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Senate

(Legislative day of Monday, May 1, 1995)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Let us pray:

Gracious God, our Father, help us to get inside what is happening in others so that we may see things with their eyes, think things with their minds, and feel things with their hearts. Strengthen us to be as kind to others as we wish them to be to us. Empower us by Your Spirit to be as faithful to others as You have been to us in spite of our shortcomings and failures.

Help us to make the same allowances for others as we would wish them to make for us.

Help us to express the same empathy for others as we would want them to have for us, when we hurt.

Help us to have the same respect and tolerance for the beliefs and ideas of others as we would wish them to have for ours.

Help us to understand others as we would wish to be understood.

So we commit this day to seek to be to others the giving and forgiving love You have been to us. Through Him who taught us the secret of serving others. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. THOMAS. Mr. President, this morning the time for the two leaders has been reserved and there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak for up to 5 minutes each.

At the hour of 10:30 a.m., the Senate will begin the first of two stacked rollcall votes. The first vote is on the confirmation of John Deutch, to be Director of the CIA. The second vote is on the motion to invoke cloture on the Coverdell-Dole amendment. Senators should also be aware that they have until 10:15 a.m. to file first- and second-degree amendments to the Coverdell-Dole amendment.

The Senate will recess today between the hours of 12:30 p.m. and 2:15 p.m. for the weekly policy luncheons.

WAIVING MANDATORY LIVE QUORUM

Mr. THOMAS. Mr. President, I now ask unanimous consent that the mandatory live quorum be waived for the purpose of this morning's cloture vote.

The PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to a period of morning business.

The Democratic leader, or his designee, is recognized to speak for up to 20 minutes.

Under the previous order, the Senator from Wyoming [Mr. THOMAS] is recognized to speak for up to 20 minutes.

Under the previous order, the Senator from Michigan [Mr. LEVIN] is recognized to speak for up to 20 minutes.

Under the previous order, the Senator from Pennsylvania [Mr. SANTORUM] is recognized to speak for up to 10 minutes.

FRESHMAN FOCUS

Mr. THOMAS. Mr. President, I would like to use our time this morning as a followup on the freshman focus that we have been carrying on for several weeks and attempt to continue. Some of my colleagues will join later in the morning and then again on Thursday.

As you know, the freshman class has made an effort to talk about the issues that are before the American people, that are before this Congress, and to focus on solving these problems, to focus on the notion that we need to find solutions—solutions that will help us to deliver services more efficiently, will help us to reduce the cost of Government, and will help us to be more effective in dealing with the problems of this country and, at the same time, reduce the size of Government.

So we are interested in exercising the first opportunity that we have had for a number of years to really analyze programs that have been in effect, in many cases, for 30 to 40 years. Frankly, the effort that has been made during that time was simply to add more money to the same program. I think most now would agree that it is time to analyze the effect, the impact, and the product of those programs. And we have, for the first time, a chance to do that.

We have a chance to change some of the efforts that have not succeeded—and there are some—so they are done in a different way. We hope our efforts will help us move forward in the Senate and in the Congress, to solving problems rather than to obstruct or just set down political issues for elections.

Today we want to talk about two issues that are very compelling which are before us and, frankly, issues that we have no alternative other than to solve. One is the budget; the other is Medicare.

Our purpose this week is to talk largely about Medicare. It is clearly related to the budget and, as a result, the two must be talked about together.

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

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Mr. President, Thomas Jefferson said, ''The art of government is the art of being honest.'' I think that is what we are faced with. This matter of Medicare and the budget is not a problem of the Congress, not a problem of those who are trustees; it is a problem for all of us who are citizens of this country, not only for the benefits that it provides, but each of us who must also pay. We need to be honest with one another as to where we are. The idea of covering up problems because it is politically expedient, or the idea that you can shift problems to somebody else because it is an uncomfortable political position simply does not hold. We have to be honest, face the problems, and talk about them. There are clearly some problems in this area of finance.

Let me talk just a minute about the chart. We are into charts around here and it is not a bad idea. It does demonstrate where we are. This particular chart talks about the Medicare hospital insurance trust fund. It talks about the fact that if we do nothing, it will be bankrupt in 7 years. The chart shows the end-of-year trust fund balances up to 1995, and then projects the balances for the years up to 2004. This is not just a chart that is put together for these kinds of purposes. This is a chart that is a result of the Social Security and Medicare Board of Trustee report that was released just a couple of weeks ago. The trustees being at least three or four members from the Cabinet and some public members. They have indicated this fund will be bankrupt in the year 2002 unless we do something. The balance in the health care insurance trust fund was $133 billion in 1994 and will rise to $136 billion in 1995.

In 1996, however, the annual deficits starts to erode the balance of $136 billion and will be broke in 2002. So that is the problem. It is a solvable problem. But it is not one that we can brush under the door, one that we can ignore, or one to make political issues of. It is one that we must indeed solve.

The next chart shows the impact this spending has on the gross domestic product. The blue being Medicare part A; and the yellow part is Medicare part B. Part A is the hospital portion that is funded by payroll taxes. Part B is that portion that is funded by general funds and beneficiary premiums. You can see how it grows. Here is 1970 and, more currently, in 1995; here we are in the year 2020, as a percentage of gross domestic product. This current period is just below 3 percent, doubling in this period of time.

So we clearly have an issue we have to deal with. The alternative is for the program to go broke. The alternative is not to have the services and that, of course, is not acceptable. Unfortunately, the current administration's position is to ignore the problem. It is to say, gee, it is up to the majority to do something about that. I think that is too bad. I think it is going to have to be something that we do collectively, but we can do something about it.

Why are we where we are? Because this program has grown at a rate of about 10 percent per year, and it continues to do so, as opposed to the private sector health care which has been growing at a more moderate rate of about 5 percent a year. This year, it was 4.4 percent and it is on its way down. Yet the Medicare Program continues to go up. Now, some say—and I go back to the political thing—''You Republicans simply want to cut Medicare so you can give tax cuts.'' That is not true. That is not where we are. The issue is to fix Medicare so that we can continue to have it over a period of time. There simply is not enough money to leave it as it is and just simply fund it without changing it. That is not an alternative. All the money that we have would be in this program.

So the alternative is to find some ways to reduce this growth. What we are talking about doing—and I think you will see generally in the budget, which is not out yet—you will see an effort to reduce it from the 10.5 percent growth to a growth of maybe 7 percent. We will see in the newspapers that they slashed Medicare, cut Medicare. But what we have done is sought to reduce the growth of Medicare, and then we will find some ways to do it more efficiently. There are ways to do that, to give some options. For example, for those elderly who choose to continue as is, that will be an option. For those who would like to move toward some kind of medical savings account, perhaps that will be an option and that would be a choice, and it will be a reduction in the cost of delivering the same medicine.

The point is that we need to be honest with ourselves in terms of what we are doing. This is not a political kind of football or struggle to see who gets political advantage. The real issue is how do you continue to provide services to people who need services and do it in a way that you can, over time, pay for it. That is the issue. Of course, it is part of the budget, because the budget is how much money we can put out to run Government and what kind of benefits we can have.

As for Medicare part B, I suspect there will be an effort to maintain the contributions that are now there—approximately 31 percent instead of 25 percent of the premium that is required to finance it. We have been moving up at 31 percent. We can go back, but if we hold it at 31 percent, the program will continue to be preserved. So there are alternatives. They are not draconian.

This is where we are on Medicare. I think it is an excellent example of our opportunity in this Congress to find some solutions to share with Americans—all of us—the responsibility of making collective decisions, to meet the responsibility of continuing to have programs where there is need, and to do it in a responsible financial way.

Mr. President, I hope that we can go forward with the bona fide discussion of Medicare and a bona fide discussion of balancing the budget. I do not think anybody will suggest that it is going to be painless. It is not painless in your family when you find you have to cut back on the growth of expenditures. It is not painless in your business when you discover that it is necessary to make some changes in order to make it work. But it is very possible. It is very possible.

It can be done by continuing to provide those essential services, doing them in a more efficient way, and we can collectively do that.

I am pleased that my associates from the freshman class will be on the floor, talking about this issue and other issues, urging Members to take advantage of the opportunity and, indeed, the request, if not demand, from voters for change. There has been a demand for change. There will be change. This is our opportunity to do that.

Mr. President, I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Democratic leader is recognized for 20 minutes.

COMPROMISE NEAR

Mr. DASCHLE. I wish the President a good morning. I want to comment briefly on the series of votes that we will be taking this morning. As the distinguished acting majority leader indicated, there will be a cloture vote this morning.

I think in that regard it is important for people to understand the current circumstances. Senator DOLE has offered an amendment. Senator ROCKEFELLER and Senator GORTON have also offered an amendment, a substitute. We will have the opportunity at some point to vote on those.

I would hope people will vote against cloture again this morning simply to preserve the options that we think are going to be very important, if indeed we reach a compromise here. I think we are getting closer now in the last 48 hours to meaningful compromise.

In that regard, let me specifically single out the distinguished Senator from West Virginia for his remarkable efforts to bring people together, to attempt to find a way to resolve the outstanding differences. He and the distinguished Senator from Washington, Senator GORTON, have done an extraordinary job in the last couple of days in addressing many of the concerns that people have raised. I think we are now beginning to come together in a way that will accommodate some of the concerns that have been raised during the last couple of weeks.

I know that others, as well, have concluded that a compromise is within reach. My distinguished colleague from Louisiana, Senator BREAUX, has also been working on ways to accommodate some of these concerns and bring all sides together.

Senator BREAUX and others have in the last couple of days talked with people on both sides of the aisle in an effort to try to reach a compromise on punitive damages, on joint and several liability, on the statute of repose. I think we are at a point now where we may be able to resolve these outstanding issues in a way that will facilitate a compromise and ultimately bring Members to a resolution on this issue.

In order to allow the Senator time to discuss this particular compromise, I would like to yield the balance of my leader time to Senator BREAUX. Again, I commend Senator BREAUX for his effort in this regard. I believe that he may have found a way with which to bridge the differences and provide Members with an opportunity to resolve the many outstanding issues that still exist. With that, Mr. President, I yield the balance of my time to Senator BREAUX.

The PRESIDING OFFICER. There are 17½ minutes remaining.

STANDARD OF FAIRNESS DESIRED

Mr. BREAUX. I thank the distinguished Democratic leader for his comments and his effort in trying to bring about a compromise that makes sense. A lot of people have been working very diligently on this issue of product liability. The Senate and the Congress has worked on it for a number of years. We have all struggled with it.

I think the standard that we are all trying to reach is a standard of fairness, to give neither people who are injured by faulty products an advantage or people who manufacture those products an unfair advantage. The key I think is a level playing field. The key is fairness to everyone. That is something that has been very difficult.

I want to particularly commend the ranking member of the Commerce Committee, which I serve, Senator HOLLINGS, for the great work that he has done in trying to make sure that fairness is the standard by which we operate.

Also, Senator HEFLIN, I think, has made a great contribution to ensuring that we do not act in haste, but do this very, very carefully.

There have been a number of Members on the Republican side—the distinguished occupant of the chair, the Presiding Officer of the Senate this morning—has also been very involved in trying to create a package that is fair and creates that level playing field that we are all striving for.

There are a number of other Senators I have not mentioned that have been involved in trying to bring all Members together in doing something that makes sense. My own preference is that this is something that the States ought to do. I am a States righter when it comes to personal injury and the tort system, and how the States can handle this can best be decided by the States.

I think, Mr. President, in trying to reach an agreement here today I would urge my colleagues to vote no on the first cloture motion this morning in order to allow Members to present to the Senate what I think is a fair and reasonable compromise, and tries to balance those who think that nothing should be done on the Federal level and those that think that everything should be done by the Federal Government here in Washington.

I think that the pending amendment that is out there that has been talked about, as a proposed compromise, the so-called Gorton-Rockefeller, their second proposal, is defective in a number of ways, and can be improved in order to reach a fair settlement of this issue, and put it to rest once and for all.

I think Gorton-Rockefeller is effective in a couple of ways. My substitute, which I will offer after cloture is not invoked, will be an amendment to the Dole-Coverdell substitute, which will still be pending, tries to address those defects in the Gorton-Rockefeller in the following ways: No. 1, on punitive damages. This has always been something that has been very controversial, but there is a reason for punitive damages. It says to a manufacturer of defective products, ''Do not do it again.''

The damages that are awarded have to be in relation to the ability of the defendant to pay. Obviously, a multibillion-dollar corporation is not going to really be affected by a small fine of $100,000. They will just say it is the cost of doing business, and continue to manufacture the defective product.

So punitive damages serve a purpose. It says to the manufacturers of products that harm people in this country, ''Do not do it anymore.'' It has been very effective. There are products today that are not on the market because of punitive damages. Companies have said ''We can't afford to do this anymore and we are not going to do it anymore.'' There are a number of products that are no longer manufactured—Dalkon shield, asbestos products, products dealing with breast implants. Some automobile manufacturers are no longer producing types of cars, because they know that if they do they will cause problems and they will be penalized doing it. So they make a very practical decision: ''We are not doing it anymore.''

The problem with the Gorton-Rockefeller substitute is that, I think, it is fatally flawed. They try and solve this problem by saying that small businesses will not be liable for punitive damages if they have 25 or fewer employees. They make a separate category for small businesses of 25 or fewer employees.

That is an interesting way of approaching it. What would happen is that many companies would just structure their operations with 25 or fewer employees. A trucking company, each truck could be a separate company. A cab company, each cab could be a separate company. A boat company, each one could be a separate company. What do we do in companies that have 23 employees at the time of the injury, or 25 employees later on during a year?

It is very complicated and it really, I think, calls for companies to structure themselves so they can avoid ever having to pay for any punitive damages for products that would cause problems to individual people.

In addition, they say that, well, if the judge thinks that punitive damages should be awarded more than this cap, then the judge can do it; but if the defendant does not like what the judge does, he can ask for another trial. Why do we have to be so complicated? That provision just calls for additional litigation, more cost, more expense, additional trials, by directing a very, very, complicated situation I think is not necessary.

What my amendment will do is to take from the suggestions of other Members who have suggested ideas that address this problem in a fair way. Our colleague, Senator DODD from Connecticut, has suggested something that I think makes sense and is the essence of my amendment. It says that when a jury finds that punitive damages are warranted because of conscious and flagrant violations by the manufacturer of a product, then the decision on how much the punitive damages should be will be decided by the judge. He does it by looking at that particular defendant, determining their ability to pay, determining how successful economically that company is, looking at their intent, how they handle everything, how long the violations continued, and then the judge will make a decision on the amount of the punitive damages that are necessary to prevent this from happening again in the future.

Mr. President, and my colleagues, I think that is a fair way of resolving this problem. A very complicated structure that says 25 or less has one standard, and then the judge can overrule the jury if he wants to, but if the defendant does not like it they can ask for another trial, is too complicated, too time consuming, encourages too many additional trials, and is not the way to do it.

I prefer the suggestion of Senator DODD, which is in my amendment, which simply says if the jury finds the defendant was so negligent in a fashion that deserves punitive damages to be awarded, then the judge will decide what is an effective and correct amount to be awarded.

Second, on the statute of repose, I think the Gorton-Rockefeller amendment is defective again. Remember this uniformity argument we talked about? They kept saying we need to pass this bill because we want to make it uniform throughout the United States. Their bill is defective because it says the statute of repose will be 25 years unless the State wants to make it less. That is not uniform. It says we

can have 50 different States with 50 different statutes of repose and 50 different standards for a person who is injured to have to worry about. That is not uniformity at all.

The statute of repose, of course, says that after a product has been in place for a period of time you can no longer bring a cause of action against that product because it is defective. My amendment says let us make it uniform, 25 years across the country, nationwide; it is the same in every State. That brings about uniformity both for the person who manufactured the product and uniformity for the person who may be injured by a defective product. I think that makes sense and is the right way to go.

The third area I think they are defective in, in their suggestion, is on the question of joint and several liability. What they are trying to do is address the problem of a manufacturer or defendant that is just a little bit responsible, just a little bit negligent. Their argument is if someone is only responsible for 3 percent of the injury he or she should not be liable for 100 percent of the damages for noneconomic damages, that is the pain and suffering type of injuries that a person would receive from a defective product. But the way they have tried to handle this problem is say you are not going to have any joint liability for noneconomic damages and that will take care of the problem. Yes, that takes care of the problem. It wipes out the possibility of an injured person, perhaps, from getting any recovery at all.

What I am going to suggest in my amendment is simply this—and this is the language, again, that has been suggested by Senator SPECTER, who has come up with I think a very good idea to solve this problem. I picked some from Democratic colleagues, Senator DODD, some from our Republican colleagues, Senator SPECTER, and tried to put them together because that is what we have been talking about for the last several days. Senator SPECTER's suggestion, which I have included in my suggestion, is simply to say there is a de minimis standard. If a defendant is responsible for less than 15 percent of the injuries that were caused, they cannot be held jointly liable, they can only be held liable for that percentage of the damages that it has been determined they are at fault for, that they caused. If it is 3 percent they can only be responsible for 3 percent. But after that threshold, if they are 20 to 30 to 40 percent responsible, then they can be held jointly liable. I think that takes care of the so-called de minimis problem, whereby we should not hold someone responsible for the whole amount of damages if they only caused a very small, de minimis, portion of those damages. But after a certain point, joint liability should prevail.

We picked up Senator SPECTER's suggestion, which I think is a very good one, that says if a person is 15 percent or more responsible for these losses, then they can be held jointly liable for noneconomic losses that they caused. That defendant, of course, has a cause of action for anybody else who is liable for the other portion of the damages. That is what normally occurs. The defendant then brings in the other party and they can be held responsible—to the defendant who has paid the entire amount—for their portion. So the system works very well. But my suggestion, I think, takes care of the de minimis concern that has been expressed by many of our colleagues.

I will offer this amendment and will be able to offer it if the cloture motion is voted down. I think it would be a big mistake, when we are so close to coming up with a compromise agreement, to at this time invoke cloture and prevent the opportunity to offer this amendment with a chance of it becoming law. This is really an attempt to try to reach a legitimate compromise. We can debate this for a long time. We could continue to prevent cloture from being invoked.

I think it is time the Senate bring this measure to a close. What I have tried to do is pick some of the best ideas from my colleagues. I continue to emphasize that many of the things I have in my legislation are the product of the suggestions of some of my colleagues—Senator SPECTER in particular with this de minimis standard, my colleague Senator DODD with the concept of punitive damages being set by the judge after a trial has occurred that determines that punitive damages would be justified. I think that makes good sense, to try to incorporate Republican ideas and Democratic ideas, to put together a package which is truly a compromise.

One of the things the advocates of this so-called tort reform legislation have advocated is a national standard when it talks to punitive damages. I have incorporated their ideas on the national standard being in fact that the plaintiff must show a conscious and flagrant indifference to safety concerns, and the plaintiff must do it and show it by clear and convincing evidence. That will be a national standard now for punitive damages in product liability cases. I have incorporated that suggestion. That is the same as in the Gorton-Rockefeller legislation.

In fact, much of what this substitute that I will offer really incorporates is the better features from the Gorton-Rockefeller language. But it also tries to address the three major areas in which I think they were defective, and those are how punitive damages are set, how they deal with joint and several liability, and how they deal with the statute of repose.

So I hope when we come to the floor to vote on cloture this morning, which has already been set, our colleagues will know there is an effort among many of us who have been involved to some extent in this legislation to try to put together a package of amendments that is truly a genuine compromise, that tries to treat people who are injured by defective products on the same level playing field that we are trying to treat defendants who in fact have manufactured defective products.

It is improper for this body to try to give advantage to one group over the other group. If we conclude there should be some national standards, then the national standards should apply both to those who are injured as well as to those who make the product that has caused injury, in the same way. It would be unfair and improper to say one side is going to get more fair treatment than the other. I am concerned the provisions that are pending in the Gorton-Rockefeller substitute in fact are not fair; in fact they do allow for more loopholes to be created with the 25-employee limitation, they do create some other problems with regard to the establishment of punitive damages, they encourage more trials, and they encourage, I think, abuse of how punitive damages would be set.

We have tried to offer something that addresses all these problems in a fashion that truly represents a fair and just compromise. But we do need to ask our colleagues—who may be trying to figure out the situation as to where we are—ask them to vote against the cloture motion and allow us to come in with a compromise that I think for once and for all will settle this very, very difficult, very emotional set of issues that we have struggled with for so many days.

The alternative I will offer, and hope to be joined by a number of our colleagues, will be something that will give everybody an opportunity to say we made some reforms but we did it ultimately and finally in a fashion that is fair to everyone involved. With that, Mr. President, is there any time left on the leader time?

The PRESIDING OFFICER. Thirty seconds.

