department and was awarded a judgment. An appellate court, however, reversed the case some years later on technical grounds. Considerable controversy has surrounded the merits of Inslaw's claim ever since. Referring this matter to the Court of Claims is thus the best way to settle this matter once and for all.

It is to accomplish that referral that I am introducing these two pieces of legislation. The first is a bill to provide the compensation due, if any, to Inslaw. The second is a resolution, referring the Inslaw matter, including the bill just described, to the United

States Court of Federal Claims for a hearing to determine whether the United States owes the company compensation for providing computer software and services to the Department of Justice.

The Senate considered this matter favorably several months ago. On October 6, 1994, we adopted a similar resolution by unanimous consent in the form of a free-standing amendment to the Process Patent Protection Act of 1994. Pursuant to the legislation establishing the Court of Federal Claims, either House of Congress may refer a matter to the court. Unfortunately, because the House of Representatives failed to take action on the patent bill last October, and the Inslaw amendment was attached to that piece of legislation, the status of the amendment was left in doubt.

As the matter was never properly referred to the court, I believe the best way to proceed is for the Senate to repeat the action it took in the Inslaw matter last October.

There is, in closing, a point I believe that deserves special emphasis. This legislation simply refers the Inslaw case to the Court of Claims to hear, determine, and render conclusions that are sufficient to inform the Congress of the amount, if any, due to Inslaw for furnishing its computer services to the Department of Justice. This legislation does not obligate Congress to compensate Inslaw. It is deficit neutral, because the final decision to satisfy any judgment rendered will rest with Congress, not with the Court of Claims. Congress, and Congress alone, will decide how much to pay, if any, should the court recommend that compensation is owed. I believe this is the fair and appropriate thing to do.

By Mr. PRESSLER:

S. 741. A bill to require the Army Corps of Engineers to take such actions as are necessary to obtain and maintain a specified maximum high water level in Lake Traverse, South Dakota and Minnesota, and for other purposes; to the Committee on Environment and Public Works.

LAKE TRAVERSE RELIEF ACT

Mr. PRESSLER. Mr. President, today I am introducing a bill to correct a serious problem in South Dakota that has resulted in severe flooding along the shores of Lake Traverse. Lake Traverse is located in the far northeast corner of South Dakota and in parts of western Minnesota. In fact, the boundary line between South Dakota and Minnesota cuts through the middle of the lake.

There is very interesting history connected with Lake Traverse. Lake Traverse is the beginning of the Red River—the only major North American river that flows north. This river eventually enters Hudson Bay and flows through Wahpeton, Fargo, Grand Forks, and Winnipeg. Historical records show this lake was an important avenue in the transportation of United States grain to destinations as far away as Belgium.

On Lake Traverse, the U.S. Army Corps of Engineers maintains and operates White Rock Dam and structures at interstate bridge. Both these sites are located east of Rosholt, SD. Operations to date have been devastating.

Lake Traverse is facing a major disaster due to high water levels. Shorelines have been destroyed. Some small businesses are facing financial jeopardy. Farmland is being lost. Homes, cottages, and other structures are being destroyed. And if that is not enough, subsequent erosion is wreaking havoc on the local land. Thousands of trees are under water and dying.

Something must be done. Taxpayers should not be required to pay taxes on land that is under water and useless.

According to the U.S. Army Corps of Engineers, congressional approval is needed before the corps can take steps to correct the high water level and erosion problems. The corps is managing the lake with arcane rules that are half a century old. That is unacceptable. My bill would give the corps the necessary authority to better manage water release at Lake Traverse and control erosion.

The answer, in the form of legislation I am introducing today, is simple: It would direct the U.S. Army Corps of Engineers to obtain and maintain a high water level at Lake Traverse not to exceed 977 (MSL). In other words, this legislation would provide the necessary authority for the U.S. Army Corps of Engineers to solve the problems surrounding Lake Traverse.

There is strong public support for this action. Just last week, I held a meeting at the Circle K Resort, which is located on the South Dakota side of Lake Traverse. More than 250 people were in attendance. This turnout clearly indicates that South Dakotans believe something needs to be done. The bill I am introducing today would achieve their goal.

Mr. President, I ask unanimous consent that material related to the Lake Traverse flooding be inserted into the RECORD.

I urge my colleagues from South Dakota and Minnesota to review this legislation. We must solve this problem. I urge their support and the support of the entire Senate.

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

[From the Rosholt Review, Apr. 26, 1995]

PRESSLER SEEKING CONGRESSIONAL ACTION ON TRAVERSE SITUATION

(By Kathleen Cook)

Emotions were almost as hard to control as rising waters on Lake Traverse at a public meeting Thursday night.

More than 250 persons crowded into Circle K Resort to voice concerns about high water, property damage and shoreline erosion at the meeting arranged by South Dakota Sen. Larry Pressler and staff.

Pressler couldn't attend, but he acted quickly on his staff's report of overwhelming public sentiment.

''According to the U.S. Army Corps of Engineers, they need Congressional approval before they can take steps to correct the high water level and erosion problems,'' he said Friday.

The Corps is managing the lake with rules that applied to its condition half a century ago, and ''that is unacceptable,'' Pressler said.

''I am preparing legislation that would give the Corps the necessary authority to better manage water release at Lake Traverse and to control erosion,'' Pressler said.

At Pressler's invitation, representatives of the St. Paul District of the U.S. Corps of Engineers attended Thursday's showdown with property owners, area farmers and sportsmen, and others who simply have sentimental ties to the lake.

Also present were representatives of South Dakota Sen. Tom Daschle and Rep. Tim Johnson and Minnesota Sen. Paul Wellstone.

''Currently, landowners are paying taxes on land that is under water and not of any use. Approval of my legislation would change that. I will work with my colleagues from South Dakota, Minnesota and North Dakota to correct this problem quickly,'' Pressler said.

Lake Traverse, bisected by the border of South Dakota and Minnesota, is located at the headwaters of the Red River, the only major river that flows north in North America, and eventually drains into the Hudson Bay.

Less than 100 years ago, Lake Traverse was a major transportation link for South Dakota agricultural products, Pressler learned after about 100 persons pressed him earlier this month to help them address problems.

Cottonwood Point Resort owner Mike Brody, who led the local effort and who served as moderator Thursday night, summed it up. Citing historic, cultural, recreational and economic value of Lake Traverse, he said, ''We would like to see it continue to flourish. We feel the present management of the lake will destroy this treasure.''

Brody added, ''Tempers are strained, which is understandable. But we are not here to attack or belittle. We are asking cooperation of all parties.''

He presented an aerial video taken around the lake April 8. Many trees along the shoreline are dying; some of them have been under water for about three years. Rainbow Island, normally a peninsula, really is an island now. Many miles of shoreline are gouged or washed away with erosion. Silt appears to flow freely into the lake in some spots.

''When work was completed on these dams (White Rock and Reservation) years ago, were they engineered to hold this water back?'' Brody asked.

The dams were intended to control ''an event'' about every 30 years, according to the Corps.

Edward Eaton, water control chief for the St. Paul District of the Corps, said water level has exceeded elevation 981 feet only once in 43 years.

Lake Traverse rose to 980.3 feet above sea level April 1, the third highest level recorded at the reservoir since it became operational in 1940. The pool reached 980.75 in 1952 and 980.71 in 1986, according to Corps information.

Todd Johnston of the Lake Traverse Association pointed out that within recent weeks he believes the water was at least in the 980 range with 40 to 50 mile per hour winds at times, creating two- to three-feet rolling waves. ''Was the dam constructed to take that kind of pounding?''

The pool was set at 981 to allow for a couple of feet of wave action, Eaton said.

Eaton then referred to excerpts from a brochure created after a public meeting concerning Traverse flooding in 1986.

At that time, Corps personnel explained in the Reservation pool, located between Browns Valley and Reservation Highway, the government bought permanent flowage rights for lands lying below elevation 977 mean sea level. Elevation 977 is the summer conservation pool for the Reservation pool.

The government also acquired the right to intermittently overflow those lands between the taking line and the summer conservation pool to temporarily store flood water. The flowage easement means Lake Traverse can permanently flood the surrounding land up to the taking line at approximately elevation 983.

''Property owners have cabins with flowage easements. We went through this whole thing after the flood of 1986. The purpose isn't to hold water down but to implement spring drawdown. We don't make releases over winter because of poor quality of water. We wait as close to spring as possible. This year a 1.2 foot drawdown would have made the lake about three-fourths foot higher than it is now,'' the Corps spokesman said.

Basically, the St. Paul District representatives relied on answers to questions from the 1986 meeting to deal with problems experienced by property owners in varying degrees over the past three years—less than a decade—far from a single ''event'' occurring every 30 years.

One local resident, John Nelson, wondered if the government controls the lake in such a way that Wahpeton-Breckenridge can release sewage.

Until then, the crowd was quiet, but in their exuberant support of Nelson's question, they even interrupted Brody.

Water treatment in cities downstream of Fargo-Moorhead isn't directly related to flood control, Eaton said. ''We don't make releases for waste dissolution.''

Brody then asked the Corps staff to define intermittent, since it seemed to him government flowage easements for ''intermittent'' flooding were ''steady'' instead, at least the last three years.

At that point, Corps spokesmen repeated they had the right to flood, acquired through easements in the early 1940s and on record in the Roberts County Courthouse.

But several property owners said they purchased lake land with no knowledge of the easements.

It is the responsibility of the property buyer to learn what terms, such as ''metes and bounds,'' mean, to make sure they have abstracts examined and updated and to read their deeds and other real estate papers.

''You're stuck if you didn't have your abstract examined,'' said Roberts County Commissioner Art Johnson.

Brody asked if the Corps would be willing to work with local agencies to establish retaining pools.

''We don't believe there is a serious sedimentation problem in the lake,'' said Eaton.

That remark put local folks over the edge, drawing loud disagreement.

Moments later, the crowd broke out in applause when Brody said if the Corps isn't authorized to make changes without Congressional action, then he wanted to pursue Congressional intervention.

He then opened the meeting to comments from the floor.

''We've got to go through all these hoops for our property. Somebody's got to be liable for what I've lost, because I'm still paying taxes on property that is gone, washed away,'' said one spectator.

The Corps had made no effort to retain shoreline, added another property owner.

Back when the Corps' policies regarding Lake Traverse were established, ''environment wasn't so important. Now two islands are completely gone, trees are gone, the rest of the islands are completely gone, trees are gone, the rest of the islands are going . . .'' said one longtime property owner.

''What's going to be done?'' asked another.

Eaton said choices were offered after the 1986 flood: Restore property to its condition before the high water and accept the risk that there may be high water again, or floodproof property so that when the lake gets above 977 elevation, property won't be damaged as severely.

Roberts County Commissioner LaVonne Ringsaker wondered it the Corps has money for dredging. Eaton said no.

Another spectator remarked, ''Water seems to be held longer these days, and the soil can't absorb it after a number of very wet years.''

''What's the magic of 981?'' asked another.

Gordon Heitzman, a water control specialist with the Corps, answered, ''The bowl is only so big; it's for the safety of the dam.''

Asked for some specific dates regarding establishment of Lake Traverse policy, Heitzman became flippant—saying he was still in school back then and wouldn't know. He insinuated information sent ahead of the meeting should have provided answers to some of the questions being tossed out.

That, and just so much technical jargon, made Brody lose his composure.

''I'm not a professor, I'm a resort owner!'' he said, exhibiting a thick catalog of Corps facts, figures and policies, which he received when he requested advance information.

''You called Friday (April 14) and asked for data. You didn't tell me your problems. I would like the same courtesy,'' Heitzman said. Heitzman later apologized.

[From Watertown Public Opinion, Apr. 11, 1995]

TRAVERSE RESIDENT BLAME CORPS FOR WATER WOES

(By Wayne Specht)

LAKE TRAVERSE—Rising water along sprawling Lake Traverse is inundating the economic and retirement dreams of Mike Brody and Ron Spencer.

Both men say it's the fault of the U.S. Army Corps of Engineers.

Last week, the Corps opened pen gates on the White Rock Dam at the northern reaches of Lake Traverse to relieve build-up of water delivered by Minnesota's Mustinka River.

That caused waters along Traverse shorelines to rise inundating some farm buildings, boat houses and vacation cabins built 40 years ago during drier weather cycles than what have been seen in the last several years.

Brody bought the 14-acre Cottonwood Point Resort, three rental cabins and a larger building housing a bar, three years ago.

For a time this week, his property was isolated as Traverse waters covered the only access road to the modest resort. Brody's parking lot is under several feet of water and he lost a line of trees he planted recently.

Because his septic tanks have been overtaken by lake waters, his sump pump motors have burned out, too, and reservations booked for cabins later this month may have to be canceled.

''This is the third consecutive year this has happened, and it's because of the Corp's inept water management practices over the years,'' says Brody, who estimates 10 of his 14 acres are now underwater. He had to haul in fill material to restore the access road so he could reach his property and says it will cost him $1,000 to blade his property when the water recedes.

One mile south of Brodie, Spencer had to purchase $210 worth of fill material to build a dike around his home to keep lake waters outside.

''I live on my military retirement checks and I won't be able to meet my bills this month because I had to buy the fill material.''

Spencer is not a happy camper either.

As he neared the end of a 24-year Air Force career, Spencer thought it would be a wonderful idea to purchase the property where, as a child, he accompanied his parents to enjoy summertime swimming, fishing and carefree hours on the same swing that remains on the site today.

''It was my dram come true when I purchased the property last October,'' Spencer says. ''But if I had the chance, I would sell the property tomorrow. I got took.''

That's because unlike Brody, who was told by local residents of Traverse flooding that threatened lakeshore structures every 10 or 15 years, owners who sold Spencer his nearly three acres, never let on about seasonal flooding.

When the water rose, Brody and Spencer went scurrying for land abstracts where they learned the Corps of Engineers purchased land around the perimeter of the lake that would be covered by water in wet years.

''We also purchased flowage easements around the lake covering areas that would be covered by water back in 1942 when the White Rock Dam and Reservation Dam across the lake were completed,'' explained Corps of Engineers Public Affairs spokesman, Ken Gardner.

Brody says his abstract shows the federal government obtained easements rights for 977 feet above sea level in 1942.

''Today (Thursday) I found an affidavit on file in the Roberts County Courthouse from Col. Joseph Briggs, St. Paul district engineer, dated 1987 placing on public record the right of the federal government to intermittently raise lake levels to 983 feet. Aren't they required to tell landowners?''

During dry cycles, these figures are of no concern to lake residents as Corps management of water outflow from the two dams keeps reservoir levels behind the White Rock Dam at between 976 and 977 feet.

''However the dams were built for flood control for the cities of Wahpeton and Breckenridge which sit on the Boyd de Sioux River,'' Gardner said. ''When flood stage reaches 10 feet in either location, we shut the dam down tight to zero outflow.''

That was the case twice during March when the inflow to Lake Traverse was doubling every 24 hours, Gardner noted, and some minor flooding struck Wahpeton.

This morning (Thursday) outflow from the White Rock Dam was 1,100 cubic feet per second, the maximum outflow says Corps resource manager for the Lake Traverse project Dave Solberg.

Solberg says the outflow has been holding steady and barring unforeseen heavy rainfall, he says Lake Traverse waters should be back to normal levels by June 15 given good evaporation conditions.

Gardner and Solberg both say the problem for residents like Spencer and Brody is properties they bought were built during the 1950s within the federal easements and are subject to periodic flooding, especially during the past three very wet years.

''I wasn't asking the Corps to bend over for me,'' Brody says, ''but Solberg told me I shouldn't have purchased my property. What kind of compassion is that?''

Brody and Spencer says the larger problem is federal government enticements to farmers for the last 60 years that rewarded them for draining sloughs thus eliminating natural drainage areas.

ADDITIONAL COSPONSORS

S. 3

At the request of Mr. DOLE, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 3, a bill to control crime, and for other purposes.

S. 12

At the request of Mr. BREAUX, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 38

At the request of Mr. HATCH, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 38, a bill to amend the Violent Crime Control and Law Enforcement Act of 1994, and for other purposes.

S. 105

At the request of Mr. DASCHLE, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 105, a bill to amend the Internal Revenue Code of 1986 to provide that certain cash rentals of farmland will not cause recapture of special estate tax valuation.

S. 234

At the request of Mr. CAMPBELL, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 234, a bill to amend title 23, United States Code, to exempt a State from certain penalties for failing to meet requirements relating to motorcycle helmet laws if the State has in effect a motorcycle safety program, and to delay the effective date of certain penalties for States that fail to meet certain requirements for motorcycle safety laws, and for other purposes.

S. 304

At the request of Mr. SANTORUM, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 351

At the request of Mr. HATCH, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.

S. 354

At the request of Mr. BREAUX, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 354, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage the preservation of low-income housing.

At the request of Mr. BREAUX, the name of the Senator from Mississippi [Mr. COCHRAN] was withdrawn as a cosponsor of S. 354, supra.

S. 358

At the request of Mr. HEFLIN, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 358, a bill to amend the Internal Revenue Code of 1986 to provide for an excise tax exemption for certain emergency medical transportation by air ambulance.

S. 463

At the request of Mr. BREAUX, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 463, a bill to amend title 28, United States Code, with respect to the treatment of certain transportation and subsistence expenses of retired judges.

S. 476

At the request of Mr. NICKLES, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 476, a bill to amend title 23, United States Code, to eliminate the national maximum speed limit, and for other purposes.

S. 524

At the request of Mr. WELLSTONE, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 524, a bill to prohibit insurers from denying health insurance coverage, benefits, or varying premiums based on the status of an individual as a victim of domestic violence and for other purposes.

S. 548

At the request of Mr. ROCKEFELLER, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 548, a bill to provide quality standards for mammograms performed by the Department of Veterans Affairs.

S. 615

At the request of Mr. AKAKA, the names of the Senator from Oklahoma [Mr. INHOFE], and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of S. 615, a bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish outpatient medical services for any disability of a former prisoner of war.

S. 641

At the request of Mr. KENNEDY, the names of the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of S. 641, a bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

S. 650

At the request of Mr. SHELBY, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 650, a bill to increase the amount of credit available to fuel local, regional, and national economic growth by reducing the regulatory burden imposed upon financial institutions, and for other purposes.

At the request of Mr. MACK, the names of the Senator from Wyoming [Mr. THOMAS], the Senator from North Carolina [Mr. HELMS], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 650, supra.

S. 688

At the request of Mr. MURKOWSKI, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Maine [Ms. SNOWE] were added as cosponsors of S. 688, a bill to provide for the minting and circulation of one-dollar silver coins.

SENATE RESOLUTION 75

At the request of Mr. MOYNIHAN, the names of the Senator from California [Mrs. BOXER], the Senator from New Jersey [Mr. BRADLEY], the Senator from West Virginia [Mr. BYRD], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Maine [Mr. COHEN], the Senator from South Dakota [Mr. DASCHLE], the Senator from Ohio [Mr. DEWINE], the Senator from Connecticut [Mr. DODD], the Senator from New Mexico [Mr. DOMENICI], the Senator from Ohio [Mr. GLENN], the Senator from Washington [Mr. GORTON], the Senator from Alabama [Mr. HEFLIN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Hawaii [Mr. INOUYE], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Nebraska [Mr. KERREY], the Senator from Massachusetts [Mr. KERRY], the Senator from Wisconsin [Mr. KOHL], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Vermont [Mr. LEAHY], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Rhode Island [Mr. PELL], the Senator from South Dakota [Mr. PRESSLER], the Senator from Virginia [Mr. ROBB], the Senator from Maryland [Mr. SARBANES], the Senator from Illinois [Mr. SIMON], the Senator from Wyoming [Mr. SIMPSON], the Senator from South Carolina [Mr. THURMOND], and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of Senate Resolution 75, a resolution to designate October 1996, as ''Roosevelt History Month,'' and for other purposes.

SENATE RESOLUTION 97

At the request of Mr. THOMAS, the names of the Senator from Arizona [Mr. MCCAIN] and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of Senate Resolution 97, a resolution expressing the sense of the Senate with respect to peace and stability in the South China Sea.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the names of the Senator from Oklahoma [Mr. NICKLES], the Senator from Georgia [Mr. COVERDELL], and the Senator from Virginia [Mr. ROBB] were added as cosponsors of Senate Resolution 103, a resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

AMENDMENT NO. 603

At the request of Mr. MCCONNELL the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of amendment No. 603 proposed to H.R. 956, a bill to establish legal standards and procedures for product liability litigation, and for other purposes.

AMENDMENTS SUBMITTED

COMMONSENSE PRODUCT LIABILITY REFORM ACT

KYL AMENDMENT NO. 611

Mr. KYL proposed an amendment to amendment No. 603, proposed by Mr. MCCONNELL, to amendment No. 596, proposed by Mr. GORTON to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

At the appropriate place, insert the following new section:

SEC. . LIMITATION ON NONECONOMIC DAMAGES.

(a) IN GENERAL.—With respect to any health care liability action, in addition to any award of economic or punitive damages, a claimant may be awarded noneconomic damages, including damages awarded to compensate the claimant for injured feelings such as pain and suffering, emotional distress, and loss of consortium.

(b) LIMITATION.—The amount of noneconomic damages that may be awarded to a claimant under subsection (a) may not exceed $500,000. Such limitation shall apply regardless of the number of defendants in the action and the number of claim or actions brought with respect to the injury involved.

(c) NO DISCLOSURE TO TRIER OF FACT.—The trier of fact in an action described in subsection (a) may not be informed of the limitation contained in this section.

(d) AWARDS IN EXCESS OF LIMITATION.—An award for noneconomic damages in an action described in subsection (a), in excess of the limitation contained in subsection (b) shall—

(1) be reduced to $500,000 either prior to entry of judgment or by amendment of the judgment after entry;

(2) be reduced to $500,000 prior to accounting for any other reduction in damages required under applicable law; and

(3) in the case of separate awards of damages for past and future noneconomic damages, be reduced to $500,000 with the initial reductions being made in the award of damages for future noneconomic losses.

(e) PRESENT VALUE.—An award for future noneconomic damages shall not be discounted to present value.

DEWINE AMENDMENT NO. 612

Mr. DEWINE proposed an amendment to amendment No. 603, proposed by Mr. MCCONNELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

In section 12(5) of the amendment, add at the end thereof the following new sentence: ''Such term does not include an action where the alleged injury on which the action is based resulted from an act of sexual abuse (as defined under applicable State law) committed by a provider, professional, plan or other defendant.''.

HATCH AMENDMENT NO. 613

Mr. HATCH proposed an amendment to amendment No. 603, proposed by Mr. MCCONNELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

In section 20(d)(1), strike ''with technical assistance'' and insert ''with grants or other technical assistance''.

SIMON (AND WELLSTONE) AMENDMENT NO. 614

Mr. SIMON (for himself and Mr. WELLSTONE) proposed an amendment to amendment No. 603, proposed by Mr. MCCONNELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

At the appropriate place insert the following:

SECTION . STATE OPTION.

(a) A provision of this subtitle shall not apply to disputes between citizens of the same State if such State enacts a statute—

(1) citing the authority of this section; and

(2) declaring the election of such State that such provision shall not apply to such disputes.

(b) If a dispute arises between citizens of two States that have elected not to apply a particular provision, ordinary choice of law principles shall apply.

(c) For purposes of this section, a corporation shall be deemed a citizen of its State of incorporation and of its principal place of business.

KENNEDY AMENDMENT NO. 615

Mr. KENNEDY proposed an amendment to amendment No. 603, proposed by Mr. MCCONNELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

On page 8, line 20, insert after ''subsection'' the following: ''(b) and''.

Strike the material from page 9, line 4 through page 10, line 17, and insert in lieu thereof the following ''The provisions of this subtitle shall not be construed to preempt any state statute but shall govern any question with respect to which there is no state statute''.

DODD AMENDMENT NO. 616

Mr. DEWINE (for Mr. DODD) proposed an amendment to amendment no. 603, proposed by Mr. MCCONNELL to amendment no. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

Strike section 15 of the amendment and insert the following new section:

SEC. 15. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Notwithstanding any other provision of law, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in an action that is subject to this Act if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) BIFURCATION AND JUDICIAL DETERMINATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in an action that is subject to this Act in which punitive damages are sought, the trier of fact shall determine, concurrent with all other issues presented, whether such damages shall be allowed. If such damages are allowed, a separate proceeding shall be conducted by the court to determine the amount of such damages to be awarded.

(2) ADMISSIBLE EVIDENCE.—

(A) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A BIFURCATED PROCEEDING.—Notwithstanding any other provision of law, in any proceeding to determine whether the claimant in an action that is subject to this Act may be awarded compensatory damages and punitive damages, evidence of the defendant's financial condition and other evidence bearing on the amount of punitive damages shall not be admissible unless the evidence is admissible for a purpose other than for determining the amount of punitive damages.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in a separate proceeding conducted under paragraph (1) shall include evidence that bears on the factors listed in paragraph (3).

(3) FACTORS.—Notwithstanding any other provision of law, in determining the amount of punitive damages awarded in an action that is subject to this Act, the court shall consider the following factors:

(A) The likelihood that serious harm would arise from the misconduct of the defendant in question.

(B) The degree of the awareness of the defendant in question of that likelihood.

(C) The profitability of the misconduct to the defendant in question.

(D) The duration of the misconduct and any concealment of the conduct by the defendant in question.

(E) The attitude and conduct of the defendant in question upon the discovery of the misconduct and whether the misconduct has terminated.

(F) The financial condition of the defendant in question.

(G) The total effect of other punishment imposed or likely to be imposed upon the defendant in question as a result of the misconduct, including any awards of punitive or exemplary damages to persons similarly situated to the claimant and the severity of criminal penalties to which the defendant in question has been or is likely to be subjected.

(H) Any other factor that the court determines to be appropriate.

(4) REASONS FOR SETTING AWARD AMOUNT.—

(A) IN GENERAL.—Notwithstanding any other provision of law, with respect to an award of punitive damages in an action that is subject to this Act, in findings of fact and conclusions of law issued by the court, the court shall clearly state the reasons of the court for setting the amount of the award. The statements referred to in the preceding sentence shall demonstrate the consideration of the factors listed in subparagraphs (A) through (G) of paragraph (3). If the court considers a factor under subparagraph (H) of paragraph (3), the court shall state the effect of the consideration of the factor on setting the amount of the award.

(B) REVIEW OF DETERMINATION OF AWARD AMOUNT.—The determination of the amount of the award shall only be reviewed by a court as a factual finding and shall not be set aside by a court unless the court determines that the amount of the award is clearly erroneous.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. MCCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will be holding

an oversight hearing on Tuesday, May 2, 1995, beginning at 9:30 a.m., in room 485 of the Russell Senate Office Building on the implementation of the tribal self-governance demonstration project authorities by the Indian Health Service.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

COMMITTEE ON SMALL BUSINESS

Mr. BOND. Mr. President, I wish to announce that the Committee on Small Business will hold a hearing on Thursday, May 18, 1995, at 9:30 a.m., in room SD–628. The focus of the hearing is the Small Business Administration's 7(a) Business Loan Program.

For further information, please contact Paul Cooksey at 224–5175.

ADDITIONAL STATEMENTS

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, REGARDING EDUCATIONAL TRAVEL

● Mr. MCCONNELL. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received notification under rule 35 for William Triplett, a member of the staff of Senator BENNETT, to participate in a program in Abu Dhabi sponsored by the Abu Dhabi Chamber of Commerce from March 9–23, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Triplett in this program.

The select committee received notification under rule 35 for Senator BOND and two members of the staff, Warren Erdman and Brent Franzel, to participate in a program in the Republic of China on Taiwan, sponsored by the Chinese National Association of Industry and Commerce, from April 18–21, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Senator BOND, Mr. Erdman, and Mr. Franzel in this program.

The select committee received notification under rule 35 for William B. Bonvillian, a member of the staff of Senator LIEBERMAN, to participate in a program in Taipei sponsored by the Tamkang University from April 10–16, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Bonvillian in this program.●

DR. DAVID A. KESSLER'S SPEECH ON TOBACCO

● Mr. SIMON. Mr. President, recently, I had a chance to read a speech by Dr. David A. Kessler, the Commissioner of the Food and Drug Administration, to the Columbia University Law School.

I have been very favorably impressed by Dr. Kessler's commitment and doggedness over the years. My colleagues will recall that he was an appointee of President George Bush, and when Bill Clinton became President, I urged him to retain David Kessler, and I am pleased that he has done so.

His talk to the Columbia University Law School was about tobacco and specifically about young people and tobacco. He describes nicotine addiction as ''a pediatric disease.''

What tobacco companies are clearly trying to do, and unfortunately doing successfully, is to make smoking attractive to young people.

My wife and I recently took a vacation, at our own expense, I hasten to add, to Portugal and Spain, and the percentage of young people who smoke in those two countries, as well as in the rest of the world, unquestionably is higher than it is in the United States. But more young people are smoking in the United States, and according to Dr. Kessler, 7 out of 10 who smoke, report that they regret having started.

He does not mention in his remarks something I have read elsewhere, and that is someone who is a cigarette smoker is much more likely to get involved in hard drugs.

An area where I have some concerns is his comment on advertising.