Mr. BREAUX. I will just reserve that 30 seconds in case the leader needs it.

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

The PRESIDING OFFICER (Mrs. HUTCHISON). Without objection, it is so ordered.

NRA'S FUNDRAISING LETTER

Mr. LEVIN. Madam President, recently, the National Rifle Association issued a widely circulated fundraising letter over the signature of Executive Vice President Wayne LaPierre and that letter is full of questionable overheated language. I wish to focus on one paragraph in particular. The letter states, and I am quoting exactly:

In Clinton's administration, if you have a badge, you have the Government's go-ahead

to harass, intimidate, and even murder law-abiding citizens.

Now, as if the force of the words ''even murder'' as applied here were not repugnant enough, the letter underlines the words ''even murder.''

This assertion that the U.S. law enforcement personnel have been authorized by President Clinton ''to harass, intimidate, even murder law-abiding citizens'' is without foundation, and it is an offensive outrage that should be condemned by members of the NRA and all other decent Americans.

On April 28, I wrote a letter to the president of the NRA, Mr. Tom Washington, asking that the statement be retracted. The statement is inflammatory; it is inappropriate. I do not think there is a single Member of this body who would stand in the Chamber of the Senate and speak such words, asserting that our President has authorized law enforcement personnel to murder law-abiding citizens. I do not believe the overwhelming majority of NRA members would countenance such language.

My letter to Mr. Washington asked, ''Can you honestly justify your organization's characterization of law enforcement officials with such language, describing them as on a mission sanctioned by the Government to murder law-abiding citizens?''

Madam President, on May 3, I received a reply from Mr. Washington, and his letter says:

> While I concede that some of the language in the NRA fundraising letter might have been rhetorically impassioned—as is most political direct mail—that in no way disparages the NRA, nor diminishes the seriousness of the alleged federal law enforcement abuses to which the letter refers.

The letter goes on to relate the history of the NRA's interest in the investigation of Federal law enforcement abuse. The letter concludes with the statement that ''blaming the rhetoric, whether in a fundraising letter or anywhere else in political discourse, serves only to silence dissent and aggravate that distrust.''

Well, Madam President, I have no interest in silencing dissent. I never have. There is nothing more American than the conscientious expression of dissent. There is no more sacred right guaranteed by our Constitution to all Americans than freedom of speech, and I will defend the NRA's right to say what it said. The point is that the reply that I have received from Mr. Washington did not answer the question that I asked. I asked Mr. Washington, ''Can you honestly justify your organization's characterization of law enforcement officials with such language, describing them as on a mission sanctioned by the Government to murder law-abiding citizens?'' The question was not answered.

I ask unanimous consent, Madam President, that the NRA letter written by Executive Vice President Wayne LaPierre and my letter of April 28 to Mr. Washington and Mr. Washington's letter of May 3 to me be printed in the CONGRESSIONAL RECORD.

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

U.S. SENATE,
Washington, DC, April 28, 1995.

Mr. TOM WASHINGTON,
President, National Rifle Association,
Lansing, MI.

DEAR TOM: Over the years we have agreed on some things, like protecting our Great Lakes, and disagreed on others, like the ban on assault weapons. But no matter what positions we have on assault weapons, I hope you will agree that the language of the NRA's recent fundraising letter over the signature of Executive Vice President Wayne LaPierre is highly inflammatory and totally inappropriate.

In one passage, Mr. LaPierre writes, ''In Clinton's administration, if you have a badge, you have the government's go-ahead to harass, intimidate, even murder law-abiding citizens.'' Can you honestly justify your organization's characterization of law enforcement officials with such language, describing them as on mission sanctioned by the government to ''murder law-abiding citizens''?

This is but one example of the inflammatory, hateful rhetoric in this letter. I will defend Mr. LaPierre's right to free speech, but the public also has a right to expect the NRA to retract hateful and inflammatory statements issued in its name. I urge the NRA to retract the LaPierre letter.

Thank you for giving this request your consideration.

Sincerely,

CARL LEVIN,
U.S. Senate.

NATIONAL RIFLE ASSOCIATION.

DEAR FELLOW AMERICAN: I've worn out a lot of shoe leather walking the halls of Congress. I've met key leaders, I've talked with old allies, I've met with the new Congressmen and many staff members.

What I'm hearing and seeing concerns me.

Many of our new Congressmen are ignoring America's 80 million gun owners. Some have forgotten what we did to elect them. Others say our demands to restore our Constitutional freedoms are politically out of line.

Don't get me wrong, not all of them are like this. Senator Phil Gramm, House Speaker Newt Gingrich, and Congressmen Bill McCollum, Bill Brewster and Harold Volkmer are all coming to our aid. But too many others are not.

And without a major show of force by America's 80 million gun owners, America will resume its long march down the road to gun bans, destruction of the Constitution and loss of every sacred freedom.

I want you to know I'm not looking for a fight.

But when you consider the facts of our current situation, you too, will see we have no other choice.

FACT #1: The Congress' leading anti-gunners, Senators Dianne Feinstein, Ted Kennedy and Congressmen Charles Schumer and Major Owens all survived their last elections.

They've pledged to fight to the bitter end for Brady II and its ammo taxes, licensing and registration schemes, gun rationing, bureaucrats with the power to determine if you ''need'' a gun and yes, the repeal of the Second Amendment.

It doesn't matter to them that the Brady Law is a failure.

It doesn't matter to them that the Brady Law has become one more tool that government agents are using to deny the Constitutional rights of law abiding citizens.

It doesn't matter to them that the semi-auto ban gives jack-booted government thugs more power to take away our Constitutional rights, break in our doors, seize our guns, destroy our property, and even injure or kill us.

Schumer, Feinstein, Kennedy, Owens and the rest of the anti-gunners want more and more gun control.

It can be something small and subtle like a regulation expanding the disqualification criteria for the Brady Law. They're fighting for anything that makes it harder for you to own a gun.

The gun banners simply don't like you. They don't trust you. They don't want you to own a gun. And they'll stop at nothing until they've forced you to turn over your guns to the government.

Fact No. 2: If the anti-gunners fail to achieve their goals in Congress, they have a fall-back position in Bill Clinton, the most anti-gun President in American history.

In two short years, Bill Clinton launched two successful attacks on the Constitution. He signed two gun control bills into law. He has sworn to veto any repeal of the semi-auto ban and any restoration of our Constitutional rights.

His Interior and Agriculture Departments have set their sights on closing hunting lands.

And his Environmental Protection Agency is attempting to take jurisdiction over existing uses of lead. This, of course, includes gun ranges and spent shot.

What's more, gun owners aren't the only ones Clinton's EPA has set its sights on. They're after fishermen, too. They want to BAN the use of small lead fishing sinkers and, of gravest concern, they want to stop the home casting of these sinkers.

If fishing sinkers are on the Clinton bureaucrat's list, you know what's next: lead shot, lead bullets, bullet casting and reloading.

Clinton's State Department is also adding to the attacks on gun owners and our Constitutional freedoms. In December, he signed the Summit of the America's agreements which pledges that the U.S. Government will push for additional gun control.

Over in the Justice Department, Clinton's Attorney General Janet Reno has signaled her intent to ''squash'' the states' rights movement an deny states their Constitutional power.

And worst of all,

Fact No. 3: President Clinton's army of anti-gun government agents continues to intimidate and harass law-abiding citizens.

In Clinton's administration, if you have a badge, you have the government's go-ahead to harass, intimidate, even murder law-abiding citizens.

Randy Weaver at Ruby Ridge . . . Waco and the Branch Davidians . . . Not too long ago, it was unthinkable for Federal agents wearing Nazi bucket helmets and black storm trooper uniforms to attack law-abiding citizens.

Not today, not with Clinton.

Our calls to investigate these outrageous assaults on our Constitutional freedoms are routinely silenced by the anti-gun media. But that's no surprise.

Fact No. 4: They've launched a new wave of brainwashing propaganda. . .

CBS, ABC, NBC, USA Today, Time, Newsweek and The New York Times have launched another round of phony polls and slanted stories to help the anti-gunners achieve their goals.

Their latest phony poll shows 70% of America support the ''semi-auto'' assault weapon ban.

That's simply not true. When it's explained that ''semi-autos'' are used in less than a fraction of one percent of crimes; that the ban only affects the law-abiding; and, that the ban is only one more way to deny Constitutional rights to the law-abiding, support for the ban drops to 30%.

But the media still uses this 70% statistic to trumpet the call for gun control.

What scares me the most about this 70% number is that the media has brainwashed 70% of Americans into believing that the government—and not each individual—is responsible for their personal protection.

Even worse, this 70% number means that there are enough people who can be brainwashed by the media to vote for a repeal of the Second Amendment if it were put to a vote.

The media, Clinton, the anti-gunners in Congress . . . This combination is a powder key that could blow at any moment and it's set squarely underneath the Constitution.

And what this means is:

FACT #5: Congress must be forced to restore the Constitution, repeal the gun bans, investigate abuse by government agents and focus the public debate on criminal control, not gun control . . .

. . . Or what we're seeing now will only be a momentary patch of sunshine on the road to doom for the Second Amendment and our Constitution.

There is hope, though. Despite the current situation, I'm encouraged by you and your fellow NRA members.

Everywhere I go, to every gun show, every NRA–ILA grassroots operation, every Friends of NRA Dinner, even in cabs and airports around the country, I run into NRA members who understand the stakes and stand ready to fight.

The question I hear from almost every one of these NRA members is the same: ''What can I do next?''

If you're one of those members, I want to thank you for your courage, your conviction and your spirit. You keep me going. You keep me on the road. You give me strength to lead the battle.

And if you want to join me in taking the next step, I need you to do these two things today.

First, I need you to sign the enclosed Petitions to the United States Congress.

These petitions are addressed to the leaders of the U.S. Congress, Senator Robert Dole and Speaker Newt Gingrich, and your U.S. Senators Daniel Patrick Moynihan, Alfonse M. D'Amato and Congresswoman Sue Kelly.

Please be sure to sign all five petitions, then fold them and place them in the enclosed, postage-paid envelope addressed to me at NRA Headquarters.

These petitions spell out, in black and white, our agenda of repeal, reform, investigate and limit government power.

In the first amendment of the Bill of Rights, we are guaranteed the right to ''petition our Government for a redress of grievances.''

And that's exactly what we're going to do: redress our grievances in the biggest and most powerful display of political clout and commitment to the Constitution.

I want to personally deliver your five petitions, and the petitions of all 3.5 million of your fellow NRA members—17.5 million petitions in all—to Congress.

And I want to show the leadership in Congress, and your Senators and Congressmen from New York, that the number one priority in their Contract with America must be defending and restoring our Constitutional freedoms.

17.5 million Petitions to Congress is the largest ''redress of grievances'' since the Constitution and the Bill of Rights were written.

So I KNOW Congress will get the message. And I know they'll act on our agenda of Repeal, Reform and Investigate if only you and I speak out.

Your Petitions to Congress also sends another message—a message not spelled out on the Petitions themselves.

Each Congressman, on the average, will receive 8,000 Petitions from NRA members demanding action. 8,000 messages from angry voters sounds an alarm in every Congressman's head.

You see, most Congressional elections were won or lost by 5,000 votes or less. So, they'll realize that failing to defend the Second Amendment and failing to retake the Constitutional freedoms lost to the anti-gunners, could result in big losses at the next election!

That's why it's critical you take a few minutes to sign your Petitions to Congress and return them to me as soon as possible.

These petitions are our D-Day.

Armed with these petitions and our First Amendment rights, we are going to storm Congress, knock out anti-gunner strongholds and recapture every bit of ground we lost since Bill Clinton took office.

And if we're successful, these petitions will be the turning point in the history of the Constitution . . . A day when our sacred right to keep and bear arms will be secure for the next generation of law-abiding Americans.

Second, when you return your signed Petitions to Congress, I need you to make a special contribution to the NRA of $15, $20, $25, $35, $50 or the most generous amount you can afford.

Most Americans don't realize that our freedoms are slowly slipping away.

They don't understand that politicians and bureaucrats are chipping away at the American way of life.

They're destroying business, destroying our economy, destroying property rights, destroying our moral foundation, destroying our schools, destroying our culture . . . Destroying our Constitution.

And the attack, either through legislation or regulation, on the Second Amendment is only the first in a long campaign to destroy the freedoms at the core of American life.

You can see it in the gun bans, certainly. But you can also see it in closed ranges, closed hunting lands, confiscated collectors' firearms, banned magazines and ammunition taxes.

You can see it when jack-booted government thugs, wearing black, armed to the teeth, break down a door, open fire with an automatic weapon, and kill or maim law-abiding citizens.

America's gun owners will only be the first to lose their freedoms.

If we lose the right to keep and bear arms, then the right to free speech, free practice of religion, and every other freedom in the Bill of Rights are sure to follow.

I am one American who is not going to sit on the sidelines and watch this happen.

And if you want to help me stop this destruction of the Constitution, then I hope you can make that special contribution of $15, $20, $25, $35 or $50 to the NRA today.

With your special contribution, I'll have the financial ammo I need to keep Congress focused on the mission we've assigned them.

First, with your help, I will expand out petition campaign to involve as many of America's 80 million gun owners as possible.

If we can double the number of Petitions flooding Congress, we'll double the speed Congress deals with our demands to repeal, reform and investigate. And with double the show of clout, we'll wipe out anti-gunner opposition.

Second, with your special contribution, I can increase the NRA's public exposure on talk shows, at rallies and shows, in radio and T.V. advertising and through broadcasts like the NRA's Town Meeting that first sounded our alarm in 16 million households, last summer.

Part of our problem is that far too few Americans understand what's at stake in these battles.

My ultimate goal is to educate the American people that this issue is not just about guns, not just about hunting, not just about personal protection; this issue is about freedom—your freedom.

I want to use the power of T.V. and radio to show the American people that, if the NRA fails to restore our Second Amendment freedoms, the attacks will begin on freedom of religion, freedom of speech, freedom from unreasonable search and seizure. . .

And that unless we take action today, the long slide down the slippery slope will only continue until there's no freedom left in America at all.

I know you see it. The elbow room you have to hunt, shoot and live life the way you see fit is slowly disappearing.

And the truth is, NRA members have been hardened by legislative battles. And only NRA members have the courage, the conviction to draw the line in the sand.

That's why I'm hoping you can take a few moments to sign and date the enclosed petitions and return them to me with your special contribution of $15, $20, $25, $35, $50 or more in the enclosed postage-paid envelope today. Or, you can charge by phone by calling 800–547–4NRA today.

You know, besides going shooting, I love to go to football games. And every time I go, I always hear my fellow fans talk about the impact of ''the 12th man.''

The 11 players calling the plays and doing the hitting get a lot of their motivation from the 12th man in the stands. I'm talking about the crowd who cheers wildly when our team is on offense, and drowns out the signals of the opposing team when they're on the defense.

I need you to be that 12th man.

I need you to sign your petitions to Congress and return them to me today. That simple act will give our allies the political courage to do what's right, to push ahead with our agenda of Repeal, Reform, and Investigate.

Likewise, your signed petitions to Congress will confuse and demoralize the anti-gun team and their agenda of bans, taxes, intimidation, harassment and destruction of the Constitution.

I know I've said what I'm about to say before. But this is a message that resonates with NRA members across the land. It's something I hope you, too, will say whenever you have the occasion to defend our Constitutional freedoms.

This, the battle we're fighting today, is a battle to retake the most precious, most sacred ground on earth. This is a battle for freedom.

Please tell me you're ready to take the next step by returning your signed petitions to Congress and special gift to me in the enclosed postage-paid envelope today.

Thank you, I look forward to hearing from you soon.

Yours in Freedom,

WAYNE LAPIERRE,
Executive Vice President.

P.S. As a special thank you for making a special contribution of $25 or more, I'd like to send you a copy of my national best-selling book, Guns, Crime, and Freedom. Guns, Crime, and Freedom is 263 pages of truth

about guns, gun control, gun owners, the anti-gun media and what's happening to our freedoms.

I hope you'll read it and use it in your own personal campaign in New York to defend the Constitution. Use Guns, Crime, and Freedom to help you keep the pressure on Congress, write letters to the editor and teach other Americans about the battle we're fighting today. Thanks again for your support and friendship.

NATIONAL RIFLE ASSOCIATION OF AMERICA,
Fairfax, VA, May 3, 1995.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: While I concede that some of the language in the NRA fundraising letter you refer to might have been rhetorically impassioned—as is most political direct mail—that in no way disparages the NRA, nor diminishes the seriousness of the alleged federal law enforcement abuses to which the letter refers. And it is certainly in no way related to the terrorist bombing in Oklahoma City.

You asked if we can ''honestly justify'' rhetoric decrying such abuses of federal power. That's what we want to find out. In January 1994, the American Civil Liberties Union, the National Rifle Association and others wrote to President Clinton, petitioning him to appoint a commission to investigate 25 documented cases of alleged federal law enforcement abuse. Our request was ignored. So again in January 1995, the ACLU, NRA and others petitioned the President. All we ask is a full, fair and open examination the facts—a request that, so far, has been denied.

This isn't just some petty gripe against the enforcement of anti-gun laws by the Bureau of Alcohol, Tobacco and Firearms. On the contrary, the inquiry we requested was to focus on all 53 federal law enforcement agencies, and on charges ranging from the denial of basic civil rights, to the confiscation and destruction of property, to the improper use of deadly force against unarmed civilians.

I agree, senator, that the partisan posturing and political exploitation of the Oklahoma City tragedy is reprehensible and should stop. But before you condemn NRA's criticism of federal law enforcement abuses as ''totally inappropriate,'' I urge you to help us find out if it really is.

Let's get all the facts out on the table regarding these cases. If the accusations against federal law enforcement are baseless, let's expose them as such and vindicate the officers accused. If, on the other hand, particular officers are operating outside the rule of law, let's find them, remove them and prosecute them for the good of the whole. Whatever the case, let's put the grievances to rest once and for all.

Doing so, I believe, could help reverse the public's documented and growing distrust of federal power. Blaming the rhetoric—whether in a fundraising letter or anywhere else in political discourse—serves only to silence dissent and aggravate that distrust.

Sincerely yours,

THOMAS L. WASHINGTON,
President,
National Rifle Association of America.

Mr. LEVIN. Madam President, I will defend LaPierre's, Mr. Washington's, and the NRA's right to free speech, but I continue to hope that the membership of the NRA and the American public will demand that this patently false statement that the President has authorized the murder of law-abiding citizens be retracted. There is a crucial difference between what someone has a right to say and what it is right to say. This statement in the NRA letter is wrong. It deserves to be condemned, and it should be withdrawn.

Madam President, I believe I have an allotted amount of morning business time, and if so I would yield 3 minutes to my friend from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 3 minutes.

Mr. CHAFEE. I thank the Chair. I thank the distinguished senior Senator from Michigan for giving me a few minutes.

Madam President, I believe the tactics used by Mr. LaPierre in his recent fundraising letter for the National Rifle Association are just plain wrong. This letter does not contribute to any informed debate. Instead, it is inaccurate and irrational. It borders on the hysterical. And this kind of hysteria only encourages paranoia, which we certainly do not need at this time in our Nation.

Madam President, I know that the Senator from Michigan has touched on some of the quotes from the letter, but I would just like to mention a few that stand out. Here is one paragraph from the letter:

> It doesn't matter to them that the semi-auto ban gives jack-booted government thugs more power to take away our Constitutional rights, break in our doors, seize our guns, destroy our property, and even injure or kill us.

This is another paragraph:

> In Clinton's administration, if you have a badge, you have the government's go-ahead to harass, intimidate, even murder law-abiding citizens. Not too long ago, it was unthinkable for Federal agents wearing nazi bucket helmets and black storm trooper uniforms to attack law-abiding citizens.

And another:

> They've launched a new wave of brainwashing propaganda aimed at further destroying our Constitutional freedoms.

And on it goes, Madam President.

Now, Madam President, the apocalypse described in this fundraising letter is not familiar to me. The Government described in these pages is not familiar to me. This is not a description of reality. It is a description of terror designed for one purpose: to provoke a visceral reaction against the U.S. Government—and at the end of the day, to raise money.

There are many powerful and ugly words used in this letter. They are insulting to American law enforcement and to American citizens. Why does Mr. LaPierre use them? I suppose in order to tap into the rage that some feel against the U.S. Government, to feed that rage, and to use that rage to gain donations.

In various interviews, Mr. LaPierre has acknowledged the NRA letter went too far. I believe it behooves him and the leadership of the NRA to apologize to the men and women in Federal law enforcement and to the American people for this letter's rhetoric, and to refrain from this kind of inflammatory prose in the future.

I thank the distinguished Senator from Michigan for giving me a few minutes.

Mr. LEVIN. I thank the Senator from Rhode Island for his comments on this letter.