I believe the Federal Government has to move very cautiously when it comes to first amendment matters.

It does seem to me, however, that it is only realistic and fair to ask the advertisers to warn more effectively about the dangers of cigarettes.

We require this of the manufacturer of other products.

The speech by Dr. Kessler is something we should be taking extremely seriously, and I ask that the speech be printed in the RECORD.

The speech follows:

REMARKS BY DAVID A. KESSLER, M.D.

It is easy to think of smoking as an adult problem. It is adults who die from tobacco related diseases. We see adults light up in a restaurant or bar. We see a colleague step outside for a cigarette break.

But this is a dangerously short-sighted view.

It is as if we entered the theater in the third act—after the plot has been set in motion, after the stage has been set. For while the epidemic of disease and death from smoking is played out in adulthood, it begins in childhood. If there is one fact that I need to stress today, it is that a person who hasn't started smoking by age 19 is unlikely to ever become a smoker. Nicotine addiction begins when most tobacco users are teenagers, so let's call this what it really is: a pediatric disease.

Each and every day another three thousand teenagers become smokers. Young people are the tobacco industry's primary source of new customers in this country, replacing adults who have either quit or died. An internal document of a Canadian tobacco company, an affiliate of a tobacco company in the United States, states the case starkly:

''If the last ten years have taught us anything, it is that the [tobacco] industry is dominated by the companies who respond most effectively to the needs of the younger smokers.''

If we could affect the smoking habits of just one generation, we could radically reduce the incidence of smoking-related death and disease, and a second unaddicted generation could see nicotine addition go the way of smallpox and polio.

The tobacco industry has argued that the decision to smoke and continue to smoke is a free choice made by an adult. But ask a smoker when he or she began to smoke. Chances are you will hear the tale of a child.

It's the age-old story, kids sneaking away to experiment with tobacco, trying to smoke without coughing, without getting dizzy, and staring at themselves in a mirror just to see how smooth and sophisticated they can look.

The child learns the ritual. It is a ritual born partly out of a childish curiosity, partly out of a youthful need to rebel, partly out of a need to feel accepted, and wholly without regard for danger. It is a ritual that often, tragically, lasts a lifetime. And it is a ritual that can cut short that lifetime.

Many of us picture youngsters simply experimenting with cigarettes. They try smoking like they try out the latest fad—and often drop it just as quickly. But when you recognize that many young people progress steadily from experimentation to regular use, with addiction taking hold within a few years, the image is far different, far more disconcerting. Between one-third and one-half of adolescents who try smoking even a few cigarettes soon become regular smokers.

What is perhaps most striking is that young people who start smoking soon regret it. Seven out of 10 who smoke report that they regret ever having started. But like adults, they have enormous difficulty quitting. Certainly some succeed, but three out of four young smokers have tried to quit at least once and failed.

Consider the experience of one 16-year-old girl, recently quoted in a national magazine. She started to smoke when she was eight because her older brother smoked. Today, she says: ''Now, I'm stuck. I can't quit . . . It's so incredibly bad to nic-fit, it's not even funny. When your body craves the nicotine, it's just: 'I need a cigarette.''

In her own terms she has summarized the scientific findings of the 1988 Surgeon General's report. That report concluded: ''Cigarettes and other forms of tobacco are addicting'' and ''Nicotine is the drug in tobacco that causes addiction.''

Let there be no doubt that nicotine is an addictive substance. Many studies have documented the presence of the key addiction criteria relied on by major medical organizations. These criteria include: highly-controlled or compulsive use, even despite a desire, or repeated attempts to quit; psychoactive effects on the brain; and drug-motivated behavior caused by the ''reinforcing'' effects of the psychoactive substance. Quitting episodes followed by relapse and withdrawal symptoms that can motivate further use are some additional criteria of an addictive substance.

Are young people simply unaware of the dangers associated with smoking and nicotine addiction? No, not really. They just do not believe that these dangers apply to them.

For healthy young people, death and illness are just distant rumors. And until they experience the grip of nicotine addiction for themselves, they vastly underestimate its

power over them. They are young, they are fearless, and they are confident that they will be able to quit smoking when they want to, and certainly well before any adverse health consequences occur.

They are also wrong. We see that documented in papers acquired from one company in a Canadian court case. A study prepared for the company called ''Project 16'' describes how the typical youthful experimenter becomes an addicted smoker within a few years.

''However intriguing smoking was at 11, 12, or 13, by the age of 16 or 17 many regretted their use of cigarettes for health reasons and because they feel unable to stop smoking when they want to . . . Over half claim they want to quit. However, they cannot quit any easier than adults can.''

This sense of helplessness and regret was further tracked in a subsequent study for the company called ''Project Plus/Minus.'' It was completed in 1982:

''[T]he desire to quit seems to come earlier now than ever before, even prior to the end of high school. In fact, it often seems to take hold as soon as the recent starter admits to himself that he is hooked on smoking. However the desire to quit and actually carrying it out, are two quite different things, as the would-be quitter soon learns.''

Unfortunately, youth smoking gives no sign of abating. While the prevalence of smoking among adults has steadily declined since 1964, the prevalence of smoking by young people stalled for more than a decade and recently has begun to rise. Between 1992 and 1993 the prevalence of smoking by high school seniors increased from 17.2 percent to 19 percent. Smoking among college freshmen rose from 9 percent in 1985 to 12.5 percent in 1994.

And young people's addiction to nicotine is not limited to smoking. Children's use of smokeless tobacco, such as snuff and chewing tobacco, is also extensive. Today, of the seven million people in this country who use smokeless tobacco, as many as one in four is under the age of 19.

This epidemic of youth addiction to nicotine has enormous public health consequences. A casual decision at a young age to use tobacco products can lead to addiction, serious disease, and premature death as an adult. More than 400,000 smokers die each year from smoking-related illnesses.

Smoking kills more people each year in the United States than AIDS, car accidents, alcohol, homicides, illegal drugs, suicides and fires combined. And the real tragedy is that these deaths from smoking are preventable.

A year ago the FDA raised the question of whether the Agency has a role in preventing this problem. FDA has responsibility for the drugs, devices, biologics and food used in this country. Over the last year we have been looking at whether nicotine-containing tobacco products are drugs subject to the requirements of the Federal Food, Drug, and Cosmetic Act. Our study continues. But we already know this: Nicotine is an addictive substance and the marketplace for tobacco products is sustained by this addiction. And what is striking is that it is young people who are becoming addicted.

Statements from internal documents by industry researchers and executives show that they understood that nicotine is addictive and how important it is to their product. Listen to these statements made decades ago:

''We are, then, in the business of selling nicotine, an addictive drug.''

''Think of the cigarette pack as a storage container for a day's supply of nicotine. Think of the cigarette as a dispenser for a dose of nicotine. Think of a puff of smoke as the vehicle for nicotine.''

And consider what a research group reported to one tobacco company about starter smokers who assume they will not become addicted:

''But addicted they do indeed become.''

More recently, a former chief executive officer of a major American tobacco company, told the Wall Street Journal: ''Of course it's addictive. That's why you smoke . . .'' And a former smokeless tobacco industry chemist was recently quoted as saying: ''There used to be a saying at [the company] that 'There's a hook in every can' . . . [a]nd that hook is nicotine.''

Nevertheless, the industry publicly insists that smoking is a choice freely made by adults. An advertisement by one of the major tobacco companies that appeared in newspapers across the country last year bore a headline that read ''Where Exactly Is The Land of the Free?'' It suggests that the government is interested in banning cigarettes—although no one in government has advocated such a position. With some 40 million smokers addicted to nicotine, a ban would not be feasible.

The ad never addresses youth smoking. And it says ''. . . The time has come to allow adults in this country to make their own decisions of their own free will, without Government control and excessive intervention.''

But listen to the words of one smoker on the subject of freedom and choice:

''Well, do you think I chose to smoke? Do you believe that I took a cigarette and said, 'I think I'll smoke this one and then maybe four hundred thousand more?''

She continues:

''Choice. That's a laugh. Within each day I make dozens—perhaps hundreds—of large and small choices. From morning until bedtime, I pick and choose. I look at options and decide. One thing I don't decide, however, is whether to smoke. For me, a forty-seven-year old woman, that decision was made nearly thirty years ago by a first-year college student. And even she wasn't intending to make a lifelong decision; she was just going to try one cigarette. And then maybe just one more. Another and then another, and at some point, she lost her power to choose. She had become addicted, still believing she chose to smoke and denying the power and impact of nicotine in her life. Belief in my power to choose, and denial of how totally nicotine has stripped me of that power, are my two greatest enemies.''

We cannot adequately address this pediatric disease our country faces without recognizing the important influences on a young person's decision to smoke. One such influence is industry advertising and promotion. It is important to understand the effects of these practices on young people.

In the last two decades, the amount of money the cigarette industry has spent to advertise and promote its products has dramatically risen. Despite a longstanding ban on broadcast advertising, in 1992 alone the industry spent more than $5.2 billion. This makes it the second most heavily advertised commodity in the United States, second only to automobiles.

Tobacco advertising appears in print media, on billboards, at point of sale, by direct mail, on an array of consumer items such as hats, t-shirts, jackets, and lighters, and at concerts and sporting events. The sheer magnitude of advertising creates the impression among young people that smoking is much more ubiquitous and socially acceptable than it is. In studies, young smokers consistently overestimate the percentage of people who smoke.

In addition, tobacco industry advertising themes and images resonate with young people. Advertising experts describe the cigarette package as a ''badge'' product that adolescents show to create a desired self image and to communicate that image to others. As a retired leading advertising executive has stated: ''When the teenagers loose [sic] the visual link between the advertising and the point of sale . . . they will loose [sic] much of the incentive to rebel against authority and try smoking.''

In recent years, the tobacco industry has been spending more money on marketing and promotion and less on traditional advertising. For example, it distributes catalogues of items that can be obtained with proof of purchase coupons attached to cigarette packs—such as Camel Cash and Marlboro Mile. These coupons are exchanged for non tobacco consumer items imprinted with product logos.

These items have proven to be a big hit with children and adolescents. Half of all adolescent smokers and one quarter of nonsmokers own at least one promotional item from a tobacco company, according to a 1992 Gallup survey.

Sponsorship of athletic, musical, sporting and other events is another important way that the industry promotes its product. This links tobacco products with the glamorous and appealing worlds of sports and entertainment. And the logos of their brands are viewed during televised events, despite the federally mandated broadcast advertising ban.

Make no mistake: All of this advertising and promotion is chillingly effective. The three most heavily advertised brands of cigarettes are Marlboro, Camel and Newport. A recent study by the Centers for Disease Control and Prevention found that 96 percent of underage smokers who purchase their own cigarettes purchased one of those three heavily advertised brands.

The advertisements apparently have far less impact on adults. By far, the most popular brand choices for adults are the private label, price value, and plain package brands, which rely on little or no imagery on their packaging or advertising.

Let me describe two campaigns to illustrate the effects that advertising and marketing practices can have on young people. One campaign gave new life to a cigarette brand with an aging customer base. The other revitalized the dying smokeless tobacco market.

In the early 1980's, Camel cigarettes were smoked primarily by men over 50, and commanded about 3 to 4 percent of the overall market. So the company began to make plans to reposition Camel.

The new advertising for Camel was designed to take advantage of Camel's 75th birthday. The campaign featured the cartoon character ''Joe Camel'' as its anthropomorphic spokescamel who gave dating advice called ''smooth moves'' and who eventually was joined by a whole gang of hip camels at the watering hole.

The campaign was variously described as irreverent, humorous and sophomoric. But Joe Camel gave the company what it wanted: a new vehicle to reposition the Camel brand with more youth appeal.

During the same time period, the company devised what it called a Young Adult Smokers program—which went by the acronym Y A S. The program was designed to appeal to the 18 to 24 age group, and more narrowly to the 18- to 20-year-old audience. The program also had a tracking system to monitor sales in these groups.

Let me give you several facts about that program.

First, on January 10, 1990, a division manager in Sarasota, Florida issued a memorandum describing a method to increase the exposure and access to the Young Adult Market for the Joe Camel campaign. The memorandum asked sales representatives to identify stores within their areas that ''are heavily frequented by young adult shoppers. These stores can be in close proximity to colleges [, and] high schools . . .'' The purpose of the memorandum was to make sure that those stores were always stocked with items that appeal to younger people—such as hats and tee shirts—carrying the Camel name and imagery.

A Wall Street Journal article revealed the contents of this letter and it also contained the company's response that the memo was a mistake. The company said the mistake had been corrected and explained that the manager had violated company policy by targeting high school students. However, on April 5, 1990, another division manager, this time in Oklahoma, sent a memo to all areas sales representatives and chain service representatives in parts of Oklahoma. The memo refers to what it calls ''Retail Young Adult Smoker Retailer Account[s]'' and goes on to say:

''The criteria for you to utilize in identifying these accounts are as follows: (1) . . . calls located across from, adjacent to [or] in the general vicinity of the High Schools . . .''

Second, an additional element of its Camel campaign was known as FUBYAS—FUBYAS—an acronym for First Usual Brand Young Adult Smokers. The company's own research in the 1980's revealed a noteworthy behavior among smokers: the brand that they use when they first become regular smokers is the brand that smokers stay with for years. There is a great deal of brand loyalty among smokers.

Third, the next slide shows the effect of the YAS or young adult smoker campaign. Prior to the campaign, about 2 to 3 percent of smokers under the age of 18 named Camel as their brand. By 1989, a year into the campaign, Camel's share of underage smokers had risen to 8.1 percent and within a few years it had grown to at least 13 percent. During this same period, Camel's share of the adult market barely moved from its four percent market share.

The campaign succeeded in resurrecting the moribund Camel brand. But it also managed to create an icon recognizable to even the youngest children. Two studies, one by an independent researcher and one company funded, found that children as young as three to six easily recognize Joe Camel and know that he is associated with cigarettes. The company's researcher found that children were as familiar with Joe Camel as they were with Ronald McDonald. This fact is significant because children this young get most of their product information from television advertising. But cigarettes have not been advertised on television since 1970.

The campaign was clearly very effective with the target group—the YAS smokers. But it was also effective with the younger, under 18 smokers.

The second example of industry promotion concerns the largest smokeless tobacco company in America. It was also trying to revive the declining market for its product. By 1970, these products were used predominantly by men over 50. Young males had the lowest usage.

The company set about to redesign its products and refocus its advertising and promotion to target younger people, especially younger men. Its high-nicotine delivery products were apparently not well tolerated by new users. But as part of the redesign, it developed low-nicotine delivery snuff products in easy to use teabag-like pouches. Company documents indicate that these products were developed to create ''starter'' brands that would attract new users who could not tolerate the higher-nicotine delivery products.

A cherry-flavored product was also developed. In fact, one former company sales representative was quoted in the Wall Street Journal as saying that the cherry product ''is for somebody who likes the taste of candy, if you know what I'm saying.''

The documents also show that the company set out to produce a range of products with low, medium, and high nicotine deliveries. One document shows that the company expected its customers to ''graduate'' upward through the range of nicotine deliveries. This chart, prepared by its marketing department shows the hierarchy of products, with arrows going from Skoal Bandits (the teabags), through Happy Days and Skoal Long Cuts, and ultimately to Copenhagen—the company's highest nicotine delivery product.

The idea behind the advertising and marketing strategy was captured in a statement a few years earlier, in 1968, by a company vice president:

''We must sell the use of tobacco in the mouth and appeal to young people . . . we hope to start a fad.''

The company's reliance on the graduation process can also be seen in a company document that depicts a ''bullseye'' chart. This chart shows the company's plan to advertise, promote, and provide free samples of the lower nicotine delivery products to new users. The highest nicotine products were to be advertised only to current users, and only in a highly focused manner.

This product development and marketing strategy has been extremely successful in recruiting new users. Use of smokeless tobacco products has risen dramatically since the 1970's. Moist snuff sales tripled from 1972 to 1991 and use by 18 to 19-year-old boys increased 1,500 percent from 1970 to 1991.

The Camel and smokeless campaigns demonstrate how marketing and promotion targeted at younger tobacco users can also reach children and adolescents. And those young people who choose to smoke have easy access to the products. Tobacco products are among the most widely available consumer products in America, available in virtually every gas station, convenience store, drug store, and grocery store. And though every state in the country prohibits the sale of cigarettes to those who are underage, study after study demonstrates that these laws are widely ignored. Teenagers can purchase tobacco products with little effort—and they know it. A 1990 survey by the National Cancer Institute found that eight out of 10 ninth graders said it would be easy for them to buy their own cigarettes. By some estimates, at least as many as 255 million packs are sold illegally to minors each year.

Younger smokers are more likely to buy their cigarettes from vending machines, where they can make their purchases quickly, often unnoticed by adults. The vending machine industry's own study found that 13-year-olds are 11 times more likely to buy cigarettes from vending machines than 17-year olds. The 1994 Surgeon General's Report examined nine studies on vending machine sales and found that underage persons were able to buy cigarettes 82 to 100 percent of the time.

But the easy access does not stop with vending machines. Self-service displays allow buyers to help themselves to a pack of cigarettes or a can of smokeless with minimal contact with a sales clerk. This makes it easier for an underage person to buy tobacco products.

I've told you today that 90 percent of those who smoke began to do so as children and teenagers. I've told you that most of them become addicted and that 7 out of 10 wish they could quit. I've told you that the tobacco industry spends more than $5 billion a year to advertise and promote an addictive product and it uses cartoon characters, tee shirts and other gimmicks that appeal to children. I've told you that one company went so far as to develop a young adult smoker's program which, intentional or not, increased cigarette sales to children.

Some may choose to ignore these facts. Some will continue to insist that the issue is an adult's freedom of choice. Nicotine addiction begins as a pediatric disease. Yet our society as a whole has done little to discourage this addiction in our youth. We must all recognize this fact and we must do more to discourage this addiction in our youth.

A comprehensive and meaningful approach to preventing future generations of young people from becoming addicted to nicotine in tobacco is needed. Any such approach should: First, reduce the many avenues of easy access to tobacco products available to children and teenagers; second, get the message to our young people that nicotine is addictive, and that tobacco products pose serious health hazards—and not just for someone else; and third reduce the powerful imagery in tobacco advertising and promotion that encourages young people to begin using tobacco products.

These types of actions have been advocated by many public health experts and organizations, including most recently the Institute of Medicine which recently issued a report on smoking and children. And a recent public opinion poll sponsored by the Robert Wood Johnson Foundation showed widespread public support for measures to reduce smoking by young people.

When it comes to health, we Americans are an impatient people. We venerate the deliberate, cautious scientific method but we yearn for instant cures. We grow restless waiting years or even months for answers, yet today I am telling you to look to the next generation.

Certainly some of the forty million addicted adult smokers in this country will succeed in quitting. Every addictive substance has some who are able to break its grip, and we should do all we can to support those who want to quit. But let us not fool ourselves. To succeed, we must fix our gaze beyond today's adults.

Of course we all want freedom for our children. But not the freedom to make irreversible decisions in childhood that result in devastating health consequences for the future. Addiction is freedom denied. We owe it to our children to help them enter adulthood free from addiction. Our children are entitled to a lifetime of choices, not a lifelong addiction.●

BUZZ ALDRIN ELEMENTARY SCHOOL

● Mr. WARNER. Mr. President, last Tuesday I had the privilege of attending the dedication ceremony naming the Buzz Aldrin Elementary School, in Reston, VA.

The school's namesake, Dr. Aldrin, delivered a very moving statement at that event. He reminded the students that ''no dream is too high for those with their eyes in the sky.''

Who among us does not remember being riveted by the words ''one small

step for man; one giant leap for mankind?'' Buzz Aldrin's inspiring remarks brought back that momentous day—July 20, 1969—when the *Eagle* landed and man's first steps were taken on the moon. Most importantly, he made it clear to the students in the audience that they, too, can and will accomplish great things.

I am pleased to share Dr. Aldrin's remarks with my colleagues and ask that they be printed in the RECORD.

The remarks follow:

A SPEECH BY BUZZ ALDRIN UPON THE DEDICATION OF THE SCHOOL NAMED IN HIS HONOR

Few people have the opportunity to attend the dedication of a school that has been named for them. My family and I are appreciative that the leadership of Fairfax County named Aldrin Elementary School in my honor, rather than in my memory! Thank you very much. It is a privilege to be here.

Twenty-five years ago it was a privilege to be there. It was incredible to be someone who lived the words, ''to go where no man has gone before,'' and science fiction became scientific fact when we walked on the moon.

Some of you in the audience may still remember where you were when you heard that the Eagle had landed. Some of you sat glued to a television screen as I climbed down to the surface of the moon. For a nation unwilling to accept second place in the race for space, it was a declaration of victory. For a world believing that space was an unconquerable frontier, it was a shout of triumph. ''One small step for man; one giant leap for mankind.''

I still hear those words in my ears, just like the hallways of this school echo with the steps of boys and girls and adults. Each day students, teachers, and administrators alike are taking small steps together to embrace the future. Some steps are taken in wheelchairs. Some steps are aided by walkers. Some steps are the small steps of two year olds and the larger ones are the steps of 12 years olds. But no one really moves toward the future alone. Each of us has been helped in our stride toward tomorrow. The steps that occur within this school are not steps taken alone. Parents bold the hand of their children, each step a step of love. Teachers hold the hands of students, each step a step of knowledge. Administrators hold the hands of students, parents, and faculty so that each step is supported. And community people, business leaders, people like Brian M. Mulholland, government officials like Senator Robb, Senator Warner, and so many others join hands and walk with this student body because the steps of students and faculty may look like small strides, but actually they are the steps that will take us into a world that will look very different.

It is here that you must take advantage of the latest in science and technology. It is here that you must realize that no dream is too small. And it is from here that a new generation of All-Stars have been born. Your theme this year has been ''Reaching for the Moon With Its Stars,'' and appropriately so. Schools are places for those small steps that later become giant leaps. It is here that hopes are nurtured and cultivated. It is here that children can be instructed to do what others have done, and be challenged to do what no one else has accomplished.

My message to you today is that ''No dream is too high for those with their eyes in the sky.''

You honor more than me and my name with this school. You honor the dreams that propelled our nation to explore space and the hopes that continue to lead us toward the future. May we continue to honor our hopes and dreams by enabling the small steps of children to become giant leaps for humanity.

It is obvious that ''It's one small step for man; one giant leap for mankind'' every day at Aldrin Elementary School.●

CUT CORPORATE WELFARE

● Mr. SIMON. Mr. President, there has been a great deal of praise to various people for direct lending, including some to PAUL SIMON.

But the person who really pioneered direct lending for the student loan program and was convinced of its usefulness before I was, is Congressman TOM PETRI, a Republican Member from Wisconsin.

Recently, he sent a ''Dear Colleague'' letter on direct lending because it is now threatened by people who profit from the present system.

His ''Dear Colleague'' is titled ''Cut Corporate Welfare,'' and I ask that it be printed in the RECORD.

The letter follows:

CUT CORPORATE WELFARE

DEAR COLLEAGUE: Those of us who call ourselves fiscal conservatives won't have one shred of credibility as budget cutters if we are unwilling to go after corporate welfare with the same zeal we apply to other types of waste. And in this kind of effort, liberals should be willing to join us. Please consider the following case carefully.

Suppose you were a banker and you were able to make loans that: were fully guaranteed by the federal government (i.e. as safe as t-bills); paid you interest directly from the federal government for a period of years at 2.5% more than the interest on t-bills; were fully as liquid as t-bills (or even more so) because you could sell them at any time at face value or even a slight premium in a large secondary market with plenty of eager buyers; require no credit-worthiness analysis up front; and required no collection effort for a period of years (you do nothing but sit back and collect your interest), after which you could still sell them or start collecting on them and receiving an extra .6% interest?

Wouldn't that be a great deal? Wouldn't you fight like Hell to keep it? You bet. And the deal exists—it's the guaranteed student loan program. But it's a lousy deal for the taxpayers. They'd be much better off selling t-bills themselves to finance the loans (rather than renting banks' capital at 2.5% more than the t-bill rate) and then contracting for loan servicing with the current private servicers on a competitive bid basis. And guess what? That's what direct lending is. It's still a public/private partnership, but the one useful function the private sector performs—loan servicing—is priced in a market process rather than a political negotiation over interest rate premiums.

Think about it another way: what useful function are the banks providing? They can't assess risk. They take no risk. We can get cheaper capital. And we wouldn't even need their servicing if we collected these loans as income taxes through the IRS.

Make no mistake—guaranteed student loans contain an enormous bank subsidy. That's one of their four main sources of waste (the others are default costs, administrative complexity, and mistargetted subsidies for students). If we don't get rid of this corporate welfare, we'll have to cut more somewhere else.

The choice is clear—are you for the banks or for the taxpayers? True fiscal conservatives should have no doubt about whose side to take.

Sincerely,

THOMAS E. PETRI, M.C.●

VETERANS' COMMUNITY-BASED CARE ACT

● Mr. WELLSTONE. Mr. President, I rise to support S. 725, the Veterans' Community-Based Care Act of 1995, introduced by my distinguished colleague, Senator ROCKEFELLER. I am honored to be an original cosponsor of this bill that I deeply believe is of signal importance to veterans and to the future of VA health care.

The VA currently is planning to revamp its health care system to reduce its strong emphasis on inpatient hospital care in order to provide more veterans with health care in outpatient and noninstitutional settings, including community-based facilities when such care is appropriate. This bill will not only support VA's restructuring efforts, but also help some of our most vulnerable veterans—those with substance abuse problems who require rehabilitation services; elderly veterans who are infirm; and homeless veterans who suffer from severe mental illnesses or substance abuse problems.

Let me stress that these are proven programs with successful track records and this bill will extend existing authorities for these worthwhile and innovative programs for about 5 years.

Mr. President, I would like to briefly describe these programs so that my colleagues may more fully appreciate their value to needy individual veterans and to the VA health system as a whole:

One provision would extend VA authority to contract with non-VA halfway houses for rehabilitation services for veterans with substance abuse problems. This worthwhile program was first authorized in 1979, and currently operates at 106 medical centers, with 6,300 veterans treated in fiscal year 1994. These community half-way houses perform a vital function in facilitating a veteran's successful transition from inpatient substance abuse treatment and detoxification to independent living within the community. The halfway houses provide a supervised, substance free environment, and help develop independent living and social skills. I strongly and unequivocally supported extension of this program in the 103d Congress and I firmly believe it merits further extension.

The bill also would extend VA's authority to provide health and health-linked service to veterans who otherwise would need nursing home care. It enables veterans to live at home and receive, at less cost to VA and the taxpayer, the same type of services that would otherwise be provided in a hospital or nursing home. Mr. President, this can be best described as a win-win-win program. Veterans would be able to continue living at home, costs to the taxpayer would be cut significantly,

and VA inpatient facilities and nursing homes could be reserved for veterans for whom there is no other feasible alternative.

I am especially pleased that this bill would reauthorize the Homeless Chronically Mentally Ill [HCMI] program. This program has been effective in serving the most disadvantaged, most needy and often most difficult population of vets to reach. It is precisely the kind of program that Senator Hubert Humphrey would have approved of in that passes his litmus test for judging a society by the way it deals with the most vulnerable and needy of its citizens. HCMI authorizes VA outreach workers to contact homeless vets, assess and refer vets to community services, and place eligible vets in contracted community-based residential treatment facilities. This program is one of the two major VA homeless programs and now operates out of 57 medical centers in 31 States and the District of Columbia. I backed extension of this program unequivocally in the 103rd Congress, and I am even more convinced now that it merits reauthorization.

Another extraordinarily valuable, effective, and humane program that this measure would reauthorize is known as the Compensated Work Therapy and Therapeutic Transitional Housing program [CWT/TR]. It is a demonstration program authorizing the VA to renovate 50 residences as therapeutic transitional houses for chronic substance abusers, many of whom are also homeless, jobless, and mentally ill. VA would also be authorized to contract with nonprofit corporation which would own and operate the transitional residences in conjunction with existing VA compensated work therapy programs. Once a residence is fully renovated and operational, rent collected from vets in the program usually exceed operating costs. A preliminary VA evaluation of the program indicates that well over 50 percent of participants complete the program and have had substantially better sobriety, employment, and housing status than before entering the program. I strongly backed extension of this program in the last Congress and have no doubt that there is an urgent need to further extend this program that serves those are among the most needy of our veterans.

Finally, Mr. President this bill would extend VA's authority to enter into enhanced use leases, which would permit other parties to use VA property so long as at least part of the property will provide for an activity that furthers the VA mission and enhances use of the property. An excellent illustration of how this program would operate is a plan to establish at the Minneapolis VA Medical Center [VAMC] a managed care clinical research and education center on land owned by the VAMC. An HMO would build a facility on VAMC grounds that would be large enough for VA personnel to do important clinical research and provide additional space for VA personnel to provide patient care to vets. Additionally, VA personnel would gain first-hand experience in managed care and make the VA more competitive in a managed care environment. Finally, the program would ready the Minneapolis VAMC for participation in the Minnesota State health care reform program should this become feasible.