Madam President, on another matter, we have a bill pending before us which I would like to briefly address as part of my time.

THE PRODUCT LIABILITY FAIRNESS ACT

Mr. LEVIN. Madam President, the bill that we will be voting on later this morning is called the Product Liability Fairness Act of 1995. One of the arguments for it is that we need uniformity in a tort system. As a matter of fact, Madam President, the bill is carefully structured to authorize States to diverge from these standards in order to provide more favorable treatment to defendants than the bill provides, but the bill prohibits States from providing more favorable treatment to plaintiffs.

In other words, this bill does not provide us with uniformity. When we look down the provisions in the bill, we will see in a moment that the bill does not assure that there will be a uniform application of these provisions to all plaintiffs and all defendants. The bill prohibits a State law attempting to provide more favorable treatment to those who have been injured, but it allows State laws that are more favorable to those who allegedly cause the injury.

Now there is a reasonable argument for uniformity in product liability law, since many products are sold across State lines. But, this bill does not provide that uniformity. States can be more restrictive than the so-called national standards in the bill. A patchwork of State laws is still permitted, provided that the divergences are in the direction of greater restriction on the injured party.

For instance, the bill contains a so-called statute of repose barring any product liability action against a manufacturer of a product that is more than 20 years old. This provision prohibits States from providing a longer period for those who are injured. But the bill expressly authorizes States to adopt a shorter and more restrictive period in order to benefit defendants.

Similarly, the bill contains standards for the imposition of punitive damages, but the provision by its own terms only applies to the extent that punitive damages are permitted by State law. The committee report states that:

> It is not the committee's intention that this act preempt State legislation or any other rule of State law that provides for defenses or places limitations on the amount of damages that may be recovered.

In other words, if a State has more lenient standards for the award of punitive damages, the bill overrides those

standards—States cannot do that—but if a State has more restrictive standards, lower caps, additional limitations, or even bars punitive damages altogether, that is allowed by this bill.

While I am on the topic of punitive damages, I would like to point out that the so-called fix adopted by the Gorton-Rockefeller substitute is, in fact, no fix at all. Punitive damages would be capped under the substitute as they are capped by the underlying bill. The substitute limits the punitive damages that maybe awarded by a jury at two times compensatory damages, or $250,000, whichever is greater. The substitute then purports to authorize judges to increase punitive damages in cases where a jury award is ''insufficient to punish the egregious conduct of the defendant.''

But, Madam President, the authority under this substitute we will be voting on, which is given to the judge, is an illusion. Because if the defendant objects to the increased damages, he or she is entitled to a new trial on the subject of punitive damages. Judgment is not entered on liability or damages until the completion of the new trial. So the plaintiff cannot get a dime until after the new trial is completed.

Nothing in the substitute indicates that the judge's decision to increase the punitive damages award may be considered at this new trial. Nothing in the substitute indicates that the caps on punitive damages would be waived at the new trial. So it even appears that the same old caps may apply.

Under these circumstances, what defendant would not insist on a new trial on punitive damages? And what plaintiff would be willing to forego all compensatory damages while awaiting a new trial on the subject of punitive damages?

Those of my colleagues who favor punitive damage caps should feel very comfortable indeed voting for cloture on this substitute. But those who oppose caps should be forewarned. The caps in this substitute are every bit as real as the caps in the underlying bill.

Back to the uniformity issue. These are one-way limits.

This chart shows which State laws would be prohibited and which would be allowed. Categories of State laws that would be prohibited are shown in red. Categories of State laws that would be allowed are shown in green. In the left-hand column, we see that every single type of State law that would be more favorable to the injured party is prohibited. Every State law that would vary from the so-called standard in order to benefit a plaintiff in any of the areas covered by this bill is prohibited by the bill; it is preempted. But in the right-hand column, we see that, with one exception, State law provisions that are more favorable to defendants are allowed.

We have heard a lot of talk about the need for national standards for product liability. But what this chart shows is that where the bill provides true national standards, it is only where plaintiffs are prohibited from gaining the benefit of any State law that varies from the so-called standard. But with one exception, State laws are allowed to vary from the so-called standard and to have more restrictive rules that benefit the defendant.

These are not national standards. These are one-way rules that limit only plaintiffs, and if defendants are able to get more restrictive laws passed by the States, they will not restrict defendants.

Let us look at one example of how this one-way preemption provision would work. The bill would override State laws that provide joint and several liability for noneconomic damages. Joint and several liability is the doctrine under which any one defendant may be held responsible for 100 percent of the damages in a case, even if other wrongdoers also contributed to the injury.

The sponsors of this bill, and this amendment, have pointed out that there are problems with joint and several liability. In some cases, a defendant who has only a marginal role in causing the damage ends up holding the bag for all of the damages. That does not seem fair.

On the other hand, there are good reasons for the doctrine of joint and several liability. Cause and effect often cannot be assigned on a percentage basis with accuracy. There may be many causes of an event, the absence of any one of which would have prevented the event from occurring. Because the injury would not have occurred without each of these so-called but-for causes, each is, in a very real sense, 100 percent responsible for the resulting injury.

This bill, however, does not recognize that in the real world, multiple wrongdoers may each be a cause of the same injury. It insists that responsibility be portioned out, with damages divided up into pieces, and the liability of each defendant limited to a single piece. Under this approach, the more causes the event can be attributed to, the less each defendant will have to pay.

Unless the person who has been injured can successfully sue all parties who contributed to the injury, he or she will not be compensated for his entire loss. The real world result is that most plaintiffs will not be made whole, even if they manage to overcome the burdens of our legal system and prevail in court. Would it not be more fair to say that the wrongdoers, each of whom caused the injury, should bear the risk that one or more of them might not be able to pay its share than it is for the injured party to be only partially compensated for his or her loss?

The bill before us completely ignores the complexity of this issue with its one-way approach to Federal preemption. States which are more favorable to defendants are allowed to retain their laws. But State laws that try to reach a balanced approach between plaintiffs and defendants would be preempted.

Roughly half the States choose to protect the injured party through the doctrine of joint and several liability. Another half dozen States have adopted creative approaches to joint and several liability, seeking to balance the rights of plaintiffs and defendants.

Let me give you a few examples.

Louisiana law provides joint and several liability only to the extent necessary for the plaintiff to recover 50 percent of damages; there is no joint and several liability at all in cases where the plaintiff's contributory fault was greater than the defendant's fault.

Mississippi law provides joint and several liability only to the extent necessary for the plaintiff to recover 50 percent of damages, and for any defendant who actively took part in the wrongdoing.

New Jersey law provides joint and several liability in the case of defendants who are 60 percent or more responsible for the harm; joint and several liability for economic loss only in the case of defendants who are 20 to 60 percent responsible; and no joint and several liability at all for defendants who are less than 20 percent responsible.

New York law provides joint and several liability for defendants who are more than 50 percent responsible for the harm; joint and several liability is limited to economic loss in the case of defendants who are less than 50 percent responsible.

South Dakota law provides that a defendant that is less than 50 percent responsible for the harm caused to the claimant may not be liable for more than twice the percentage of fault assigned to it.

Texas law provides joint and several liability only for defendants who are more than 20 percent responsible for the harm caused to the claimant.

All of these State laws are efforts to address a complex problem in a balanced manner, with full recognition of factors unique to the State. Because they are all more favorable to the injured party than the approach adopted in this bill, however, they would all be prohibited.

Perhaps this is one reason why the National Conference of State Legislatures opposes this bill. As the NCSL explains:

> Tort law traditionally has been a state responsibility, and the imposition of federal products standards into the complex context of state tort law would create confusion in state courts. Without imposing one-size-fits-all federal standards, states may act on their own initiative to reform product liability law in ways that are tailored to meet their particular needs and that fit into the context of existing state law.
>
> The proponents of S. 565 want Washington to dictate the legal standards and evidentiary rules that fifty state court systems use to adjudicate injury disputes involving allegedly defective products. There is no precedent for such congressional imposition of federal rules by which state courts will be forced to decide civil disputes.

For NCSL, the question is not which tort reforms are appropriate, but who makes that decision. The issue is who has responsibility for state civil justice. This is a federalism issue of major consequence. It should not be ignored.

Madam President, what kind of national standard is it that prohibits State laws only when they are more favorable to plaintiffs than Federal law and not when they vary from Federal law to favor defendants? What kind of fairness bill is it that contains such a blatant double standard?

Madam President, the bill before us is called the Product Liability Fairness Act of 1995. If you read the title, it sounds pretty good. Who could be against bringing greater fairness to our product liability system, or to our legal system in general?

There is a list of problems in our legal system that we could all go through. Going to court takes too much time and it costs too much money. There are many stories of plaintiffs winning what seem like absurdly high verdicts or, on the other hand, being denied a day in court by defendants with deep pockets who engage in such hard-ball tactics as investigations into the private lives of plaintiffs, grueling depositions, unreasonable requests for medical and psychological histories of plaintiffs, and multiple motions to dismiss.

As Senator GORTON, one of the lead authors of the bill before us, explained at the outset of this debate:

[T]he victims of this system are very often the claimants, the plaintiffs themselves, who suffer by the actual negligence of a product manufacturer, and frequently are unable to afford to undertake the high cost of legal fees over an extended period of time. Frequently, they are forced into settlements that are inadequate because they lack resources to pay for their immediate needs, their medical and rehabilitation expenses, their actual out-of-pocket costs.

In 1989, a General Accounting Office study found that on average, cases take 2½ to 3 years to be resolved, and even longer when there is an appeal. One case studied by the GAO took 9½ years to move through our court system. In one of many hearings held on this issue over the years, University of Virginia law professor Jeffrey O'Connell explained, and I quote him: ''If you are badly injured in our society by a product and you go to the highly skilled lawyer, in all honesty the lawyer cannot tell you what you will be paid, when you will be paid or, indeed, if you will be paid.''

Senator GORTON concluded his thought as follows:

Uncertainty in the present system is a reason for change. Plaintiffs, those injured by faulty products, need quicker, more certain recovery—recovery that fully compensates them for their genuine losses. Defendants, those who produced the products, need greater certainty as to the scope of their liability.

I agree with Senator GORTON that there is unfairness in our current legal system. There is unfairness to defendants in some cases, and there is unfairness to plaintiffs. However, this bill does not address the problems faced by plaintiffs at all. There is virtually nothing in this bill to assist those who have been hurt by defective products and face the difficult burdens of trying to recover damages through our legal system.

For instance, this bill does nothing to address the hardball litigation tactics used by some defendants in product liability cases, such as excessive investigations, depositions, and motions practice that often mars such litigation. It does nothing to help bring to public light documents revealing defendants' knowledge of product defects, or to shorten the time required to litigate these cases and obtain relief.

Instead this bill would limit the money that can be recovered by plaintiffs who manage to navigate the hazards of our legal system and provide in court that they were hurt by defective products. The bill contains any number of provisions addressing compensation to plaintiffs which is too high, but not a single provision addressing the cases in which, as the sponsors themselves acknowledge, compensation is too low.

This bill is not balanced, it is not uniform, and I cannot support it.

Madam President, if I have any additional time remaining, I will be happy to yield to the Senator from Alabama.

Mr. HEFLIN. Madam President, I only want to speak briefly right now relative to this matter. I think the Senator from Michigan has covered the issue on additur very adequately.

In the case of Dimick versus Schiedt, a 1935 Supreme Court case, the High Court ruled that the district court lacked the power to deny a plaintiff a new trial, sought on the ground that the jury award of damages was too low, when the trial court judge proposed to increase the damages and the defendant had consented in order to avoid a new trial. The Supreme Court held that the power to increase a damage award, known as an additur, was a violation of the right of trial by jury. According to the Court, the amount of damages must be determined by juries, not judges, in the Federal court, subject to the right of courts to set aside jury awards that are clearly excessive. Some State courts have held that additur violates their State's constitution as well.

That is the major point that I want to make on this issue. Senator LEVIN mentioned this matter pertaining to the lack of uniformity.

I want to also point out that all State courts under the bill and the substitute—any of the substitutes—are to accept as binding precedents in the construing act, the decision of a Federal court of appeals covering this mandate.

This mandate, in my judgment, is clearly unconstitutional and contrary to article III of section 1 of the Constitution, which provides that the judicial power of the United States shall be vested in one Supreme Court, which has always been construed to mean that State courts must follow the decisions of the Supreme Court and not the lower Federal courts.

With the addition of the punitive damage additur provision in the substitute, there is an expansion by Congress of an extraordinary nature to encroach on the power of the State courts. Rules concerning the use of additur and remittitur have always been left to the State courts, as have also every other State rule of civil procedure.

I just wanted to mention that. I think there are others who are desiring to speak. I yield the floor at this time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania is recognized to speak up to 10 minutes.

Mr. GLENN. Parliamentary inquiry. Is there a 5-minute limit on speeches this morning?

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania has been allocated 10 minutes to speak, after which there is a 10:30 a.m. vote.

Mr. GLENN. I thank the Chair.

Mr. SANTORUM. Madam President, I yield 5 minutes of my time to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

STOP THE DEMAGOGING

Mr. INHOFE. Madam President, I thank the Senator from Pennsylvania for yielding a portion of his time. I do not think I will take the 5 minutes.

After the trauma and the tragedy that we have gone through in Oklahoma, it has diverted our attention from many of the other significant things that are taking place in this body. I think the most significant thing, second only to that tragedy in Oklahoma, is the tragedy, the revelation that was recently discovered of what is going to happen to Medicare in America and the demagoging that is taking place in this and other bodies concerning that trauma.

Specifically, a report was released by the Medicare trustees that has come to the incontrovertible conclusion that our Medicare system, in absence of change, is going to go broke in the year 2002, approximately 6½ years from now.

I think it is important to look and see who was it who looked at the data, who studied the actuarial reports and came to that conclusion.

There are six members of the Board of Trustees of Medicare. They are Robert Rubin, the Secretary of the Treasury, who was appointed by President Clinton; Robert Reich, Secretary of Labor, appointed by President Clinton; Donna Shalala, Secretary of HHS, appointed by President Clinton; Shirley Carter, Commissioner of Social Security, appointed by President Clinton; and Stanford Ross and David Walker.

Four of the six members are appointments and work in the Clinton administration, and they have come up with the conclusion that Medicare will, in

fact, go broke in the year 2002. I think we know the reasons for it, and I will not get into that.

Quoting from the report, it says, Medicare is ''severely out of financial balance and the trustees believe that Congress must take timely action to establish long-term financial stability for the program. The trustees believe that prompt, effective and decisive action is necessary.''

Madam President, these are the trustees that were appointed by President Clinton, and what has happened since that time? Absolutely nothing. We have not heard one word out of the Clinton administration. We hear a lot of people criticizing Republicans because we want to do something to save a system, and they come up and say, ''The Republicans are suggesting that they are going to cut Medicare in order to pass a tax reduction.'' Nothing could be further from the truth, and that certainly is not true. But for the President to do nothing in facing this crisis is something that cannot be tolerated.

The proposal that has been discussed by the Budget Committee chairman, Senator DOMENICI from New Mexico, has suggested that we put caps on the system, somewhere around 7 to 7.5 percent growth caps. In other words, the Republican budget is suggesting not that we have cuts in Medicare, but that we have increases in Medicare, but those increases will be capped somewhere between 7 and 7.5 percent, at an amount that has been actuarially determined that we will now have Medicare and it will not go bankrupt in the year 2002.

Right now, Madam President, we have some 36 million people on Medicare. It is projected by the time 2002 comes, we will have something like 50 million Americans, 20 percent of all Americans, including myself, will be eligible for Medicare at that time.

So I only say, it is time to stop the demagoging. We have a very serious problem on our hands. I believe the Republicans have a solution to that problem, but we should be getting some leadership from the White House at this time. This is not something with which we should be playing politics.

I yield back to the Senator from Pennsylvania.

A CRISIS IN MEDICARE

Mr. SANTORUM. Madam President, I thank the Senator from Oklahoma for his comments. I wholeheartedly agree with him. I think this is a question of leadership, what kind of leadership we are going to see not only out of the White House but out of the U.S. Senate.

I think the rhetoric to date has not served this institution well. There is, indeed, a crisis in Medicare. I know there are a lot of folks on the other side of the aisle who are saying we knew about this crisis, you folks denied there was a health care crisis. We are not talking about a health care crisis, we are talking about a Medicare crisis. We are talking about a trust fund problem that says there is not enough money in the trust fund to be able to fund Medicare past a 7-year window. That is immediate, that is real, and that is something that we have to deal with, and I believe we will only deal with if we do so in a bipartisan way.

If this becomes a partisan issue where one seeks to take political gain at the expense of doing something that is responsible action, we will not succeed and the trust fund will continue to go further and further to the brink of insolvency, and we will be left with not a lot of options but very dramatic choices that are going to affect a lot of taxpayers and a lot of seniors and the availability of Medicare benefits into the future.

The other comment I keep hearing is, ''Well, this crisis has been around a long time and we have known. This is not the first trustees report that has been published that says Medicare is in trouble and will go bankrupt in a few years.''

That is true. In fact, over the last 10, 15 years, the average solvency of the Medicare trust fund has been about 12 years. Now it is at 7, which is I think a low. That is the shortest timeframe that we have seen recently where Medicare is in trouble and scheduled to go bankrupt. So it is important, but we are usually running around 12, 14 years as the average.

So why the big hullabaloo now? The reason for that is, once we get through the next 12 years or so, to the year 2010, we can do that pretty well by doing a fix. Senator DOMENICI's budget calls for roughly $250 billion in reductions in the growth rate of Medicare over the next 7 years. That will fix Medicare, again, to make it solvent for about 12 years from now, which will be about average of where the fund has been.

The problem with that is not the 12 years, it is what happens in the 13th, 14th, 15th year and beyond, because after 12 years from now or 13 years from now that is when the baby boomers begin to retire and that is when Medicare really takes off.

Spending in Medicare just goes up astronomically once the baby boomers and that big chunk of the population starts getting into this program. So when we look at Medicare funding now, we have to look at it with a whole new ball game in mind. We have to preserve the long-term funding and solvency of this program through a period where we are going to see a rapid escalation, not in the cost of Medicare and inflation, but in the number of people in the program.

So when we look at Medicare now, and I hope we will have this informed discussion, that we will look at it over the long term recognizing that Medicare costs, just by demographic reasons, are going to escalate beyond what we have ever seen before in the history of the Medicare program.

So I am hoping we can have this kind of constructive dialog and we will not use brinkmanship for political gain, that we will have a good, bipartisan solution to the problem that faces this country.

I yield the floor.

TRIBUTE TO THE NORTH DAKOTA STATE UNIVERSITY WOMEN'S BASKETBALL TEAM

Mr. DORGAN. Madam President, I want to take some time today to belatedly honor the North Dakota State University women's basketball team. Outside of North Dakota, most people probably don't know that this team won the NCAA division II national championship. Not only did they win it this year, but the Bison women have won this honor for 3 straight years. I think they deserve some national recognition.

The NDSU women had the additional honor of being the first ever division II women's team to make it through a season undefeated. This remarkable team ended its season 32–0, and they did it by focusing on one game at a time.

I think we can all learn some important lessons about life by watching these champions—about perseverance, about working together and helping each other, about being a good sport.

I want to congratulate each of these women for the year of hard work that culminated in their ultimate victory: seniors Linda Davis and Lynette Mund who provided experience and leadership, juniors LaShalle Boehm, Jessica DeRemer, Jenni Rademacher, and Lori Roufs; sophomore Kasey Morlock, who was the most valuable player of the tournament, and her fellow sophomores Rhoda Birch and Andrea Kelly; and freshmen Tanya Fischer, Erica Lyseng, Amy Ornell, and Rachael Otto.

These women are even more special because they will not be making millions of dollars playing in the NBA when they graduate. They are playing basketball because they love the game, and in the process they are serving as good role models for many young girls who need active, successful young women to look up to.

A lot of the credit for the success of the NDSU program rests with Head Coach Amy Ruley. She has led the Bison to four championships in the last five seasons. In fact, she is doing such a good job that the University of Illinois and Long Beach State—two division I schools—both wanted her for their programs, but I was glad to hear recently that she has decided to stay with us in North Dakota.

We also can not overlook the assistant coaches, Kelli Layman and Kathy Wall; student assistant Darci Steere; volunteer assistant Robin Kelly; student trainer Nikki Germann; and student manager Mary Schueller. Their work behind the scenes plays an important role in the team's success.

We in North Dakota have a lot to look forward to from the NDSU women's program in the future. All but the two seniors will be returning, and this team knows what it feels like to win. For now, though, we can just savor the feeling of having national champions in our midst.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Madam President, the skyrocketing Federal debt—which long ago soared into the stratosphere—is in a category somewhat like the weather—everybody talks about it but almost nobody had undertaken the responsibility of trying to do anything about it until immediately following the elections last November.