In closing I want to thank my colleague, Senator ROCKEFELLER for his leadership in preparing this legislation and urge my colleagues to give it their full support.●

A BULLET FROM AMERICA THREATENS AN INVALUABLE BEIRUT SCHOOL

● Mr. SIMON. Mr. President, my wife and I took off on a rare vacation of any length, when we spent 10 days in Spain and Portugal over the Easter recess.

While I was there, I picked up the New York Herald Tribune and read the Tom Friedman column, which originally appeared in the New York Times, paying tribute to Malcolm Kerr, who served as president of the American University in Beirut.

An incidental surprise in the article was to learn that Steve Kerr, who plays for the Chicago Bulls, is the son of the late president of American University.

Mr. Friedman has a point to make on what we ought to be doing in the field of economic assistance to other countries. I ask that the Tom Friedman column be printed in the RECORD.

The column follows:

A BULLET FROM AMERICA THREATENS AN INVALUABLE BEIRUT SCHOOL

(By Thomas L. Friedman)

WASHINGTON.—When I was a reporter in Beirut in the early 1980s the three most chilling words anyone could say to you were: ''Have you heard?'' The news that followed was almost always bad. That is why I shuddered on the morning of Jan. 18, 1984, when a banker friend called me to say: ''Have you heard? Malcolm Kerr has been shot.''

Malcolm was the president of the American University of Beirut, an expert on Arab politics and a friend of mine. I immediately ran over to the AUB campus. By the time I got there Malcolm was dead, the gunmen were gone and the only trace left of the murder was the bullet hole that had gouged the wall on the stairs to his office.

I have been thinking about Malcolm and the AUB lately because his widow, Ann Zwicker Kerr, has just published an affectionate memoir of both entitled ''Come With Me From Lebanon.'' The book chronicles how they met on the AUB campus in 1954, she as a junior year abroad student from Occidental College and he as the son of AUB instructors. (Ann's parents wanted her to go to school in Europe, she wanted to go to India, so they compromised on Lebanon.)

Years later, after marrying, she and Malcolm returned to the AUB as teachers, and finally, after 20 years at the University of California at Los Angeles, they came back to run the AUB in the middle of the Lebanese civil war, out of a conviction that it was an institution worth saving. In Malcolm's case, it became an institution worth dying for.

I fondly recall sitting on the veranda of Marquand House, the AUB president's residence overlooking the Mediterranean, drinking freshly squeezed lemonade and listening to Malcolm's sober and always biting analysis of Arab politics. I was reminded of it reading Ann's book, in which Malcolm complained that there were ''two rival student groups each wanting to organize its own Miss AUB contest—a Miss Left-Wing AUB and a Miss Right-Wing AUB, and after heroic efforts the dean of students finally got them together, only to have the army move in and scrap the whole thing!''

No one knows who murdered Malcolm, but clearly it was extremists intent on driving the United States, and its marines, out of Beirut. (He left behind four kids, one of whom, Steve, plays guard alongside Michael Jordan for the Chicago Bulls.)

I hope this book gets read by two audiences. For the general reader it is a throughtful period piece about Americans abroad—a reminder of that generation of American secular missionaries, most of them teachers and doctors who, long before the Peace Corps, dedicated their lives to spreading the gospel of Jefferson and Lincoln in the Arab East. They came innocent of any imperial ambitions and they both nourished and were nourished by the local educational institutions they ran.

I also hope it is read by all those in Congress who today are so eagerly, and mindlessly, slashing U.S. foreign aid. Because when America cuts foreign aid, it isn't just cutting payoffs to the Guatemalan army. It is also cutting off the AUBs.

Who cares? Well, consider this: When the United Nations was founded in San Francisco, there were 19 AUB graduates among the founding delegates, more than any other university in the world. Educational institutions like the AUB are literally factories of pro-Americans.

Since its founding in 1866 it has graduated 34,000 students from all over the Middle East, who were educated in the American system and exposed to basic American values and standards. Today those graduates are cabinet ministers, business executives and educators peppered throughout the region.

Most important, the AUB is still one of the only real liberal arts colleges in the Arab world. It is the best answer to Islamic fundamentalism. In fact, most of the AUB's students today are Sunni and Shite Muslims, who still see an American degree, not a Khomeini decree, as their ticket to advancement in the world.

But the AUB today is struggling. In 1985 it got about $15 million a year in American foreign aid. Today it gets $1.8 million. Tomorrow, if some in Congress have their way, it could get nothing. It would be an ironic tragedy if the AUB, having survived civil wars, bombings and the murder of Malcolm Kerr, were to have the fatal bullet put in its head by a stingy U.S. Congress controlled by people with no sense of America's role in the world or the institutions that sustain its values abroad.

Mr. SIMON. I visited the American University in Beirut long before I was a Member of Congress and was favorably impressed by what they did. The stunning statistic, which I had never read before, that there were 19 American University in Beirut alumni among the founding delegates at the San Francisco U.N. Conference, is dramatic evidence of the good work that they do.

The first lesson from the Tom Friedman column is that we should adequately support this fine and important university.

But there is another lesson to be drawn. Until the political earthquake of November 8, 1994, I served on the Senate Foreign Relations Committee and chaired the Subcommittee on African Affairs. I learned to my chagrin, a little more than a year ago, that only 1½ percent of American economic aid to sub-Sahara Africa goes for higher education.

In our aid programs we have to meet emergencies—and Africa has more than its share of emergencies—but we also have to be looking long-term, and one of the ways that we help Africa long-term is to see to it that they have leadership in the future. One of the most effective ways to see that they have good leadership in the future is to make an investment in higher education.

I hope we reflect on the Tom Friedman column.●

RICH NATIONS CRITICIZE UNITED STATES ON FOREIGN AID

● Mr. SIMON. Mr. President, recently, I read a New York Times article titled ''Rich Nations Criticize U.S. On Foreign Aid,'' by Steven Greenhouse. It referred to a report of the Organization for Economic Cooperation and Development [OECD], and I ask that the article be printed in the RECORD at this point.

The article follows:

RICH NATIONS CRITICIZE UNITED STATES ON FOREIGN AID

(By Steven Greenhouse)

WASHINGTON, April 7—An organization of wealthy industrial nations issued a stinging report today criticizing the United States for moving to cut foreign aid when it already gives a smaller share of its economic output to such assistance than any other industrial nation.

The Organization for Economic Cooperation and Development, a Paris-based group of 25 nations, said the United States, once far and away the world's leading donor, was setting a poor example by cutting its aid budget and warned that the move might prompt other countries to follow suit.

Using unusually blunt language, the report said that ''this seeming withdrawal from traditional leadership is so grave that it poses a risk of undermining political support for development cooperation'' by other donor countries.

The report said the United States had slipped to No. 2, well behind Japan, in the amount of foreign aid provided excluding military assistance. The United States provided $9.72 billion in 1993, compared with $11.3 billion for Japan.

It said the United States contributed 15-hundredths of one percent of its gross domestic product for economic aid, putting it last among the 25 industrial nations. The average among these nations was 30-hundredths of one percent, while Sweden, Denmark and Norway all give 1 percent of their overall output to foreign aid.

J. Brian Atwood, Administrator of the Agency for International Development, the Government's principal aid arm, welcomed the report, making clear that he intends to use it as ammunition in the Clinton Administration's fight to persuade Congress not to cut foreign aid. At a news briefing today, Mr. Atwood criticized Congressional committees for proposing to cut $3 billion from the $21 billion international affairs budget, which includes State Department spending as well as foreign aid.

The report was written by the O.E.C.D. Secretariat and was overseen by James H. Michel, the chairman of its development assistance committee. Mr. Michel was an assistant administrator of A.I.D. in the Bush Administration.

Mr. SIMON. After reading the article, I asked for a copy of the OECD report, and it is a somewhat technical but important insight into our deficiencies.

Let me give a few quotes from the report:

A perplexing feature of the US development assistance effort is that while public opinion responds readily to situations of acute needs in developing countries (contributions to private voluntary agencies are among the highest per capita among DAC Members), there is no strong public support for the Federal aid budget. This may be explained in part by the fact that the public greatly overestimates the share of foreign assistance in the US Federal budget. According to a recent poll, the majority of respondents believe it to be around 20 percent of total US Government spending. In fact, USAID spending represents only 0.5 percent of the Federal budget and the US has the lowest ODA/GNP ratio among DAC Members.

Two other important points are made:

There is considerable apprehension in the donor community that some proposals may be given voice in the new Congress which raise the possibility of major cut-backs in US aid and even a turning away by the US from the common effort for development which it inspired over 30 years ago.

The second important point:

The US has accumulated substantial arrears both to the U.N. system and to be the multilateral concessional financing facilities, due to Congressional reluctance to approve the necessary appropriations. Plans discussed with Congress in 1994 to eliminate these arrears over the next few years are welcome. At the same time these plans appear to imply a reduction in US contributions to future financing of these agencies and facilities. This would represent a shift in burden-sharing to other DAC Members, and might have serious consequences for upcoming replenishments of the International Development Association (IDA) and the soft windows of the regional development banks.

But perhaps more telling than anything else is the percentage of gross national product [GNP] that is used for foreign aid among the 21 wealthy nations.

I ask my colleagues to look at this table, and I do not believe we can look at it with pride.

Mr. President, we are shortly going to be making decisions on our budget, and one of the questions is: Are we going to be less sensitive to the needs of the poor, both within our country and beyond the borders of our country?

I hope we will provide a sensible and humanitarian answer, that suggests we should be helpful to those in need.

The table follows:

Net ODA from DAC countries in 1993

[As percent of GNP]

Denmark	1.03
Norway	1.01
Sweden	0.98
Netherlands	0.82
France	0.63

Net ODA from DAC countries in 1993—Continued

Canada	0.45
Finland	0.45
Belgium	0.39
Germany	0.37
Australia	0.35
Luxembourg	0.35
Switzerland	0.33
Italy	0.31
United Kingdom	0.31
Austria	0.30
Portugal	0.29
Japan	0.26
New Zealand	0.25
Spain	0.25
Ireland	0.20
United States	0.15
Total DAC	0.30●

AFRICA

● Mr. SIMON. Mr. President, the World Bank issues an annual report on regional perspectives.

Because I formerly chaired the Subcommittee on Africa for the Senate Foreign Relations Committee and have a continuing interest in that continent, I read their report on Africa with special interest.

There are some things that are worth noting.

One is that, excluding South Africa, the gross domestic product [GDP]—national income—grew by just 1.4 percent. That is a low growth rate for an area with a high population growth rate. Fundamentally, it means there is a continuing decline in the standard of living that should concern all of us.

The high debt burden they mention is also something to be concerned about.

They did note ''the political transition sweeping the continent, noting that a few years ago there were only six democracies in Africa and the number had reached 29 by the end of June 1994.'' But they also note in the story that while in general democracies fare better, some of them are having a difficult time, and there are exceptions to democracies faring better, including the repressive Government of Sudan.

Mr. President, I ask that the article be printed in the RECORD.

The article follows:

AFRICA

The year 1993, on the whole, was a difficult one for the countries of the Africa region, as gross domestic product (GDP), excluding South Africa, grew by just 1.4 percent. Although this represents an improvement over 1992, it is nevertheless disappointing, considering the region's high rate of population growth and the level needed for development. As in previous years, the countries implementing major reforms, and therefore benefiting from the Special Program of Assistance (SPA), saw their aggregate output increase by 2.1 percent, or more than the average for the region.[1] The sixteen core (or steady) reformers did still better, as their GDP rose by 2.8 percent; the countries comprising the CFA Zone, however, saw their economies contract for a third consecutive year.[2] A positive development in 1993 was that, on average, the low-income countries performed better than the middle-income

Footnotes at end of article.

ones, although neither group recorded an increase in per capita terms.

TABLE 5–1.—AFRICA: 1992 POPULATION AND PER CAPITA GNP OF COUNTRIES THAT BORROWED DURING FISCAL YEARS 1992–94

Country	Population [1] (millions)	Per capita GNP [2] (U.S. dollars)
Angola [3]	9.7	NA
Benin	5.0	410
Burkina Faso	9.5	300
Burundi	5.8	210
Cameroon	12.2	820
Cape Verde	0.4	850
Central African Republic	3.2	410
Chad	6.0	220
Comoros	0.5	510
Congo	2.4	1,030
Cote d'Ivoire	12.9	670
Equatorial Guinea	0.4	330
Ethiopia	54.8	110
Gabon	1.2	4,450
Gambia, The	1.0	370
Ghana	15.8	450
Guinea	6.1	510
Guinea-Bissau	1.0	220
Kenya	25.7	310
Lesotho	1.9	590
Madagascar	12.4	230
Malawi	9.1	210
Mali	9.0	310
Mauritania	2.1	530
Mauritius	1.1	2,700
Mozambique	16.5	60
Niger	8.2	280
Nigeria	101.9	320
Rwanda	7.3	250
São Tomé and Principe	0.1	360
Senegal	7.8	780
Seychelles	0.1	5,460
Sierra Leone	4.4	170
Sudan [4]	26.5	NA
Tanzania	25.9	110
Togo	3.9	390
Uganda	17.5	170
Zaire [4]	39.8	NA
Zambia [4]	8.3	NA
Zimbabwe	10.4	570

[1] Estimates for mid 1992.
[2] "World Bank Atlas" methodology, 1990–92 base period.
[3] Estimated as lower-middle-income ($676–$2,695).
[4] Estimated as low-income ($675 or less).

Note: The 1992 estimates of GNP per capita presented above are from the "World Development Indicators" section of World Development Report 1994.

Some of the highest growth rates were achieved by those countries, such as Lesotho, Malawi, Mozambique, and Zambia that were recovering from the severe drought of 1991–92. The rather quick recovery of these and other countries from the effects of the drought is testimony to the relative resilience of their economies and to the effectiveness of collaboration among their public administrations, donors, and nongovernmental organizations (NGOs). The improvement in weather conditions was not generalized, however. Drought persisted in some areas, posing a serious threat in parts of Ethiopia and Kenya, and the countries of the western Sahel experienced poor rainfall. In addition, in these and other countries growth was held back by political transition, a high debt burden (despite debt forgiveness and reschedulings), a deterioration in the terms of trade, and weak policy implementation.

The political transition sweeping the continent has resulted in increasing multiparty democracies; whereas there were just six democracies a few years ago, the number had reached twenty-nine by the end of June 1994. The transition, however, has not been easy, without cost, or uniformly smooth. Where transition governments are in place, power sharing has proven difficult to achieve, and opposing groups still vie for power in many places. On the economic front, the transition has sometimes disrupted production and commerce, affected the mobilization and allocation of resources, and diverted attention away from needed policy reforms. Yet the transition continues nearly everywhere.

There were sharp contrasts on the African scene in 1993/94. The installation of democratically elected governments in Malawi and South Africa stand in sharp contrast to the mass killings in Rwanda. There were a variety of outcomes in the economic sphere, too, due to the contradictory forces at play not just across countries, but within them and even

TABLE 5–2.—LENDING TO BORROWERS IN AFRICA, BY SECTOR, 1985–94

[Millions of U.S. dollars; fiscal years]

Sector	Annual average, 1985–89	1990	1991	1992	1993	1994
Agriculture	533.9	997.4	504.9	707.4	318.3	152.6
Energy:						
Oil and gas	20.6	.....	300.0	48.5	2.4	186.2
Power	113.9	230.0	155.0	86.0	356.0	90.0
Environment	.....	.....	.....	.....	.....	2.6
Human resources:						
Education	122.8	350.7	265.9	402.9	417.4	325.5
Population, health, and nutrition	75.7	232.7	432.8	100.3	131.2	161.6
Social sector	.....	.....	.....	.....	.....	.....
Industry and finance:						
Industry	124.6	180.1	11.0	200.0	83.5	29.6
Finance	241.3	193.6	138.8	619.9	252.3	400.1
Infrastructure and urban development:						
Telecommunications	50.0	225.0	12.8	.....	89.1	.....
Transportation	339.4	543.6	309.5	242.8	483.0	515.0
Urban development	177.2	360.4	98.3	233.8	61.2	111.4
Water supply and sewerage	102.9	257.2	256.0	297.4	67.2	74.1
Mining and other extractive	31.5	.....	21.0	6.0	.....	.....
Multisector	504.0	285.6	861.0	895.0	434.2	711.0
Public sector management	81.0	76.6	27.2	133.6	121.5	48.2
Tourism	.....	.....	.....	.....	.....	.....
Total	2,519.0	3,932.9	3,394.2	3,973.6	2,817.3	2,807.9
Of which:						
IBRD	909.3	1,147.0	662.9	738.4	47.0	127.7
IDA	1,609.7	2,785.9	2,731.3	3,235.2	2,770.3	2,680.0
Number of operations	80	86	77	77	75	60

Note: Details may not add to totals because of rounding.

within sectors. Some countries (such as The Gambia, Sierra Leone, and Zimbabwe), where the implementation of reform programs is on track, nonetheless experienced low GDP growth rates due the deterioration of their terms of trade, weather conditions, the lingering effects of the 1991–92 drought, or the disruptions caused by rebel activity and political transition. In contrast, other countries (such as Equatorial Guinea and Sudan, for example), where reform programs were lacking or off-track, registered growth of 6 percent to 7 percent, helped by oil exports or favorable agricultural conditions. In yet other countries, results were uneven, with agricultural growth coinciding with a decline in industrial production and services, or a decline in overall exports accompanied nevertheless by an expansion of nontraditional exports. Contrasts also marked the implementation of policies. While the countries of the CFA Zone as a group failed to take the necessary measures to restore their competitiveness in 1993, many of them implemented significant structural reforms in the fiscal, financial, trade, and other areas. In several of the good performers, the improvements that took place were still inadequate, however; savings rates, for example, remained too low to support rapid, sustained growth, and social conditions continued unsatisfactory.

Despite this panoply of variations, the events of the past twelve months have some common elements that provide encouraging signs for the future. Despite delays and costs in terms of lives and physical assets, the democratization process is moving ahead. Despite economic and political hardships, reform programs have survived in most countries and have even been strengthened in some. Several countries improved their performance in the course of the past year, and the members of the CFA Zone have taken an historic, bold step to improve their competitiveness. While much remains to be done, more countries are embarked on reform programs and face better prospects than compared with a year ago.

VARYING POLICIES, VARYING PERFORMANCE

Another common thread of Africa's experience, despite the contrasts noted, is that African countries that have sustained adjustment policies generally have performed better than those countries that have not. This observation, made in a recently released staff study that covered the adjustment experience in sub-Saharan Africa from 1981 through 1991 (see Box 5–1), is complemented by comparing the more recent experience of a country where policy reform has been seriously interrupted (Nigeria) with a country that strayed from, but reembarked on, policy

reform (Kenya) and with one that has remained steadily on the reform path (Uganda).

Nigeria went through a tumultuous period in both 1992 and 1993. The planned democratic transition was protracted and, in the end, did not establish civilian rule. The process generated considerable uncertainty, economic disruptions, and social unrest. Budgetary control deteriorated, leading to fiscal deficits, which exceeded 10 percent of GDP. Inflation rose to 40 percent in 1992 and 58 percent in 1993. The official exchange rate was pegged below market rates, with the spread reaching 100 percent by late 1993. The external balance deteriorated significantly, with reserves dwindling and arrears to external creditors rising to more than $6 billion, or one fifth of outstanding debt. Meanwhile, the economy grew by only 4.1 percent in 1992 and 1.9 percent in 1993, compared with an average 5 percent in the preceding six years. The economic policies announced in the 1994 budget abolished free transactions in the foreign exchange and credit markets, thereby removing the remaining core pillars of the structural adjustment program adopted in 1986.

In 1990–92, Kenya witnessed a sharp decline in all major macroeconomic performance indicators. However, in early 1993, the Kenya authorities signalled an interest in restarting the reform process, and, as a result, the conditions for strong medium-term growth in Kenya have improved significantly. Implementation of stabilization policies and more effective enforcement of financial sector regulations have sharply reduced runaway inflation (falling to an annual rate of around 15 percent during the last quarter of 1993 after peaking at around 100 percent during the second quarter). Important steps towards structural reform, particularly in the area of external trade, have begun to gradually restore domestic and international confidence in the government's commitment to reform. With the elimination of all but a short list of import licenses and the introduction of a unified and stabilized market-determined exchange rate (the Kenya shilling becoming fully convertible in May 1994), the stage has been set for the private, and especially the export, sector to lead the recovery. By the end of 1993, monetary control had been tightened, discipline had been reintroduced in the financial sector, the maize market had been fully liberalized, and foreign-exchange reserves had recovered to comfortable levels. These improvements facilitated the approval by the International Monetary Fund (IMF) of a one-year Enhanced Structural Adjustment Facility arrangement during the fourth quarter of 1993, as well as the successful rescheduling of external arrears with the Paris Club in January 1994.

Uganda has gone quite far in creating a free enterprise economy. At the same time, the government has stabilized the economy through tight fiscal and monetary programs. Inflation was reduced to around 4 percent in 1993, down from 45 percent in 1992 and 240 percent in 1987, the year in which the present adjustment program was initiated. Uganda has in place a program of comprehensive structural reforms covering the civil service, public enterprises, and major financial institutions, and is undertaking a large reduction in military forces to release resources for priority spending programs. These reforms have had a positive effect on the economy: Real GDP growth is estimated to have reached 6 percent in 1993, enabling per capita consumption to rise by about 2.5 percent. The lowered inflation has contributed to a stable exchange rate and renewed confidence in the country's currency. In addition, the downward slide in coffee production, the country's main export, has been halted. There are also signs that nontraditional exports are growing rapidly; that the public's willingness to hold financial assets in the form of savings and time deposits, which have increased fourfold in the past two years, is increasing; that the inflow of private capital has been substantial; and that investment, including rehabilitation and reconstruction work on properties of returning entrepreneurs, is on the rise. All of these gains, together with the increased focus of government spending on basic social services, are expected to have a positive impact on poverty reduction.

IMPROVED COMPETITIVENESS

The countries of the CFA Zone have faced major economic, financial, and social difficulties since 1986. These difficulties were caused by a downward deflationary spiral of production, incomes, and expenditures that cut average real per capita income by 40 percent, reduced the capacity of governments to provide basic social services, increased the incidence of poverty, and undermined the Zone's financial institutions. The spiral, in turn, was caused by a massive loss of competitiveness that resulted from a combination of the inflated cost structure existing in the mid 1980's and the major external shocks suffered since then. The prices of the Zone's major exports (coffee, cocoa, cotton, phosphate, uranium, and oil) dropped sharply in the second half of the 1980s, causing its terms of trade to fall by 40 percent between 1985 and 1992. The Zone's real effective exchange rate (REER) appreciated by 39 percent over the same period. That movement was the result of the depreciation, since 1985, of the United States dollar and the large depreciation achieved by many competing developing countries of their own REERs through nominal devaluations in the context of economic reforms. The internal adjustment programs and structural reforms pursued by various CFA countries in the period 1986–93 were able neither to correct this massive loss of competitiveness nor halt the ongoing downward spiral.

Recission and financial crisis in the CFA Zone continued throughout 1993. Moreover, as it became increasingly clear that internal adjustment programs were not working, external financing for them dried up. For 1993 as a whole, per capita real income declined by 4.5 percent, exports fell by 3.9 percent in volume. and investment further contracted to 13.8 percent of GDP.

Against this backdrop, in early January 1994 the heads of state of the CFA countries met in Dakar to discuss ways to end the economic crisis. The meeting resulted in the historic decision to change the parity of the CFA franc from 50 per French franc, a level at which at had been fixed in 1948, to 100 per French franc.[3] At the Dakar meeting, another important, although less publicized, step was taken: the signing of a treaty transforming the West African Monetary Union into a full economic union. A common approach to the implementation of economic reforms that were needed to accompany the parity change was also discussed.

The decisions made at the Dakar meeting have provided a unique opportunity to restart the stalled structural adjustment process in the fourteen countries, restore growth, and reduce poverty. Indeed, since January, nearly all countries have adopted reform programs that are being supported by the World Bank and the IMF. All postdevaluation programs give priority to restraining inflation to ensure that the nominal parity change actually leads to a substantial depreciation of the real exchange rate. Hence, public sector wage increases have generally been limited to 10 percent to 15 percent to prevent a wage-price spiral. To allow some time for urban wage earners to adjust to the higher cost of imported items, increases in the prices of selected imported goods (petroleum products, rice, sugar, edible oils, medicines, and school books, for instance) are being curtailed through temporary tax reductions and direct subsidies. Fiscal reform—reduction of deficits to sustainable levels, tax reform, and restructuring of expenditures—also figures prominently as an objective of the reform programs. Priority, however, has been given to protecting vulnerable groups and relaunching proverty-reduction programs by increasing public expenditures on basic education and health services, developing and implementing social funds targeted at the poorest groups, and expanding labor-intensive public works programs.

REGIONAL COOPERATION EFFORTS

The recent events in the CFA Zone and the new challenges facing South Africa and its neighbors call for strengthened regional cooperation. Various actions have already been taken in this direction, and others are under consideration. In the CFA Zone, the member countries of the new West African Economic and Monetary Union (UEMOA) and the Central African Monetary Union have decided to form economic—as well as monetary—links. In Western Africa, the signing of the treaty for the new union by the six member states was accompanied by further efforts to render budgetary policies coherent, harmonize tariffs and indirect taxes, and develop a regional financial market. In Central Africa, the six member states of the Central African Customs and Economic Union have taken advantage of their increased competitiveness to accelerate the implementation of a new common external tariff. Nontariff barriers have been removed, and rates have been lowered.

These efforts are being supported by the Bank, together with the IMF, the European Union, and other interested donors.

At the level of the entire CFA Zone, progress was made during the fiscal year in the areas of social-security provision and collection of statistics. With a view to providing a positive environment for private sector-led growth, a treaty has been signed that will put into place a common framework for business law.

The World Bank, together with the IMF, the European Commission for the European Union, and the African Development Bank, is cosponsoring an initiative to facilitate private investment, trade, and payments in Eastern and Southern Africa and in the Indian Ocean countries—the cross-border initiative (CBI).

The CBI is based on a new integration concept that promotes mobility of factors, goods, and services across national boundaries among participating countries while minimizing chances for diversion of trade and investment. It involves voluntary participation by countries that are ready to accelerate the reform effort, and is based on the principle of reciprocity among the participating countries. The proposed reform measures are in the areas of trade liberalization, liberalization of the exchange system, deregulation of cross-border investment, strengthening of financial intermediation, and the movement of goods and persons among the participating countries. The reform agenda supported under the CBI has been developed through a two-year process of discussion by public and private sector representatives of the participating countries, as well as consultations with regional institutions.

The CBI endorsed by thirteen countries at a meeting in Kampala, Uganda, in August 1993. To date, nine countries (Kenya, Malawi, Mauritius, Namibia, Rwanda, Swaziland,

Uganda, Zambia, and Zimbabwe) have confirmed their intention to participate and have established mechanisms to prepare country-specific proposals for implementing the CBI-supported reform agenda.

In addition the heads of state of Kenya, Tanzania, and Uganda (the members of the former East African Community) recently met in Arusha, Tanzania, to reaffirm their commitment to strengthened cooperation. There is a consensus that this cooperation should be based on practical improvements in investment incentives and tax regimes, and streamlined border formalities.

THE BANK'S ASSISTANCE STRATEGY

The priorities for the Bank in Africa are poverty reduction through environmentally sustainable development; human resources development—not just through lending but also by defining frameworks for effective interventions by governments and donors, as in a recent staff study on health in Africa (see Box 5–2); providing an exceptional response, already in progress, to the situation and events in the CFA Zone; working with major partners to fulfill the objectives and the priorities of the SPA; and ''getting results in the field'' through the improved quality of projects and their implementation, especially through strong capacity-building efforts.

Poverty reduction through environmentally sustainable development. The need and urgency to reduce poverty in the region is evident; however, progress has been limited in Africa as a whole, despite success in some countries. Achieving a high rate of economic growth, combined with a pattern of growth favoring increases in incomes in the poorest sections of society, is central to the Bank's poverty-reduction strategy. The Bank's two-pronged strategy, as elaborated in ''World Development Report 1990,'' acts as a guide to the institution's economic and sector work, as well as to its lending operations.

Fighting land degradation and desertification have been key objectives of the Bank in its environmental program for the region. This program has been addressed primarily through the elaboration and implementation of national environmental action plans (NEAPs) and through the Bank's lending program. NEAPs—which provide a basis for the Bank's dialogue with borrowers on environmental issues, describe a country's major environmental problems and concerns, and formulate actions to address whatever problems are identified—have systematically paid attention to arresting land degradation through better natural resource management. The Bank's regional portfolio includes more than $500 million in environmental projects, some of which can be directly linked to the NEAP process. The Bank has also been involved in the preparation of a new international convention on desertification that is currently being negotiated and is prepared to be a partner in its implementation when it enters into effect.