When the 104th Congress convened in January, the U.S. House of Representatives approved a balanced budget amendment. In the Senate only one of the Senate's 54 Republicans opposed the balanced budget amendment; only 13 Democrats supported it. Thus, the balanced budget amendment failed by just one vote. There will be another vote later this year or next year.

As of the close of business yesterday, Monday, May 8, the Federal debt stood—down to the penny—at exactly $4,856,502,980,514.90 or $18,435.37 for every man, woman, and child on a per capita basis.

YOUNG AMERICA

Mr. COHEN. Madam President, I rise today to pay tribute to the captain and crew of *Young America*, which as many of my colleagues know, is the yacht that came very close to winning the Defenders' series of the America's Cup competition on April 26.

Young America, owned by the Maine-based PACT '95 syndicate and originating out of my hometown of Bangor, was very strong in the competition but was beaten in the finals by America's Cup veterans and past victor, Dennis Conner and his boat, *Stars & Stripes.*

While *Young America's* captain, Kevin Mahaney, did not have Dennis Conner's experience, he sailed boldly and impressively and displayed the kind of leadership and perseverance for which Mainers are renowned. Kevin had captured the silver medal in sailing at the 1992 Olympics, but it was his first America's Cup competition. He and his crew sailed with excellence throughout the competition.

Last summer, before Kevin even had a boat to compete in, he started to assemble a crew with John Marshall, head of the PACT '95 syndicate. Marshall was an experienced sailor and former crew mate of Dennis Conner in past America's Cup bids. Even so, many people on the sailing circuit did not assign much credibility to their efforts and saw little threat from their entry. However, Mahaney and Marshall and the crew they assembled soon made yachting enthusiasts begin to take notice of the boat from Bangor.

This is not to say that *Young America* encountered smooth waters during its assent to the top ranks of yachting. Mahaney had to rely heavily on the tenacious crew that he assembled to overcome obstacles and make it as far as they did.

Young America's bid for the cup was threatened last January when a tornado ripped through the compound where it was stored, causing extensive damage to the boat. In March, bad luck struck again when *Young America* suffered significant structural damage while being towed through heavy waves. This damage was particularly ill-timed, and the crew had to rush to make repairs in the final days before the Defender semifinals. John Marshall saw the silver lining in these clouds and commented that the times of hardship were when the crew really came together as a team.

Ironically, the crew that worked so hard to bring *Young America* to the forefront of the yachting world had the bittersweet experience of now seeing their boat compete against New Zealand in the America's Cup finals without them aboard. Shortly after his victory, Dennis Conner, full of admiration for Mahaney's triumphs, asked John Marshall if he and his crew could sail *Young America* in the final competition. Diplomatic to the last, Marshall honored his request. He said that both the crews from *Stars & Stripes* and *Young America* will emerge as victors if the Americans beat New Zealand.

The quiet but determined efforts of Kevin Mahaney and his crew justifiably make Mainers proud. While they are not manning the boat that is competing against the New Zealand vessel this week, everyone's mind will be on the come-from-behind boat known as *Young America.*

RECOGNIZING BILLINGS, MT, POSTAL SERVICE

Mr. BAUCUS. Madam President, today I would like to recognize the outstanding achievement of the Postal Service in Billings, MT. As is the case most of the time, we know how to do it right in Montana.

Billings' delivery of overnight first-class mail is first in the Nation, No. 1. The lucky residents of Billings received their mail 94 percent on time, the country's highest performance level this year. The score also ties for the highest mark achieved by any city since the measurement began. In an era when public and private mail volume continues to increase, I am proud of the ability of the Billings Postal Service to rise above the rest and top the Nation.

I would like to congratulate and thank everyone involved in the mail process in Billings for serving Montana and our Nation with such capability.

PROTECTING MEDICARE

Mr. BAUCUS. Madam President, yesterday before the Senate Finance Committee I spoke about the importance of the Medicare Program to Montanans. I would like to take this opportunity to share those comments with the entire Senate.

There being no objection, the comments were ordered to be printed in the RECORD, as follows:

Mr. Chairman, here in Washington, people often lose the forest for the trees. I'm afraid we may be doing just that on Medicare. So I hope we can begin by remembering what life was like for older Americans before Medicare.

The fact is, before we created Medicare, our senior citizens lived in fear.

Everyone over sixty knew that private insurance was shaky and expensive at best, and would cost them more every year.

And a serious illness—or even a common ailment that required treatment but did not threaten life—was not only a health problem, but something that could reduce a whole family to poverty.

Today, Medicare has removed that fear from our lives. Those of us with short memories have forgotten it ever existed. But let me tell you about some people who don't.

Two weeks ago I spent some time at the Seniors Center in Great Falls, Montana. The people at the center know exactly what Medicare and Social Security mean to their lives.

It means a little financial security. Some faith that illnesses will be treated and that families won't be wiped out by the cost. A hundred and twenty-five thousand Montanans are eligible for Medicare, and each one of them knows exactly what Medicare means.

Listen to Margaret and Frank Jackson of Billings, who wrote me last week:

''Social Security and Medicare are not only necessary, they are absolutely essential to our survival in Montana. Higher costs such as higher property tax, increase in school levies, fuel in a cold climate, and medicine take a toll. There is just too much month at the end of our money. Needless to say, additional cuts would put a burden on us.''

Or Joyce Hert, also from Billings:

''I am 58 years old and for the past 18 years have had chronic obstructive pulmonary disease, asthma, emphysema, Renaud's Disease, degenerative arthritis and a disease of the connective tissue. . . . My medication costs approximately $677 a month* * *. Please don't turn your back on those of us who need Social Security and Medicare.''

The leadership now proposes something like $250 billion in Medicare cuts. It is staggering. It is a reduction of nearly a quarter in Medicare services by the year 2002. And to add insult to injury, the House would do it in part to pay for tax cuts for Americans who are already very wealthy. Some in the Senate want to do the same.

What would it mean if this happens?

Montana Medicare beneficiaries would pay up to $800 more a year out of their own savings. These are people who live on fixed incomes, and eight hundred bucks is an awfully big bite.

We would see thousands of operations and hospital stays put off.

Thousands of people would decide to go without home health care.

And, as the federal government cut reimbursement, more rural hospitals would be pushed to the edge, forced to choose between serving their patients and remaining solvent. Some Montana hospitals get 60% of their

revenue from Medicare. This plan would hit them like a wrecking ball.

Now, it may well be that we need to make changes in the Medicare program. We must be realistic.

The answer is not, however, to simply approach Medicare reform as a budget cutting exercise. Because we are talking about preserving essential health services for 125,000 senior citizens in Montana and thirty million seniors across America.

We are talking about good, middle class Americans like the Jacksons.

And above all, we must not use Medicare as a piggy bank. Don't take money that buys health care for senior citizens and use it for a tax break for rich individuals and big corporations. That is disgraceful.

Perhaps some changes lie ahead. But if they do, they should be made for the single purpose of keeping Medicare services for senior citizens and people with disabilities. It is an issue of good faith on the part of the government, and basic, essential health services for Americans.

RETIREMENT OF GEORGE K. ARTHUR

Mr. MOYNIHAN. Madam President, yesterday's Buffalo News reported the forthcoming retirement of Buffalo, NY, Common Council President George K. Arthur, after four decades of public service. Mr. Arthur, who has been Common Council President since 1983, is a distinguished public servant who has given much to the people of Buffalo. I know I speak for the people of Buffalo in offering George Arthur great thanks and congratulations. He will indeed be missed.

Mr. President, I ask unanimous consent that the text of the article from the Buffalo News be printed in the RECORD.

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

[From the Buffalo News, May 8, 1995]

POLITICAL LEADERS PRAISE ARTHUR'S ENDURING LEGACY

(By Anthony Cardinale)

Geroge K. Arthur will leave a legacy of lasting achievement as Common Council president when he steps down on Dec. 31, several political observers said Sunday.

Never mind the decade of Common Council friction with then-Mayor James D. Griffin, who reserved his most stinging invective for the Council president and took particular delight in defeating Arthur's challenge for the mayor's office 10 years ago.

Arthur's proudest hour as a politician was when he beat the Democratic incumbent for the Democratic Party's endorsement in 1985, these observers agreed. And he would have ousted Griffin from City Hall, they added, if it weren't for the votes siphoned off by Nicholas Costantino as an independent candidate.

Arthur, 62, who announced over the weekend that he won't seek re-election, was first elected to the former Erie County Board of Supervisors in 1963. He was elected Ellicott District Council member in 1969, then Council member at large, and he has been Council president since 1983.

''I believe it's probably the longest political career of anybody in our area,'' said Vincent J. Sorrentino, Erie County Democratic chairman.

''He was part of the emergence of the black community into the mainstream of the political process in our community—he and (Council President) Delmar Mitchell a little before him,'' said Joseph F. Crangel, Sorrentino's predecessor at the party helm.

''His leadership was instrumental in helping much of the rebirth of Buffalo,'' said Arthur O. Eve, deputy Assembly speaker, who pointed to measures to improve Buffalo's housing stock and quality of life.

Accolades for Arthur even came from Council Member Alfred T. Coppola of the Delaware District, who has often clashed with him—and who now wants to succeed him as Council president.

''We've disagreed on various projects, but we've also agreed on some,'' said Coppola, who has asked Sorrentino for his backing.

''George has always been a unique person,'' Coppola went on. ''He's always been a gentleman. There were times when George pulled us together. He'd say, 'Let's sit around a breakfast table and let it all hang out on a Saturday morning.' Those were terrific meetings.''

Arthur's ability to bring together dissenting parties was the common theme Sunday of those who have worked with him over the years.

''George did an excellent job in helping to forge together a very diverse group of men and women into a fairly cohesive body,'' Eve said. ''That takes a lot of talent, patience and compassion,.''

Eve said he will work to help Council Majority Leader James W. Pitts become the next Council president.

''We certainly will miss (Arthur) as the Council president,'' Eve said, ''but I'm in hopes that Jim Pitts will emerge as his replacement and the tradition that George Arthur started will continue and hopefully will grow.''

Sorrentino, who reportedly supports Pitts, also credited Arthur as a consensus builder.

''He had a great quality of being able to bring consensus into very hostile situations—especially during the Griffin years,'' he said. ''His leadership will be missed at these difficult times.''

Sorrentino said he recently had breakfast with Arthur and learned then that he had all but decided to retire after this year.

''And I said, 'if you do, we certainly expect you to play a role in the campaign.' While he'd be retiring as president of the Common Council, he's not retiring from politics.''

All four observers rejected the notion that Arthur had slowed down in recent years, no longer the civil rights firebrand who once joined the plaintiffs in the school desegregation suit and supported two other discrimination suits against the city's fire and police force.

''Very often with age comes wisdom—you're more prudent how you express things,'' said Crangle. ''You put things in more perspective and focus than you did when you first started out.''

Crangle said he greatly admires Arthur for standing up against Griffin.

''He was one of the towering strengths of the Democratic Party in City Hall,'' he said. ''He did not get intimidated; he didn't in any way yield. And many times it was very lonely.''

Coppola said that was when Arthur's ''professionalism'' shined brightest.

''There were moments when George was the acting mayor in some of the tougher years when Jimmy Griffin was really playing hardball,'' Coppola said. ''And George never took advantage of the situation, especially when the mayor was out of town.''

The former mayor was asked Sunday for his comment on Arthur's decision to retire.

''I wish him luck,'' Griffin said. ''I wish him and his family the best.''

THE MOSCOW SUMMIT

Mr. PELL. Madam President, today President Clinton is joining President Mitterrand, Prime Minister Major, Chancellor Kohl, and President Yeltsin in Moscow to commemorate the 50th anniversary of the end of World War II. That is as it should be. Together, after all, the United States, France, Britain, and the Soviet Union rid the world of the Nazi menace.

The anniversary of Allied triumph over the Nazis carries great significance for us all. For the Russian people, who lost more than 20 million of their fellow citizens during the war, this commemoration is particularly meaningful.

Now that the cold war is over, the allies have the opportunity to stand together again—this time to build a new Europe—democratic, whole, and free. The gathering of the five leaders in Moscow today should be seen as a commitment to that goal.

We have an enormous stake in Russia. United States engagement with Russia since the breakup of the Soviet Union has yielded significant results—particularly with regard to the reduction of weapons of mass destruction and the withdrawal of Russian troops from Europe. It is in the U.S. national interest to see that this process proceeds. Russian reformers offer the best prospect for continued progress on the issues that really count for the United States. Accordingly, we should be doing what we can to bolster Russia's democrats.

President Clinton has come under fire for going to Moscow at a time when Russia is pursuing some policies to which the United States is opposed. I believe this criticism is short-sighted and for the most part, politically motivated. Some of the same people who are criticizing the President for going to Moscow are also demanding that the administration deliver a tough message to Moscow about its behavior in Chechnya, its proposed sale of a nuclear reactor to Iran, and its views about NATO expansion. What better way to deliver the message than to go to Moscow and do it personally?

By going to Moscow, President Clinton is demonstrating to Russian leaders the benefits of continued engagement with the West. If he had decided to cancel his trip, President Clinton would be missing an opportunity to tell President Yeltsin and other Russian leaders—face to face—where he believes Russian policy is on the wrong track.

That being said, we should not have any illusions about our ability to change Russian policy overnight. We must be realistic. Russian leaders, like their counterparts worldwide are political creatures. With parliamentary elections looming at the end of this year, and Presidential elections scheduled for 1996, few Russian politicians want to be perceived as buckling to Western pressure. Russian nationalists, whose influence is regrettably on the

rise, would be quick to brand them traitors.

It is therefore highly unlikely that President Clinton will return to Washington with a long list of Russian concessions. Those who are demanding—or even predicting—that he will do so are setting up the administration for failure. We can and should expect, however, President Clinton to discuss our differences candidly and constructively, and to lay the ground work for United States-Russian accommodation on key issues like arms control, the Iran nuclear deal, Chechnya, and European security.

The hallmark of a successful summit is not to solve all of the world's problems or even to resolve all of the bilateral issues between two countries. President Clinton's trip to Moscow is part of an ongoing process between Russia and the United States. We should be realistic about our expectations.

TRIBUTE TO DR. WAYNE TEAGUE, FORMER ALABAMA SUPERINTENDENT OF EDUCATION

Mr. HEFLIN. Madam President, Dr. Wayne Teague served as Alabama's Superintendent of Education for almost 20 years, from October 1975 through March 31 of this year. During his tenure as Alabama's top educator, public education in Alabama has prospered. His many years of public service are a hallmark of exceptional commitment and dedication to public education and to the children of Alabama.

There has been a great deal of progress in Alabama education since Wayne Teague took over as superintendent in 1975. His many contributions have made tremendous improvements in the State's public school system. His many successes and vast knowledge were once recognized by the British Council of Great Britain, when he was one of only three chief State school officers invited to participate in the American Education Policy-Makers' Study Trip to Northern Ireland in 1990.

Of Dr. Teauge's many wonderful personal attributes, the one that probably served him best while he was superintendent was his unique leadership style. He was able to master the art of cooperation with a myriad of groups for the benefit of the public schools. Government officials, parents, teachers, students, administrators, and business, civic, and educational leaders all gained admiration and respect for him over the course of his career as they observed his many accomplishments for Alabama's school children and for education overall.

Wayne Teague received his bachelor's, master's, and doctoral degrees all from Auburn University. Prior to becoming State superintendent, he was a local superintendent, college professor, principal, and teacher. Since then, he has become widely known throughout the State and country not only as a superb superintendent, but also as an authority on State and Federal legislative relations, a civic and community activist, a public speaker, and author. He has participated in several international activities and received numerous honors and awards for his service in education.

Dr. Wayne Teague certainly emerged as one of the giants of education while he was superintendent. He possesses all the skills, experience, and professional attitudes that make an outstanding leader. As much as he will be missed, I salute and congratulate him for a job well done, and offer my best wishes for his long, healthy, and fulfilling retirement.

AID

Mr. THOMAS. Madam President, I rise this morning as a member of the Senate Foreign Relations Committee to discuss the content of a recent interoffice electronic memo from Sally Shelton, the Assistant Administrator for the Bureau of Global Programs, Bill Support and Research at the Agency for International Development [AID] regarding congressional plans to merge AID into the State Department and to cut the somewhat bloated foreign assistance budget. For the benefit of my colleagues who may not have seen the memo, dated May 3, let me quote it here:

> The Administrator spoke to InterAction yesterday * * *. The Administrator would prefer that InterAction stay out of the merger issue and there is indeed no consensus on their Board as to what position to take. But some want to be involved—the Administrator reminded us of Dean Acheson's comment ''Don't just do something, sit there!''
>
> Tony Lake is addressing InterAction tomorrow—he is pushing the phrase ''backdoor isolationist'' to tar the anti-150 account Congressmen with * * *. Shalikashvili and Wm. Perry had a good mtg with the Speaker on the 150 account * * * though the news from the Senate is not so good * * * Sen. Domenici is pushing for bigger cuts than had been anticipated earlier.
>
> Jill Buckly reports that the Senate For. Rels. Comm. staff was relatively uncooperative in discussions yesterday and somewhat surprisingly the HIRC [House International Relations Committee] staff was cooperative. The strategy is ''delay, postpone, obfuscate, derail''—if we derail, we can kill the merger. Larry Byrne met with Sen. Robb and got his support on the merger though Robb is not committed, yet, to defend the 150 account budget levels. Official word is we don't care if there is a State authorization bill this year.
>
> Larry B. announces that we are 62 percent through this fiscal year and we have 38 percent of the dollar volume of procurement actions completed; we need to do $1.9 billion in the next 5 months * * *. There are large pockets of money in the field and about $570 million in Global and ENI each. So let's get moving * * *. Jim Bond called Larry Byrne * * * then yelled at him about our obligation rate, said it imperils our ability to argue we need more money * * *.

Madam President, I am incensed by this memo and by the mind-set it manifests at AID. It seems clear to me that instead of looking for ways to work with Members of Congress to streamline its operations, cut waste and bloating, and accept the same kind of downsizing that the American people expect of every other agency of the Federal Government, AID has taken on as its first priority saving its own skin.

There is nothing back-door isolationist about a desire to down-size AID and get rid of functions it carries out which are duplicative of those carried out by other agencies; it's a move that Secretary of State Christopher himself supported until recently overruled by the Vice President. At a time when we don't have enough money to take care of our own citizens and are consequently forced to rethink the funding levels in our domestic budget, to argue that we can't make similarly difficult cuts in our foreign aid budget is both disingenuous and unrealistic.

While I am certainly not in favor of a full-scale gutting of foreign aid, there is no bureaucracy in this Government that in my estimation couldn't stand a healthy cut in its budget—AID among them. For those who might doubt that assertion, the following information is instructive. AID has requested $16 million in aid to Jordan so that it could ''attract more tourists to come to Jordan, enjoy their experience, and recommend Jordan to others.'' AID wants to pay $528,000 to Vietnamese contractors who were not paid as a result of the Vietnam War, while at the same time hundreds of American contractors remain unpaid. AID has proposed giving the AFL–CIO $5 million to make home improvement loans to Sandanista labor union members in Nicaragua. AID has proposed giving $900,000 to the lobbying firm TransAfrica to develop linkages with South Africa. The grant would enable TransAfrica to buy a TV, VCR, camcorder and computers for its Washington, DC, lobbying office. These proposals are just some of the highly questionable ways in which AID allocates its funds.

While speaking about funding, let me note that I am outraged by the suggestion in the memo that as the fiscal year draws to a close and AID has only ''38 percent of the dollar volume of procurement actions completed,'' that employees would be encouraged to get out there and spend, spend, spend so that their ability to argue we need more money is not imperiled. Statements such as that are a perfect example of bureaucratic thinking run amok, and illustrate to me precisely why their budget is in need of some substantial trimming.

Madam President, policy statements coming from AID which note that they intend to work to delay and derail the legitimate work of this Congress for their own selfish needs strike me—and, I am sure, other Members—as blatantly improper. As a result of this memo, you can be sure that I will view anything AID has to say on reorganization or budget matters in the next few weeks with a very jaundiced eye, to put it very mildly.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF JOHN M. DEUTCH, OF MASSACHUSETTS, TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session to consider the nomination of John Deutch to be Director of the Central Intelligence Agency, which the clerk will report.

The legislative clerk read as follows:

John M. Deutch, of Massachusetts, to be Director of the Central Intelligence Agency.

NOMINATION OF JOHN DEUTCH TO BE DIRECTOR OF CENTRAL INTELLIGENCE

Mr. LEVIN. Madam President, it is with enthusiasm that I will vote today to confirm the President's nomination of John Deutch to one of our country's most important and difficult jobs, Director of Central Intelligence.