TABLE 5–3.—WORLD BANK COMMITMENTS, DISBURSEMENTS, AND NET TRANSFERS IN AFRICA, 1990–94

[Millions of U.S. dollars; fiscal years]

Item	Nigeria			Côte d'Ivoire			Sudan			Total region		
	Start 1994	1994	1990–94	Start 1994	1994	1990–94	Start 1994	1994	1990–94	Start 1994	1994	1990–94
Undisbursed commitments	2,461			423			181			13,118		
Commitments		—	1,954		376	1,365		—	98		2,808	16,953
Gross disbursements		353	1,646		306	1,073		48	378		3,195	14,002
Repayments		348	1,402		183	769		3	49		1,116	4,678
Net disbursements		5	243		123	304		45	329		2,079	9,324
Interest and charges		270	1,325		149	767		4	36		868	4,221
Net transfer		−265	−1,082		−26	−463		41	293		1,211	5,103

Note: Disbursements from the IDA Special Fund are included. The countries shown in the table are those with the largest amounts of public or publicly guaranteed long-term debt. Details may not add to totals because of rounding.

Assistance to CFA countries. Since the parity change and as of June 30, 1994, IDA has provided approximately $1 billion in quick-disbursing credits and adjustment operations to the CFA countries. For the short term, the Bank-supported postdevaluation programs include, in addition to steps to limit the price increases of essential goods, (a) a draw-down of reserve stocks and additional imports of essential foodstuffs to counter speculative commercial practices, (b) increased budgetary appropriations for education and health, and (c) steps to assure adequate supplies of essential drugs in public health facilities and of low-cost generic drugs in private pharmacies. For the longer term, expenditures on labor-intensive civil works programs, rural infrastructure, education, and health will be increased, as will special programs (nutrition in particular) that target the poorest groups and that will be implemented by NGOs and community associations.

SPA—phase three. The third phase of the Special Program of Assistance (SPA–3), launched by the program's donors in October 1993, will cover the three calendar years 1994–96. Since the CFA Zone countries instituted a parity change in their currency and launched comprehensive economic reforms, two additional countries, Comoros and Côte de'Ivoire, have met SPA eligibility requirements, bringing the total of eligible countries to twenty-nine. The estimated requirements of donor adjustment assistance for these countries is $12 billion over the three-year period. The SPA donors have met twice since the parity change to discuss financing requirements. Total donor pledges have increased, and some disbursements will be accelerated in response to these needs. In addition to mobilizing additional resources, SPA donors have stressed the need to pursue greater selectivity in allocating resources to ensure that countries with strong reform programs are adequately funded and that scarce resources are used efficiently. As of June 30, 1994, the donor community had pledged $6.6 billion in quick-disbursing balance-of-payments assistance, and further efforts are continuing to close the remaining gap.

The priorities and objectives of SPA–3 are achieving higher growth rates and alleviating poverty; supplementing policy-reform programs with more investment in human resources and infrastructure; raising the level of domestic savings and private investment; placing greater emphasis on ensuring that the benefits of growth are directed at reducing poverty; and strengthening local economic management and institutional capacity. The SPA's primary objective continues to be to assist countries to strengthen their policy-reform programs and structural reform efforts. However, to accelerate growth, reduce poverty, and realize the full benefits of policy reforms, the efficiency of public investment financing by donors, which still accounts for about 80 percent of total donor financing, must be improved substantially. Discussion is continuing on sectorwide approaches to donor financing aimed at improving aid coordination and effectiveness. The SPA's role would be to serve as a catalyst to encourage donor support for such integrated sector programs, to monitor outcomes, and promote the harmonization of donor procedures. Mobilization of resources and coordination of specific sector-investment programs will continue at the country level through mechanisms such as consultative groups, roundtables, and country-based local aid-coordination groups.

Project quality and implementation. Despite the difficulties faced by the region, portfolio performance was relatively stable in 1993. Differences among countries were caused, in part, by variation in macroeconomic performance. Overall, adjusting countries had a better record of project performance than the nonadjusting ones, and operations in the particularly difficult areas of agriculture and adjustment lending improved their implementation records. The most serious general constraints to effective implementation are uncertain borrower ownership and limited local capacity. To increase ownership, the Bank is making a concerted effort to involve stakeholders (governments, beneficiaries, the private sector) in project preparation and implementation. The use of participatory approaches—beneficiary assessments, participatory rural assessments, and participatory workshops—is steadily increasing. In many cases, stakeholders participate not just in project design and preparation but also in economic and sector work (ESW). Several actions are under way to improve project quality at entry such as preparation of ''letters of sector policy,'' avoiding unnecessary complexity in project design (through participatory approaches to project preparation and greater involvement to project preparation and greater involvement by resident missions in the process, for example), testing new or complex approaches in small pilot operations, and identifying project-monitoring indicators that reflect both output and impact. In fiscal 1993, the most recent year for which numbers are available, the amount of loan cancellations expected to result from completed or planned restructurings of problem projects totaled about $500 million.

The need for capacity buildings in Africa cuts across all sectors, and, in all cases the need is urgent and acute. The challenge involves both making greater use of existing local capacity and helping to build such capacity where it does not exist. The Bank's approach recognizes that capacity-building issues need to be addressed at an early stage in the project cycle and that the effort cannot succeed without improving the performance and productivity of the civil service. This concern has led the Bank to appoint a Capacity Building Committee to make recommendations on the most effective ways to advance toward this goal. The committee's recommendations (which highlight ''best practices'' to follow and cover a broad spectrum, from ESW and lending to the role of resident missions) have been approved and are being carried out.

Capacity building—as well as dialogue with the intended beneficiaries of development—

continued to be the focus of the Bank's work in South Africa during the past year. In that country, the Bank's informal work has dealt with the entire political spectrum, including nongovernmental organizations, the private sector, teachers, and trade unions. Dozens of South Africans have been trained in economics, and relationships have been built up with many of the country's economic and political actors. In April 1994, the Bank opened up a resident mission, following a request from the multiparty South African transitional council.

FOOTNOTES

[1] The SPA for low-income, debt-distressed sub-Saharan African countries provides quick-disbursing balance-of-payments assistance to twenty-nine eligible countries (as of the end of June 1994) in support of reform programs developed in conjunction with the Bank and the International Monetary Fund (IMF).

[2] The countries are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Gabon, Mali, Mauritania, Niger, Senegal, and Togo.

[3] The parity of Comoros' currency was changed to 75 per French franc.

BOX 5–2. TOWARD BETTER HEALTH IN AFRICA

Health issues are assuming an increasingly important place in the Bank's assistance strategy in Africa. Reflecting this trend, a major sector study was completed in 1993 in close cooperation with the World Health Organization, the United Nations Children's Fund, and other partners. The study, ''Better Health In Africa,'' aimed at building consensus on future health strategies in Africa among the many stakeholders.[1] It found that while dramatic improvements had taken place since independence, most African countries lagged well behind other developing countries in health status. At fifty-one years in 1991, life expectancy at birth in Africa is eleven years less than in the low-income countries as a group, and Africa's infant mortality rate, at over 100 deaths per 1,000 live births, is about one third higher on average than for the universe of low-income countries. New health problems, such as AIDS, and new strains of well-known diseases such as malaria, threaten the important health gains made in Africa over the past generation.

The report discussed ''best practices'' for health improvement by African governments and their external partners in three areas. First, as did ''World Development Report 1993—Investing in Health,'' the report emphasized the importance of strengthening the capacity of households and communities to recognize and respond to health problems. This requires health and development strategies that increase the access of the poor to income and opportunity, pay special attention to female education and literacy, provide for community monitoring and management of health services, and furnish information to the public and health-care providers on health conditions and services. Second, the report called for reform of African health-care systems, and especially for making a basic package of cost-effective health services available to Africans near where they live and work through health centers and first-referral hospitals. Third, the report underscored the need for more efficient allocation and management of public financial and human resources devoted to health improvement, and for their progressive reallocation away from less cost-effective interventions (largely provided through tertiary facilities) to a basic package. It found substantial room for increases in technical efficiency.[2]

The report concluded that substantial health improvement in Africa is feasible, despite the severe financial constraints facing most African countries. The will to reform and to provide a limited package of quality, low-cost, and highly cost-effective health services to the vast majority of the population is central to success. The study found that higher-income and middle-income African countries, in due course, should be able to finance a basic package of health services for their people from public and nongovernmental resources, without substantial external support. However, the low-income countries are likely to need donor assistance in support of health for an extended period. These countries now spend about $8 per capita annually on health from all sources—public, nongovernmental, and external—compared with the indicative estimate for the basic package in the study of about $13. The transition from the current to the indicative level of spending will have to be implemented flexibly, on a country-by-country basis, with provisions put in place of interim targets to be met along the way.

FOOTNOTES

[1] World Bank. 1994. ''Better Health in Africa.'' Washington, D.C.

[2] For example, poor drug selection, procurement, distribution, and prescription practices are responsible, together with other factors, for an effective consumption of only about $12 on drugs for every $100 in public spending on pharmaceuticals in many African countries.

Footnotes at end of article.

AMENDMENT TIME

• Mr. SIMON. Mr. President, recently, I came across an article by John G. Kester, a Washington attorney. It is a commonsense article about our Constitution and amending the Constitution.

I have great reverence for the Constitution, but I also know that the Constitution was written to meet problems that existed more than two centuries ago.

On the matter of a balanced budget amendment, the author writes:

Congress, for instance, has demonstrated for decades that institutionally it cannot muster the discipline to restrain excessive spending. Lately, ashamed to speak the name, it even pretends that most expenditures are something else, labeling them entitlements. Presidents no longer refuse to spend excessive appropriations. A balanced-budget amendment may be a challenge to express in words, but it is not impossible, and it is certainly not, as Senator Chris Dodd asserts, very irresponsible. It imposes a new constitutional obligation on Congress without micromanaging the policy choices for achieving it. It is not likely to make the situation worse, even if courts will be invited to construe it. And if experience suggests improvements, those can be added.

John Kester brings both scholarship and common sense to this discussion.

At this point, I ask that his article be printed in the RECORD.

The article follows:

[From the Washingtonian, March 1995]

AMENDMENT TIME

(By John G. Kester)

If the people really are serious about taking back their government, they can start by amending the Constitution. There have been a few lurches in that direction—like the balanced-budget amendment that was part of the Republicans' Contract With America, and some talk about amendments that would ban unfunded federal mandates or set uniform term limits for Congress.

That's a beginning, but a modest one. The current state legislatures are in a receptive mood. If Speaker Gingrich and the new tribunes of the people really want permanent change in the way Washington and its federal judges run the country, then this spring constitutional amendments ought to be blossoming like azaleas.

But don't count on it. The op-ed pages already have begun to darken with warnings from learned scholars, politicians, and columnists that to lay hands on the Constitution would be impractical, even dangerous, downright unpatriotic. The Constitution, they suggest, is so nearly perfect that to revise it would be like altering the formula of mother's milk—nothing else could be healthful, and any variation might make you sick.

Is the Constitution too flawless and sacred a document to violate with alterations? Most of the Cassandras stop short of suggesting it was divinely inspired, but even that has been claimed. The less devout shake their heads and say that adding amendments just isn't practical—that it can never work, that even figuring out the right words is too hard, that the only way to fit the Constitution to the times is to leave all corrections to the courts.

Even aesthetics is invoked. To add amendments, it has been said, would make our classically crisp federal Constitution resemble those ungainly creations of the 50 states. State constitutions are longer, often loaded with dozens of amendments, and deal with such mundane affairs as off-street parking in Baltimore (Maryland Constitution Article XI–C) or preserving natural oyster beds (Virginia Constitution Article XI, section 3).

But no one has shown that state constitutions do not work—or, indeed, that lengthy and detailed constitutions don't work better because they leave less room for doubt. Automobile engines, reliably move your car without being engineered to win beauty contests. If the purpose of the Constitution is to model 18th-century elegance, perhaps the parchment should be moved from the Archives to the National Gallery.

The Constitution exists to be applied, not adored. A politically rare opportunity will be lost if the hand-wringing about constitutional purity succeeds in scaring off reformers. Of course not every popular idea belongs in the Constitution, and not every proposed policy change would be a good one. But (dare one say if?) there is room for improvement.

No one should take all the warnings against amendments seriously. The authors of the Constitution certainly wouldn't have.

The men who spent the summer of 1787 holding secret meetings in a room in Philadelphia did not think they were Moses, chiseling stones with dictation from a Higher Source. Their un-air-conditioned days passed in disagreements, endless compromises, and perspiration. The product was simply a well-organized document that most could accept, although with varying degrees of reluctance.

The 13-state ratification process that followed was even more contentious, and nearly failed. To obtain agreement from the minimum nine states took nine months, and the votes in key ratifying conventions were too close for comfort: Virginia 89 to 79, Massachusetts 187 to 168, New York 30 to 27. No one arguing for ratification ever gave a speech claiming the document was perfect; the authors more humbly expressed hope and said they had done the best they could.

All recognized that, as Virginia's George Mason observed at the beginning, ''The plan now to be formed will certainly be defective.'' (So defective he finally concluded, particularly in its treatment of slavery, that in the end he refused to sign it.) For that reason, the Constitution was written with one article of its seven devoted entirely to

the subject of how to amend it. This was done, acknowledged Charles Pickney of South Carolina, because ''it is difficult to form a Government so perfect as to render alterations unnecessary.'' Amendments, James Iredall told the reluctant North Carolina ratifying convention, would provide its own fallibility.'' Even James Madison, called the Father of the Constitution, anticipated that his offspring would need to grow. ''[U]seful alterations,'' he predicted, ''will be suggested by experience.''

Alterations did come, but mostly not in the way Madison anticipated. They have come usually by courts announcing, and sometimes revising, their conclusions about what words of the Constitution mean.

Anyone who says that amending the Constitution is in principle a bad idea is really selling a notion about where to assign power. For a long time now the only players in the constitution-altering game have been judges. They have secured their position by taking open-ended phrases like ''due process of law'' or ''the freedom of speech'' or ''Commerce . . . among the several States'' and announcing that these mean one thing, and then another, and then another. Many of their pronouncements, which take the form of decisions in lawsuits, seem logical correct. Others occasionally appear daffy. The secret was spilled when Charles Evans Hughes, before he became Chief Justice, explained in a speech: ''The Constitution is what the judges say it is.''

That is true, however, only if the Supreme Court's view is not superseded by a higher authority—the amending process. It makes no sense to cut off debate on any subject by saying, ''The Supreme Court has spoken.'' The Supreme Court speaks all the time. But this is a government, not the army. The Supreme Court may speak—but the Constitution intends that if the people care enough, the option of amendments gives them the last word.

Adding a new provision to the Constitution to reject a court decision—as the Eleventh Amendment did in 1798—can at least slow a Supreme Court down. Because the Constitution came from ''We the People,'' why should not the people through their elected representatives participate more often in the process of constitutional change? Especially when the document itself—which does not even mention interpretation by judges, much less give judges the last word—spells out a precise and simple amending procedure for the people to use? Why shouldn't there be amendments to make corrections when the Supreme Court gets it wrong—or, no less appropriately, when the Court's reading of an old provision may seem accurate, but the people on reflection decide that they no longer want such a rule? It is amazing that every time the Supreme Court issues some new constitutional interpretation, provoking a storm of public outrage—then nothing happens.

Correcting the Supreme Court is not even the most crucial issue. New needs develop that don't show up in Supreme Court decisions. Why shouldn't the people adopt constitutional solutions for perennial problems—for instance, uncontrollable extravagance by Congress, or federal power-creep, or war powers of the president—that seldom, if ever, come before the courts? Even for those who believe that the Supreme Court's job is to ''keep the Constitution in tune with the times,'' it expects too much of the Court to act as the only corrective balance wheel of the government.

Power lies with whoever can change the Constitution. Court decisions can be overruled by amendments, and when there is contrary consensus, they ought to be. More important, constitutional updating is not the assignment of the Supreme Court, but rather the duty of Congress and the states. Constant abdication of the amending power was never expected, and in a representative government makes no sense.

The Constitution does not come to us, as foes of amendments imply, in an undefiled condition. True, there have been few formal amendments over 200 years, but there has been plenty of change in the Constitution. In fact, although custom speaks of ''the Constitution'' as if there is only one, the reality is that this country has had several. We live in 1995 under the fourth constitution of the United States.

The first constitution, adopted in 1778 by 11 sovereign governments, resembled a treaty, and appropriately was called Articles of Confederation. It created a loose alliance of independent states—that is, countries—designed mainly to pursue a united front in a war. The national organization's few activities operated by unanimous consent, which meant it operated very little. Each of the 13 governments remained independent to set its own tariffs, raise its own taxes and armies, print its own money, and govern its internal affairs. Still, the Articles of Confederation were not a total failure. After the British decided to cut their losses and quit, the main complaint about life under the Articles was that state tariffs and trade barriers in independent economies were strangling each other. A NAFTA of its time was needed.

The congress created by the Articles authorized delegates to meet in Philadelphia in 1787 to propose amendments to the Articles of Confederation. The first thing the delegates did was exceed their authority. They began by junking the Articles and starting over to design a national government that would exist in addition to those of the states.

The result was the constitution of 1787, which became operational in 1789. The purpose of the document was not to provide a code of laws, secure human rights, or solve all problems, but rather to set up—''constitute''—a new government. It contained a handful of specific prohibitions on Congress (like taxing exports) and the states (like levying tariffs). But mostly it outlined an organization chart and allocated powers between the national government and states, and among the three branches of the national government.

Two subjects consume most of the Constitution. The first was, what powers would the national government have? All agreed that, quite unlike the states. It should not have general legislative powers, but instead would be allowed to act only on topics the Constitution assigned to it. Just to nail that down, 10 amendments were promptly proposed and adopted, called the Bill of Rights. These were not really a list of rights of individuals (they left the power of state governments unrestrained), but rather they were some important specific examples of what the federal government had *not* been empowered to do—like abridge the freedom of the press, or quarter soldiers in people's houses. The enumeration ended up with two directions on interpretation. The Ninth Amendment reminded that just because the federal government could not do these things did not imply that it was authorized to do others. The Tenth Amendment then reiterated that unless powers were delegated by the Constitution to the federal government, or prohibited to the states, they all remained with the States or the people.

The other focus at Philadelphia was the internal arrangements of the national government itself—such issues as how Congress would be formed and chosen (a Senate chosen by states and a House by people), the addition of a national executive, and how the limited national powers would be divided among the Congress, the President, and the judiciary—which Hamilton called ''the least dangerous branch.''

The Constitution of 1787, typical of many hard-negotiated agreements, swept under the rug two potentially contentious issues that everyone hoped might go away; first, whether states that entered the new union could withdraw if they did not like it; and second, slavery, which the framers chose not to mention by name and not to deal with except to give a 20-year protection to the slave trade and require the return of fugitives slaves.

Unfortunately, over time each of those unresolved issues played into the other, and finally with the election by a minority of an extremist president in 1860, the 1787 structure dissolved into a contest of arms. Whether states legally could withdraw—some like Massachusetts and South Carolina had claimed the right for years—was a question incapable of any sure answer from logic, history, or reading the text of the Constitution. And it was never submitted to the Supreme Court. Instead, disproving once again the canard that wars never settle anything, it was decisively resolved by soldiers killing each other.

The Civil War led to the third constitution of the United States. Although this constitution wears the more modest label of the Fourteenth Amendment, it turned out to be a whole new arrangement of government. Adopted in 1868 with the forced consent of defeated Southern states, the Fourteenth Amendment in ringing and undefined words forbade any state to deny equal protection of the laws, or to deprive anyone of life, liberty, or property without due process of law. In the end those ringing and undefined words drastically revised the roles of the states and the federal courts.

For the rest of the 19th century and into the next, this new provision was transformed by the Supreme Court into a shield for businesses from state regulation. With each decade the sweep of the Fourteenth Amendment got bigger and bigger. It was read to forbid states from, for example, requiring attendance at public schools, or limiting maximum hours of work. It became a charter for judges, citing only the Constitution's phrase ''due process,'' to invalidate whatever laws they believed unwise.

Still, the limited scope of activities for the national Congress that had been enumerated and confined in 1787 tended to remain. A few controversies had arisen early—such as establishing the Bank of the United States (opposed on constitutional grounds by Madison), whether the Constitution authorized purchasing Louisiana, and Monroe's plans for federal road-building. But in spite of occasional pushing of the envelope of Congress's spending power, the government in Washington generally left it to the states to regulate most matters affecting people's daily lives, and did not find reason to read too expansively its powers listed in the 1787 Constitution.

In the 1930s, the country was hit by the Depression and the national government became much more radical and active. The Supreme Court promptly reminded Congress of its limited legislative role, holding that one New Deal law after another exceeded its powers to tax, spend, or regulate commerce.

Then all of that changed. The Roosevelt administration decided to deal with the Constitution's restrictions not by amendment, but as a personnel matter. Franklin Roosevelt first threatened to expand the Supreme Court from nine judges to as many as fifteen, then found he did not need to. From 1937 to 1941 he appointed seven new justices, all of them devoted New Dealers. Their opinions held that, for example. Congress's power

to regulate interstate commerce was so far-reaching that it could prohibit a farmer from growing a patch of wheat for his own bread. The limitations on the powers of the federal government suddenly seemed to evaporate.

A fourth constitution thus emerged when the Supreme Court by the end of the 1930s brushed aside the doctrine of enumerated powers, which had limited Congress by requiring reasonably clear grants of authority in the Constitution. The Court about the same time also renounced ''due process'' as a restriction on state or federal legislation. Then, having demolished all those barriers to regulation, the Court for the rest of the 20th century began erecting hurdles of a different kind by interpreting the Bill of Rights more expansively and reading the Fourteenth Amendment to limit the states in novel ways. It announced that the 1868 Fourteenth Amendment without saying so had stripped the states of virtually all the powers that the 1791 Bill of Rights had said were outside the charter of the federal government. It also held suddenly in 1964 that the Fourteenth Amendment had made unconstitutional all houses of state legislatures that, like the U.S. Senate, were not based on equal population. By the end of the century the Supreme Court had begun invoking ''due process'' again, but this time to invalidate laws it concluded unduly limited personal liberty.

* * * * *

Most real political revolutions have left their lasting traces on the Constitution. The Republicans after the Civil War secured the three amendments that ultimately ended racial inequality under law, and turned out to do far more. The pre-World-War-I Progressives, while they were democratizing state governments, also switched control of the Senate to the people, gave the federal government the tax base to grow, and soon afterward helped secure the vote for women. The New Deal even brought new access to liquor while rewriting the Constitution by restaffing the Supreme Court.

The time will never be better to update a marvelous and rightly cherished document, perhaps to correct some mistakes in how it has been interpreted, but most important to readjust its balances to fit the needs of a new century. Its authors would have expected no less.●

AFFIRMATIVE ACTION

● Mr. SIMON. Mr. President, there is more and more discussion on affirmative action these days.

Most of those who question affirmative action are the same people who opposed the civil rights legislation.

But there is no question that, like any good thing, affirmative action can be abused.

I ask that an excellent Los Angeles Times editorial titled, ''Glass Ceiling? It's More Like a Steel Cage'' be printed in the RECORD, as well as a tongue-in-cheek column by Robert Scheer, ''Who Needs Affirmative Action?'' and a column that I wrote for the newspapers in Illinois discussing this subject.

The material follows:

[From the Los Angeles Times, Mar. 20, 1995]

GLASS CEILING? IT'S MORE LIKE A STEEL CAGE—BUSH PANEL FINDS LITTLE ROOM AT TOP FOR WOMEN OR NONWHITES

In the heated debate over affirmative action, some who want to abolish all such programs suggest that lots of white males are being unfairly shunted aside in favor of lots of African Americans, Latinos, Asians and white women. However, there simply are no facts to support this. Indeed, according to a bipartisan commission appointed by then-President George Bush, the senior ranks are still populated almost exclusively by white males.

The findings by the Glass Ceiling Commission, a panel of business executives and legislators, are important and especially timely. It is expected that an initiative calling for a blanket rejection of policies that allow race, ethnicity and gender to be taken into account in hiring, promotion and college admissions will make it onto the California state ballot.

In Washington, President Clinton, mindful of the evident exodus of angry white men from the Democratic Party, for starters has ordered an evaluation of federal affirmative-action programs. That's defensible and could prove useful. But too many in Congress are rushing to jump on the anti-affirmative-action bandwagon, including Senate Majority Leader Bob Dole. Ironically, long before Dole made his presidential ambitions public, he sponsored the very bill that created the federal panel to study the situation of minority men and all women in American industry. And it is that panel, in reporting its findings last week, that turned up so little evidence of progress.

The facts are simple. White male managers dominate the senior levels at the top 1,000 U.S. industrial firms. They also dominate the top 500 business firms. In the top echelon of U.S. commerce, no less than 97% of the positions at the level of vice president and above are held by whites, the panel found. Between 95% and 97% of these senior executives are male. They have a lock on most of the top jobs, while most minority men and women and most white women struggle to crash the glass ceiling.

The commission said that one case of the paucity of promotions was the fear and prejudice of white men. Of course that is only part of the problem. More minorities and women must be given access early on to educational and social opportunities that lead to business success. But even education does not always level the playing field. Asian Americans are nearly twice as likely to hold college degrees as the general population, yet they remain much less likely to become executives and managers. Do racial stereotypes block their promotion?

Black men with professional degrees earn 79% of the pay of their white male counterparts. Black women with professional degrees earn even less; they earn, on average, only 60% of what white males do. Latinos, who are less likely to have the advanced degrees that foster advancement in companies, are ''relatively invisible in corporate decision-making positions,'' the report says. Their visibility should increase as their qualifications and numbers increase. Latinos are also hampered by pernicious stereotypes, including the misperception that most Latino workers are foreign-born, the panel maintains.

The Glass Ceiling Commission based its findings on hard information, not unsubstantiated fears. Facts, and nothing but, should inform the intense debate over affirmative action—and the decisions that will determine how this nation can fairly handle the moral obligation of opening the doors of opportunity to all who knock.

[From the Los Angeles Times, Mar. 20, 1995]

WHO NEEDS AFFIRMATIVE ACTION?

(By Robert Scheer)

Forget affirmative action. Maybe it once was a necessary tactic but its time is clearly gone. True, there used to be slavery and segregation and women didn't have the vote but that's all ancient history. C'mon, blacks and women have all the power now. Just look at the O.J. trial.

Try getting a decent job if you're a white man. You don't see my name on the masthead of this paper. What kind of meritocracy is this if my merit isn't rewarded the way I think it ought to be?

I'm not making this up, folks. The census stats back me up. Minorities and women now hold 5% of senior management positions, and those used to be white-guy jobs. Even among Fortune 1,000 companies, women now have 3% of the top slots, according to last week's report by the bipartisan federal Glass Ceiling Commission. So far, black men don't have any of the top jobs, but if affirmative action isn't stopped, who knows what could happen?

Don't try to paint me like some kind of racist for saying this, like I've got something against black men. Our beef is more with women than with black men, who are going nowhere fast. Even though almost 800,000 black students a year graduate from college, many of them business majors, they don't have what it takes to get to the top. Most of them still don't play golf. That's what a lot of white executives told the federal commission, which, incidentally, was created by the Bush Administration, so its results are reliable. One white manager told the truth: that, in hiring, ''What's important is comfort, chemistry, relationships and collaborations.'' That's why black, college-educated professional men earn only 71% of their white counterparts on the bell curve: The comfort level is too low.

The real threat is from women, with whom white men have a longer history of relationships. I hesitate to bring it up because they vote and it's better to have white women believe that affirmative action is a black thing. But take what's called ''middle management.'' Black men account for only 4% of those positions, but almost 40% of middle managers are women. Unless you marry one of them, you're out of luck, and what does that tell you about who wears the pants?

The big problem up the road is that you'll have to get along with those women, what they call networking, just to get a job. What does that say about traditional values when a man has to worry about what a woman thinks of his performance? Meritocracy, in the wrong hands, can be a killer. No wonder the federal commission concluded that ''Many middle- and upper-level managers view the inclusion of minorities and women in management as a direct threat to their own chances for advancement.'' They'd be stupid not to.

But we don't have a chance a turning back the tide unless we eliminate the discrimination against white males in the universities. On the nine campuses of the University of California, white men were 40% of the student body in 1980, and now they're a miserable 24%, less than half the number of women. Girls were always better at the school stuff but you could count on them to drop out along the way. Another threat is the 12% who are Latino, but Proposition 187 should scare them off. Same for the Asians, who outnumber white males at UC. I know that Asians are not covered by affirmative action, but even with round-the-clock tutoring, we can't keep up with them. And none of this would have happened if the blacks hadn't stated all this. You don't see blacks endangered at UC—they went up a full two-tenths of a percent in the past 15 years, from 3.8% to 4%. They're taking over.

Don't get me wrong, I'm not against a level playing field, and I know that a lot of blacks come from disadvantaged backgrounds due to poverty. After all, census data show that almost half of black children

live in poverty, which shows that they have lost the spirit of individual responsibility. We have got to stop coddling them. The answer is to end poverty by eliminating food stamps, school lunches and infant nutrition programs that provide such an irresistible incentive for people to raise their kids in lousy neighborhoods. If poor people want a good job, they should get it the way the rest of us do. Call an uncle or a business associate of your father. Invest your inheritance. Get active in a prestigious church or a good golf club. Blacks are going to make it when they learn to act and look like everyone else.

I am for social policies that are colorblind, just as the founders of our nation were.

For me, all I want is my country back. You know what I mean: a return to traditional values where the white man is king, even if his woman has to work.