As a member of the Senate Armed Services Committee, I have worked closely with John Deutch in both his present position as Deputy Secretary of Defense and in his prior capacity as Under Secretary of Defense for Acquisition and Technology. I have had the opportunity to admire his competence as a manager and his broad knowledge on and accomplishments in national security matters.

Secretary Deutch has firsthand experience in improving our national security institutions. He successfully led the Pentagon's effort to reform its acquisition process, a long overdue and badly needed initiative. He also took the lead on the controversial C–17 aircraft negotiations and produced a good solution. In short, he has taken some of the thorniest problems in our largest national security institution and produced positive and cost-effective results.

The U.S. intelligence community is at a critical crossroads as it responds to a host of new and demanding challenges. With the end of the cold war, the need for reliable intelligence for the President and the Nation's decisionmakers has not vanished, but it has changed. We have seen a dramatic shift in the nature of the threats to U.S. national security. We have seen a sharp rise in the number and intensity of regional conflicts including the Persian Gulf, Bosnia, Somalia, and Haiti. We have also seen the need to broaden the cope of our intelligence efforts to include work on emerging challenges in interdiction of the international drug trade, anti-terrorism, nonproliferation and in support of government decisionmaking in economics and trade.

At the same time, the intelligence community faces a number of internal challenges. The community should not, has not, and will not be spared the budget cuts and downsizing facing all of the Federal Government. And, the intelligence community must work very hard to recover from the shocks of the Ames case and the current controversy over events in Guatemala.

The President could have named no more qualified nominee to grapple with these challenges. John Deutch's vast knowledge and experience, his track record in government, will assure that he will do so with the full confidence of those who work in within the intelligence community and those in the Congress responsible for oversight. While I have not agreed with him on every issue, I admire and respect his considerable abilities and the forthright manner in which he engages debate.

I am very pleased today to join in what I hope and expect will be the unanimous confirmation of the nomination of John Deutch to be the next Director of Central Intelligence.

Mr. KEMPTHORNE. Madam President, it is with great pleasure that I support John Deutch's nomination to serve as the Director of Central Intelligence. During Dr. Deutch's service at the Department of Defense, including his service as the Deputy Secretary of Defense, John Deutch has been a thoughtful, decisive, and professional public servant.

Over the last 2 years, I have worked with John Deutch on a number of important, complicated, and diverse issues. In every instance, Dr. Deutch was extremely knowledgeable about the issue, he demonstrated diligent follow-up, and he never deviated from his commitment to serve the national interest. I have appreciated working with John Deutch and he will be missed at the Department of Defense.

John Deutch will be an excellent Director of Central Intelligence. This is a crucial time for the U.S. intelligence community as it tries to adapt to the post-cold-war era. I have every confidence that John Deutch will lead the Central Intelligence Agency forward in the 21st century.

Madam President, I look forward to casting my vote in support of John Deutch's nomination to serve as the next Director of Central Intelligence.

Ms. MOSELEY-BRAUN. Madam President, I am proud to support President Clinton's nominee, John M. Deutch, as Director of Central Intelligence. This is a difficult time for the CIA, but John Deutch brings considerable skills and experience to the position, and I have every confidence that he will make a difference at the CIA.

Mr. Deutch has an impressive academic background. He has been a distinguished professor at the Massachusetts Institute of Technology. He was chair of the department of chemistry there. As a teacher and a scientist, Mr. Deutch understands the technical details of the newest emerging intelligence technology, and he also has the remarkable ability to explain this technology in plain English, so that nonscientists understand.

Mr. Deutch has also served with distinction in Government. He worked at the Department of Energy, as Under Secretary of Energy Technology. In recognition of his contributions in that position, he was honored with the Secretary's Distinguished Service Medal and the Department's Distinguished Service Medal. More recently, he served at the Department of Defense as Under Secretary of Acquisition and Technology. And he leaves DOD as the distinguished Deputy Secretary of Defense.

Mr. Deutch will have to draw from this extraordinary experience to address a number of concerns at the Central Intelligence Agency. His responsibility is great. The CIA has been faced with a number of scandals of its own making. The Aldrich Ames spy case compromised U.S. intelligence gathering overseas. For years, the CIA was unable to detect his treachery, and more recently, the CIA appeared unwilling to appropriately discipline his superiors. This is unacceptable. I am confident that Mr. Deutch will address the flaws in the internal administration of the CIA which allowed Ames to flourish in the system undetected. He has pledged that in the future, anyone in a position of supervision over an agent who is spying on the United States, and does not take forceful action, will be fired.

Mr. Deutch's nomination also comes at a time when very serious questions have been raised about CIA operations in Guatemala. It has become clear through public hearings in recent weeks that a paid CIA informant in the Guatemalan military was involved in horrendous human rights abuses against Guatemalan people, and participated in the torture and death of an American citizen, and a Guatemalan who was married to an American citizen. Further, when this information became known to CIA officials, it was not properly reported to the House or Senate Intelligence Committees. The United States must stand for democracy and the protection of human rights abroad. I am deeply offended, as are many Americans, to learn of a relationship between the CIA and this Guatemalan colonel.

These and other scandals have plagued the CIA. Morale is low. John Deutch is clearly needed at this time to revitalize the CIA. With the end of the cold war, America's intelligence needs have changed. But they have not diminished. Our intelligence community is staffed with brave men and women who take risks every day to assist our policymakers by providing the best intelligence in the world. We must restore the confidence of the American people in these men and women, and in our intelligence gathering capabilities. John Deutch is a man of real quality. He is fully capable of meeting the challenges that lie before him.

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD.)

● Mr. WARNER. Madam President, I would like to express my strong support for the nomination of John Deutch to serve as Director of Central Intelligence.

I have had the privilege of working with Secretary Deutch since 1993 in his various capacities in the Department of Defense, first as Under Secretary of Defense for Acquisition and Technology, and most recently as Deputy Secretary of Defense. 3

Secretary Deutch has served his Nation well in these assignments, and I am pleased that he will be bringing his considerable expertise to the Nation's intelligence community.

This is a time of great challenge for the various elements of the intelligence community and, in particular, for the Central Intelligence Agency. As it continues the process of adapting to the intelligence challenges of the post-cold-war world, the CIA has been rocked recently by a number of problems—from the Aldrich Ames spy scandal to the recent revelations of possible problems with CIA activities in Guatemala. I am concerned about the well-being of this agency, and the morale of the fine intelligence professionals who serve our country—at great personal risk—at the CIA. The work of the CIA, and the many other agencies of the intelligence community, remains vital to the security of our great Nation. We should not lose sight of this basic fact as we contemplate reforms.

I am pleased that Secretary Deutch will be taking over stewardship of the intelligence community at this critical time. I was encouraged by Secretary Deutch's testimony at his confirmation hearing regarding the changes that he believes should be made at the CIA. I wish him well as he undertakes a difficult task which is so important to the future well-being of this Nation.●

Mr. KYL. Madam President, I rise to support the nomination of Deputy Secretary of Defense John Deutch to be the Director of Central Intelligence. I have had the opportunity to meet with Secretary Deutch on a number of occasions to discuss defense and intelligence issues and am impressed with his ability in both of these critical areas.

As the President's new senior advisor on intelligence, John Deutch will have the responsibility of placing before the Congress a vision for the intelligence profession that embodies the lessons learned from the cold war and lessons from recent unfortunate mistakes within the agency. He will also be required to steadfastly guard against the politicization of the intelligence mission by government officials who would use intelligence resources for other ends, at the expense of the core programs. My impression of John Deutch is that he is well prepared to meet these challenges.

I believe John Deutch will be someone who is prepared to think seriously about the place and purpose of intelligence in a democracy, both as he fulfills his responsibilities as a senior Government official and as he lays the President's plans and programs before the Congress. In short, Madam President, I believe John Deutch will be a fine Director of Central Intelligence and have every confidence in his ability to lead the intelligence community into the 21st century. I wholeheartedly support his nomination.

Mr. SANTORUM. Madam President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of John M. Deutch, of Massachusetts, to be the Director of the Central Intelligence Agency? On this question, the yeas and nays have been ordered.

The clerk will call the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from New York [Mr. MOYNIHAN] is necessarily absent.

I further announce that, if present and voting, the Senator from New York [Mr. MOYNIHAN] would vote ''yea.''

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 155 Ex.]

YEAS—98

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

NOT VOTING—2

Moynihan	Warner

So the nomination was confirmed.

Mr. DOLE. Madam President, this matter has been cleared with the Democratic leader. I ask unanimous consent that the motion to reconsider the vote by which the Deutch nomination was confirmed be tabled and that the President be immediately notified of the Senate's action.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session and resume consideration of H.R. 956.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER. 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:

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

Coverdell-Dole amendment No. 690 (to amendment No. 596), in the nature of a substitute.

Gorton-Rockefeller modified amendment No. 709 (to amendment No. 690), in the nature of a substitute.

Ms. MOSELEY-BRAUN. Madam President, as I stated at the outset of debate on this bill, I believe it makes sense to have some basic, national product liability standards that apply across the board. In 1995, products manufactured in Illinois are no longer shipped down the street; instead, they are shipped throughout the 50 States, and beyond. The Constitution of the United States, in article 1, section 8, grants Congress the power to regulate interstate commerce. Where our product liability system acts as a disincentive to the manufacture and sale of goods in interstate commerce, Congress has not only a right, but a duty, to reform that system. I believe the Product Liability Fairness Act, while not perfect, is a good step in the reform process, and I am proud to cast my vote in favor of this bill.

I would like to add how pleased I am that, during the past weeks, the Senate very carefully considered and debated each and every amendment that was offered to this bill. I am particularly pleased by the compromise amendment that will soon be offered as a substitute amendment. I believe that the amendment significantly improves the committee reported bill, and I know that it would not have been possible without the vigorous debate that surrounded this legislation.

I strongly support the changes being made to the punitive damages section of the bill Rockefeller-Gorton substitute. While the original bill linked the calculation of punitive awards to economic damages, the amended bill instead links punitives to compensatory damages, a standard that is

much fairer to low-income workers, women who don't work outside the home, children and the elderly, who may not have a great deal of economic damages. I have no objection to making punitive damages proportionate to the harm caused by the product, the goal that the punitive damage limitation is intended to accomplish. That harm should not, however, be limited to out of pocket costs or lost wages. Non-economic damages can often be difficult to calculate, but that does not make them any less real.

Indeed, these compensate individuals for the things that they value most—the ability to have children, the ability to have your spouse or child alive to share in your life, the ability to look in the mirror without seeing a permanently disfigured face. As a notion of fundamental fairness, any congressional attempts to create a punitive damage standard should include both economic and noneconomic damages in its formula, as the Rockefeller-Gorton substitute now does.

In addition, the amended bill contains a provision that will allow a judge to increase the amount of a punitive damage award, if an increased award is necessary to either adequately punish a defendant for its past conduct, or to adequately deter a defendant from engaging in such conduct in the future. I know there have been concerns raised during the course of this debate that, in some cases, punitive damages awarded pursuant to the formula will not be sufficient to either punish or deter. I believe this judge additur provision addresses these concerns, and I want to thank Senators ROCKEFELLER and GORTON for their willingness to add this provision to their legislation. In my opinion, it makes a good bill even better, and it demonstrates their willingness to respond to the concerns of those of us ''in the middle.''

Madam President, last year I stood on the Senate floor, after the Senate failed to invoke cloture on the Product Liability Fairness Act, and stated my desire not to filibuster this bill again. What I wanted to do was debate what alterations the Federal Government should make in the area of product liability law, and to act on a narrow, moderate product liability bill. I am pleased to have a chance to act on such a bill today.

But reporting a bill out of the Senate is only half of the battle; I also want to see this legislation enacted in to law. I believe that can happen, as long as a House-Senate conference committee keeps the bill limited to the subject of product liability, and rejects the draconian, anti-consumer provisions included in legislation which passed the House of Representatives. The votes in the Senate during the past 2 weeks should send a strong signal to the House that the U.S. Senate does not intend to restrict the ability of ordinary citizens to access the courts, under the guise of civil justice reform.

If our colleagues in the House of Representatives truly want a product liability reform bill, I have no doubt that we can obtain one. Our votes in the Senate spell out very clearly what will and will not be acceptable to this body, and I urge my House colleagues to consider those votes very carefully. For despite my desire to enact a product liability reform bill, nothing has changed about my underlying commitment to equal justice under law. I remain just as opposed to loser-pays provisions, caps on noneconomic damages, or changes that would restrict the right of individuals to bring suit for civil rights violations, employment discrimination, and sexual harassment, among other issues, as I have been in the past, and I will be compelled to oppose any legislation that returns from a conference including these provisions.

Madam President, in closing, I would like to commend Senators ROCKEFELLER and GORTON for all of their hard work to enact a product liability reform bill, not only this year, but in past Congresses as well. They are to be commended for championing an issue that needs to be addressed, and for doing so in a way that is balanced and fair. During the past 3 weeks, they have demonstrated a willingness to listen and resolve the concerns raised by myself and other Senators, and have taken steps to improve this legislation. I commend them for their leadership, and I am pleased to vote with them today.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on the pending substitute amendment to H.R. 956, the Product Liability bill.

Slade Gorton, Dan Coats, Richard G. Lugar, John Ashcroft, Rod Grams, Kay Bailey Hutchison, Judd Gregg, Strom Thurmond, Trent Lott, Rick Santorum, Larry E. Craig, Bob Smith, Don Nickles, R.F. Bennett, John McCain, Connie Mack.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the Coverdell-Dole amendment, No. 690, to H.R. 956, the product liability bill, shall be brought to a close?

The yeas and nays are required.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from New York [Mr. MOYNIHAN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 60, nays 38, as follows:

[Rollcall Vote No. 156 Leg.]

YEAS—60

Abraham	Frist	Mack
Ashcroft	Gorton	McCain
Bennett	Gramm	McConnell
Bond	Grams	Mikulski
Brown	Grassley	Moseley-Braun
Burns	Gregg	Murkowski
Campbell	Hatch	Nickles
Chafee	Hatfield	Nunn
Coats	Helms	Pell
Cochran	Hutchison	Pressler
Coverdell	Inhofe	Pryor
Craig	Jeffords	Robb
DeWine	Johnston	Rockefeller
Dodd	Kassebaum	Santorum
Dole	Kempthorne	Smith
Domenici	Kohl	Snowe
Dorgan	Kyl	Stevens
Exon	Lieberman	Thomas
Faircloth	Lott	Thompson
Feinstein	Lugar	Thurmond

NAYS—38

Akaka	Daschle	Leahy
Baucus	Feingold	Levin
Biden	Ford	Murray
Bingaman	Glenn	Packwood
Boxer	Graham	Reid
Bradley	Harkin	Roth
Breaux	Heflin	Sarbanes
Bryan	Hollings	Shelby
Bumpers	Inouye	Simon
Byrd	Kennedy	Simpson
Cohen	Kerrey	Specter
Conrad	Kerry	Wellstone
D'Amato	Lautenberg	

NOT VOTING—2

Warner	Moynihan

The PRESIDING OFFICER (Mr. INHOFE). Are there any Senators who wish to change their vote? If there are no other Senators desiring to vote, on this vote, the yeas are 60, the nays are 38. Three-fifths of the Senators duly chosen and sworn, having voted in the affirmative, the motion is agreed to.

REGARDING THE VISIT BY PRESIDENT LEE TENG-HUI OF THE REPUBLIC OF CHINA ON TAIWAN TO THE UNITED STATES

Mr. MURKOWSKI. I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 103, House Concurrent Resolution 53, relative to the visit by the President of China on Taiwan, and that no amendments be in order to the resolution or the preamble.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (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.

The Senate proceeded to consider the resolution.

Mr. MURKOWSKI. I thank the Chair.

Mr. President, I rise to speak in favor of House Concurrent Resolution 53, which is a concurrent resolution expressing the sense of the Congress that the President of the Republic of China on Taiwan, Lee Teng-hui, be allowed to visit the United States. House Concurrent Resolution 53 is almost identical to my concurrent resolution, Senate Concurrent Resolution 9, which has 52 bipartisan cosponsors, including both the majority and minority leaders, for which I am most grateful. I ask unanimous consent the names of the cosponsors of Senate Concurrent Resolution 9 be printed in the RECORD.

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

COSPONSORS OF SENATE CONCURRENT RESOLUTION 9

Abraham (R–MI)
Akaka (D–HI)
Ashcroft (R–MO)
Bond (R–MO)
Brown, Hank (R–CO)
Burns (R–MT)
Campbell (R–CO)
Chafee (R–RI)
Coats (R–IN)
Cochran (R–MS)
Cohen (R–ME)
Conrad (D–ND)
Coverdell (R–GA)
Craig (R–ID)
D'Amato (R–NY)
Daschle (D–SD)
DeWine (R–OH)
Dole (R–KS)
Dorgan (D–ND)
Faircloth (R–NC)
Feingold (D–WI)
Gorton (R–WA)
Grams (R–MN)
Grassley (R–IA)
Gregg (R–NH)
Hatch (R–UT)
Hatfield (R–OR)
Helms (R–NC)
Hutchison (R–TX)
Inouye (D–HI)
Jeffords (R–VT)
Kassebaum (R–KS)
Kempthorne (R–ID)
Kyl (R–AZ)
Lieberman (D–CT)
Lugar (R–IN)
Mack (R–FL)
McCain (R–AZ)
McConnell (R–KY)
Nickles (R–OK)
Pell (R–RI)
Robb (D–VA)
Rockefeller (D–WV)
Roth, William (R–DE)
Simon (D–IL)
Simpson (R–WY)
Smith (R–NH)
Snowe (R–ME)
Specter (R–PA)
Thomas (R–WY)
Thompson (R–TN)
Thurmond (R–SC)
Warner (R–VA)

Mr. MURKOWSKI. Mr. President, Senate Concurrent Resolution 9 was unanimously reported out of the Senate Foreign Relations Committee in March of this year. That resolution specifically calls on President Clinton to allow President Lee Teng-hui to come to the United States on a private visit, and I wish to emphasize private. House Concurrent Resolution 53 was submitted in the House by Congressmen LANTOS, SOLOMON, and TORRICELLI, and adopted by the House by a rollcall vote of 396 to zero last week.

Mr. President, the question is, Should we let the People's Republic of China dictate who can visit the United States? The current State Department policy of claiming that allowing President Lee to visit would upset relations with the People's Republic of China officials personally is offensive to this Senator.

Taiwan is a friend. They have made great strides toward American goals—ending martial law, holding free and fair elections, allowing a vocal press, and steadily improving human rights.

Taiwan is friendly, democratic, and prosperous. Taiwan is the 6th largest trading partner of the United States, and the world's 13th largest. The Taiwanese buy twice as much from the United States as from the People's Republic of China. Taiwan has the largest foreign reserves and contributes substantially to international causes.

Unfortunately, the United States continues to give the cold shoulder to the leader of Taiwan. You will recall last May, we were embarrassed when the State Department refused an overnight visit for President Lee, who was in transit from Taiwan to Central America. His aircraft had to stop for refueling in Hawaii and he would have preferred to stay overnight before continuing on. Unfortunately, the State Department continues to indicate that the administration will not look favorably on a request for a private visit.

Mr. President, Taiwan and the People's Republic of China are making significant progress in relations between the two of them. I call my colleagues' attention to the existence of an organization known as the Association for Relations Across the Taiwan Straits. That organization operates in Beijing. The counter to that is the Mainland Affairs Council in Taiwan. These two groups get together regularly. They talk about everything conceivable except the political differences between the two countries. That conversation includes such things as hijacking; it also includes such things as eliminating the necessity of goods from Taiwan having to go through Hong Kong before they can come into the People's Republic of China. They are addressing now the direct shipment of goods from Taiwan to the mainland of China.

So here we have evidence that there is this dialog based on trade and commerce, but still the United States is afraid to take steps to encourage our trade and commerce with Taiwan because of the objections from the People's Republic of China.

Now, we know that the People's Republic of China will object to a visit by President Lee because the People's Republic of China complains loudly about many United States initiatives such as United States pressure at the United Nations with regard to China's human rights practices, criteria for China's World Trade Organization membership, and anything we do to help Taiwan. But in the end, the People's Republic of China Government makes a calculation about when to risk its access to the United States and our market. And I think we should make the same calculation.

The precedent does exist, my colleagues, for a visit by President Lee. The administration has welcomed other unofficial leaders to the United States—the Dalai Lama called on Vice President GORE, over the People's Republic of China's objections, I might add. Yasser Arafat came to a White House ceremony. Gerry Adams has been granted numerous visits over Britain's objections.