THE PROPER ROLE FOR AFFIRMATIVE ACTION

''Affirmative action'' is not-so-suddenly becoming a major topic of discussion.

Affirmative action is like religion or education: A good thing, but it can be abused.

Affirmative action means opportunity and fairness. It does not mean quotas. It does not mean hiring unqualified people.

Some believe that affirmative action hurts minorities and women and those with disabilities, because when people secure jobs there will be some who say, ''He (or she) only got that because of being a minority.'' Or a woman or being disabled. They believe that it is demeaning for people of ability.

The distinguished African American writer Shelby Steele properly suggests that we are troubled by ''race fatigue'' and ''racial anxiety.'' He oppose affirmative action and wrongly—in my opinion—calls the opportunities that result ''entitlements.''

No one is entitled to a job or an opportunity because of race or gender or ethnic background.

I accept the idea that diversity in our society needs encouragement and is good for us.

If, for example, someone employs 500 people—and they all happen to be white males—it still may not be possible to prove discrimination. One answer for that situation is to go through the lengthy legal process of proving discrimination.

A better answer is affirmative action, where that employer understands that his business should not compromise quality, but opportunity should be given to those who don't fall into the usual personnel pattern.

Employing people on the basis of ability is just good business, and affirmative action encourages good business.

My office is an example. If I were to hire everyone from Chicago or from Southern Illinois, the people of Illinois would regard that as strange. I look for diversity in geography, and it does not compromise quality. I don't lower my standards when I choose to hire someone from central Illinois.

In the same way, I have consciously made sure that in my employ there are African Americans, Latinos, Asian Americans and people with disabilities. Anyone who knows my office operation knows that we have not compromised quality to do this.

Has this harmed the people of Illinois? To the contrary, it has helped them and it has helped me.

To move away from affirmative action, back to a situation where discrimination has to be proven to bring about change, invites clogging the courts with endless litigation, and denying opportunity to many.

A federal judge in Texas ruled that the University of Texas law school can set a general goal (not a rigid quota) of admitting 10 percent Mexican Americans and 5 percent African Americans, but if the school lowers it standards to reach those goals, that is unconstitutional.

That strikes many legal scholars as sound.

Interestingly, if that same school gives preference for admission to children of alumni—who are overwhelmingly white—no one objects to that. But if steps are taken to diversify the student body, some of the same alumni object.

Complicating all of this is the fact that many Americans are out of work. The opportunity for people of limited skills to have a job is declining, and will continue to decline.

The person in that situation rarely says, ''I'm not working because I don't have the skills that are needed.''

It is often easier to say, ''I don't have a job because a black [or a woman or a white or someone else] got the job I should have.''

And so tensions rise.

The answer is not to get rid of affirmative action, but to work on jobs programs for those of limited skills, expand education opportunities for all, and increase efforts to give training (including reading and writing) to those who are unemployed.

We should diversify opportunity, and at the same time see that everyone has the basic tools to function effectively.●

AFFIRMATIVE ACTION: AID IN DOING THE RIGHT THING

● Mr. SIMON. Mr. President, I have been inserting into the RECORD items on affirmative action from time to time because I am concerned that the distortion of affirmative action can result in loss of opportunity for many Americans.

Columnist William Raspberry had an op-ed piece in the Washington Post, and in other newspapers in which his column is circulated, on affirmative action.

It appeared during the days when Congress was in recess, and many of my colleagues may not have seen it.

It is simple common sense, and we seem to lack that so often.

I ask that the William Raspberry column be printed in the RECORD.

The column follows:

AFFIRMATIVE ACTION: AID IN DOING THE RIGHT THING

(By William Raspberry)

It was 1967, and I had just taken my new wife—a Washington native—on her first visit to my home state of Mississippi.

She had heard all the horror stories of racial mistreatment, and she was pleasantly surprised at the way white salesclerks seemed to be going out of their way to be nice. She was particularly intrigued by one middle-aged white clerk at the J.C. Penney's in Tupelo. For some reason, this woman, having learned that we were from ''up north,'' wanted to talk—even after we'd paid for our purchases.

Just as we were about to make our final effort to leave, her face lit up. She caught the attention of a black woman across the store and beckoned her to come over.

''This,'' she said, introducing us, ''is our new salesclerk.''

I don't suppose I'll ever forget the humiliations, large and small, of growing up under the American apartheid that used to be the rule in the Deep South. But I'll also remember the pride this one white woman displayed in the fact that her boss had done the right thing. It was almost as if she herself had been somehow redeemed.

It's something I think of when I hear well-meaning people say that affirmative action is ultimately demeaning to minorities and it would be better to just let merit be the rule. It's reasonable to punish discrimination, they say, but an artificially produced diversity comes close to the discredited practice of setting racial or sexual quotas; worse, it is tantamount to acknowledge that minorities and women are inferior.

It came back to me the other day when a colleague called my attention to Katha Pollitt's column in the March 13 issue of The Nation magazine. This liberal publication has been a staunch advocate of affirmative action and diversity and all the things that give minorities and women all those warm-fuzzy feelings. But listen to this one passage from Pollitt's piece:

''In the 13 years I've been associated with The Nation, we've had exactly one nonwhite person (briefly) on our editorial staff of 13, despite considerable turnover. And we're not alone: The Atlantic has zero nonwhites out of an editorial staff of 21; Harper's, zero out of 14; The New York Review of Books, zero out of nine; The Utne Reader, zero out of 12. A few do a little better, although nothing to cheer about: The Progressive, one out of six; Mother Jones, one out of seven; In These Times, one out of nine; The New Republic, two out of 22; The New Yorker, either three or six, depending on how you define 'editorial,' out of 100 plus, . . .''

It's a passage that could fuel right -wing radio talk shows for months. But that wasn't Politt's point. Her point, which seems unaccountably difficult to grasp, is that it's not necessarily bigots and hypocrites that stand in the way of the ''diversity'' so many of us favor; it's the fact that people tend not to pay attention to unpleasant facts that they can as easily ignore.

Atlantic editor William Whitworth told The Post's media critic, Howard Kurtz, that his magazine's statistics were ''unfortunate'' and ''embarrassing.'' He went on to describe the publication's open-door policy, its desire to have black journalists and his bafflement that so few have applied. Whitworth at least answered Kurtz's queries, as some others did not. Still I found myself wondering what sort of shot the magazine might have taken at, say, an insurance company or police department that offered a similar defense.

It wouldn't surprise me to learn that the management of the Penney's store in Tupelo made just such an argument before some combination of legislation, court decree and affirmative action forced a change in the company's hiring policies.

And it wouldn't surprise me, sometime down the road, to hear Whitworth and his peers boasting of their success in hiring black writers and without any sacrifice in quality, either.

Why do opponents of affirmative action find it so difficult to understand that even good people need a nudge now and then, or to comprehend that anti-discrimination statutes are insufficient to overcome deeply entrenched racial attitudes? What black writer—unemployed or working elsewhere—could be certain that some white guy on one of these liberal publications has the job she should have had? How can anybody know?

In some jobs, discrimination is easy to spot; the 120-word-per-minute typist who loses out to a competitor whose top speed is 80 wpm has a discrimination claim. But what of the applicant for an editorial position, or a legal clerkship, or a securities brokerage?

Anti-discrimination laws won't do it and neither will affirmative action—although these things may help employers to focus on their behavior.

I keep hoping that the time will come when nearly all employers will react as

many already do: with embarrassment when they haven't lived up to what they know to be right and with pride when they know they've done it right.

That's why I remember that beaming clerk in Tupelo 28 years ago. And, by the way, I don't recall the faintest indication that her black colleague found it demeaning to have been hired for what may have been the best job of her life.

THE WRONG TARGET

● Mr. SIMON. Mr. President, recently, Bob Herbert, a columnist for the New York Times, had a column about affirmative action and how the politics of meanness is in the ascent.

My colleagues have heard me address this question before. Affirmative action is basically an excellent thing that has helped to make opportunity available to many people who otherwise would not have it. Has it been abused occasionally? Yes, like any good thing is abused, just as religion and education are abused.

In this column, he concludes ''All of this will pass. Eventually we'll find our higher selves.''

I hope he is right.

But there is both the beast and the noble in all of us, and unless our leaders appeal to the noble in us, instead of the beast—instead of hatred and fear—the better instincts in our people will not come forward. That is true, not only in the United States but in any country.

It is important for politicians, journalists, members of the clergy, business leaders, labor leaders, and people of every walk of life to call upon us to reach out and do what is noble.

''One nation, under God, indivisible'' should be more than a phrase in our country.

At that point, I ask that the Bob Herbert article be printed in the RECORD.

The article follows:

[From the New York Times, Apr. 5, 1995]

THE WRONG TARGET

(By Bob Herbert)

One of the many important issues to emerge battered and distorted from the insidious cavern of political demagoguery is affirmative action. If you listen to the latest crop of compulsively deceitful politicians, or tune into the howling degradation of talk radio, you might become convinced that the biggest problem of discrimination in the United States today is bias against white men.

The complaint is that legions of African-Americans, women and assorted others are taking jobs, promotions, classroom slots, theater tickets and the best seats on the bus from the folks who really deserve them—white guys.

The arguments against affirmative action are almost always crafted in racial terms because the demagogues know that race is the way to get the emotional flames roaring. In fact, the primary beneficiaries of affirmative action are women. If all parties would lower their voices and try to communicate in good faith, it could be pointed out that while there are problems with affirmative action—including some serious problems of fairness—the negative impact on white men has not been great, and the problems are correctable.

What you do not want to do, in a country where there are still prodigious amounts of race and sex discrimination, is abandon a long and honorable fight for justice in the face of political hysteria.

The Federal Glass Ceiling Commission recently reported that 95 percent of top corporate management positions in the United States are held by white men. Throughout corporate America, women, blacks and Latinos are paid less than white men for doing the same work. And if you believe there is a bias against white males in hiring, just pair up a white guy with a black guy and send them off in search of the same job.

Racism against blacks and sexism against women abound. And yet the outrage we hear today is about discrimination against white men.

A report on discrimination in employment commissioned by the Labor Department found very little evidence of employment discrimination against white men. The report was prepared by Alfred W. Blumrosen, a law professor at Rutgers University. It found that a ''high proportion'' of the so-called ''reverse discrimination'' claims brought by white men were without merit.

The politicians will tell you that the attack on affirmative action is a cry for racial justice. That is not so. It is an expression of the anger and frustration felt by large numbers of overwrought and underemployed white men. Their anxiety is understandable, but affirmative action is not their enemy. Downsized to the point of despair, their wages stagnant or falling, their prospects dim, these men are caught up in the treacherous world of technological innovation, economic globalization and unrestrained corporate greed. Buffeted by forces that seem beyond their control (forces that are affecting everybody, not just white men), they listen to the demagogues. *It's the blacks doing it to you. It's the women. They're getting your piece of the pie. Otherwise you'd be O.K.*

AFFIRMATIVE ACTION ISN'T ANTI-WHITE

The Clinton Administration, under pressure, is reviewing Federal affirmative action programs. Fine. Let whatever abuses exist come to light. Scrap whatever programs are unnecessary or unfair. Where affirmative action is being used to help the disadvantaged, remove the racial or ethnic requirements. There are white kids all over the country who are economically and educationally deprived. Give them a hand.

But neither Bill Clinton nor anybody else should back off from the commitment to fight what is still an enormous and debilitating problem—discrimination against blacks, other ethnic minorities and women. Where affirmative action is needed to counter the effects of discrimination, let it be.

The United States is going through a period in which the politics of meanness is in the ascent. In many circles, it is unfashionable to be compassionate. Putting down others is the dominant mode of political expression, preferably with a vicious remark accompanied by cruel laughter.

All of this will pass. Eventually we'll find our higher selves and chase the dogs of bigotry and fear and ignorance from the yard. I am convinced this will happen. We are Americans, after all. We are better than we have been behaving lately.●

DR. HENRY FOSTER SHOULD BE CONFIRMED

● Mr. SIMON. Mr. President, I had the privilege of serving in the House of Representatives with Congressman Paul Findley, who is now retired and writes a Sunday column for the Jacksonville Journal-Courier in Illinois.

My friend, Gene Callahan, who once served as administrative assistant for Senator Alan Dixon, still get the Jacksonville newspaper, and he sent me Paul Findley's commonsense reaction to the nomination of Dr. Henry Foster.

I ask that it be printed in the RECORD.

The column follows:

DR. HENRY FOSTER SHOULD BE CONFIRMED

(By Paul Findley)

During a discussion at a meeting of the Pittsfield Rotary Club, a member asked if I favor the confirmation of Henry Foster, M.D., President Bill Clinton's nominee to be surgeon general of the United States.

My answer was affirmative. Based on what I believe to be factual about Foster's career, he should be confirmed. The president is entitled to have a surgeon general of his own choosing, barring the disclosure of some important flaw in character or record.

A casual reader glancing at headlines and picking up snippets from televised news reports might easily reach the erroneous conclusion that Foster's record is badly flawed, that he is a back-alley disgrace to the medical profession who has spent a long career performing abortions.

It was a curious happenstance that the question was raised in Pike County, once the family home of a physician who fit that dreary description and gained a reputation as one of Chicago's preeminent abortionists. This was a half-century ago when abortion was illegal, not job in Illinois but throughout the nation. Never indicted, the doctor in question made abortion his career, performing the surgery clandestinely in various parts of Chicagoland. It was his specialty. So far as I know, he did nothing else. He catered mainly to people who could not afford to travel to Sweden for the desired surgery. Legend had it that he periodically hauled bags of money back to Pike County.

By contrast, the president's nominee is not an abortionist. In the years since abortion has been made lawful by ruling of the U.S. Supreme Court, Foster, by his own account, performed 39 abortions, all of them to save the life of the mother or to end pregnancies caused by rape or incest. He has delivered several thousand babies and declares that he abhors abortion.

Some years ago, like many other physicians, he performed procedures that sterilized institutionalized women who were determined to be severely mentally retarded. At the time, that procedure was legal and broadly accepted by the medical profession. Both law and medical policy have since changed. Under existing law, sterilization can be performed only through court order.

Abortion, of course, has been legal for many years in the United States and is widely practiced. In fact, the Accreditation Council for Graduate Medical Education now requires that programs to train doctors in obstetrics must include abortion skills. About a million abortions are performed here each year, notwithstanding widespread controversy that sometimes becomes violent and even fatal. House Speaker Newt Gingrich, although anti-abortion, wisely advises his Republican colleagues in the Senate, where the confirmation vote will occur, not to focus on Fosters, abortion record.

Although, like thousands of other U.S. physicians,, Foster has performed a few abortions since the procedure became legal, it has never been more than a minor part of this 38-year practice. To his credit, he has been candid on all points.

He is former dean and acting president of Meharry Medical College in Nashville, widely praised for bringing new vitality to the school. He has initiated a successful program to discourage teen-age pregnancies called ''I Have a Future.''

His nomination is praised by Dr. Louis Sullivan, a former Secretary of Health and Human Services under President Bush and himself a medical school president.

The White House bungled the Foster nomination process by failing to get the facts straight about his background in abortions and related matters, but that is no discredit to the nominee. Certainly, the president could have found a less controversial nominee. (He could have chosen a dermatologist, for example).

But the important fact is that Foster is the nominee. He is the president's choice. He has a significant record of leadership in the medical profession. There is not the slightest hint of unethical or illegal conduct. Unless some shocking revelation comes to light, he deserves confirmation by a strong bipartisan vote.●

PEACEKEEPING SAVES LIVES

● Mr. SIMON. Mr. President, in catching up on my reading, I came across an op-ed piece in the Washington Post by Brian Urquhart, who has contributed to U.N. peacekeeping efforts throughout the world in a significant way, until his retirement from the United Nations.

In his op-ed piece, he makes the point that John Foster Dulles said that a peacekeeping force was desirable and that compared to what we do in general, expenditure on arms is an economically way to bring stability to the world.

How right he is.

If we were to even suggest that we spend 1 percent of our defense budget on U.N. peacekeeping, it would be a significant and helpful shift for the United States, as well as for the world.

At this point, I ask that the op-ed piece by Brian Urquhart be printed in the RECORD.

The opinion piece follows:

[From the Washington Post, Feb. 16, 1995]

PEACE-KEEPING SAVES LIVES

(By Brian Urquhart)

''As you know the United States . . . has a strong interest in the early establishment of standby arrangements for a United Nations Peace Force. The interest of the American people in this concept is further demonstrated by the fact that during the past year resolutions were adopted by both the House of Representatives and the Senate calling for the establishment of a United Nations force.''

These words, written by an American secretary of state, John Foster Dulles, to a U.N. secretary general, Dag Hammarskjold, are a good measure of how different the climate in Washington is these days toward the idea of U.N. peacekeeping operations.

''I want to assure you that the United States is prepared to assist you in every feasible manner in strengthening the capacity of the United Nations to discharge its responsibility for the maintenance of international peace and security, a task to which you have already contributed so much,'' Dulles wrote in that 1958 letter.

Hammarskjold responded cautiously. At that high point in the Cold War he feared that a standing U.N. force, actively opposed by the Soviet Union, would become a political football between East and West, destroying the fragile innovation of peace-keeping which he had pioneered during the Suez crisis of 1956 and the Lebanon crisis of 1958.

President Eisenhower and Dulles, on the other hand, evidently saw a standby U.N. peace-keeping capacity as being greatly in the interest of the United States. In fact, just 18 months later Eisenhower, pressed by the new prime minister of the Congo for U.S. intervention there, adroitly referred him to the United Nations. The resulting peacekeeping operation was widely regarded as an extraordinary success in dealing with the chaos there.

Since that time the United Nations has undertaken some 25 such assignments of varying sizes in different parts of the world. Given the desperate origins of most of these operations, it is scarcely surprising that not all have achieved all their objectives. But it is worth noting that in the present controversy over peace-keeping, the successful operations—which constitute the majority—are seldom mentioned.

In recent months, for example, there has been much discussion of placing U.S. troops in the Golan Heights as part of the Middle East peace process, but little mention of the U.N. Disengagement Observer Force, which has successfully presided over peace on the Golan Heights since 1974. Somalia and Bosnia are constantly invoked, but the Nobel Peace Price of 1988 and later successes in Namibia, Cambodia, El Salvador and Mozambique are routinely forgotten.

The prevailing attitude in Washington toward U.N. peace-keeping these days seems to be a radical reversal of the earlier U.S. attitude. The impression is often given now that past U.S. support of these efforts was an aberration, a charitable—and largely unwise—gesture of condescension. But in fact, from Suez in 1956 to the present time, U.N. peacekeeping has far more often been a vital element of U.N. foreign policy.

During the Cold War, it was vital to maintaining international peace and security, because, among other things, it kept regional conflicts out of the U.S.–Soviet orbit and lessened the potential of such conflicts for provoking nuclear East-West confrontation.

In the post-Cold War world, that motivation for supporting peace-keeping no longer exists. The United Nations' new involvements are for the most part in massive civil and ethnic conflicts where human, not international, security is involved, although such disasters often cause major destabilization in neighboring states as well as strong emotional reactions worldwide. It is this change in the basic character of conflict that has led the more vocal opponents of U.N. peacekeeping to argue that there is little or no U.S. national interest in it.

But as Charles William Maynes has pointed out in testimony before the House International Relations Committee, today's great powers are ''like the most successful members of any community. They have a stake in the general health of the community. They cannot and should not be the world's policeman.''

Great powers have major economic and other interests in global stability, but they find it increasingly unwise to intervene on their own in regional conflicts. It was considerations such as these that underlay the enthusiasm of Dulles and Eisenhower for building up the peace-keeping capacity of the United Nations. Even the United Nations' most criticized operations such as UNPROFOR in ex-Yugoslavia often serve as a useful pretext for avoiding more intensive U.S. involvement and a screen for differences with allies. Imperfect though they are, they also save thousands of lives.

U.N. peace-keeping can be, and will continue to be, an invaluable—even an indispensable—instrument of peace. Its capacity and effectiveness need to be strengthened, not diminished. To be sure, new forms, rules and methods, including a training system, need to be developed. But the cost of peace-keeping—contrary to widespread belief—is small by comparison with the cost of massive military involvement, which timely peace-keeping often succeeds in making unnecessary. John Foster Dulles got it right.●

DIRECT LOANS BENEFIT STUDENTS

● Mr. SIMON. Mr. President, we are going to hear a lot about direct lending during the coming months.

It is a success for everyone but the people who profit from the present system. I want banks in America to be successful, but if we are going to subsidize banks, we ought to do it openly and not do it in the name of aiding students.

The Daily Illini, which is the student newspaper of the University of Illinois, had an editorial recently about direct lending. The University of Illinois is one of the schools that is now on the direct lending program.

I think my colleagues would be interested in what the student editorial says. I ask that it be printed in the RECORD.

The editorial follows:

[From the Daily Illini, Jan. 31, 1995]

DIRECT LOANS BENEFIT STUDENTS

Students love direct lending. College administrators love direct lending. So why are the House Republicans thinking of limiting the program?

William Goodling, House Economic and Educational Opportunities Committee chairperson, wants to cap the number of new student loans under direct lending at 40 percent, which is how large the program is expected to grow in the next academic year. The original legislation called for a 60 percent growth in the program by the 1998–99 academic year.

Goodling's reasoning is not clear yet, but there are already plenty of reasons why direct lending should be expanded, not curtailed.

The old system of going through the Student Loan Marketing Association, or Sallie Mae, doesn't work well. Students have to negotiate a long process involving complicated forms. And the overhead has been huge. Besides Sallie Mae, the federal government operates a system of more than 35 ''guarantee agencies'' to collect payments and repay on defaulted loans.

By contrast, the year-old direct lending program delivers loans fast and without hassle. As a result, the University has seen fewer students encumbered during registration for the spring semester and fewer student deferring payments or needing emergency loans, according to Orlo Austin, director of the office of student financial aid.

His office has also benefited from having control at the local level. Direct lending is less complex than the federal guaranteed-loan system because schools do not have to cut through a massive bureaucracy to get ahold of students' payments, he said.

And Austin isn't the only administrator happy with the program. ''(Direct lending) makes those of us in financial aid more sophisticated and user-friendly in helping to

serve students. We can't do anything but do our jobs better,'' said an official at the University of San Francisco in the Jan. 20 Chronicle of Higher Education.

In fact, the only people who seem to prefer the guaranteed-loan system are the bankers and guarantee agencies who direct lending will put out of work. That's not enough support for limiting the scope of this new program.●

ILLINOIS HIGH SCHOOL CHESS CHAMPIONS

● Mr. SIMON. Mr. President, I would like to commend the Orr High School chess team in Chicago, IL, for their outstanding participation in the State chess competition.

Orr High School's chess team is among the best in Illinois even though it represents one of the city's most troubled areas. The team is the other side of the story, the story beyond the statistic. It is ordinary people—parents, grandparents, big brothers and sisters and a math teacher joining together to save their children with rooks and knights and a lot of prayer.

It all began in room 207, the detention room at Orr where punishments are served. It also became a room where dreams are made: the chess team practices there. Team members start filing into 207 early every morning because that is where the coach, Thomas Larson, spends his days. Mr. Larson is a math teacher, and is also in charge of the in-school suspension or detention room where unruly and angry students are sent to cool off.

Nearly 75 percent of Orr's students come from low-income families. Students enter Orr, if they are lucky, with sixth and seventh grade math skills. In 1986, Mr. Larson started using chess and other games in his prealgebra class to help students with their analytical skills. Soon he began holding chess competitions in class and started a team. Chess was foreign to most of the students at Orr. It was a game that they thought was just ''for smart kids.''

The first year Orr played in the public school chess league, they came in fourth of six teams in their division; they placed 14th out of 16 teams in the citywide playoffs. A few weeks ago, Orr was crowned the city champions and was one of the top five schools statewide.

Congratulations to the Orr High School chess team on their outstanding performance in their State and local competitions.

RAY CARROLL: ONE OF ILLINOIS' FINEST

● Mr. SIMON. Mr. President, I would like to acknowledge the retirement of one of my constituents, Mr. Ray Carroll. Ray is the Director of Engineering at the Office of the Architect of the Capitol. Mr. Carroll's retirement became effective April 30, 1995.

Ray Carroll joined the Architect's office in 1975 as Director of Engineering, and in the ensuring years he was placed in charge of all engineering matters relating to new building design and renovations. Ray's duties also involved the oversight of modifications to existing buildings and facilities, as well as the operation and maintenance of mechanical and electronic equipment. Ray's expertise in the various engineering disciplines has made him a vital part of the Architect of the Capitol's office during the last 20 years.

Ray holds a bachelor of science degree in mechanical engineering from the University of Illinois. He is involved in a variety of social activities and has been the recipient to a number of awards.

We in Illinois are proud of Ray and the many contributions he has made not only to the running of Congress, but to the larger Washington community as well.

To Ray Carroll and his wife Dar, I want to like extend my gratitude for his years of service, and our best wishes and continued success and health as he returns to Illinois.●

ORDERS FOR TUESDAY, MAY 2, 1995

Mr. DEWINE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10 a.m. on Tuesday, May 2, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and that the Senate then resume consideration of the pending product liability bill; further, that there be an hour for debate, to be equally divided between the two managers or their designees, prior to the stacked votes, which are scheduled to occur at 11 a.m.

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

Mr. DEWINE. Mr. President, I further ask unanimous consent that the Senate stand in recess between the hours of 12:30 p.m. and 2:15 p.m. in order for the weekly party luncheons to occur.

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

Mr. DEWINE. Mr. President, for the information of all members, there will be a series of stacked rollcall votes beginning at 11 a.m. on Tuesday.

RECESS UNTIL 10 A.M. TOMORROW

Mr. DEWINE. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 7:50 p.m., recessed until Tuesday, May 2, 1995, at 10 a.m.

EXTENSIONS OF REMARKS

AMERICANS OBSERVE ''NATIONAL DAY OF PRAYER''

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. FIELDS of Texas. Mr. Speaker, Thursday, May 4 marks the 44th consecutive observance of the National Day of Prayer.

I congratulate all those Americans who will pause on that date to thank God for the blessings He has bestowed on our country, and to ask for His continued guidance for our Nation, its people and its leaders.

Even as we mourn the senseless tragedy that occurred in Oklahoma City which killed and injured so many of our fellow citizens and brought sadness to so many other Americans, we have much for which to be thankful.

We are free to practice—or not practice—the religion of our choice. We are free to think for ourselves and believe what we wish, and we are free to voice our opinions without fear. We are blessed with a free press that keeps us informed of what is right, and what is wrong, with our Government and our other public institutions.

In comparison to other nations of the world, we are a prosperous people—well-fed, well-housed and well-clothed. Our system does not guarantee success for every one of our citizens, but it does allow each American to advance as high as his talents and hard work can carry him.

Yes, our Nation has problems, and yes, there is injustice in our country. But in the United States, more than in any other nation in the world, all of our people have an opportunity to succeed. That opportunity is what drew immigrants to ''the new world'' in the 17th century; it's what drew settlers to ''the colonies'' in the 18th century; it's what motivated countless men and women to settle the West in the 19th century; and it's what continues to draw men and women from around the world to our shores in the 20th century.

Just as important, we Americans have in place a judicial system within which injustices can be eliminated, and within which wrongs can be righted peacefully, without resolve to violence. While our system of justice is not perfect, and while mistakes can occur, no once can deny the fact that America's judicial system has served our country and our people well for more then two centuries.

The idea that we Americans should pause and reflect on our blessings, and ask for God's guidance, is nothing new, National day of prayer have been part of our Nation's heritage since the first one was declared by the Continental Congress in 1775. Through the influence of Gen. George Washington, many of our founding fathers and succeeding presidents, prayer became an essential foundation upon which the United States of America was established and upon which it has grown.

On Thursday, through the collective prayers of citizens from every State and territory of our country, all Americans will have the opportunity to acknowledge our dependence upon God; recognize our need to renew moral values in our personal and professional lives; seek God's guidance for our Nation's governmental and community leaders; give thanks for the many blessings which our country has received from Him through the years; pledge ourselves to the restoration of marriage and family commitments; and intercede for healing and reconciliation within our Nation.

The participation of millions of American men and women in this year's National Day of Prayer will ensure that the event will be a success. As someone who believes in the power of prayer, and as someone who depends upon prayer in my daily life—both personal and professional—I sincerely thank everyone who takes part in this important annual event, as well as every American who keeps the interests of our nation, its people and its leaders in their prayers on a daily basis.

Thank you, Mr. Speaker, and may God bless you, our great Nation, and each and every American.

SALUTE TO THE GLENS FALLS ARMORY

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. SOLOMON. Mr. Speaker, for 100 years, the Glens Falls Armory has been a conspicuous landmark on Warren Street and a source of pride for the people of this small city I call home.

During those 100 years, units headquartered at the armory have served in both world wars. At the outbreak of World War I, Company K, 105th Infantry, 27th Division was activated from August 8, 1917, through April 1, 1919. In World War II, Company K of the 108th Infantry, 27th Division was activated from October 15, 1940, through December 31, 1945.

The armory was designed by the famous architect Isaac G. Perry, who helped design and construct the State Capital in Albany. The armory consists of 24,055 square feet, including a garage added in 1959.

First opened in 1895 to house a company of the New York National Guard, the armory presently serves as headquarters for two NYNG units, the 646th Medical Company and Detachment 1, Company C, 3d Battalion, 108th Infantry.

That first unit, the 18th Separate Company, was also known as the Rockwell Corps or the Citizens Corp. And that, Mr. Speaker, reminds me why the armory is so special.

It's a symbol of the citizen soldier who has fought in all our wars, from Concord and Lexington to the arid plains of Iraq.

The backbone of our Armed Forces for 200 years has been the National Guard and Reserves, men and women from every walk of life who proudly devote several hours a month to the defense of their country.

The response of this country to crises has always been speeded by the high state of readiness of our guardsmen and reservists. I can't tell you how proud I am of them.

The men and women who serve in these units are all-around outstanding citizens, contributing to their communities in more ways than one. The armory itself has long been a focus of community life in the Glens Falls area.

Mr. Speaker, on May 6, the scene will be the scene of a centennial celebration, complete with tours, displays, and speeches.

I ask all Members to join me in a salute to the Glens Falls Armory and to all the patriotic Americans who have served there over the last 100 years.

SUE MIKOLAJCZYK RECEIVES 1995 POLISH HERITAGE AWARD

HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. KLECZKA. Mr. Speaker, I rise today to congratulate Ms. Sue Mikolajczyk on receiving the Pulaski Council of Milwaukee's 1995 Polish Heritage Award.

In selecting Sue Mikolajczyk as the 1995 Polish Heritage Award recipient, the Pulaski Council has honored a woman who has devoted countless hours of work to preserving the richness of Milwaukee's Polish-American heritage.

It has long been a goal of our community to build a Polish-American Community Center. This goal is closer to becoming a reality because of the commitment, hard work, and sheer determination of people like Sue Mikolajczyk. Her outstanding efforts as coordinator of Polishfest's weekly bingo games have helped to ensure a steady source of funds for the development of the community center and more importantly, have helped to sustain the dream which guides our Polish-American community forward.

In addition to her involvement with Polishfest, Sue Mikolajczyk has been actively involved in a number of other Polish cultural organizations in our area and has assumed leadership positions in several of these organizations. Groups such as the Polish National Alliance, the Polish-American Congress, Polanki, and the Polish Womens' Alliance have all benefited from Sue's talents, determination, and willingness to take charge.

At a time when it seems that more and more people are forgetting their roots, Milwaukee's Polish-American heritage, thanks to the efforts of people like Sue Mikolajczyk, remains as alive and vibrant as ever. I commend Sue on her outstanding efforts on behalf of Milwaukee's Polish-American community and I congratulate her on receiving the 1995 Polish Heritage Award.

RECOGNIZING THE ''DEAN OF CALIFORNIA CITY ATTORNEYS'' MR. ALLEN E. SPRAGUE

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. STARK. Mr. Speaker, today, I would like to pay tribute to city attorney Allen E. Sprague for his dedicated years of service to the city of Fremont. During his tenure, Mr. Sprague has provided strong leadership to a city which has risen to new heights.

After graduating from University of California Boalt Law School, Mr. Sprague was hired as the city of Freemont's assistant city attorney in 1963. Six years later, he was appointed as their city attorney, thus attaining the title of ''Dean of California City Attorneys,'' as the longest serving, continuous, and surviving city attorney in northern California. Mr. Sprague served as counsel to 18 separate city councils, and as a mentor to numerous staff members who have gone on to serve other California cities as city attorneys. During a difficult transitional period, Mr. Sprague also acted as interim city manager in 1980 and 1981.

Mr. Sprague's community commitment goes well beyond his years with the city. He was an active participant with the Kiwanis International Club for 20 years, where he served as local chapter president, regional and national officer. Mr. Sprague also shared his fellowship as a lay Eucharist minister at St. Anne's Episcopal Church in Fremont and by raising the spirits and bringing comfort to those in need as a volunteer with the Vespers Hospice.

Mr. Speaker, I come before you today to recognize Mr. Allen E. Sprague for all his achievements and commitment to our community. I hope you and my colleagues will join me in congratulating this leader for his illustrious career and wish him and his family well in their future endeavors.

HAPPY 50TH BRONNER'S CHRISTMAS WONDERLAND

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. BARCIA. Mr. Speaker, there have been many times when we have wished it could be Christmas 365 days of the year. The special feeling that this wonderful holiday inspires enlightens us, and helps us to focus on kindness toward all.

Well, the people who work at Bronner's CHRISTmas Wonderland should be the envy of us all because for them it is Christmas every day of the year. This Wednesday, Bronner's, the world's largest Christmas store, celebrates its 50th anniversary at its store on 25 Christmas Lane in Frankenmuth, MI. This fantastic store, operated by Wallace ''Wally'' Bronner, supported by his parents, Herman and Ella Bronner, started as a small sign store to its current enviable position of offering a selection of more than 50,000 items from all over the world. The design and production of Christmas panels for merchants from Clare, MI, marked the first official sale of Christmas decorations to other communities.

Bronner's CHRISTmas Wonderland is a must-see holiday store for the consumer. And it is also a major supplier for churches, businesses, industries, cities, parks, shopping centers, parades and parties. It is a family-owned and operated business, now including its third generation of Bronners, that has grown from its early days as a small sign shop through several expansions that now allow it to boast a showroom equal to the size of four football fields. At peak time, more than 400 people are employed on a full or part-time basis at this manger of holiday spirit. Much of the merchandise is imported from other manufacturers, but the most special pieces include those designed and produced by Wally Bronner himself.

And not forgetting that the true part of Christmas is its religious heritage; Wally, Irene and other members of the Bronner family 3 years ago opened Bronner's Silent Night Memorial Chapel to both signify their thanks for God's blessings, as well as to provide an opportunity for the millions of people who surely visit Bronner's over the years to pause and offer their own thanks for what life has given them.

Mr. Speaker, Frankenmuth is a community that speaks volumes about what commitment to one's neighbor and hard work can accomplish. Like a sturdy tree, it supports many branches that extend through its commercial, agricultural, educational, and social greatness. It is filled with people who we would all like to have as our own neighbors. When it is crowned with the bright star of Bronner's CHRISTmas Wonderland, the decoration of this tree is truly complete. I urge you and all of our colleagues to wish the Bronner family and the hundreds of dedicated, good-spirit inspiring employees the very best on the 50th anniversary of Bronner's CHRISTmas Wonderland.

IN RECOGNITION OF HELAINE STRAUSS

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. ACKERMAN. Mr. Speaker, I rise today with great pride to share with my colleagues in the House of Representatives the inspiring story of a woman who has been an active member of the Jewish community in Suffolk County for many years, Helaine Strauss.

Helaine Strauss became a Jewish community center professional on Long Island in 1967. This began a lifetime career in which she vastly changed the landscape of Long Island's Jewish community.

In 1980, a determined board of directors, Suffolk County Y staff and Helaine took a bold step forward. They moved the Y into a brand new setting that provided the first Jewish day care center in the United Jewish Appeal [UJA] federation network, as well as a nursery school, a senior citizen and singles' center. In addition to these conveniences, the Y developed and installed a state-of-the-art fitness center.

When the initial construction of this enormous project was completed, Ms. Strauss breathed a sigh of relief and embarked on a new project: building bridges. Today, the Suffolk Y Jewish Community Center joins with a multitude of Jewish agencies, synagogues and community organizations sponsoring innovative programs and services.

Ms. Strauss' leadership has been widely recognized. She is past president of the New York chapter of the Metropolitan Association of Jewish Center Workers and participated in Jewish Welfare Board's Executive Development Program and the Jewish Community Center Association's Executive Fellows Program. Ms. Strauss serves on the nation board of the Jewish Community Center Association and on the advisory board of the Adelphi School of Social Work. She received the Woman of the Year Award from Friends of Lubavitch of eastern Long Island.

In 1985, Ms. Strauss received the Samuel W. and Rose Horowitz award from the Commission on Synagogue Relations of UJA–Federation of New York, and she has also been honored by the Women's American Organization of Rehabilitation Training (ORT).

I ask my colleagues in the House of Representatives to join with me in saluting Ms. Helaine Strauss, for 20 years of outstanding service, commitment and devotion to not only the Suffork Y, but the entire Jewish community of Suffolk County, Long Island.

THE 75TH ANNIVERSARY OF SARATOGA SPRINGS V.F.W.

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. SOLOMON. Mr. Speaker, 75 years ago this summer, Veterans of Foreign Wars Post No. 420 was established in Saratoga Springs, NY. The V.F.W., Mr. Speaker, has been and continues to be an organization of exceptional merit and service to the needs of many veterans. V.F.W. Post 420 was founded upon these principles in the summer of 1920, and continues to serve and remember those veterans who made sacrifices for America.

Post 420 was founded as a memorial to two brothers who courageously fought for America in WWI. On October 20, 1918, the Gurtler brothers were both killed in battle along the Hindenburg line in Germany. It is only appropriate that those brave men who placed themselves in harm's way overseas be represented by such an able organization.

Mr. Speaker, it is comforting to know that those who served the needs of our country and fought for the principles and ideas of America all over the globe can depend on the support of an organization like this post back home in upstate New York.

Mr. Speaker, the service of Post 420 in Saratoga Springs is worthy of significant recognition. This post, and others like it, are the reason I fought so hard to attain department-level status for Veterans' Affairs. When President Ronald Reagan signed that legislation into law, veterans were finally afforded the degree of national consideration they deserve. The efforts of V.F.W. posts like this one, having served the needs of veterans since 1920, played a major role in the grassroots efforts by V.F.W. posts across this Nation to enact that bill into law. For this, Mr. Speaker, we owe Post 420 a tremendous debt.

The famous historian George Santayana once said, ''Those who do not remember history are bound to repeat it.'' V.F.W. posts all across America have not forgotten the past or those men and women who made the ultimate sacrifice for our country. I ask all my fellow Members to rise in tribute to V.F.W. Post 420 in Saratoga Springs on the occasion of their 75th Anniversary.

JANET BANACH NAMED 1995 POLISH WOMAN OF THE YEAR

HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. KLECZKA. Mr. Speaker, I rise today to congratulate Mrs. Janet Banach on being named 1995 Polish Woman of the Year by the ladies auxiliary of the Polish National Alliance—Milwaukee Society.

Janet Banach is a person who is genuinely committed to well-being of others and to the betterment of her community. By selecting Janet as the 1995 Polish Woman of the Year, the Milwaukee Society—ladies auxiliary is rightfully recognizing a person who has devoted her time and talents to a wide variety of worthwhile activities.

Over the years, Janet Banach has been actively involved in a number of organizations dedicated to assisting the needy and less fortunate. Through her volunteer involvement with organizations such as the American Red Cross, the St. Vincent DePaul Society, the SHARE Program, and the South Community Organization, Janet has transformed her concern for others into effective action. Through her involvement as a Cub Scout and Brownie leader Janet has helped to prepare our community's future leaders for the challenges that lay ahead.

Janet has also shown herself to be a person committed to her Catholic faith and her Polish-American heritage. Janet is a long-time member of Milwaukee's Holy Spirit Parish. Both she and her husband take an active role in sharing their faith with others through their parish activities. In addition, through her involvement with organizations such as the Polish National Alliance—Milwaukee Society and Polish Festivals Inc., Janet plays an active role in keeping Milwaukee's Polish-American heritage alive.

I would like to commend Janet on her outstanding and worthwhile achievements and I congratulate her on being named 1995 Polish Woman of the Year.

OPENING OF EXHIBIT ''DEFENDING RELIGIOUS LIBERTY'': THE STORY OF THE BAHAIS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. STARK. Mr. Speaker, I would like to call attention to the Members and the general public of the opening of an exhibit entitled ''Defending Religious Liberty,'' on view in the rotunda of the Cannon House Office Building, U.S. House of Representatives, May 2–5, 1995.

The focus of the exhibit is on repression of the Bahai community and portrays America's concern for religious freedom and the response of the United States and other nations to the persecution of members of Iran's largest religious minority.

Those who practice the Bahai faith number 6 million in more than 205 countries with more than 100,000 worshipers in the United States. The Islamic regime calls the Bahai faith a conspiracy and heresy. Followers have no legal rights and secret documents show official Government policy is suppression of the Bahai community. Bahai students have been expelled from schools, followers have been denied food ration cards, dismissed from jobs and denied pensions. Many have disappeared, been kidnapped, jailed, tortured, and executed on account of their religion.

Congress has acknowledged that the abusive treatment of the Bahais is a critical human rights concern. Although diplomatic pressure and critical publicity has elicited a positive response from the Iranian Government the Bahai community remains an oppressed minority, denied the right to elect leaders, conduct religious schools, and pursue other organized religious activities.

Bahai members are composed of the mainstream of people, from different races, nationalities, and social and economic backgrounds. They believe that all people are meant to live in peace and unity and should be supported in their continuing efforts to protest against the Iranian Government's persecution of Bahais.

Mr. Speaker, I hope this exhibit will remind us of the oppression of our fellow human beings. We must continue to direct our efforts toward resolving these crimes against humanity. Therefore, I propose we should never resume trade or diplomatic relations until the Islamic Revolutionary regime reverses their policy.

SCHEURER HOSPITAL: CELEBRATING 50 YEARS OF COMMUNITY CARING

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. BARCIA. Mr. Speaker, this past week I was privileged to join a great number of people who came together to celebrate the 50th anniversary of the opening of Scheurer Hospital in Pigeon, MI. The many people in Huron County and around the western portion of the Thumb of Michigan who have been helped by the quality medical care provided by the dedicated staff at this facility over the years know a quality institution when they have the good fortune to be served by it.

Scheurer Hospital is named for Dr. Clare Scheurer, a physician who in 1944 was convinced that a new medical facility was needed for the people in the area who either overfilled his office, couldn't be served within the hours he had available for treating patients, or were too far away following surgery in the Bad Axe Hospital. Donations from friends and businesses in the area helped lead to the construction of the then 21-bed hospital, and its official opening on April 23, 1945. Mrs. C.H. Spence was the first patient admitted, and her daughter, Margaret, was the first baby born at the hospital.

Over the years this facility continued to provide excellent elective and emergency care to patients, until it was replaced by the current 47-bed hospital in 1971. And an expansion and modernization program in 1985 provided more examination rooms, and an improved laboratory and pharmacy. This project was again heavily supported by the community served by this most important facility.

Today the thousands of people who live in Scheurer Hospital's service area know that they can count on the 28 doctors, 40 nurses, and nearly 170 other professionals that are part of the dedicated Scheurer team under the direction of Chief Executive Officer Dwight Gascho for a wide range of medical services including orthopedics, cardiology, nuclear medicine, micro eye surgery. In the hospital's last fiscal year, there were over 3,500 emergency room visits, nearly 5,800 redi-care visits, and 600 admissions.

Mr. Speaker, I urge you and all of our colleagues to join me in wishing the wonderful staff of Scheurer Hospital the very best of wishes on their 50th anniversary.

HONORING JOYCE TOBIAS

HON. THOMAS M. DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. DAVIS. Mr. Speaker, it gives me great pleasure to rise today and pay tribute to one of Virginia's outstanding citizens, Joyce Tobias.

Joyce Tobias, a registered nurse and the mother of seven children, has been a community organizer and a parent and child advocate since 1967. A tribute dinner was held in her honor Friday, April 28th on the occasion of PANDAA's [Parents Association to Neutralize Drug and Alcohol Abuse] 15th anniversary. Joyce founded PANDAA in 1980 and has served as executive director, newsletter editor, and member of the board of directors since its founding. The organization greatly contributes to parents awareness of drug abuse among young children and gives hope and support to parents and children alike who face those problems.

PANDAA, a volunteer organization, combats alcohol and other drug abuse through education and civic action. Under the leadership of Joyce Tobias, PANDAA publishes a quarterly newsletter with a national distribution of 10,000 copies, provides a hotline and referral service for parents, conducts adult and youth conferences, maintains a speakers bureau and assists in the formation of new groups.

Joyce was also a founding member of the Virginia Federation of Parents [VFP] in 1982 and served as its president in 1992 and 1993.

Along with her strong advocacy role in Fairfax County, she has served as a consultant for the U.S. Department of Education—1988–89—and other school districts across the country. She traveled to Brazil for the U.S. Information Agency in 1991, participated in electronic dialog with two countries in Africa, and represented the United States by speaking many foreign visitors through USIA.

Joyce is the author of ''Kids and Drugs,'' a 126-page handbook for parents and professionals that has been translated in part into Portuguese and Arabic. Other publications include ''Schools and Drugs,'' a handbook for parents and educators, and ''Preparing for Parenthood: A Lamaze Childbirth and Postpartum Guide.''

After teaching childbirth preparation for four years. Joyce founded FLAME [Family Life and Maternity Education Inc.] in 1971, an organization which teaches the Lamaze method of childbirth.

Joyce Tobias is a remarkable woman whose contributions to her community and her country as a leader and volunteer have made a difference. I know my colleagues join in honoring this outstanding woman.

FORT EDWARD FIRE DEPARTMENT DEMONSTRATES TRUE AMERICAN INGENUITY

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. SOLOMON. Mr. Speaker, I have always held a special place in my heart for volunteer fire companies and the invaluable service they provide the residents of small towns like those in my 22d Congressional District of New York. As a volunteer firefighter myself for 20 years, I understand the commitment necessary to fulfill such a role, regardless of the weather or the time of day. The members of the Fort Edward Fire Department have selflessly provided this vital service, and for that, we should all pay tribute.

However, Mr. Speaker, as if these people have not provided a great enough example of community service, the members of this fire department will unveil this Saturday, May 6, 1995, another accomplishment we would all do well to emulate. The Fort Edward Fire Department will be holding a ribbon cutting ceremony to commemorate the opening of their newly expanded and renovated fire station. This project, combining two separate branches of the fire department and providing much needed expansion and improvement of facilities, cost over $400,000. However, the most notable accomplishment is that it will be financed without a single penny of public tax money. As we all strive to regain fiscal sanity in the public sector and encourage public service, the efforts of the volunteers who comprise the Fort Edward Fire Department are worthy of significant recognition. In a time where government spending and regulation seem to play a role in all aspects of American life, this achievement signifies an example of true American voluntarism and wherewithal which made our Nation the greatest in the world.

At the open house this Saturday, the fire company will be able to show off the improvements to the fine citizens of Fort Edward. They will exhibit the new rooms and offices they added to the station, the fine colors and carpeting they chose to decorate the hall where they will hold bingo nights, as well as other special events to help finance their project, and allow the children to climb all over the fire trucks in the expanded truck bays, all the while knowing they did so without spending any of the citizens hard-earned tax dollars. This is an accomplishment which we should all take comfort in commending. Therefore, Mr. Speaker, I ask that all my fellow Members rise with me and salute the achievements of the Fort Edward Volunteer Fire Department, they truly exemplify the spirit of community service all Americans should strive to achieve.

IF YOU HAVE A JOB, YOU AREN'T CAUSING INFLATION—GUESS WHO IS?

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. CRANE. Mr. Speaker, the Orlando Sentinel recently featured an article which destroys numerous myths pertaining to inflation.

Mr. Charley Reese, author of the article, highlights congressional responsibility for inflation. He goes on to argue that economic progress has been hampered by inflation stemming from actions of the Federal Government and Federal Reserve System.

I commend to the attention of my colleagues ''If you have a job, you aren't causing inflation—guess who is?''

IF YOU HAVE A JOB, YOU AREN'T CAUSING INFLATION—GUESS WHO IS?

(By Charley Reese)

There's a big con game going on. The con is that politicians in both parties and the bankers talk about problems caused by inflation without mentioning that they cause it.

To hear the central bank talk about it, you would think inflation is caused by people getting jobs. Uh, oh, the central bankers are saying, too many Americans have jobs, and so we had better increase the rates of usury to keep inflation under control.

In a country with so many millions of people unemployed and underemployed, it is impossible for people to cause inflation by getting a job. Even if we had 100 percent employment, people getting jobs would cause little if any inflation.

There are, to keep it simple, two kinds of inflation. One is called cost-push inflation and the other is monetary inflation. Politicians and money-lenders would like you to believe that cost-push inflation is the only kind that exists.

Not so. An example of cost-push would be a situation in which there were a great drought in the Midwest followed by a plague of locusts, so that the grain crop would be severely reduced. Because there would be insufficient grain to meet the demand, people would bid up the price in an effort to get what was available. That's cost-push: a rise in prices produced by an increased demand for a commodity or product.

Monetary inflation, however, is when the monetary authorities put so much money into the system that the value of each unit declines. Demand and working people have nothing to do with it. That type of inflation is entirely in the hands of the government and the central bank.

That's really what Mexico's peso crisis is all about. As it always does, the Mexican ruling party turned on the printing presses and greatly boosted the money supply during the election campaign. When this happens, eventually the monetary unit will decline in value.

As the value of the monetary unit declines, people are forced to raise prices just to maintain their same level of income. Because of continued deficits and the profligate policies of the Federal Reserve, the U.S. dollar has lost its value.

Money is not wealth. What one buys with money is wealth—houses, clothes, tools, services, etc. How much a given unit of money can buy is called purchasing power. Well, the purchasing power of the U.S. dollar, thanks entirely to Congress and the Federal Reserve, has declined so much that, if you made $10,000 in 1967, you would have to make $40,000 in 1995 just to be where you were 28 years ago. To put it another way, it takes $4 today to buy what $1 would buy in 1967.

But the key point to understand is that this is the fault of Congress, not the fault of the private sector. Back in the 1960s, Congress gave up any effort to maintain a stable money system and indexed—those famous cost-of-living allowances—most federal programs. It did that to take the sting out of inflation, a policy it was consciously pursuing, because it is more politically palatable than bringing the federal budget into balance and reining in the central bank.

But, of course, if you aren't on the federal teat, your income didn't get indexed to inflation. Inflation never affects people uniformly. Some can prosper; some can stay even; and some will fall behind.

What outrages me is to hear bankers and politicians talk about the real misery their inflationary policies have caused while pretending that it is not their fault but someone else's, either greedy consumers spending too much or some unexplained, uncontrollable mysterious ''thing.''

It's they. It's the 100 senators and the 435 members of the House. It's the Federal Reserve System, which Congress created and which Congress could, if it had the sense and the guts, seriously reform or abolish. They caused the economic misery. Now they are blaming the victims.

BART ROWEN SET THE STANDARDS

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. LAFALCE. Mr. Speaker, On April 13, 1995, the pioneer of modern economic journalism Hobart Rowen, died, leaving a legacy of standards for the profession. International economic issues and events were Mr. Rowen's specialty. Through five decades of dedication and innovation devoted to economic journalism, Mr. Rowen reshaped the standards for the profession by bringing the sometimes arcane issues of international economics to mainstream America. He wrote so that readers could understand and appreciate the importance of economic events and the impact of international economics on their lives. Whether the subject was international trade, monetary policy, or exchange rates, Mr. Rowen's knowledge and journalistic style put him in a league of his own. I most recently spoke to Mr. Rowen in February this year about the Mexican peso crisis. His knowledge, insight, and willingness to question traditional economic assumptions were clearly demonstrated on this issue. Mr. Rowen will be missed, but his legacy to economic journalism has set the standard for years to come.

Mr. Speaker, I am submitting for the RECORD, a copy of Mr. Rowen's obituary that appeared in the Washington Post on April 14.

ECONOMICS JOURNALIST HOBART ROWEN DIES; REPORTER AND FINANCIAL EDITOR AT THE POST

(By Claudia Levy and Bart Barnes)

Hobart Rowen, 76, an economics reporter and editor at The Washington Post who played an important role in bringing coverage of business news and economics into the mainstream of American journalism, died of cancer April 13 at his home in Bethesda.

Mr. Rowen, a leading economics journalist for five decades, joined the news staff of The Post in 1966. He was a pioneer in bringing economic news to Page One and was known for his ability to explain domestic and global economics in terms that helped readers relate them to their own bread-and-butter issues.

His work took him to conferences around the world, to the boardrooms of industry and business and to the seats of power in Washington and other national capitals. In his news stories and syndicated columns, Mr. Rowen broke new ground on such issues as fiscal and monetary policy, the implications of appointments to the Federal Reserve Board and the actions of the World Bank and the International Monetary Fund.

''He was the first economics reporter of his generation who could go to a press conference about economics and know more than the guy who gave it,'' said Benjamin C. Bradlee, the former executive editor of The Post, who hired Mr. Rowen ''to bring the newspaper's business coverage from nowhere to somewhere.''

When Mr. Rowen arrived at The Post, the paper's business and financial staff consisted of one editor, two assistants and a news aide, and most of its coverage was devoted to promotions and retirements at local businesses. Today, The Post's business section includes a staff of 55 with bureaus in New York and Tokyo.

In addition to his work in print journalism, Mr. Rowen appeared frequently on television broadcasts such as ''Washington Week in Review,'' ''Nightly Business News,'' ''Meet the Press'' and ''Face the Nation.''

''We have lost one of this nation's preeminent economic journalists,'' Treasury Secretary Robert E. Rubin said yesterday at a speech in Los Angeles. ''He was a leader in bringing to the fore those issues which are so central to the economic debate.''

Mr. Rowen was born in Burlington, Vt. He grew up in New York and graduated from the City College of New York. In 1938, he joined the Journal of Commerce in New York as a copy boy and nine months later was hired on as a reporter to cover commodities.

He took courses at the New York Stock Exchange and wrote a pamphlet on futures trading. He was assigned to the paper's Washington bureau in 1941 to cover the new defense agencies and show their interaction with business.

Mr. Rowen took a two-year break from journalism during World War II to work as a public relations specialist with the information division of the War Production Board.

In 1944, he joined the Washington bureau of Newsweek, writing a business trends page for the magazine that interpreted news for the business community. Until joining The Post at the invitation of former Newsweek colleague Bradlee, Mr. Rowen remained with the news magazine.

As financial editor and assistant managing editor for business and finance at The Washington Post, Mr. Rowen oversaw the launching of the newspaper's Sunday Business section and an expansion of its business coverage. He continued his column and broke many stories, including a prediction that dollar devaluation and wage-price controls would be imposed before those events occurred in 1971.

In 1967, he drew the wrath of the Johnson administration with a story quoting a ''high government official'' to the effect that costs of the war in Vietnam would rise sharply above official estimates. It turned out later that the unnamed official was William McChesney Martin, chairman of the Federal Reserve Board.

Mr. Rowen returned to full-time writing in 1975, and in 1978, he was named international economics correspondent. He said he found the beat increasingly important because in many respects Washington, not New York or London, had become the financial capital of the United States and of the world. He covered the fluctuation of the dollar and other currencies, third World economics, international trade and world economic summits.

In addition to his twice-a-week column, ''Economic Impact.'' he contributed to publications, including Harpers and the New Republic.

His books included ''The Free Enterprisers: Kennedy, Johnson and the Business Establishment,'' ''The Fall of the President and Bad Times and Beyond'' and ''Self-Inflicted Wounds: From LBJ's Guns and Butter to Reagan's Voodoo Economics,'' published last year.

''Self-Inflicted Wounds'' told a story of ''blunder, mismanagement, stupidity and irresponsibility by officials whose chief obligation to govern the nation was betrayed by their embrace of politics misconceived and ineptly applied.'' This had led the nation on a path of ''slow but steady self-strangulation,'' he wrote.

In 1992, Mr. Rowen wrote for The Washington Post Health section about the misdiagnosis of his prostate cancer that led to incorrect treatment at Georgetown University Hospital. He emphasized the need for a second opinion, even at the nation's most prestigious medical institutions.

Mr. Rowen's honors included Gerald Loeb awards for best economics column, for a piece on problems faced by the International Monetary Fund and the World Bank, and for lifetime achievement. He also received the distinguished service award for magazine writing from the Sigma Delta Chi journalism honorary society.

He also received the John Hancock award, the A.T. Kearney award and the Townsend Harris medal of CCNY. He was elected to the Hall of Fame of the D.C. chapter of the Society of Professional Journalists and won the first professional achievement award of the Society of American Business Editors and Writers.

Mr. Rowen served on the Town Council of Somerset in Chevy Chase from 1957 to 1965 and was president of the Society of American Business Writers and the Washington professional chapter of Sigma Delta Chi. He was a member of the National Press Club, the National Economists Club and the Washington-Baltimore Newspaper Guild.

Survivors include his wife of 53 years, Alice Stadler Rowen of Chevy Chase; three children, Judith Vereker of London, James Rowen of Milwaukee and Daniel Rowen of New York City; and five grandchildren.

AFFIRMING EQUALITY IN RHODE ISLAND

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. STUDDS. Mr. Speaker, on March 19, the Rhode Island House of Representatives approved legislation to prohibit discrimination on the basis of sexual orientation. If, as expected, the bill clears the Senate and is signed by the Governor, Rhode Island will become the ninth State to provide such protections to its citizens.

This milestone was marked by the Providence Sunday Journal of April 2, 1995, in a superb column by M. Charles Bakst which I am proud to insert in the RECORD.

The article describes the passage of this legislation through the eyes of one of the people who worked hard to bring it about. His name is Marc Paige. Among other things, he is gay and living with AIDS. He is also a former member of my campaign staff whom I am proud to call my friend. His personal journey is a familiar story for all who grow up gay in our society, and the families and friends who love them.