In these cases, the administration I think has made the correct choice to allow visits to advance American goals, and President Lee's visit would do the same thing. The USA-ROC Economic Council Conference is going to be held in Anchorage, AK, in September. Visiting Alaska would not be a political statement, by any means. We consider ourselves, as my Alaskan colleague Senator STEVENS often remarks, almost another country. President Lee's alma mater, Cornell University in New York, would like him to visit in June to give a speech. It is completely a private matter. It is not a matter of a state visit.

I have heard suggestions that the Special Olympics, which will be held in Connecticut, might extend an invitation to President Lee, as well.

So I would call on my colleagues to vote to send a strong signal to the administration that President Lee should be allowed to make a private—and I emphasize ''private''—visit. I call on the administration to change the policy because it is simply the right thing to do and it is the right time to do it.

If the administration does not change the policy based on this resolution, I think they are going to face binding legislation that would force the President to allow the visit. The administration should act before facing such a situation.

Mr. President, it is my intention to ask for the yeas and nays on this resolution.

I also ask unanimous consent that editorials from cities around the country supporting the Lee visit be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Boston Globe, Apr. 17, 1995]

A SNUB FOR TAIWAN'S DEMOCRATS

Taiwan's president, an alumnus of Cornell, wants to address his alma mater this June. But a visit to the United States by Lee Teng-hui is something that will not happen, says the assistant secretary of state for East Asian affairs.

This pusillanimous attitude ought to change, both for reasons of courtesy and as a sign the United States applauds Lee's work in moving Taiwan toward full democracy.

The United States has a vital interest in the sustenance of democratic governments in Asia.

At issue is the two-China question, one that has vexed US policy makers since Mao Zedong's Communists took over all of China except the island of Taiwan in 1949. For a generation, The United States erred in ignoring the Communist reality; it should not now denigrate the success of Taiwan.

While the mainland was enduring the excesses of the Cultural Revolution, the people of Taiwan were laying the groundwork for an economic boom. As Beijing cracked down on dissidents, the Nationalists on Taiwan were opening up their regime. Last December an opposition leader was elected mayor of Taipei, the capital.

While acknowledging these achievements, Assistant Secretary of State Winston Lord said last year that the United States should do nothing that Beijing would perceive as lending ''officiality'' to US relations with Taiwan. This fear of offending Beijing explains why Lee was denied permission to visit Cornell last June and why Lord implied he should not bother to apply for a visa this year.

When thousands of Taiwanese regularly come to the United States, it is inconsistent to prohibit a private visit by Lee. Moreover, it compounds the insulting treatment he received last year when he was denied permission to spend the night in Honolulu while en route to Latin America. As an alumnus of an American university, he has ties to the United States that transcend politics.

Cornell wants Lee to give a speech at reunion weekend, Lord says Taiwan ''has shown that political openness must accompany political reform and that Asians value freedom as much as other people around the globe.'' That message ought to be heard by university alumni and a billion Chinese.

[From the Providence Sunday Journal, Mar. 19, 1995]

DISHONORABLE DIPLOMACY

Lee Teng-hui came to the United States as a foreign student and earned his Ph.D. in 1968 from Cornell University, one of the nation's premier institutions. His thesis was cited as the year's best dissertation by the American Association of Agricultural Economics. After returning home, he had an eventful career, topped off in 1990 by being elected president of his native land, one of America's oldest and most loyal Asian allies.

To honor Mr. Lee, Cornell officials have invited him to participate in a three-day alumni reunion at the campus in Ithaca, N.Y., in June, when he is scheduled to deliver the school's prestigious Olin Lecture.

A heartwarming story. But there's one big problem: President Clinton may bar Mr. Lee from visiting Cornell.

Why? Because Mr. Lee is the president of Taiwan, and the Clinton administration fears that the Communist regime of the Chinese mainland will be offended if he is allowed to come to America. It's as simple—and as outrageous—as that.

Now, we can understand why officials in Beijing wouldn't want Mr. Lee to visit this country and receive the honors. They hate and fear him and what he stands for because his regime has put the Communists and all their works to shame. He heads a rival Chinese government that, by following largely market-oriented policies, has spearheaded the relatively small (population: 20 million) island of Taiwan's rise as a major player on the world's economic scene. Meanwhile, the Communists—by following the bizarre schemes of the ''Great Helmsman,'' the late Mao Tse-tung—crippled mainland China's economic development (until, in recent years, they finally started to move away from Marxist follies).

Furthermore, the regime on Taiwan is rapidly democratizing itself, allowing the presence of an active opposition party, which has won a strong minority of seats in the legislature. In this regard, it ought to be emphasized that Mr. Lee is the freely elected president of Taiwan. Whereas the Communists now ruling in Beijing—while admittedly not as bad as the mass murderer, Mao Tse-tung—cling to their dictatorial power: no opposition parties, no freedom of speech or press, no free elections. And, of course, no freely elected presidents.

Which gets us back to Mr. Lee. President Clinton, a Rhodes Scholar, is a clever fellow. And he has available to him some very high-priced legal talent, as well as numerous figures—in and out of the State Department—with considerable experience and skill in the diplomatic arts. President Clinton should be able to figure out an adroit way to allow Mr. Lee to make what is essentially a private visit to Cornell and receive his well-deserved honors.

If the Communists in Beijing want to fuss and fume, let them. They may no longer be our enemies, but they are most assuredly not yet our friends. Mr. Lee, on the other hand, represents a brave people who have been our friends and allies for more than four decades. If Mr. Clinton bars Mr. Lee from coming here, he would dishonor not only himself, which would be his business, but the entire United States as well, and the American people should not stand for that.

[From the Washington Times, Apr. 9, 1995]

UNWELCOME MAT FOR OUR FRIENDS

(By Arnold Beichman)

There is every possibility that President Lee Teng-hui of Taiwan may one day be allowed to enter the United States just like Yasser Arafat and Gerry Adams, onetime terrorists, and other statesmen as distinguished as the head of the Palestine Liberation Organization or the leader of Sinn Fein who have been allowed to do so.

The possibility of a visit by the elected president of Asia's island democracy has arisen because the House of Representatives International Relations Committee has urged President Clinton to allow Mr. Lee to enter the United States. Mr. Lee has been invited to attend graduation exercises at his alma mater, Cornell University.

The House panel didn't ask President Clinton personally to receive President Lee. How could it? After all, the appointments schedule of the president of the United States is controlled by the Politburo of the Chinese Communist Party, which decides what Chinese the president may or may not receive. So all the House panel asked Mr. Clinton to do is to allow President Lee to visit—that's it, nothing more—just visit the United States. If Mr. Clinton turns down that request will that mean the Chinese Politburo controls our Immigration and Naturalization Service, too? Perhaps Mr. Clinton could ask the Chinese Politburo to do something about illegal immigration.

It isn't the first time that the appointments schedule of the president of the United States was under the control of a foreign communist power. In 1975, President Ford declined to receive Alexander Solzhenitsyn since such an act of hospitality and respect for human rights would have offended the Soviet Politburo. Or so Secretary of State Kissinger believed. After his election defeat in 1976, Mr. Ford confessed that he had erred in barring the great Russian dissident from the White House.

The power of the Chinese Communist Politburo extends not only to which Chinese can visit the United States but it also determines who can overnight on our soil. Last year, Mr. Lee was barred from overnighting in Honolulu lest such a simple act enrage the Beijing gerontocrats. However, it's quite all right to enrage the British government and Prime Minister John Major in receiving Gerry Adams and allowing him to engage in dubious fund raising.

What presidents and their advisers do not understand is that the reaction of totalitarians to American policy depends less on a given American action than it does on the party's long-range view. It didn't matter to Josef Stalin that Adolf Hitler inveighed against the Soviet Union or communism. When it suited Stalin's needs, he signed a Nazi-Soviet pact in August 1939. And when it suited Hitler, he attacked the U.S.S.R. despite the Nazi-Soviet Pact. President Nixon ordered the bombing of North Vietnam while he was in Moscow. The Soviet Politburo didn't order Mr. Nixon out of the Soviet Union to show its displeasure. Moscow negotiated with the United States despite the bombing of its military ally, North Vietnam.

Whenever it suits Beijing to violate its agreements with the United States, it will. Whenever it suits Beijing to lose its temper with Mr. Clinton, it will—regardless of protestations of past friendship.

For the United States to continue to treat Taiwan as an outcast nation as it has for a quarter-century because of the Communist Politburo is a sign of weakness that will not be lost on Deng Xiao-ping's successors. After all, Taiwan's democratic credentials are of the highest. Its market economy has propelled Taiwan—remember this is a country with a population of but 21 million—into the 13th largest trading nation in the world. Taiwan enjoys a rule of law. It recognizes property rights. There is a legal opposition and a free press.

If we continue to treat a friendly people, a friendly government and its chosen representatives as nonpersons at a time when we would like to see a world of democracies and when to further that course we have even sent troops overseas, as we did to Haiti, isn't it time—at the very least!—to tell the Beijing totalitarians that the president of Taiwan can overnight on American soil anytime he wants to? And, perhaps, even stay for two nights?

[From the Washington Post, Mar. 31, 1995]

KOWTOW—THE STATE DEPARTMENT'S BOW TO BEIJING

(By Lorna Hahn)

Lee Teng-hui, president of the Republic of China on Taiwan, wishes to accept an honorary degree from Cornell University, where he earned his PhD in agronomy.

Last year, when Cornell made the same offer, Lee was refused entry into the United States because Beijing belligerently reminded the State Department that granting a visa to a Taiwanese leader would violate the principle of ''One China'' (Cornell subsequently sent an emissary to Taipei for a substitute ceremony.) This year, on Feb. 9, Assistant Secretary of State Winston Lord told a congressional hearing that our government ''will not reverse the policies of six administrations of both parties.''

It is high time it did. The old policy was adopted at a time when China and Taiwan were enemies, Taiwan's government claimed to represent all of China, and Beijing's leaders would never dream of meeting cordially with their counterparts from Taipei. Today, things are very different.

Upon assuming office in 1988, Lee dropped all pretense of ever reconquering the mainland and granted that the Communists do indeed control it. Since then, he has eased tensions and promoted cooperation with the People's Republic of China through the Lee Doctrine, the pragmatic, flexible approach through which he (1) acts independently without declaring independence, which would provoke Chinese wrath and perhaps an invasion; (2) openly recognizes the PRC government and its achievements and asks that it reciprocate, and (3) seeks to expand Taiwan's role in the world while assuring Beijing that he is doing so as a fellow Chinese who has their interests at heart as well.

Lee claims to share Beijing's dream of eventual reunification—provided it is within a democratic, free-market system. Meanwhile, he wants the PRC—and the world—to accept the obvious fact that China has since 1949 been a divided country, like Korea, and that Beijing has never governed or represented Taiwan's people. Both governments, he believes, should be represented abroad while forging ties that could lead to unity.

To this end he has fostered massive investments in the mainland, promoted extensive and frequent business, cultural, educational and other exchanges, and offered to meet personally with PRC President Jiang Zemin to discuss further cooperation. His policies are so well appreciated in Beijing—which fears the growing strength of Taiwan's pro-independence movement—that Jiang recently delivered a highly conciliatory speech to the Taiwanese people in which he suggested that their leaders exchange visits.

If China's leaders are willing to welcome Taiwan's president to Beijing, why did their foreign ministry on March 9, once again warn that ''we are opposed to Lee Teng-hui visiting the United States in any form''? Because Beijing considers the ''Taiwan question'' to be an ''internal affair'' in which, it claims, the United States would be meddling if it granted Lee a visa.

But Lee does not wish to come here in order to discuss the ''Taiwan question'' or other political matters, and he does not seek to meet with any American officials. He simply wishes to accept an honor from a private American institution, and perhaps discuss with fellow Cornell alumni the factors that have contributed to Taiwan's—and China's—outstanding economic success.

President Clinton has yet to make the final decision regarding Lee's visit. As Rep. Sam Gejdenson (D-Conn.) recently stated: ''It seems to me illogical not to allow President Lee on a private basis to go back to his alma mater.'' As his colleague Rep. Gary Ackerman (D-N.Y.) added: ''It is embarrassing for many of us to think that, after encouraging the people and government on Taiwan to democratize, which they have, [we forbid President Lee] to return to the United States . . . to receive an honorary degree.''

[From the Wall Street Journal, Mar. 15, 1995]

TWO VISITORS

Gerry Adams can tour the United States, but Lee Teng-hui can't. Gerry Adams will be feted and celebrated Friday at the White House, but when Lee Teng-hui's plane landed in Honolulu last year, the U.S. government told him to gas up and get out. The Gerry Adams who is being treated like a head of state by the Clinton Administration is the leader of Sinn Fein, the political arm of the Irish Republican Army. The Lee Teng-hui who has been treated like an international pariah by the Administration is the democratically elected President of the Republic of China, or Taiwan. The disparate treatment of these two men tells an awful lot about the politics and instincts of the Clinton presidency.

Gerry Adams's face will be all over the news for his Saint Paddy's Day party with Bill O'Clinton at the White House, so we'll start with the background on the less-publicized President of Taiwan.

Cornell University has invited President Lee to come to the school's Ithaca, N.Y., campus this June to address and attend an alumni reunion. In 1968, Mr. Lee received his doctorate in agricultural economics from Cornell. The following year, the American Association of Agricultural Economics gave Mr. Lee's doctoral dissertation, on the sources of Taiwan's growth, its highest honor. In 1990, Taiwan's voters freely elected Mr. Lee as their President. He has moved forcefully to liberalize Taiwan's political system, arresting corrupt members of his own party. Last year, the Asian Wall Street Journal editorialized: ''Out of nothing, Taiwan's people have created an economic superpower relative to its population, as well as Asia's most rambunctious democracy and a model for neighbors who are bent on shedding authoritarian ways.''

Asked last month about President Lee's visit to Ithaca, Secretary of State Christopher, who professes to wanting closer links with Taiwan, said that ''under the present circumstances'' he couldn't see it happening. The Administration doesn't want to rile its relationship with Beijing. The Communist Chinese don't recognize Taiwan and threaten all manner of retaliation against anyone who even thinks about doing so. That includes a speech to agricultural economists in upstate New York. This, Secretary Christopher testified, is a ''difficult issue.''

Sinn Fein's Gerry Adams, meanwhile, gets the red carpet treatment at 1600 Pennsylvania Avenue. Mr. Adams assures his American audiences that the IRA is out of the business of blowing body parts across the streets of London. He promises the doubters that if people give him money, it won't be used to buy more guns, bullets and bombs for the high-strung lads of the IRA.

Now before the Irish American communities of Queens and Boston get too roiled over our skepticism toward Northern Ireland's most famous altar boy, we suggest they take their grievances to John Bruton, who is Irish enough to be the Prime Minister of Ireland. He, too, will be at Bill Clinton's St. Patrick's Day party for Gerry Adams, and he has a message for the two statesmen: The IRA has to give up its arms. ''This is an item on the agenda that must be dealt with,'' Premier Bruton said Monday in Dublin. ''It's a very serious matter. There are genuine fears felt by members of the community that have been at the receiving end of the violence.''

We don't at all doubt that somewhere amid the Friday merriment, Mr. Clinton will ask Mr. Adams to give up the guns and that Mr. Adams will tell the President that is surely the IRA's intent, all other matters being equal.

It is hard to know precisely what motivates Mr. Clinton to lionize a Gerry Adams and snub a Lee Teng-hui. The deference to China doesn't fully wash, because when Britain—our former ally in several huge wars this century—expressed its displeasure over the Adams meeting, the White House essentially told the Brits to lump it. Perhaps the end of the Cold War has liberated liberal heads of state into a state of lightheadedness about such matters. We note also this week that France's President Francois Mitterrand has been entertaining Fidel Castro at the Elysees Palace.

But it's still said that Bill Clinton has a great sense of self-preservation. So if he's willing to personally embrace Gerry Adams while stiffing the Prime Minister of England and forbidding the President of Taiwan to spend three days with his classmates in Ithaca, there must be something in it somewhere for him.

[From the Memphis Commercial Appeal, Apr. 22, 1995]

LET LEE VISIT

Eleven months after Communist China's old tyrants loosed the tanks on pro-democracy students in Tiananmen Square, Taiwan's new president, Lee Teng-Hui, released several political prisoners—the first step in his rapid march to democratizing ''the other China.'' Now guess who—the despots or the democrat—is being banned from setting foot in the Land of the Free.

Secretary of State Warren Christopher drones that to grant Lee a visa to address his alma mater, Cornell University, in June would be ''inconsistent with the unofficial character of our relationship'' with Taiwan.

That relationship dates from 1979, when Jimmy Carter severed diplomatic ties with Taiwan to stroke Beijing, which views the island nation as a rebellious province. Presumably, the red carpet remains out for the massacre artists whose sensibilities Christopher cossets.

Not everyone in Washington abides this outrage against a country making strides toward real political pluralism and free-market economics. The House Committee on International Relations, burying partisanship, recently voted 33–0 in moral support of Lee's visit. (The Senate Foreign Relations Committee backed a similar resolution in March.)

With more bite, Rep. Robert Torricelli (D-N.J.) has introduced legislation that would compel the State Department to issue visas to democratically elected Taiwanese leaders. Meanwhile, Cornell president Frank Rhodes says Lee's return to campus ''would offer an extraordinary educational opportunity.''

The administration's posture—stubborn pusillanimity—is odd. Lee's visit clearly would not be a state-to-state affair. If Communist China's leaders sulked anyway, so what? How would they retaliate? Give their tank commanders directions to California? Refuse to sell us the $31.5 billion in goods they exported to the United States in 1994?

Congress should reaffirm America's welcome to democracy's friends by quickly passing the Torricelli bill; as for the administration, its Christopher is obviously no patron saint to all travelers.

[From the Durham Herald-Sun, Apr. 20, 1995]

TAIWAN PRESIDENT; SORRY, YOU CAN'T TALK HERE

For a country that beats its chest about freedom of speech, we're setting a very hypocritical example in the case of Lee Teng-Hui, the president of Taiwan. He wants to come back to Cornell University, his alma mater, to give a speech.

No way, says the Clinton administration, which argues that mainland China is the one and only China. Presumably that leaves Taiwan, at least in Washington's eyes, as pretty much what Beijing says it is: a rebellious province.

Rebellious or not, at least Taiwan is moving toward a more open and democratic society than the mainland. Yet Lee is being denied a visa for his Cornell visit because, in the words of Secretary of State Warren Christopher, it would be ''inconsistent with the unofficial character'' of this country's relationship with Taiwan. The United States recognized Taiwan as the legitimate government of China until 1979, when then President Jimmy Carter decided that ties with the mainland regime were more vital to the interests of the United States.

In the long shadow of history, Carter's decision is likely to win favor as the correct

one. But that doesn't mean we ought to slam the door on the elected leader of Taiwan just because the gerontocracy in Beijing might get a case of political heartburn. These fellows are, after all, the very officials who turned the Chinese army loose in Tiananmen Square.

In any case, Lee's visit to Cornell would not be a pomp-and-circumstance state visit, but rather a low-visibility affair. The House Committee on International Relations knew that when it voted 33–0 on a resolution backing Lee's visit. The Senate Foreign Relations Committee also adopted a resolution in favor of Lee. In addition, Frank Rhodes, the president of Cornell, has spoken up for Lee.

Rep. Robert Torricelli, a New Jersey Democrat, is so incensed by the administration's deliberate snub of Lee that he has introduced a bill in the House that would mandate the State Department to issue a visa to Lee or any other freely elected official from Taiwan.

Good. If the State Department won't let Lee into the motherland of the First Amendment, then Congress ought to see to it that he gets a visa. As for the State Department, it could use some sensitivity training in good manners.

[From the Washington Times, May 2, 1995]

A MATTER OF HONORS DUE A STAUNCH FRIEND

(By James Hackett)

After two years of insulting America's friends and allies while accommodating America's enemies, the Clinton Administration finally has hit bottom. The matter involves Lee Teng-hui, president of the Republic of China on Taiwan, who has been invited by Cornell University to receive an honored alumnus award at ceremonies at Ithaca, N.Y., in early June. Mr. Lee received his Ph.D. at Cornell and wants to accept the honor bestowed by his alma mater.

President Lee is a native of Taiwan and the first popularly elected president of a country that long has been a close friend and ally of the United States. But incredibly, the State Department will not allow Mr. Lee to visit the United States, even for such an unofficial purpose, lest it annoy the communist rulers on the mainland.

The State Department's China hands, with the approval of the Clinton White House, are trying hard to accommodate the wishes of the government in Beijing. Last year, Mr. Lee and his minister for economic affairs were denied permission to attend an Asian economic summit in Seattle, despite Taiwan's status as an Asian economic powerhouse that buys more than twice as much from the United States as mainland China.