The article follows:

[From the Providence Sunday Journal, Apr. 2, 1995]

GAY RIGHTS ACTIVIST SAVORS BIG VICTORY

(By M. Charles Bakst)

When the House last week passed the gay rights bill, supporters of the measure were jubilant. One of them, watching from a gallery seat, was Marc Paige of Cranston.

He is 37. He is a gay activist. He is Jewish. And he has AIDS.

Paige is part of the army that has long fought for this measure to ban discrimination against homosexuals in employment, credit, housing, and accommodations. It has kicked around the capitol for 11 years and now, having survived the House, appears headed for Senate passage and signing by Governor Almond.

''All Rhode Islanders won today,'' Paige enthused after Wednesday's House vote. And, of course, he was right. Whenever society takes a stand against discrimination against anyone, it is a victory for everyone. But if you sit and talk with Paige, you will get a better appreciation of why this bill has such meaning for gays and lesbians, and of the hurt and pride that motivate him to seek its passage.

If the bill is enacted, he says, it will be a ''very big deal.'' Though not transforming society overnight, it will be a start:

''It's going to give gay people the knowledge that they do have recourse if they are discriminated against. And it's going to, hopefully—and I have no delusions that it's going to be in my lifetime—make things easier for, particularly, the children who realize that they're gay, that they're lesbian. Because it pains me the most to know that kids today are still experiencing the isolation, the fear, that I had to go through. Being a teenager is hard enough. These are needless, senseless, tragic emotions that they have to deal with.

Paige, who has helped organize demonstrations against anti-gay-rights legislators, can be as militant as they come. But he also can sound gentle, and sunny.

A friend, former Sundlun administration staff chief Dave Cruise, says, ''He's an amazing person. With what his future holds for him, he doesn't bear ill will toward anyone.''

Paige tested HIV-positive in 1989. He says this was a result of unprotected gay sex years earlier in a less enlightened age. By 1993, he had full-blown AIDS.

''I feel sometimes like I'm living with a time bomb inside me,'' he says. ''And I know that I could get very sick. But I'm starting new treatments and I'm trying to stay healthy as long as possible and I take it a day at a time.''

He adds, ''I couldn't say for sure that I'm going to be here for my niece's bar mitzvah, which will be in three years. I'd say it's even money. But we don't know what will be developed, so there's always hope. As long as you're breathing, there's hope.''

He grew up in a middle-class family.

As a teenager, he realized he was gay—and that he felt isolated.

''Teenagers especially want to fit in, and, when you're gay, when you're lesbian, you don't fit in. So then I threw my energy into other causes. I was very involved with B'nai B'rith youth . . . I worked very hard on Jewish causes, on Israel.''

He was a student at Cranston West and he was still in the closet:

''I knew a couple of gay people at my high school. They were constantly tormented and harassed. So the messages I received throughout all of society were, 'This is very bad.' So I kept it hidden, as most gay kids do.''

Then he went to college in New Jersey:

''One night, when I enrolled at Rutgers University, my freshman year, a snowy December night, I got up my courage and I went to a meeting that was advertised in the school newspaper for the Homophile League, which is a very antiquated term, but this was back in 1976, and I expected to find the monsters that society told me would be there, and what I found were wounderful, supportive, warm, welcoming people and I realized then I wasn't some terrible person.''

Now it was Christmas vacation:

''I wanted to share the joy that I was feeling with my parents. I was finally able to be comfortable with who I was, and I shared that information with them. Their reaction was shock, disappointment.''

Did they send him to a psychiatrist?

''No, because I wouldn't have gone to a psychiatrist. There was nothing wrong with me . . . It took me about six years of torment, really, to come to this position, so I wasn't going back and I wasn't going to feel badly about myself ever again on this issue.''

Eventually, he says, his parents came around, ''because they loved me, whoever I was.''

Paige often speaks in schools and in temples, including Barrington's Temple Habonim, where I first encountered him. He says his Jewishness played a large role in shaping his gay activism:

''Growing up, my parents instilled in both my sister and myself a strong sense of Jewish identity, and also we learned about the injustices that were brought upon the Jewish people throughout the ages, particularly, of course, only 50 years ago, when 25, 30 percent of the world's Jewry was eliminated from the planet. I have seen what the seeds of hatred, bigotry can do.''

He no longer works—he was in the fashion industry and, for awhile, in the state Department of Administration—but he's still out speaking, often on AIDS prevention.

This past Tuesday, he was buttonholing legislators, and on Wednesday, the day of the House vote, he was at the State House again to take in the scene.

Outside the House entrance, we happened upon Linc Almond, a backer of the bill. ''I want to thank you very much for your support,'' Paige said. In fact, he had some news for the governor. When Almond was barraged by anti-gay-rights calls on a recent Steve Kass WHJJ talk show, Paige's was the only supportive call that got through.

We went up to a House gallery and there was Eileen Gray, Paige's 66-year-old mother, sporting a button that said, ''I'm straight. But not narrow.''

I took her aside for a moment and asked why she was there.

''Because I believe in the bill and I'm supporting my son,'' she said.

Many parents would say, ''It's bad enough that he's gay. Why does he have to be public about it? The last thing I want is to be public.''

Gray said, ''I'm his mother. I love him with all my heart and soul. I don't think there's anything wrong with him. I don't think he's 'sick.' I have become educated and wiser, hopefully, to understand that a certain percentage of the population, from the beginning of time, is born gay. What's the big deal?''

Not that it was easy for her to accept initially. She said when she first heard Marc's news, she spent a day in bed with a headache, and her daughter, three years older than the son, phoned.

''My daughter Robin called me and said, 'Mom, what's the matter?' ''

''I said, 'It's Marc.' ''

''She said—in a frantic voice suggesting a fear of something like cancer— *'What?'* ''

''Marc told me he's gay.''

The daughter, relieved it was only that, said, ''Thank God.''

That helped, Gray said.

Now Marc, with AIDS, does face a grim future. But Gray was upbeat.

''He's very good,'' she said. ''He takes very good care of himself.

And, with medical technology, I think he's going to be here a long, long time. I truly believe that.''

Now the House debate began and droned on—with exquisite odes to equality and dignity, but also with ugly, arrogant talk of gays and their so-called lifestyle that is, in some eyes, such an abomination before God.

Paige told me had a headache. ''I don't know if it's from this or the AZT I took a couple of hours ago.''

He sat with a House seating diagram, with notations of the expected vote lineup, which was thought to be very close.

And then the actual tally came—passage by a surprisingly comfortable 57 to 41. Thrilled, he turned to me and said, ''Wow!''

As they made their way out of the gallery, he and his mother kissed.

EXEMPLARY VA EMPLOYEES

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. MONTGOMERY. Mr. Speaker, our human vocabulary does not contain the words to accurately describe the horror, the sadness, the profound feelings of grief and loss we have all experienced since the April 19th bombing of the Oklahoma City Federal Building. This monstrous act—targeted at our young innocents, at the elderly seeking their Social Security benefits, at disabled veterans checking on their vocational rehabilitation or compensation benefits, at the hundreds of Federal employees laboring conscientiously to serve their fellow citizens—epitomized man's inhumanity to man. In response, we want to reach out to the injured and to the families of those who are missing or dead, and speak the words that will relieve their suffering. Knowing this is impossible we nonetheless struggle to share with these blameless victims our concern for them and the pain we feel on their behalf.

In contrast to the ugliness of the bombing, countless men and women in Oklahoma City epitomize, by their selfless heroism, courage, valor, and determination, the deep concern most of us feel for one another in this country. I am particularly proud of the extraordinary response of the Department of Veterans' Affairs [VA] employees in Oklahoma City. Most of you read in the April 23, 1995, edition of the Washington Post the remarkable account of the brave actions of the VA staff who were in the Federal Building at the time of the explosion. I will not soon forget the description of Paul Heath, a VA counseling psychologist, who, having escaped the collapsed building, returned to his ruined office with a stretcher to rescue his badly-injured colleague. For the benefit of my colleagues who did not have an opportunity to read the Post article, a copy follows:

[The Washington Post, April 23, 1995]

PELTED WITH GLASS, BURIED BY WALLS, THIS OFFICE OF EIGHT PULLED THROUGH

(By William Booth)

OKLAHOMA CITY.—They began an extraordinary day as the most ordinary of people.

On Wednesday morning at 9, they sat at their computers or leaned on their desks in the Department of Veterans Affairs' small office on the fifth floor of the Alfred P. Murrah Federal Building. There were eight of them that morning, people similar to hundreds of thousands of federal employees across the nation.

''Just the most normal day,'' rehabilitation specialist Diane Dooley would recall later. ''That's how the day started, just the same old, same old.''

But not for long. In the time it might have taken to retrieve a file, the office was ripped in half by a massive explosion from a car bomb set off just outside the building's front entrance. Those inside were buried by an avalanche of debris or swept away in a blast of flying glass.

In the torrent, they lost fingers and eyes and ears. Their bones were broken and twisted. Some even lost their sense of where and who they were, becoming white ghosts covered in dust and blood, wandering in shock through a building filled with the dead.

Later, at least one of them would wonder why he was not more brave; another would claim they were not heroes. All of them wept. But all of them survived the bomb that went off at 9:04 a.m.

''We were so lucky,'' said Jim Guthrie. ''I know if things had just been a little bit different, that we could all be buried out there in the rubble.''

The VA office was not unlike the 14 other agencies' offices in the building. Each was filled with bureaucrats, secretaries, clients—perhaps 800 people in all that morning, now grimly divided between the survivors and the dead. Although its occupants were more fortunate than many others, the story of the VA office is in many ways the story of them all.

The eight VA employees pushed papers but they also pushed disabled veterans, helping them get jobs and benefits. They thought of themselves as a family: They told jokes, they made calls, and they filled file cabinets with stories of veterans getting ahead in life or spiraling ever downward. Of the eight workers, five were veterans themselves.

They called themselves by alphabet letters, as federal employees so often do—CPs and VRSs and LVERs: Counseling Psychologists and Veteran Rehabilitation Specialists and Local Veteran Employment Representatives. On Wednesday morning, they were discussing their QRs, or Quality Reviews. They were busy, one recalled without irony, ''reinventing government.''

Guthrie, a contracting officer's representative, stopped by the office to work on securing a dental contract for disabled veterans in nearby Lawton. He considers himself a hard worker and a trouble-shooter, who does all the ''crappy little jobs'' that need doing. Long and lean, divorced with kids and living in nearby Muskogee, where the central office is located, Guthrie, 44, is a former Marine, who spent 13 months ducking rockets in Da Nang, Vietnam, an experience he does not dwell on. ''I don't like pity parties,'' he says.

The explosion, he said, was worse than anything that happened to him in Vietnam.

When Guthrie arrived at the office, he greeted everyone. He remembers that Stan Ronbaun, who worked for the state but was attached to the federal office to help find jobs for disabled veterans, was sitting at his desk right next to the window. Ronbaun was from New York and liked jokes. He reminded people of the actor Walter Matthau.

Martin Cash, too, was in the front room, almost as exposed as Ronbaun to the large plate-glass windows on the north face of the building. Cash counseled veterans about their benefits. Nearby were John Colvin and George Denker. They helped disabled vets get loans.

Guthrie visited for a few minutes with Diane Dooley and office coordinator Paul Heath, a man who wears many hats. Heath is a psychological counselor for veterans, helping them through neurological disease or divorce or alcoholism. He has been with the VA in this office for 28 years. People call him ''Doc.''

The three of them—Guthrie, Dooley and Heath—talked about ''nothing unusual.'' Heath recalls, ''something about putting together a unified database for a vocational rehab unit.''

Daughter of a retired Air Force sergeant, Dooley married the son of another Air Force sergeant. She started working for the VA five years ago as a clerk-typist and put herself through college, becoming what she jokingly calls ''a social worker for veterans.'' Just as she was getting up to go to the Federal Employee Credit Union, she got a call from Dennis Jackson, her co-worker, ringing her from his cellular phone, telling her he was running late.

At 9:00, running late herself because of Jackson's call, Dooley started for the stairwell to descend to the credit union on the third floor. She never made it. She was lucky. Seventeen of the 31 employees at the credit union are believed dead.

''Just as my hand reached the door, the explosion, it went off,'' Dooley said, relating the story from her flower-filled bedroom after being released Friday from St. Anthony's Hospital. ''I though I had set it off. Honest to God, I believed I triggered the bomb.''

Dooley was knocked on her back, her right hand and wrist smashed, her toes broken. She believes she heard a second explosion, which may have been the device itself or the front of the building collapsing. ''I could hear a man, somewhere, saying, 'Help me, help me.' ''

Dooley stumbled down another two flights and staggered from the building. A man kept asking: ''What's your name? What's your name?''

She was bundled into a police cruiser and is believed to have been the first person in the explosion to reach a hospital. When she recovered from surgery, she kept asking her husband, Jim, about her colleagues.

Seconds before the explosion, Jim Guthrie had left the office with Bob Armstrong. A VA field investigator of fraud and, like Guthrie, a former Marine, Armstrong had served in Korea and done two tours in Vietnam.

''I felt a boom and was picked up off my feet and thrown under a water fountain, and I was thinking, that was fine, since I thought the roof was about to collapse,'' Guthrie said. He heard the second explosion and covered his ears.

''The smoke and dust, it was almost immediate,'' he said. ''I couldn't breathe. I kept looking for pockets of air. We were choking and coughing.''

Armstrong followed Guthrie down the same stairs Dooley had used to escape moments before, but they moved slowly, feeling their way in complete darkness. They finally emerged into the light in the back of the building, the side facing away from the bomb.

Guthrie is not sure what happened when he emerged from the building. He and Armstrong were covered in dust. ''For the next three or four hours, we just wandered around,'' Guthrie recalled. They wanted to make phone calls, but were afraid to enter the Internal Revenue Service building nearby.

''I have never felt so helpless and disoriented,'' Guthrie said. While he stumbled in shock through the streets of downtown Oklahoma City, Guthrie said, he wondered what he had done with his life: ''I could've been dead but I wasn't dead, but I began to imagine all the dead and all the dead before me.''

When Guthrie and Armstrong emerged from the building, a woman approached screaming at them to save the children in the day-care center on the second floor.

''We didn't do anything,'' Guthrie recalled. ''We couldn't do anything. We stood there, dazed and helpless.''

While the two men stood in a daze, Paul Heath, the psychologist, was sitting at a desk in Diane Dooley's office, debris up to his armpits. ''I was staring ahead and could see, where the building used to be, nothing. I could see across the street.''

The front of the building fell away almost beneath Heath's feet. He sat for a second half-buried. ''I mean, the roof fell on my head. Aluminum. Light fixtures. Duct work. Wiring. And I could still see what I think was the explosive, the fertilizer, popping, these little sparks, and then the black cloud rolled in.''

Heath thought it must have been a natural gas explosion. He crawled over his desk and into the front room, clearing a path through the ruins. There he saw Colvin leaning over Ronbaun's crumpled body. ''Stan's hurt real bad,'' Colvin told Heath. Martin Cash, too, was covered in blood, his left arm broken, bruised and deeply cut. Swaying on his feet, Cash announced. ''I think my eye is gone.'' Colvin ripped off his own shirt and held it to Cash's eye. George Denker was without his glasses, fumbling around in the dark.

''I told John to stay with Stan, that we'd find a way out and come back,'' Heath recalled. A steady man, Colvin remained with Ronbaun while Heath and the others made it down the back stairs, remained with him even as the building groaned and continued to fall apart and the facade and ceilings gave way.

Heath returned with a stretcher, carried by a maintenance man whose name he does not remember, and Robert Roddy, who works for the Department of Housing and Urban Development. Ronbaun is more than six feet tall and weighs about 265 pounds. Heath helped carry him out, pushing desks and debris out of the way, but he worried. Heath has a bad heart.

When Heath emerged from the building, the first person he met was a woman, sobbing and nearly hysterical, whose daughter had been among those in the day-care center. Heath knew the building well, serving as chief medical officer despite the fact that he did not hold a medical degree. He knew the center had taken an almost direct hit, and he feared no one could have survived.

Later, an old high school classmate whose wife worked for HUD asked for his help in searching for her. ''I asked him where his wife worked, what side of the building, and when he told me. I knew he'd never find her. That floor was gone,'' Heath said.

Diane Dooley is home now with a smashed wrist, which probably will require bone grafts. Martin Cash is still in Presbyterian Hospital, and it looks as if he may lose an eye. Stan Ronbaun remains at St. Anthony's Hospital and may also lose an eye. The rest of the staff is home. Heath and Guthrie were back at work on Friday at the VA's new temporary quarters at Oklahoma City's VA hospital.

Paul Heath said he does not find any cosmic significance in the bombing. He believes instead, he said, that ''in my life and the life of others there are these times of extreme pain, and then there are all the good times to help you grow strong and heal.'' And then Heath began, very quietly, to weep.'

Dooley said that when Heath visited her in the hospital, she told him she had not yet had time to cry. But she has time now.

''These veterans are going to want their checks on Monday,'' Dooley said, ''and I don't know how I'm gonna type with one hand.''

When asked what she would think if the bombers turned out to be former military men with a grudge, she sighed and said it would not surprise her. Dooley said she often thought that someday, some angry and disturbed person, even one of the veterans, might enter the federal building and start shooting. There are no metal detectors and security was light, almost nonexistent.

Guthrie said, ''I am a solid person, but this whole experience has a lot of psychological effects. I'm rethinking my life. I really am. I want to spend more time with my children and maybe change some other things.''

In this time when federal bureaucrats are sometimes seen as the source of everything that is wrong with the United States, Paul Heath and his colleagues ask people to remember the good that many federal workers try to do.

''We're not heroes,'' he said. ''But I like to think that all of us try to help.''

On Friday Paul Heath went back into the ruins of the Murrah building one last time. He convinced some local policemen he knew to accompany him up five flights back to his old office to retrieve his computers and his files.

He stared at the wreckage. The computer monitor on his desk had seemingly been sucked to the floor. There were overturned chairs, wires and insulation. It was an eerie experience—it unnerved him and reminded him how close he and his co-workers had come to death.

Additionally, although the director of the VA Medical Center in Oklahoma City, Mr. Steve Gentling, would assert that he and his staff were simply doing their jobs, their many contributions during the crisis merit special recognition. Although the following report is only a summary of VA activities during the early days of the crisis, it vividly demonstrates the exemplary commitment of VA employees:

DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, VA MEDICAL CENTER, OKLAHOMA CITY, OK

SUMMARY OF OKLAHOMA CITY VAMC ACTIONS IN RESPONSE TO ALFRED P. MURRAH FEDERAL BUILDING DISASTER

As of 4:00 p.m., April 21, 1995, the VAMC had taken the following actions in response to the April 19, 1995, bombing of the Murrah building:

Received 12 casualties, beginning at 10:50 a.m. One of the casualties was a veteran; two were children, both of whom were treated and referred to Children's Hospital. Three people were admitted to the hospital and discharged on April 21.

Sent a four-person triage team to the site of the bombing immediately after the disaster occurred.

Sent 19 critical care nurses and emergency employees to the closest hospital to the disaster, St. Anthony's Hospital.

Sent triage supplies to St. Anthony's Hospital.

Sent 14 crisis intervention team members, primarily psychiatrists and psychologists, to three assistance locations—the disaster site, the American Red Cross and the First Christian Church.

At the request of the American Red Cross, sent Dr. John Tassey, Director VAMC Behavioral Medicine Service, to serve as coordinator/liaison for Oklahoma City mental health response coordination with the National American Red Cross.

Set up offices for Veterans Benefits Administration (VBA) operations on the first floor of the VAMC. VBA Operations commenced at 9 a.m. on April 20.

Set up office space in the VAMC for two of the forensic teams from the Public Health Service.

VAMC Psychiatry and Psychology employees, including the Chief of Psychiatry Service, Dr. Charles Smith, answered telephones for the American Red Cross Crisis Intervention Center continuously for 36 hours.

Set up a blood donor team to identify employees with rare blood types to be prepared for requests for those blood types. Collected blood donations from donors, some of whom waited 5 hours to donate.

Sent chaplains for coverage in one of the community clinic centers set up in local churches on April 20–21.

Establsihed a VAMC-sponsored community hotline for post-trauma counseling through the American Red Cross. The American Red Cross will issue the hotline number and the calls will be referred to VAMC staff.

Will hold two ''Group Counseling'' sessions on April 21 and 24 open to all VAMC employees. Will schedule additional sessions as needed.

Sent 2 VAMC pathologists to the State Medical Examines Office for assistance.

Sent Paul Farney, VAMC Supervisory Technologist in Radiology Service, to the State Medical Examiners Office to serve as Coordinator for all city hospital radiology technicians.

Sent 2 vehicles and drivers to transport Radiology film for development at the VAMC for return to the State Medical Examiner. The effort is anticipated to continue for the next 6 days.

Assisted the State Medical Examiner's office in leasing a portable X-ray machine, and with procuring supplies and technical assistance.

Provided gowns, scrub suits, masks, gloves, and jaw stretchers to the State Medical Examiners Office.

Dick Campbell, Chief Human Resources Management, and Chairman of the Federal Personnel Council, is organizing the effort with other agencies to reconstruct the personnel records of Federal Building employees whose records were destroyed.

Providing sleeping/showering facilities for firefighters and rescue workers in the auditorium area of the Health Wing of the VAMC.

Fred Gusman, M.S.W., head of the VA Disaster Mental Health Trauma Team, will be reporting to the VAMC to provide mental health counseling/coordination.

Established Oklahoma City Family Assistance Relief Fund at the Oklahoma Federal Credit Union.

WHY WE NEED NATIONAL HEALTH CARE REFORM: $38,696 FOR A HEALTH INSURANCE POLICY

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. STARK. Mr. Speaker, we didn't pass health care reform last Congress, but the need for it didn't go away.

I've just received a letter from a midwestern family, which shows how the Nation's insurance companies continue to behave in an irresponsible and capricious manner. This family of four, which says they have less than average health care expenses, had been using the COBRA health continuation provisions for 18 months at an annual rate of $5,556.97. With COBRA expiring, they wrote Connecticut General Life Insurance Co. to ask about converting to an individual rate policy.

Following is their letter describing what happened. The company sent them a printed sheet in which they were invited to continue for the annual rate of $38,696.

Mr. Speaker, Connecticut General obviously has no interest in writing policies for individuals. It met the letter of the law requiring that COBRA enrollees be offered a conversion policy—but their offer is a joke and an insult.

When the Nation's insurance companies display this type of behavior, they are just refanning the flames for health care reform.

The letter follows:

APRIL 21, 1995.

Re health care cost reform.

Hon. PETE STARK,

Subcommittee on Health, Ways and Means Committee, Longworth House Office Building, Washington, DC.

DEAR CONGRESSMAN STARK: I am writing to you because I believe you would want information like this to help you make informed judgments on health care issues that not only affect me and my family, but affect millions of other people.

I believe it is federal law that requires insurance companies to offer group medical conversion policies to individuals when they are no longer eligible to be part of the group. Surely that legislation didn't intend to allow for an insurance company, in this case Connecticut General Life Insurance Company, to increase a family's premium from $5,556.97 per year to $38,696.00 (over 590% increase) with a higher deductible ($500) and lower R&B daily limit ($250).

I paid a monthly premium of $463.08 for eighteen months after leaving my teaching position. When I was informed that I was no longer eligible for the group, I requested and received the enclosed conversion quotes. I am sure that Connecticut General Life Insurance Company's attorneys have assured them that they are within the law when they quoted such an unjust rate.

I would hope that Congress would review and modify any legislation that requires health insurance companies to offer conversion policies, but allows them to do so in such an unconscionable way.

Sincerely yours,

——— ———.

Enclosure.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, A GROUP MEDICAL CONVERSION QUOTE—QUARTERLY PREMIUMS

Rate quote for:———.
Your age: 54.
Your spouse status: Yes, age: 47.
You have: 2 children.
Today is: 03/02/95.
Effective date: 03/01/95.
Your ZIP: —

QUARTERLY COMPREHENSIVE PREMIUMS [1]

R&B daily limit	$100	$150	$200	$250
Surgical maximum	4,500	6,000	7,500	9,000
Deductible:				
$100	9,959	10,363	10,787	11,208
$250	9,316	9,694	10,091	10,485
$500	8,596	8,945	9,310	9,674
$1,000	7,918	8,239	8,576	8,910
$2,000	6,915	7,195	7,490	7,782

[1] Choose the benefit provisions from the top of the chart with the deductible from the side of the chart to determine the premium for your particular plan.

QUARTERLY HOSPITAL/SURGICAL PREMIUMS [1]

Hospital only:				
R&B daily limit	$100	$150	$200	$250
Premium	2,781	3,357	3,828	4,189
Surgical only:				
Surgical maximum:	2,400	3,600	4,800	6,000
Premium	159	238	317	396
Hospital and surgical:				
R&B daily limit	100	150	200	250
Surgical maximum	2,400	3,600	4,800	6,000
Premium	2,940	3,595	4,145	4,585

[1] Choose hospital only, surgical only, or hospital and surgical as indicated to determine the premium based on the benefit provisions.

PI KAPPA DELTA NATIONAL TOURNAMENT

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. SKELTON. Mr. Speaker, today I wish to recognize an outstanding group of students from Central Missouri State University's forensics team. The forensics team recently won the national 39th biannual Pi Kappa Delta National Tournament. The tournament was held from March 22–25, 1995 at Louisiana State University in Shreveport.

Pi Kappa Delta is a national honorary fraternity that symbolizes the benefits of a forensics education. Twenty-three students represented Central Missouri State University in the competition. The team placed first in debate and second in individual events, winning 32 individual event awards. This is the first national championship in the team's 73-year history.

I know that the Members of this body join me in congratulating the Central Missouri State University forensics team for their accomplishment. The students on the forensics team should be applauded for all the hard work, dedication, and perseverance it took to win the tournament.

UNITED STATES SPONSORS WAIT FOR UNACCOMPANIED HAITIAN CHILDREN

HON. CARRIE P. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mrs. MEEK of Florida. Mr. Speaker, few things are as traumatic for a child as being abandoned. However, for the past 9 months, 249 unaccompanied Haitian children have been detained in a hot, dusty refugee camp at the United States Naval Base at Guantanamo Bay, Cuba. The plight of these children demands the attention of every American.

I want to share with my colleagues an article that appeared in this morning's New York Times which describes the plight of these unfortunate, minor children, who have waited for months—and possibly will have to wait several more months—while the United Nations High Commissioner on Refugees tries to find homes for them in Haiti.

This article details the harsh, impermanent life that these children face in the camp, despite the best efforts of dedicated U.S. military personnel to help make the best of a bad situation. I urge all my colleagues to read this article.

The United States would not tolerate such treatment for our children. In fact, the United States does not treat Cuban children at Guantanamo in this manner. The time has come for the United States to end this kind of treatment to Haitian children at Guantanamo, too.

At Guantanamo, these children are alone, vulnerable and depressed. However, many of these children have relatives living in the United States who are ready and willing to care for them. Religious and community groups in Miami have volunteered to provide whatever resources are necessary to insure that no child would become a public charge and that each would be fully supported.

Mr. Speaker, children belong in homes, not camps. The time has come to close this camp and insure these children a decent place in which to live where they are wanted, loved, nutured and properly cared for. The Justice Department needs to change its policies to make this possible.

[From the New York Times, May 1, 1995]

MANY HAITIAN CHILDREN VIEW CAMP'S LIMBO AS PERMANENT

(By Mireya Navarro)

GUANTÁNAMO BAY, Cuba.—In a neat corner of a tent at the United States Naval Base here, an assortment of personal items had been tightly arranged on two cardboard boxes that served as a night stand: lotion to protect against the relentless Caribbean sun, detergent to hand-wash laundry, and M&M's and Tootsie Rolls.

The occupant who calls that corner home is a 13-year-old boy, and what he lacked was shoes. He is among 249 Haitian children who have been held in one of 14 refugee camps here since last summer while American officials decide, case by case, whether to allow them into the United States or send them back to Haiti. As the weeks drag on, shoes and clothes donated by relief organizations are sometimes in short supply.

So, the boy said, he has skipped school for five days while he goes barefoot. He was too embarrassed to do otherwise.

''He doesn't want to go to school without shoes; it's understandable,'' said Capt. Michael Dvoracek, the Army officer who oversees the Haitian children's camp, operated by a joint military task force. ''We'd love to get more shoes and clothes. They are growing kids, and it doesn't take long for them to go through a pair of shoes when they do get them.''

At a portable Air Force hospital, another ''unaccompanied minor'' from Haiti, a teenager named Marie-Carole Celestin, awaited a decision on her future, with a badly injured right hip. She was summoned to the hospital the other day with all her belongings because her doctors had recommended that she be sent to the United States for surgery that could not be performed here.

But for the third time the Justice Department said no. Her pediatrician, Lieut. Col. Nadege Maletz, said that because Marie-Carole's hip injury had existed before she left Haiti and was not considered acute, she had not been deemed eligible for treatment in the United States. But Colonel Maletz said she would make another appeal. In the meantime, she said, the girl's discomfort has kept her from sleeping at night, and so she will be sent back to the camp with painkillers.