The worst insult to Taiwan, however, was a disgraceful episode last May when Mr. Lee was denied permission to stay overnight in Honolulu after his plane stopped there to refuel. The State Department is following a policy of no overnight stays on U.S. soil for senior Taiwan officials, treatment more appropriate for criminals than for friends and allies.

In contrast, the administration is eager to please the regime in Beijing, a government that continues to test nuclear weapons while developing a whole new series of ballistic missiles, including some that can carry nuclear weapons anywhere in Asia and even across the Pacific. China also is buying frontline Russian SU–27 combat aircraft, Russian Kilo-class submarines, and other equipment under a major military modernization program. This Chinese development of power projection capabilities is a direct threat to Taiwan and the other democracies of Asia.

China's military buildup is being achieved even as the communist regime continues to suppress human rights, commits systematic genocide in Tibet, confronts its neighbors with claims on oil deposits and islands in the South China Sea, and threatens to invade Taiwan if that democracy declares its independence. Yet the Clinton administration wants close relations with the Chinese military and is eager to sell China high-speed computers and other advanced technologies that have significant military applications. Last October, Mr. Clinton sent Defense Secretary William Perry to Beijing to cement relations with the Chinese army, and Mr. Perry wound up toasting the commanders who crushed the democracy uprising.

Policy toward Taiwan, however, continues to be shaped by the Shanghai Communique that was signed before the Tiananmen Square uprising, which requires the United States gradually to decrease the quality and quantity of military equipment sold to Taiwan. Consequently, even the F–16A/B aircraft that President Bush approved for sale to Taiwan just before the 1992 election are the oldest models of that fighter, inferior even to the model being sold to Saudi Arabia.

As China builds up its offensive military force, the United States must help Taiwan defend itself. Congress should disavow the ill-considered Shanghai Communique and press Mr. Clinton to sell first-line military equipment, including the best available air, sea, and missile defenses, to our friends on Taiwan.

Members of Congress of both parties are increasingly unhappy with Mr. Clinton's China policy and irate at the treatment of Taiwan's President Lee. The House International Relations Committee approved by a vote of 33–0 a resolution calling on Mr. Clinton to welcome President Lee to visit Cornell University, and to allow him to attend a planned meeting of the U.S.-Taiwan Economic Council in Anchorage, Alaska. But the administration has ignored this unanimous bipartisan congressional resolution.

If President Lee is denied permission to receive his honors at Cornell, the Clinton administration's lack of principle will have dragged this country to a new low. The House is expected to bring this issue to a floor vote today to demand prompt approval of a visa for Mr. Lee and the restoration of common decency to our relations with Taiwan. The Senate should quickly follow suit.

[From the Rocky Mountain News, Apr. 19, 1995]

ODD WAY TO REWARD A FRIEND

Eleven months after Communist China's old tyrants loosed the tanks on pro-democracy students in Tianamen Square, Taiwan's new president, Lee Teng-Hui, released several political prisoners—the first step in his rapid march to democratizing ''the other China.'' Now guess who—the despots or the democrat—is being banned from setting foot in the Land of the Free. Secretary of State Warren Christopher drones that to grant Lee a visa to address his alma mater, Cornell University, in June would be ''inconsistent with the unofficial character of our relationship'' with Taiwan. That relationship dates from 1979 when Jimmy Carter severed diplomatic ties with Taiwan to stroke Beijing, which views the island-nation as a rebellious province. Presumably, the red carpet remains out for the architects of the Tianamen massacre whose sensibilities Christopher cossets.

Not everyone is Washington abides this outrage against a country making strides toward real political pluralism and free-market economics. The House Committee on International Relations, burying partisanship, recently voted 33–0 in moral support of President Lee's visit. (The Senate Foreign Relations Committee backed a similar resolution in March.) With more bite, Rep. Robert Torricelli, D–N.J., has introduced legislation that would compel the State Department to issue visas to democratically elected Taiwanese leaders. Meanwhile, Cornell president Frank Rhodes says Lee's return to campus ''would offer an extraordinary educational opportunity.''

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[From the Seattle Times, Feb. 11, 1995]

THE WRONG CHINA POLICY

President Lee Teng-hui of Taiwan has again been denied entry into this country and it's time once again to ask the simple question: Why?

Lee is the democratically elected leader of the 22 million Chinese on Taiwan who form an economy that is one of America's most vigorous trading partners. He has a Ph.D. from Cornell University in upstate New York, something one would wish more foreign leaders possessed.

Cornell wants to offer this distinguished graduate an honorary degree. The Clinton administration, following the policy of previous administrations, says Lee can't come back to this country. The reason is that the mainland Chinese would be offended.

That policy is inexplicable. Essentially, the U.S. is allowing mainland China to dictate the terms of our relations with one of our best trading partners. Lee's policies and economy is far more admirable than the mainland's, but we keep him at arm's length. At the minimum, Lee should be allowed to visit his alma mater. An official visit to Washington, D.C. is not a bad idea, either.

[From the Richmond Times-Dispatch, Sept. 26, 1994]

TALE OF TWO NATIONS

The Clinton administration is committing hundreds of millions of dollars, and potentially the lives of many American military personnel, to the ''restoration'' of democracy in Haiti. If that third-rate nation's brutal politicians and policemen suspend their practice of murdering their critics and oppressing the populace, the United States may reward the country with generous economic aid for years to come. And, of course, its diplomats will continue to receive invitations to White House soirees.

Meanwhile, how does the Clinton administration reward an old American ally that is democratizing by choice, that has established a commendable record on human rights, that has embraced the free enterprise system, and that does enough business with the United States to support more than 300,000 American jobs? By throwing it a few crumbs and telling it to keep its officials away from the White House and the State Department.

That about explains the Clinton administration's new and supposedly improved policy on the Republic of China on Taiwan. The President has condescendingly allowed Taiwan to rename its unofficial mission here from ''The Coordination Council for North American Affairs'' to ''The Taipei Economic and Cultural Representative's Office in the

United States,'' which more clearly described the mission's function.

He also has removed the ban on direct contacts between American economic and technical officials of non-Cabinet rank and Taiwanese government officials in Taipei, but Taiwanese officials stationed in the United States will not be permitted to visit the State Department. And the President may support Taiwan's membership in certain international organizations, such as those concerned with trade, when he can do so without implying diplomatic recognition of that country.

In other words, Taiwan is to remain a diplomatic pariah whose president is not even permitted to land on American soil long enough to play a round of golf.

Taiwan deserves better treatment. It is the United States' sixth-largest trading partner. It stood shoulder to shoulder with the United States during the darkest and most dangerous phases of the Cold War. It has used the United States as a model in building its economic and political structures. Voluntarily and enthusiastically, it is developing exactly the kind of democracy that the United States advocates.

The United States withdrew diplomatic recognition from Taiwan during the Carter administration, and denies it still, in an effort to cultivate the friendship of mainland Communist China, which asserts sovereignty over Taiwan and vows to reclaim that island someday. Taiwan is also committed to eventual reunification. The two countries have developed important commercial ties in recent years, but they are far from agreement on the terms for merging politically into a new united China.

Strong arguments based on both principle and political reality can be made against the United States' eagerness to appease Communist China at the expense of an old American friend. Tomorrow Senator Robb will convene a hearing of his Subcommittee on East Asian and Pacific Affairs to review the administration's China policies. The exchange promises to be vigorous.

Democratic Senator Paul Simon of Illinois considers it wrong as a matter of principle for the United States to disdain a country that has ''a multi-party system, free elections, and a free press—the things we profess to champion—while we continue to cuddle up to the mainland government whose dictatorship permits none of those.'' Heritage Foundation China analyst Brett Lippencott suggests that by developing closer ties to Taiwan the United States could promote the reunification of China. The reason, essentially, is that the failure to enhance Taiwan's ''international status could weaken those in Taiwan who favor eventual reunification . . . and strengthen those who seek an independent Taiwan.''

Obviously, the actual existence of two Chinas creates a difficult and delicate problem for the United States. But in dealing with it, our leaders should occasionally do what is right instead of always doing what they think will please the tyrannical rulers of the world's last remaining major Communist stronghold.

[From the Dallas Morning News, Sept. 27, 1994]

TAIWAN—SENATE SHOULD URGE GREATER WHITE HOUSE SUPPORT

For the second consecutive year, Taiwan's bid for membership in the United Nations has been thwarted. But however many ''no'' votes may have been cast against Taiwan at the U.N., the island democracy off the coast of mainland China deserves far better treatment from the Clinton administration.

Last week's anti-Taiwan vote by the 28-member General Assembly steering committee was hardly surprising. Because Communist China considers Taiwan to be a ''renegade province,'' China has waged an ongoing and heavy-handed campaign against Taiwan since 1949.

As relations have warmed between the United States and China, U.S.-Taiwan relations have suffered. U.S. policy continues to be based on the traditional formula that says, ''There is only one China, and Taiwan is a part of China.'' To be sure, President Clinton attempted to boost economic and commercial ties with Taiwan earlier this month by calling for more high-level visits. He is putting special emphasis on those relating to technical and economic issues. But that's insufficient.

Today may be another milestone in the evolution of U.S.-Taiwan relations. The Clinton administration's new Taiwan policy is scheduled to be examined by the East Asian and Pacific affairs subcommittee of the Senate Foreign Relations Committee. As Sen. Paul Simon of Illinois has pointed out, the first thing the Senate should note is that Taiwan features a multi-party system, free elections and a free press. He's right.

Earlier this year, President Clinton said in his State of the Union message that ''the best strategy to ensure our security and to build a durable peace is to support the advance of democracy elsewhere.'' The East Asian and Pacific affairs subcommittee chairman, Charles Robb of Virginia, should recite those words in his hearing room today.

Taiwan is the perfect place for the Clinton administration to translate words into action. The way to do that is by giving Taiwan greater recognition for its democratic advances.

[From the Boston Herald, Mar. 18, 1995]

LET TAIWAN PRESIDENT VISIT

President Clinton's China policy (essentially, give Beijing whatever it wants) is about to be challenged over his snubbing of Taiwan.

Cornell University has invited one of its graduates to address an alumni reunion in June. He is Lee Teng-hui, who received a doctorate in agricultural economics from Cornell in 1968. He is president of the Republic of China on Taiwan.

Since 1979, Washington has taken the position that the Communist government in Beijing, one of the most repressive on earth, is the exclusive representative of the Chinese people. Taiwan is a democracy and one of our largest trading partners.

To placate the People's Republic, the president of Taiwan isn't allowed to visit the United States, even in an unofficial capacity. Last May, when Lee stopped in Honolulu en route to Costa Rica, the State Department generously offered to permit him to enter the airport, provided he remain in quarantine. Lee chose to stay on his plane.

Why the administration must allow Beijing to jerk its strings is a mystery. The regime is not the least cooperative on human rights or trade.

Congressional Republicans are threatening to revolt. Sen. Frank Murkowski (R–Alaska) has 35 co-sponsors on a resolution calling on the administration to allow Lee to visit Cornell. If the resolution is ignored, Murkowski is threatening to reopen the issue of U.S. relations with Taiwan.

This is a fight the president doesn't need. Beijing may bluster but ultimately will do nothing. The world won't come to an end if one of Cornell's more distinguished alumni visits his alma mater.

[From the Tampa Tribune, Mar. 26, 1996]

WHY TREAT TAIWAN LIKE DIRT?

Standing up for what you believe is not always easy in international affairs, and President Clinton probably wishes people wouldn't force him into areas of diplomacy where he is so uncomfortable.

But it's happening again. Pesky Cornell University is inviting one of its graduates, Taiwan's President Lee Teng-Hui, to give a speech there in June. So President Clinton must decide whether to allow the visit, sure to anger mainland China, or to continue the policy of pretending Taiwan's top leaders have the plague.

Helping keep the issue in the public eye is a proposed Senate resolution, sponsored by Frank Murkowski of Alaska and co-sponsored by Sen. Connie Mack of Florida and 34 others.

Each of the many ''whereas'' paragraphs in the resolution contains a bit of information sure to make the President twitch. Taiwan is the United States' sixth-largest trading partner; it supports democracy and human rights; it has a free press and free elections; its elected leaders deserve to be treated with respect and dignity; and the U.S. Senate has voted several times last year to welcome President Lee to the United States.

Perhaps if President Clinton were more confident in the diplomatic skills of his administration, he would be less cautious about putting a few old Communist tyrants in a temporary huff.

[From the Oregonian, Feb. 24, 1995]

STRENGTHEN U.S.-TAIWAN TIES

Taiwan has made remarkable efforts to do the kinds of things that United States foreign policy has asked of it. The Clinton administration ought to reward that effort by further loosening the shackles on U.S. Taiwanese relations. It made some hopeful changes last September, but badly needs to do more.

Members of both parties in Congress are dismayed—rightly so—at how this country has treated Taiwan's reformist President Lee Tanghui. It forbade him to stay overnight when his plane landed in Hawaii for refueling last May on a trip to Central America, and so far has refused permission for Lee to enter the United States, even as a private citizen acting in a wholly unofficial capacity, to receive an honorary degree from his alma mater, Cornell University.

The reason for that is the ''one China'' policy adopted in 1979, when the United States finally abandoned hope that the rump Nationalist government on Taiwan would ever regain control of mainland China, the communist People's Republic.

China considers Taiwan a rogue province. By a combination of bluster and threat, it has long persuaded other nations and international organizations to isolate Taiwan.

But that doesn't mean the United States shouldn't do much more to strengthen its unofficial economic, political and cultural ties with Taiwan pending a final resolution of the Taiwan-China dispute.

Taiwan is our fifth-largest trading partner (third-largest for the Columbia-Snake River Customs District) and an economic powerhouse in Asia. We ship twice as many goods to the island of 20 million people as we do to the mainland.

Taiwan has made immense progress along the road from virtual dictatorship under the late Chiang Kai-shek and his son, Chiang Ching-kuo, to representative democracy.

One result has been that Lee's ruling Nationalist Party faces significant opposition

not only from the populist Democratic Progressive Party, which favors Taiwanese independence from China, but also from a breakaway Nationalist group calling itself the New Party.

Unlike the People's Republic. Taiwan has a free press and a television system that is only nominally government-controlled. The Taipei government tolerates an illegal cable TV system that broadcast a ''democracy channel'' and news from the mainland.

Unlike the People's Republic, Taiwan has acknowledged past human-rights abuses, including the Nationalist slaughter of thousands of native Taiwanese in 1947, two years before Chiang's forces finally lost their civil war against the communists, and has made far more human-rights progress than the mainland.

Taiwan has taken more positive steps then the mainland to protect U.S. intellectual property—the current sore point between Washington and Beijing.

These are exactly the combination of reforms and brisk march toward democracy that the United States urges on Russia, China and some Latin American nations, among others. The only difference is that Taiwan is getting it done.

That should be rewarded with closer ties to the United States and U.S. help in getting Taiwan full participation in the World Trade Organization, International Monetary Fund. World Bank and other organizations that should be more concerned with facts as they are than facts as China might like them to be.

And let Lee visit Cornell.

Mr. JOHNSTON. Mr. President, I intend to offer my thoughts on House Concurrent Resolution 53, but before doing so, I would like to know if my colleague from Alaska might engage in a colloquy on a particular point about this resolution on which we would agree: that it is important to maintain a productive relationship with the People's Republic of China.

Mr. MURKOWSKI. I would be happy to enter into a colloquy with my good friend from Louisiana on this point.

Mr. JOHNSTON. I wonder if it is the Senator's intent by this resolution to begin a two China policy, that is to violate the terms of the agreement the United States made with the People's Republic of China in 1979 to recognize the People's Republic of China as the sole legal Government of China? As my colleague knows, since signing that agreement, the United States has maintained only unofficial relations with Taiwan, keeping commercial, cultural, and other relations without official Government representation and without diplomatic relations.

Mr. MURKOWSKI. I believe this resolution is consistent with our agreements with the People's Republic of China and is consistent with the Taiwan Relations Act as well. This resolution does not, in this Senator's opinion, violate our one-China policy. I believe that the United States can allow a private visit by President Lee to his alma mater, Cornell University, and to a business conference in Alaska without compromising United States foreign policy toward the People's Republic of China.

This resolution merely calls on the administration to recognize that President Lee should be admitted to attend private events in the United States to promote our friendly, albeit unofficial, ties with the Republic of China on Taiwan, as envisioned under the Taiwan Relations Act.

Since 1979, circumstances have changed between the People's Republic of China and the Republic of China on Taiwan. I would direct my colleague's attention to the relationship that has developed between the People's of China and the Republic of China on Taiwan through their unofficial entities: the Association for Relations Across the Taiwan Straits in Beijing and the Mainland Affairs Council in Taiwan. The two sides get together and talk about everything but politics. Trade and investment has ballooned. It seems entirely appropriate that the United States should also be able to take actions to increase our trade and economic ties with Taiwan.

Mr. JOHNSTON. I thank the Senator from Alaska for that clarification. As I know my colleague is aware, diplomacy is often a gray area, and I believe there can be honest disagreements over when an action crosses a sometimes arbitrary line. On this particular issue, the Senator from Alaska and I might disagree over where that line is drawn. From this colloquy I think we agree that it is in the interests of the United States to maintain the fundamental United States-People's Republic of China relationship.

Mr. MURKOWSKI. I thank my friend from Louisiana for that colloquy.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I will be very brief.

Mr. President, even with this important clarification, I remain extremely concerned about how actions such as this, no matter how harmless they may appear, could impact the United States relationship with the People's Republic of China. For almost 15 years, the United States has remained committed to a one-China policy that includes only unofficial recognition of Taiwan. This commitment is backed up by several joint communiqués issued by the United States and the People's Republic of China and by the Taiwan Relations Act. I am concerned about the ambiguities and confusion a visit by President Lee to the United States could raise in the eyes of the People's Republic of China. Although this visit would be a private one, Mr. Lee is the President of Taiwan, he would be staying on American soil in an official capacity, and the United States does have a commitment to the People's Republic of China to maintain only unofficial relations with Taiwan. I hesitate to muddy the waters and compromise our carefully crafted, delicate relations with the People's Republic of China by initiating vague policies of recognition of Taiwan's leaders, whether such visits are private or not. The People's Republic of China is entering a period of transition. Deng Xiaoping is over 90, and it is unclear who will succeed him as head of the Chinese Government. Now is not the time to look as if we were altering the United States steadfast commitment to a one-China policy.

Should this resolution pass, as I expect it will, I urge the State Department not to follow this nonbinding resolution and not to issue a visa to Mr. Lee. I have the greatest respect for President Lee and this is in no way meant to be a personal affront to him. I have seen relations between the United States and Taiwan grow and improve and I have seen Taiwan take great strides toward democracy. In fact, this administration completed a comprehensive review of our policy with Taiwan last year and implemented a number of appropriate steps to further improve our relationship with Taiwan. Taiwan has held free and fair elections for some offices, and I hope this trend of expanding free and fair elections will continue in the near future, including for the office of the Presidency. I hope the United States will continue to maintain its ties with Taiwan, but these ties must remain unofficial.

Mr. President, this is a very, very critical time for China, the largest nation in the world upon which the stability of all of Asia and, some would say, the stability of all of the world depends.

Deng Xiaoping, their leader, is transitioning out. New leaders are coming in. Therefore, it is very important that the United States not do anything to upset what is one of the most important pillars of our relationship with them, which is a one-China policy.

Now the question is, Does this violate the one-China policy?

The Secretary of State testified before the Budget Committee in February that the United States has committed itself to the concept of one China and to having an unofficial relationship with Taiwan. He also stated that if the President of Taiwan ''is wanting to transit to the United States when he is going someplace else, that would be acceptable under the new arrangements. But it is regarded as being inconsistent with the unofficial character of our relationships with Taiwan for the President to visit here in what would be, in effect, an official capacity.'' It is my hope that, should this resolution be enacted by the Congress, the administration will continue to hold to this policy and will not issue the travel visa to President Lee. As I said earlier, while I have the greatest respect for the President and people of Taiwan, and commend them on the significant progress they have made toward democracy, the United States Congress should not alter over 15 years of United States foreign policy with a single resolution. Our current foreign policy toward China and Taiwan brings maximum benefit to the United States; we have official diplomatic ties with

Beijing while maintaining trade and cultural relations with Taipei. We should not change a policy that continues to serve U.S. interests so well.

Our Secretary of State believes this does violence to the one-China policy. I, therefore, would urge my colleagues to vote against this resolution, and I urge the Secretary of State not to issue the visa called for by this resolution. I stand second to no one in my affection and regard for Taiwan. But the way to show our regard and affection for Taiwan and President Lee is not by departing, however ambiguously, from the one-China policy.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I will take only 1 minute.