The children, most from 14 to 17 years old but some as young as 2 months, are among the last 480 of 21,000 Haitians who were settled in the refugee camps here after they fled political violence in their homeland last year.

Most of the adults were repatriated beginning last November, shortly after the Rev. Jean-Bertrand Aristide was restored to the presidency. But scores of children remain here while the United Nations High Commission on Refugees and other organizations trace relatives to make certain that the young Haitians have a proper home when they either return to their country or, for very few, make it to the United States.

The base provides the children clothing, food and schooling. But the tent city where they live is dusty, the supplies of donated items like shoes are haphazard, medical care is limited, and spirits are low.

As with most of the Haitian children here—who are believed to have close relatives remaining in Haiti, where the political situation is still somewhat unsettled—the barefoot 13-year-boy was allowed to speak to a reporter on the condition that his name not be published. ''I'm alone here,'' he said. ''I don't feel good here. It's been nine months.''

The United States houses Haitian and Cuban refugees separately here—there are 2 camps for Haitians, 12 for Cubans—and also, say advocates for the Haitian children, treats them unequally. While a revision in American policy has reopened the door to entry to the United States fairly wide for Cuban children, particularly those who are unaccompanied by their parents here, that door remains almost entirely closed to young Haitians.

Alleging discrimination, lawyers for the Haitian Refugee Center in Miami have filed a petition asking the United States Supreme Court to order that the Haitian children be admitted.

The lawyers note that the Clinton Administration is reviewing the cases even of Cuban children who are in the care of their parents here, but for whom a long stay at Guantánamo would constitute ''an extraordinary hardship.'' This, they argue, amounts to saying that refugee camps that are hard on Cuban children are adequate for Haitian children.

American officials explain the differences in treatment by saying that Haitians as a whole can now return home to a democracy, an option the Cubans do not have. And better to keep the Haitian children here for the time being, they say, than to send them to an unknown fate before their relatives can be found back in their country.

''I don't know how we can run a more humane policy,'' said Brig. Gen. John J. Allen, the Air Force officer who commands the camps.

How did Haitian youths wind up alone here? Why had they set out on their dangerous voyage alone? In some cases, advocates say, because their parents had been killed in Haiti, in others because they represented a family's hope of riches in America.

Whatever the case, tracing relatives has been hampered not only because of all the logistical and communications problems entailed in reaching remote areas of the children's little homeland but also because the children often provide inaccurate or insufficient information about their families—sometimes intentionally, in an effort to avoid being sent back.

Since November, when the tracing began, only about 70 of the youths have been placed in Haiti—or ''aged out'' as they turn 18, at which point most are repatriated. Even the most optimistic estimates foresee most of them remaining here through the summer.

Very few of the Haitian children—23 so far—have been allowed into the United States. These are children who had parents there or had medical problems deemed life-threatening.

At the portable hospital, Colonel Maletz said this policy had meant, for instance, that a diabetic girl and an H.I.V.-infected boy with a lung ailment had been allowed to immigrate, while four children who need surgery for cataracts and other eye problems had not, even in cases that posed a risk of vision loss.

As the camps for Haitians are phased out and the camps for Cubans become more nearly permanent, the Cubans are afforded improvements that the Haitians lack.

An increasing number of Cubans are sheltered now in sturdier ''strong-back'' tents with wooden floors and window screens, for instance. There are also plans to allow them visits from relatives in the United States. Neither step is being considered for the Haitian children, simply because they are not expected to be here beyond a few more months.

Still, recent additions to Camp 9, a former airfield where the children live in 24 tents with 20 Haitian adults known as ''house parents,'' include a playground for small children, a basketball hoop and an open area for soccer and volleyball. A suspended cargo parachute provides shade for a gathering place, as does a huge tree where a dozen boys sat on picnic tables the other day, hanging out.

The Haitian youths are expected to rise at 6 A.M. and go to bed at 10 P.M. Their responsibilities consist of attending school, doing their own laundry, keeping the camp clean and helping with chores like serving food.

Teen-agers, eight of whom have become pregnant since arriving at the camp, receive contraceptives. They also have adult education classes. (A sign on a bulletin board summoned, in Creole: ''Women Only! To discuss quality of life in camp. Types of activities you want. Types of supplies you need. What's important to you.'')

On one recent day, seven teenagers were on ''administrative segregation'' in another camp, most of them for fights during which they ''took a swing'' at an intervening soldier or camp worker, Captain Dvoracek said. But he minimized any such problems, saying that ''the vast majority are great kids.''

Around the camp, the children's main complaint is uncertainty of the future. Mental health workers here say that most of the

children are handling their stay well but that many suffer from adjustment disorders like depression.

When the 13-year-old barefoot boy heard that children in the neighboring camps for Cubans were being flown to the United States, he told his keepers that his mother was Cuban. Switching from Haitian Creole to fluent Spanish, he said his father, a Haitian, had not liked Cuba and so had taken him to Haiti when he was 8, leaving his mother behind.

He said he did not want to go to Cuba, because Cuban refugees had already warned him that things were bad there. And he said he did not want to go back to Haiti, where, he said, he saw his father shot to death by ''guards'' in 1994 ''because they thought he worked with Aristide.'' His hope, he said, is an uncle in Florida whom he has tried to call but whose telephone has been disconnected.

Sitting on a cot in his neat corner in the tent, bent over with elbows on his thighs, he spoke in an irritated tone. He said he passed the time sleeping, attending school and thinking about ''my father, who died.'' If he makes it to the United States, he said, he wants to learn English and study to be a doctor and a journalist.

He said he was still waiting for a response to his contention that he is half Cuban.

''We want to leave, too,'' he said.

MEDWAY-GRAPEVILLE VOLUNTEER FIRE COMPANY CELEBRATES 50 YEARS OF FIGHTING GREENE COUNTY FIRES

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 1, 1995

Mr. SOLOMON. Mr. Speaker, those who have visited my office have probably noticed the display of fire helmets which dominates the reception area. The hats hang in that prominent position for two reasons.

First, I had the privilege of serving as a volunteer firefighter in my hometown of Queensbury for over 20 years. During that time, I gained a great amount of respect and appreciation for the selfless volunteers who devote their time and energy to protecting our rural areas from the devastation of fire. This immense admiration is the second reason for the location of my hat collection.

In rural areas such as the many small towns in the 22d district of New York, fire protection is more often than not solely the responsibility of volunteer firemen such as those of the Medway-Grapeville Volunteer Fire Company. These dedicated individuals have saved countless lives and billions of dollars worth of property in New York State alone. And the Medway-Grapeville Volunteer Fire Company exemplifies the kind of heroism which makes volunteer firefighters such an important part of our local communities.

During my years as a volunteer fireman, I noticed some extraordinary things about my company. Its members were among the most varied groups of people I have encountered before or since. There were teachers, doctors, and farmers, just to name a few of the many walks of life represented. Despite their many differences, however, these volunteers had two very important things in common—a strong desire to help their fellow neighbors in times of trouble, and an unwavering commitment to perform their duties at any time, day or night, whenever they were needed. I know that my experience was not a unique one, and that the volunteers of the Medway-Grapeville Company are equally dedicated to and superbly skilled in their most crucial roles as community protectors.

Mr. Speaker, on May 6, the Medway-Grapeville will celebrate its 50th year of service to Greene County. I would now ask that all Members join me in paying tribute to the Medway-Grapeville Volunteer Fire Company, as it celebrates a half-century of firefighting excellence.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, May 2, 1995, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MAY 3

9:00 a.m.
Armed Services
SeaPower Subcommittee
To hold hearings on proposed legislation authorizing funds for fiscal year 1996 for the Department of Defense and the future years defense program, focusing on the Marine Corps modernization programs and current operations.
SR–232A

Budget
To hold hearings to examine Medicare solvency.
SD–608

9:30 a.m.
Banking, Housing, and Urban Affairs
Financial Institutions and Regulatory Relief Subcommittee
To continue hearings on S. 650, to increase the amount of credit available to fuel local, regional, and national economic growth by reducing the regulatory burden imposed upon financial institutions.
SD–538

Finance
To hold hearings on the alternative minimum tax.
SD–215

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Agriculture.
SD–138

Environment and Public Works
Transportation and Infrastructure Subcommittee
Business meeting, to mark up S. 440, to provide for the designation of the National Highway System.
SD–406

2:00 p.m.
Foreign Relations
European Affairs Subcommittee
To hold hearings to examine NATO enlargement, focusingon interest and perceptions of allies, applicants and Russia.
SD–419

Select on Intelligence
Closed business meeting, to consider pending intelligence matters.
SH–219

2:15 p.m.
Judiciary
Antitrust, Business Rights, and Competition Subcommittee
To hold hearings to examine antitrust issues as contained in proposals to reform the telecommunications industry.
SD–G50

2:30 p.m.
Armed Services
Airland Forces Subcommittee
To hold hearings to examine peace operations.
SR–222

MAY 4

9:00 a.m.
Budget
To continue hearings to examine Medicare solvency.
SD–608

Environment and Public Works
Superfund, Waste Control, and Risk Assessment Subcommittee
To resume oversight hearings on the implementation of the Comprehensive Environmental Response, Compensation, and Liability Act.
SD–406

Labor and Human Resources
To hold hearings to examine primary health care services, focusing on access to care in a changing health care delivery system.
SD–430

9:30 a.m.
Finance
To hold hearings on the proposed vaccines for children program.
SD–215

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Coast Guard, Department of Transportation.
SD–192

Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To hold oversight hearings to review the high performance computing and communications program and a demonstration of the World Wide Web.
SR–253

Foreign Relations
To hold hearings to examine the incidence of illegal trade in human body parts in China.
SH–216

Governmental Affairs
Permanent Subcommittee on Investigations
To resume hearings to review the Navy class oiler contract.
SD–342

10:30 a.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for foreign assistance programs.
SD–138

2:00 p.m.
Appropriations
Treasury, Postal Service, and General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Postal Service and the Office of Management and Budget.
SD–138

Armed Services
To hold closed and open hearings on S. 727, authorizing funds for fiscal year 1996 for military activities of the Department of Defense and the future years defense program, focusing on the Ballistic Missile Defense Organization.
SR–222

Foreign Relations
Near Eastern and South Asian Affairs Subcommittee
To hold hearings to examine U.S. assistance programs in the Middle East.
SD–419

Judiciary
To hold hearings on the nominations of Peter C. Economus, to be United States District Judge for the Northern District of Ohio, John Garvan Murtha, to be United States District Judge for the District of Vermont, Mary Beck Briscoe, of Kansas, to be United States Circuit Judge for the Tenth Circuit, and George A. O'Toole Jr., to be United States District Judge for the District of Massachusetts.
SD–226

MAY 5

9:00 a.m.
Armed Services
Acquisition and Technology Subcommittee
To hold hearings on S. 727, to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, and to prescribe military personnel strengths for fiscal year 1996, focusing on the implications of the revolution in military affairs.
SR–232A

9:30 a.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on issues of waste, fraud and abuse in the Medicare program.
SD–192

Joint Economic
To hold hearings to examine the employment-unemployment situation for April.
SD–106

10:30 a.m.
Commission on Security and Cooperation in Europe
Briefing on media and press developments underway in Serbia, Kosovo and Vojvodina.
2200 Rayburn Building

MAY 8

10:00 a.m.
Budget
Business meeting, to mark up a proposed concurrent resolution on the fiscal year 1996 budget for the Federal Government.
SH–216

Governmental Affairs
Post Office and Civil Service Subcommittee
To hold hearings to review the implementation of the Ramspeck Act, which allows congressional employees to transfer to executive branch positions under certain circumstances, focusing on procedures and restrictions of the law.
SD–342

MAY 9

9:00 a.m.
Armed Services
Personnel Subcommittee
Readiness Subcommittee
To hold joint hearings on S. 727, authorizing funds for fiscal year 1996 for military activities of the Department of Defense, and the future years defense program, focusing on military family housing issues.
SR–232A

9:45 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on National Guard and Reserve programs.
SD–192

MAY 11

9:30 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Transit Administration, Department of Transportation.
SD–192

Labor and Human Resources
Disability Policy Subcommittee
To hold hearings to examine proposed legislation relating to the education of individuals with disabilities.
SD–430

Rules and Administration
To hold hearings to examine management guidelines for the future of the Smithsonian Institution.
SD–106

Special on Aging
To hold hearings to examine ways the private sector can assist in making long term care more affordable and accessible.
SD–562

10:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Indian Affairs, Department of the Interior.
SD–116

10:30 a.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for foreign assistance programs, focusing on the Agency for International Development.
SR–325

1:00 p.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Indian Health Service, Department of Health and Human Services.
SD–116

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings to examine access to abortion clinics.
SD–138

MAY 12

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Environmental Protection Agency, the Council on Environmental Quality, and the Agency for Toxic Substances and Disease Registry.
SD–192

MAY 16

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on environmental programs.
SD–192

Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee
To hold hearings to examine NASA's space shuttle and reusable launch vehicle programs.
SR–253

Labor and Human Resources
Disability Policy Subcommittee
To resume hearings to examine proposed legislation relating to the education of individuals with disabilities.
SD–430

MAY 17

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings to examine the National Academy of Public Administration's study on the Environmental Protection Agency.
SD–G50

Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Park Service, Department of the Interior.
SD–192

2:00 p.m.
Armed Services
Acquisition and Technology Subcommittee
To resume hearings on S. 727, to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, and to prescribe military personnel strengths for fiscal year 1996, focusing on dual-use technology programs.
SR–232A

MAY 18

9:30 a.m.
Rules and Administration
To resume hearings to examine management guidelines for the future of the Smithsonian Institution.
SD–106

Small Business
To hold hearings to examine the Small Business Administration's 7(a) business loan program.
SD–628

Indian Affairs
To hold oversight hearings on the recommendations of the Joint Department of the Interior/Bureau of Indian Affairs/Tribal Task Force on Reorganization of the Bureau of Indian Affairs.
SR–4485

10:30 a.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for foreign assistance programs.
SH–216

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Institutes of Health, Department of Health and Human Services.
SD–192

MAY 19

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Housing and Urban Development.
SD–192

MAY 23

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on financial management.
SD–192

Indian Affairs
To hold hearings on S. 479, to provide for administrative procedures to extend Federal recognition to certain Indian groups.
SR–485

MAY 24

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Fish and Wildlife Service, Department of the Interior.
SD–192

JUNE 6

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on intelligence programs.
S–407, Capitol

Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Interior.
SD–138

JUNE 7

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Service and the Selective Service System.
SD–192

JUNE 13

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on health programs.
SD–192

JUNE 20

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on counternarcotic programs.
SD–192

JUNE 27

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense.
SD–192

CANCELLATIONS

MAY 5

9:30 a.m.
Environment and Public Works
Transportation and Infrastructure Subcommittee
To hold oversight hearings on General Services Administration activities on the U.S. Food and Drug Administration consolidation project, the proposed Federal Communications Commission lease consolidation, and the U.S. Patent Trademark Office consolidation.
SD–406

Monday, May 1, 1995

Daily Digest

HIGHLIGHTS

See Résumé of Congressional Activity.

Senate

Chamber Action

Routine Proceedings, pages S5857–S5930

Measures Introduced: Four bills were introduced, as follows: S. 738–741. **Pages S5909–10**

Product Liability Fairness Act: Senate continued consideration of H.R. 956, to establish legal standards and procedures for product liability litigation, taking action on amendments proposed thereto, as follows: **Pages S5870–71, S5874–S5909, S5930**

Pending:

(1) Gorton Amendment No. 596, in the nature of a substitute. **Page S5870**

(2) McConnell Amendment No. 603 (to Amendment No. 596), to reform the health care liability system and improve health care quality through the establishment of quality assurance programs. **Pages S5870, S5874–S5900, S5909**

(3) Thomas Amendment No. 604 (to Amendment No. 603), to provide for the consideration of health care liability claims relating to certain obstetric services. **Page S5870**

(4) Wellstone Amendment No. 605 (to Amendment No. 603), to revise provisions regarding reports on medical malpractice data and access to certain information. **Page S5870**

(5) Snowe Amendment No. 608 (to Amendment No. 603), to limit the amount of punitive damages that may be awarded in a health care liability action. **Page S5870**

(6) Kyl Amendment No. 609 (to Amendment No. 603), to provide for full compensation for noneconomic losses in civil actions. **Page S5870**

(7) Kyl Amendment No. 611 (to Amendment No. 603), to place a limitation of $500,000 on noneconomic damages that are awarded to compensate a claimant for pain, suffering, emotional distress, and other related injuries. **Pages S5874–79**

(8) DeWine Amendment No. 612 (to Amendment No. 603), to clarify that the provisions of this title do not apply to action involving sexual abuse. **Pages S5879–80**

(9) Hatch Amendment No. 613 (to Amendment No. 603), to permit the Attorney General to award grants for establishing or maintaining alternative dispute resolution mechanisms. **Pages S5888–90**

(10) Simon/Wellstone Amendment No. 614 (to Amendment No. 603), to clarify the preemption of State laws. **Page S5890**

(11) Kennedy Amendment No. 607 (to Amendment No. 603), in the nature of a substitute. **Pages S5897–99**

(12) Kennedy Amendment No. 615 (to Amendment No. 603), to clarify the preemption of State laws. **Pages S5899–S5900**

(13) DeWine (for Dodd) Amendment No. 616 (to Amendment No. 603), to provide for uniform standards for the awarding of punitive damages. **Page S5909**

A unanimous-consent time agreement was reached providing for further consideration of the bill on Tuesday, May 2, 1995, with votes on certain of the pending amendments to occur at 11 a.m. **Page S5930**

Measures Placed on Calendar: **Page S5909**

Communications: **Page S5909**

Statements on Introduced Bills: **Pages S5910–12**

Additional Cosponsors: **Pages S5913–14**

Amendments Submitted: **Page S5914**

Notices of Hearings: **Pages S5914–15**

Additional Statements: **Pages S5915–30**

Recess: Senate convened at 9:30 a.m., and recessed at 7:50 p.m., until 10 a.m., on Tuesday, May 2, 1995. (For Senate's program, see the remarks of the Acting Majority Leader in today's RECORD on page S5930.)

Committee Meetings

(Committees not listed did not meet)

OKLAHOMA CITY BOMBING

Committee on Appropriations: Subcommittee on the Treasury, Postal Service, General Government held hearings on certain issues relating to the Oklahoma City bombing incident, focusing on Federal building safety measures, receiving testimony from Ronald K. Noble, Under Secretary for Enforcement, Charles Thompson, Associate Director for Law Enforcement, Bureau of Alcohol, Tobacco, and Firearms, and Eljay Bowron, Director, United States Secret Service, all of the Department of the Treasury; and Roger W. Johnson, Administrator, General Services Administration.

Subcommittee recessed subject to call.

House of Representatives

Chamber Action

Bills Introduced: One public bill, H.R. 1527; and two resolutions, H. Con. Res. 64 and H. Res. 135, were introduced. **Pages H4440–41**

Reports Filed: Reports were filed as follows:

H.R. 1139, to amend the Atlantic Striped Bass Conservation Act, amended (H. Rept. 104–105);

H.R. 1361, to authorize appropriations for fiscal year 1996 for the Coast Guard, amended (H. Rept. 104–106);

H.R. 1141, to amend the Act popularly known as the ''Sikes Act,'' to enhance fish and wildlife conservation and natural resources management programs, amended (H. Rept. 104–107, Pt. 1);

H. Res. 136, providing for the consideration of H.R. 655, to authorize the hydrogen research, development, and demonstration programs of the Department of Energy (H. Rept. 104–108);

H.R. 541, to reauthorize the Atlantic Tunas Convention Act of 1975, amended (H. Rept. 104–109, Pt. 1); and

H.R. 1323, to reduce risk to public safety and the environment associated with pipeline transportation of natural gas and hazardous liquids, amended (H. Rept. 104–110, Pt. 1). **Page H4440**

Speaker Pro Tempore: Read a message from the Speaker wherein he designates Representative Waldholtz as Speaker pro tempore for today. **Page H4435**

Recess: House recessed at 12:37 p.m. and reconvened at 2:00 p.m. **Page H4436**

Late Report: Committee on Rules received permission to have until midnight tonight to file a report on H.R. 655, Hydrogen Future Act of 1995. **Page H4437**

Recess: House recessed at 2:11 p.m. and reconvened at 2:19 p.m. **Page H4437**

Quorum Calls—Votes: No quorum calls or votes developed during the proceedings of the House today.

Adjournment: Met at 12:30 p.m. and adjourned at 2:20 p.m.

Committee Meetings

HYDROGEN FUTURE ACT

Committee on Rules: Granted, by a voice vote, an open rule providing for 1 hour of debate on H.R. 655, Hydrogen Future Act of 1995. The rule makes in order the amendment in the nature of a substitute recommended by the Committee on Science as an original bill for the purpose of amendment and each section of the amendment shall be considered as read. Finally, the rule provides one motion to recommit with or without instructions. Testimony was heard from Chairman Walker and Representative Brown of California.

Joint Meetings

CHECHNYA

Commission on Security and Cooperation in Europe (Helsinki Commission): Commission resumed hearings on the current crisis in Chechnya, receiving testimony from Ariel Cohen, Heritage Foundation, Washington, D.C.; and Sergei Adamovich Kovalev and Yevgeniya Albats, both of Russia.

Hearings were recessed subject to call.

COMMITTEE MEETINGS FOR TUESDAY, MAY 2, 1995

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations, Subcommittee on Interior, to hold hearings on proposed budget estimates for fiscal

year 1996 for the Forest Service of the Department of Agriculture, 9 a.m., SD–138.

Subcommittee on Defense, to hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on the ballistic missile program, 10 a.m., SD–192.

Subcommittee on Energy and Water Development, to hold hearings on proposed budget estimates for fiscal year 1996 for energy and water development programs, 2:30 p.m., SD–192.

Committee on Armed Services, Subcommittee on Strategic Forces, to resume hearings on proposed legislation authorizing funds for fiscal year 1996 for the Department of Defense and the future years defense program, focusing on space programs, and to review the Department of Defense's Space Management Initiative, 9:30 a.m., SR–222.

Full Committee, to hold hearings on the nominations of Gen. Dennis J. Reimer, USA, to be Chief of Staff of the Army, and for reappointment to the grade of general, and Lt. Gen. Charles C. Krulak, USMC, to be Commandant of the Marine Corps, and for appointment to the grade of general, 3 p.m., SR–222.

Committee on Banking, Housing, and Urban Affairs, Financial Institutions and Regulatory Relief, to hold hearings on S. 650, to increase the amount of credit available to fuel local, regional, and national economic growth by reducing the regulatory burden imposed upon financial institutions, 10 a.m., SH–216.

Committee on Foreign Relations, business meeting, to consider the nomination of Lawrence Harrington, of Tennessee, to be United States Alternate Executive Director of the Inter-American Development Bank, and pending treaties, time to be announced, S–116.

Committee on Governmental Affairs, Permanent Subcommittee on Investigations, to hold hearings to review the Navy class oiler contract, 10 a.m., SD–342.

Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, to hold hearings to examine the costs of the legal system, 9 a.m., SD–226.

Committee on Labor and Human Resources, to hold hearings on the nomination of Henry W. Foster Jr., of Tennessee, to be Medical Director in the Regular Corps of the Public Health Service, Department of Health and Human Services, 9:30 a.m., SD–106.

Committee on Indian Affairs, to hold oversight hearings on the implementation of the Tribal Self-Governance Demonstration Project authorities by the Indian Health Service, 9:30 a.m., SR–485.

NOTICE

For a listing of Senate Committee Meetings Scheduled ahead, see pages E895–897 in today's RECORD.

House

Committee on Appropriations, Subcommittee on Commerce, Justice, State, and Judiciary, on Congressional and Public Witnesses, 10 a.m. and 2 p.m., H–309 Capitol.

Subcommittee on National Security, on Munitions Issues, 1 p.m., H–140 Capitol.

Subcommittee on VA, HUD and Independent Agencies, on Department of Housing and Urban Development, 10 a.m. and 1:30 p.m., 2360 Rayburn.

Committee on Banking and Financial Services, Subcommittee on Domestic and International Monetary Policy, hearing on the Administration's plan for authorization of the fiscal year 1996 funding for the International Financial Institutions, 10 a.m., 2128 Rayburn.

Committee on the Budget, hearing on the Impact of Federal Regulation on State and Local Governments, 1 p.m., 210 Canon.

Committee on Economic and Educational Opportunities, Subcommittee on Early Childhood, Youth and Families, hearing on Adult Education, 9:30 a.m., 2261 Rayburn.

Subcommittee on Employer-Employee Relations, hearing on Affirmative Action, 9:30 a.m., 2175 Rayburn.

Committee on Government Reform and Oversight, Subcommittee on Government Management, Information, and Technology, hearing on the National Performance Review, 10 a.m., 311 Cannon.

Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs and the Subcommittee on Rules and Organization of the House of the Committee on Rules, joint hearing on ''Corrections Day Policy and Procedures'', 9:30 a.m., 2154 Rayburn.

Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, to continue hearings on H.R. 994, Regulatory Sunset and Review Act of 1995, Part 2, 2 p.m., 2154 Rayburn.

Committee on International Relations, Subcommittee on International Economic Policy and Trade, hearing on U.S. Sanctions on Iran: Next Steps, 2 p.m., 2128 Rayburn.

Committee on Ways and Means, hearing on Medicare Hospital Insurance Trust Fund, 10 a.m., 1100 Longworth.

Résumé of Congressional Activity

FIRST SESSION OF THE ONE HUNDRED FOURTH CONGRESS

The first table gives a comprehensive résumé of all legislative business transacted by the Senate and House. The second table accounts for all nominations submitted to the Senate by the President for Senate confirmation.

DATA ON LEGISLATIVE ACTIVITY

January 3 through April 30, 1995

	Senate	*House*	*Total*
Days in session	68	58	..
Time in session	564 hrs., 59′	528 hrs., 47′	..
Congressional Record:			
Pages of proceedings	5,856	4,433	..
Extensions of Remarks	..	879	..
Public bills enacted into law	6	3	9
Private bills enacted into law	0	..	..
Bills in conference	4	1	..
Measures passed, total	100	128	228
Senate bills	15	7	..
House bills	9	48	..
Senate joint resolutions	1	..	..
House joint resolutions	0	2	..
Senate concurrent resolutions	0	..	..
House concurrent resolutions	6	9	..
Simple resolutions	69	62	..
Measures reported, total	*93	*100	193
Senate bills	61	..	..
House bills	6	59	..
Senate joint resolutions	2	..	..
House joint resolutions	2	3	..
Senate concurrent resolutions	2	..	..
House concurrent resolutions	0	..	..
Simple resolutions	20	38	..
Special reports	8	..	..
Conference reports	0	4	..
Measures pending on calendar	78	11	..
Measures introduced, total	892	1,808	2,700
Bills	737	1,526	..
Joint resolutions	32	85	..
Concurrent resolutions	11	63	..
Simple resolutions	112	134	..
Quorum calls	2	9	..
Yea-and-nay votes	136	76	..
Recorded votes	..	217	..
Bills vetoed	..	..	..
Vetoes overridden	..	..	..

*These figures include all measures reported, even if there was no accompanying report. A total of 78 reports has been filed in the Senate; a total of 104 reports has been filed in the House.

DISPOSITION OF EXECUTIVE NOMINATIONS

January 4 through April 30, 1995

Civilian nominations, totaling 190, disposed of as follows:	
Confirmed	80
Unconfirmed	109
Withdrawn	1
Civilian nominations (FS, PHS, CG, NOAA), totaling 702, disposed of as follows:	
Confirmed	696
Unconfirmed	6
Air Force nominations, totaling 9,954, disposed of as follows:	
Confirmed	9,814
Unconfirmed	140
Army nominations, totaling 3,408, disposed of as follows:	
Confirmed	3,298
Unconfirmed	110
Navy nominations, totaling 3,908, disposed of as follows:	
Confirmed	969
Unconfirmed	2,939
Marine Corps nominations, totaling 1,259, disposed of as follows:	
Confirmed	375
Unconfirmed	884

Summary

Total nominations received this session	19,421
Total confirmed	15,232
Total unconfirmed	4,188
Total withdrawn	1

Next Meeting of the SENATE

10 a.m. Tuesday, May 2

Senate Chamber

Program for Tuesday: Senate will resume consideration of H.R. 956, to establish legal standards and procedures for product liability litigation.

(Senate will recess from 12:30 p.m. until 2:15 p.m. for respective party conferences.)

Next Meeting of the HOUSE OF REPRESENTATIVES

9:30 a.m., Tuesday, May 2

House Chamber

Program for Tuesday and Wednesday: Consideration of the following Suspension:

H. Con. Res. 53, expressing the Sense of the Congress Regarding a Private Visit by President Lee Teng-hui of the Republic of China on Taiwan to the United States.

Consideration of H.R. 655, Hydrogen Future Act of 1995 (open rule, one hour of general debate).

Motion to go to conference on H.R. 1158, Making Emergency Supplemental Appropriations for Additional Disaster Assistance and Making Rescissions for Fiscal Year 1995.

Extensions of Remarks, as inserted in this issue

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