I think this is a sound resolution. I want to get along with the People's Republic of China, but they cannot dictate what we do. Taiwan has a freely elected government and a free press, all the things we say that we allow. The President of Taiwan wants to come over here on a private visit and go to his alumni meeting at Cornell University. I think for us to knuckle under to the People's Republic of China under those circumstances just goes contrary to everything we say we profess. I strongly support the resolution.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, this resolution has one fault: It is too late in coming. It has been reported out favorably by the Foreign Relations Committee. It is a mistake that we should have corrected a long time ago.

Senator MURKOWSKI and I, and others, have for a long time been protesting this travesty in the conduct of U.S. foreign relations. How and when did the United States reach the point in United States-Taiwanese relations that United States foreign policy could preclude a visit to the United States of the highest ranking, democratically elected official of Taiwan?

Though I did not often disagree with Ronald Reagan—I did on occasion, and one of those times was when President Reagan's advisers made a regrettable decision which risked jeopardizing our relations with Taiwan by cuddling up to the brutal dictators in Beijing. Since that time, we have been hiding behind a diplomatic screen when demonstrating our commitment and loyalty to the Taiwanese people.

Mr. President, at the time President Reagan's advisers made that grievous error, Congress was promised that the United States would continue to ''preserve and promote extensive, close and friendly * * * relations'' with the people on Taiwan. But successive administrations have not lived up to that promise. How in the world could any one consider it close and friendly to require the President of Taiwan to sit in his plane on a runway in Honolulu while it was refueled? I find it hard to imagine that United States relations with Red China would have come to a standstill because of a weekend visit to the United States by Taiwan's President Lee.

The President's China policy is in poor shape at this point—even members of his team recognize that. So, how can anyone really believe that allowing President Lee to travel to his alma mater—or to vacation in North Carolina—would send our already precarious relations with Red China plummeting over the edge?

Last time I checked, the Mainland Chinese were obviously enjoying their relations with the United States—a small wonder since they are benefiting $30 billion a year from the American taxpayer as a result of United States trade with Red China.

Time and again, the U.S. Congress has urged the administration to grant President Lee a visa. We have amended our immigration law so that it now specifically mentions the President of Taiwan. Congress has passed resolution after resolution encouraging the President to allow President Lee into the United States for a visit. All to no avail.

But today the delay is over. I hope I will have the privilege of being one of the first to welcome the distinguished President of the Republic of China on Taiwan. He deserves a warm welcome from all of us.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I strongly hope that the concurrent resolution will be agreed to. The President of Taiwan has studied and taught at Cornell, as well as Iowa State. This is a single visit. It fits within the guidelines of the policy review carried out by the White House and the National Security Council. It is a resolution which should get an ''aye'' vote.

Mr. MURKOWSKI. I ask unanimous consent that Senator NICKLES be added as the 54th bipartisan cosponsor.

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

Mr. THOMAS. Mr. President, I rise this morning as the chairman of the Senate Subcommittee on East Asian and Pacific Affairs to join in the sentiments expressed by my colleague, Senator MURKOWSKI, on Taiwan, and in particular on the visit of President Lee.

I need not repeat in detail for the Senate Taiwan's many accomplishments, either economic or political; these have often been discussed on the Senate floor. It is sufficient to note that this country is our fifth largest trading partner, and imports over 17 billion dollars worth of U.S. products annually. More importantly, though, Taiwan is a model emerging democracy in a region of the world not particularly noted for its long democratic tradition.

The Taiwanese Government has ended martial law, removed restrictions on freedom of the press, legalized the opposition parties, and instituted electoral reforms which last December resulted in free elections. Taiwan is one of our staunchest friends; I think every Member of this body recognizes that, and accords Taiwan a special place among our allies. Unfortunately, Mr. President, the administration apparently does not share our views. Rather, the administration goes out of its way to shun the Republic of China on Taiwan almost as though it were a pariah state like Libya or Iran. Sadly, the administration's shoddy treatment of Taiwan is based not on that country's faults or misdeeds, but on the dictates of another country: the People's Republic of China.

It is because the People's Republic of China continues to claim that it is the sole legitimate Government of Taiwan, and because of the administration's almost slavish desire to avoid upsetting that view, that the State Department regularly kowtows to Beijing and maltreats the Government of Taiwan.

The administration refuses to allow the President of Taiwan to enter this country, even for a private visit. A private visit, Mr. President. President Lee is a graduate of Cornell University, where he earned his Ph.D. He has expressed an interest in attending a class reunion at his alma mater this June, and a United States-Taiwan Economic Council Conference. Yet the administration has made clear that it will not permit him entry.

Mr. President, the only people that this country systematically excludes from entry to its shores are felons, war criminals, terrorists, and individuals with dangerous communicable diseases. How is it possible that the administration can see fit to add the President of Asia's oldest republic to this list? We have allowed representatives of the PLO and Sinn Fein to enter the country, yet we exclude a visit by an upstanding private citizen?

Mr. President, I think we have made clear to Beijing—I know I have tried to—the great importance to us of our strong relationship with that country. This relationship should, in my opinion, transcend squabbles over diplomatic minutiae. I will always seek to avoid any move that the Government of the People's Republic of China reasonably could find objectionable. I believe that countries like ours should try hard to accommodate each others' needs and concerns, in order to further strengthen our relationship.

However, I believe that the People's Republic of China needs to recognize the reality of this situation. Both Taiwan and the People's Republic of China are strong, economically vibrant entities. Both share a common heritage and common culture, yet have chosen political systems that are mutually exclusive. And despite these differences, the United States has a strong and important relationship with both.

I strongly believe that it is the Chinese who must work out their differences among themselves, without resort to or interference by outside forces. While I am sure that a solution will come eventually, it is liable to take a number of years. In the meantime, it does no good to continually place the United States in the unproductive position of having to walk a tightrope between the two, of continually having to choose sides.

Mr. President, our Taiwanese friends have been very understanding about our relationship with the People's Republic of China. I would hope that our friends in Beijing would be equally respectful of our relationship with Taipei. I fully support the concurrent resolution.

Mr. SIMPSON. Mr. President, I rise today in support of the concurrent resolution offered by Senator MURKOWSKI, which I am pleased to cosponsor.

This, very simply, would state the sense of the Senate that we should remove existing restrictions on the right of President Lee Teng-hui, of the Republic of China on Taiwan, to travel to the United States. As my colleagues have already heard, the President of Taiwan wishes to come here to visit his alma mater, Cornell University. However, he cannot, because existing U.S. policy prevents him from staying here overnight.

It is certainly no secret to my colleagues that a principal reason for this restriction is the particular sensitivity of the Mainland Chinese Government to how the United States deals with and treats the Taiwanese. I would simply say that I speak as someone who has—and will—stoutly defended the United States-China relationship, even when Mainland China was under attack here in the United States for alleged human rights transgressions. I have consistently argued that the best policy toward China is one of mutual exchange and respect, of cooperation in trade, environmental work, population issues, and all else. So I do not believe that I can fairly be accused of being heedless of the very real and delicate sensitivities that the Chinese might display regarding this matter.

However, I believe that it is possible—indeed, imperative—that we be open in our dealings with Mainland China and with Taiwan simultaneously. We must not insult the one in order to please the other. Indeed, even China and Taiwan are coming to increasingly recognize the foolishness of their mutual antagonism of the last several decades. It is still a sensitive and difficult problem for each government, but ''behind the scenes,'' we are seeing more travel across the Taiwan Strait, more investment, more economic and cultural exchange. That relationship is beginning, however slowly, to change.

In any case, there are limits to how much we should rebuff the Taiwanese in order to preserve our relationship with Beijing. We should strive to trade with the Chinese, to cooperate with them on a large number of issues, but not to refuse to participate in relationships that are beneficial and proper for the United States. One of these is with the Republic of China on Taiwan.

Mr. President, I have always been one who has argued that there is a vital stake in old foes coming together to hammer out their ancient differences and eternal conflicts. I believe that backchannel contacts were indispensable to bringing about the possibility for expanded, public talks to bring about peace in the Middle East and in Ireland. So I have not publicly criticized the administration for its dealings with Yasir Arafat, or with Gerry Adams, or any of a number of at times even justifiable blameworthy international figures.

But it does strike me as very odd that we can reach out so much to individuals who have previously engaged in fully criminal conduct, yet we cannot even allow one of our true friends, the President of Taiwan, to come to the United States for a private—I stress, private—visit.

And he is indeed a friend to the United States—his administration has made it far easier for the United States to pursue a desirable economic relationship with Taiwan without sacrificing any of our principles on human rights. Taiwan has recently enjoyed the freest and fairest elections in its history. There is unprecedented political competition, and public debate, and fully indulged criticism of the Government, in that country. It is not an American-style democracy by any stretch. But the progress has been quite remarkable.

What we have here is a policy of punishment for precisely the type of behavior which we would hope to see in our oversees counterparts. President Lee has not only worked to make the United States-Taiwan relationship less troublesome, but even has exerted energy to lessen strains in the Taiwan-China relationship as well. That takes genuine political courage.

So I congratulate my fine friend the Senator from Alaska, FRANK MURKOWSKI, for bringing this matter to the attention of the Senate, and I pledge to him my full support in this and future efforts to repair and resolve this situation.

Mr. BAUCUS. Mr. President, I rise in support of this concurrent resolution.

The concurrent resolution offered by the Senator from Alaska is, in essence, a statement of a basic American principle: free association, or our right to meet and speak with whomever we choose. It is strictly limited to this issue, and raises no fundamental questions of China policy.

This resolution welcomes the visit of President Lee Teng-hui of Taiwan, as a private citizen, to attend the United States-Republic of China Business Council conference in Alaska, and give a speech at Cornell University. These activities would in no way violate any of our commitments to China, and would make sure we give President Lee the respect he has earned as one of Asia's great democrats.

The principal objection to this resolution is the claim that it would violated American commitments to the Chinese Government. Let me review precisely what these commitments are. In 1972, 1979, and 1982, we signed a series of three communiques with the People's Republic of China. In the last of these, to quote the text:

> The two sides agreed that the people of the United States would continue to maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

I believe we should keep our promises. We have made commitments to China to maintain a one-China policy and keep our relationship with Taiwan on an unofficial basis. And as long as China keeps its side of the bargain—to ''strive for a peaceful resolution'' to its differences with Taiwan—we should keep ours.

But the text of the communique is very clear. It says that our relationship will be unofficial. What is does not say is equally clear. That is, neither the 1982 communique nor the other two make any commitment whatsoever which Chinese citizens shall be eligible for visas. Thus, I am convinced that the proposed visit by President Lee as a private citizen would fall entirely within the framework of ''cultural, commercial and other unofficial relations.''

Once again, this concurrent resolution, rightly construed, does not bear on China policy at all. It is simply as statement of our right as Americans to meet and speak with whom we choose; and of our respect and friendship for President Lee personally and the people of Taiwan in general. I support it and hope my colleagues will do likewise.

Mr. DOMENICI. Mr. President, could I just make an announcement? The Budget Committee intended to go back to mark up and vote after the two votes. I would like to tell them all we are going to go back to committee and have two votes, one after another. I hope they will all come. No proxy votes allowed.

Mr. MURKOWSKI. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution. The yeas and nays have been ordered. The clerk will call the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from New York [Mr. MOYNIHAN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 97, nays 1, as follows:

[Rollcall Vote No. 157 Leg.]

YEAS—97

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

NAYS—1

Johnston

NOT VOTING—2

Moynihan Warner

So the concurrent resolution (H. Con. Res. 53) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote.

Mr. MURKOWSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business until the hour of 12:30 p.m., with Senators permitted to speak therein for 5 minutes each.

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

Mr. DOLE. Mr. President, that will give everybody interested in the product liability bill an opportunity to discuss what their remaining strategy or plans may be. We would like to complete action on the bill today. And then, if possible, we would like to move to the trash bill sometime this afternoon and try to complete action on that bill this week.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I thank my colleagues for the evidence of support to extend an invitation to President Lee Teng-hui to visit the United States in an unofficial capacity. I think the support, as evidenced by the vote of 97 to 1 is a clear message of the prevailing attitude in this body toward extending this invitation.

It is my hope that the administration and the State Department will understand the intensity of the feelings with regard to our friends in Taiwan as evidenced in President Lee visiting his alma mater and to a send him to the United States-Republic of China Economic Council Conference in September of this year. I thank my colleagues for their assistance, understanding, and support of this resolution.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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 thank the Chair.

(The remarks of Mr. GORTON pertaining to the introduction of S. 768 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Delaware.

(The remarks of Mr. ROTH and Mr. D'AMATO pertaining to the introduction of S. Res. 117 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

PRESIDENT CLINTON'S SUMMIT IN MOSCOW

Mr. ROTH. Mr. President, today the President of the United States is participating in Russia's May 9 commemoration of V–E Day. President Clinton accepted Russian President Boris Yeltsin's invitation to this event despite the fact that I and many of my colleagues encouraged him to select another time for a United States-Russian summit. We were concerned that because of the moral ambiguity of this commemoration, United States participation would undermine the relationship we seek to develop with Russia. We must not forget that the Soviet Union contributed to the outbreak of World War II, exploited the war's end, and committed countless atrocities to Russians, Ukrainians, Lithuanians, and other peoples subject to its brutal domination.

President Clinton should not have accepted this invitation, but now that he has, it is for these reasons that during his visit to Moscow he must meet not only with Russia's leaders, but the Russian people and emphasize three key themes. First, he must emphasize human rights. Second, democracy. And, third, rejection of empire. In doing so, the President would encourage all Russians not to look nostalgically back on the Soviet Union, but forward toward the potential of a democratic and postimperial Russia. That should be the principal purpose of President Clinton's visit.

Toward this end, President Clinton must emphasize that his role in this celebration is not to honor the Soviet Union, but the valor and sacrifices of all the peoples who fought in opposition against Nazi aggression.

He must underscore the fact that while the United States, as a whole, celebrates victory in this war, it has not forgotten the victims nor any crimes committed during that era, be it by the Nazis, Stalin and his henchmen, or others.

This will not slight those who fought valiantly against fascism, as indeed did millions of Russians. It will in fact honor them even more highly by ensuring that their contributions are distinguished from the war-mongering and atrocities of that brutal time. And, in this way, the President will clearly differentiate the United States from those who seek to reanimate the Soviet past.

In articulating these themes, the President must publicly and forcefully address the ongoing war in Chechnya. Moscow's management of the Chechnyan autonomy movement is depressingly reminiscent of the policies that Stalin, himself, used to terrorize the peoples incorporated into the former Soviet Union. It indicates the fragility of democracy in Russia and, perhaps, even a weakening of its impulse.

President Clinton vowed that he would not visit Russia as long as Moscow continues the war against Chechnya. Indeed, Mr. President, in the weeks preceding this summit meeting, President Yeltsin actually stepped up military operations against the Republic, leveling more towns and killing more innocent civilians, both Russian and Chechnyan.

It is therefore absolutely essential that President Clinton speak forthrightly to the Russian people, not hiding the fact that America condemns the brutal use of military force against Chechnya.

He should state that America's relationship with Russia is contingent upon Moscow's peaceful resolution of its differences with the Chechnyan people. Hesitation on this matter will undermine the legitimacy of Russia's true democrats who have valiantly protested against this war and will strip credibility from our efforts to support Russia's still embryonic democracy.

The bottomline, Mr. President, is that human rights is an international issue. If Russia avows to be a member of the community of democracies founded upon respect for inalienable human rights, it must live up to those standards.

Third, in order for a true strategic partnership to evolve between the United States and Russia, Moscow must respect the sovereignty of the non-Russian nations of the former Soviet Union and former Warsaw Pact.

In this regard, the President's decision to visit Ukraine is crucially important. A Kyiv summit will be an important signal of America's commitment to assist the consolidation of Ukraine's independence. In light of Ukraine's intertwined history with Russia, the success of Ukrainian independence and integration into the Western community of nations will be a critical determinant of Russia's evolution into a postimperial state.

An important underpinning of the constructive role we desire Russian-Ukrainian relations to play in European security has been the Tripartite Agreement between Russia, Ukraine, and the United States. In addition to facilitating the elimination of Ukraine's nuclear arsenal, the agreement committed Russia to respect Ukraine's sovereignty and independence. While in Moscow President Clinton must underscore America's commitment to this agreement and our expectations that Russia do the same.

The President must also emphasize that NATO enlargement will contribute to greater peace and stability in post-cold war Europe. He must communicate that this is a normal process that is driven not only by the need to address the security of Central Europe but also by the Central Europeans who have clearly articulated their desire for membership.

By further ensuring stability in Central and Eastern Europe, NATO expansion will positively and significantly shape the futures of Russia and Germany, two great powers now engaged in a delicate and complex process of national redefinition. It is a critical step toward providing the security essential to enhance the prosperity and stability now beginning to characterize Central and Eastern Europe.

It is a requirement for preserving Germany's progressive role in European affairs and promoting Russia's postimperial evolution. By creating greater stability along Russia's frontiers, NATO enlargement would allow Moscow to spend more of its energy on the internal challenges of political and economic reform.

I hope that, while he is in Moscow, our President will underscore the fact that Russia cannot and will not have any veto over the future membership of NATO.

We all must recognize that NATO enlargement is a process whose outcome Russia will, nonetheless, inevitably influence. If Russia resists the process through intimidation or aggression, NATO enlargement will more likely be directed against Russia. If Russia respects the rights of other nations to determine their own geopolitical orientation, if Russia recognizes the objective benefits of NATO enlargement, and if Russia ultimately works with the alliance, enlargement will contribute to a broader engagement and integration that will bring Europe and Russia closer together.

As it was well put in one of the recent hearings of the Foreign Relations' Committee on this matter, it is not NATO enlargement that will determine the future of Russia's relationship with the alliance, but Moscow's reaction to NATO enlargement.

Finally, during his stay in Moscow President Clinton must emphasize that America is more interested in the future of Russian democracy than in the fate of a single leader. I strongly encourage that the President meet with members of Russia's beleaguered press and those democratically minded legislators—particularly Sergei Kovalyov, the Duma's former Human Rights Commissioner who was recently relieved of his duties because of his courageous criticism of the Russian Government's Chechyn policy. Perhaps, the President should even meet with those Russian generals who oppose this war, such as former Deputy Minister of Defense Boris Gromov who also lost his position for his criticism.

I say this because the future of our relationship with Russia lies not with those who fall back on the brutal mechanisms of a bygone age, but with those who envision Russia as a prospering democracy.

Mr. President, America's role in Moscow's V–E Day celebrations should be to encourage Russian people and their leaders to concentrate not on the former Soviet Union, but on Russia's future. These themes—human rights, democracy, and the rejection of empire—are the keys not only to unlocking Russia's potential but also to a true strategic partnership between Russia and the United States. Should Moscow's leaders respond positively to these themes, it would be a strong demonstration that Russia is shedding the imperialist ambitions and totalitarian proclivities of the Soviet past.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

HEARINGS SCHEDULED BY THE SUBCOMMITTEE ON TERRORISM, TECHNOLOGY AND GOVERNMENT INFORMATION

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on a series of hearings scheduled by the Subcommittee on Terrorism, Technology and Government Information of the Judiciary Committee in the wake of Oklahoma City, although one had actually been scheduled in advance.

We have so far had hearings on the statutes proposed by the administration and others. We have had a hearing in response to certain groups concerned with the issue of constitutional rights. A hearing is scheduled for this Thursday, May 11, on the so-called mayhem manuals, where you can find out how to make a bomb, and a hearing is scheduled on May 18 on the incidents involving Waco, TX and Ruby Ridge, ID.

I have received correspondence from the distinguished chairman of the full committee, Senator HATCH, who raises a question about the timeliness of the hearings and about the jurisdiction of my subcommittee. I have responded to Senator HATCH, and intend to put the correspondence in the RECORD so it may be available for the public, by noting that the jurisdiction is clear-cut on the subcommittee, both under the authority on terrorism and on governmental information.

It is my view, Mr. President, that it is important and the hearings are long past due on what happened at Waco, TX and what happened at Ruby Ridge, ID. There can be no misunderstanding or no question that whatever happened at Waco, TX and Ruby Ridge, ID, that there is absolutely, positively no justification for the bombing of the Federal building in Oklahoma City, OK.

But there has been a great deal of concern about whether there has been a candid response by the Government of the United States, and in the congressional oversight responsibility, we should lay all the facts on the table in the interest of full disclosure—let the chips fall where they may. The virtue of strength of a democracy is that we do not cover our mistakes; that if there are errors and if there are problems, we identify them forthrightly.

There had been some concern that a hearing on Ruby Ridge, ID might in some way prejudice the investigation by the prosecuting attorney who may intend to bring some charges, perhaps even against Federal officials. I have had an extended discussion with Randolph Day, Esq., the county attorney for Boundary County, who has advised me that he sees no problem in our going forward with hearings by the subcommittee.

A number of Senators have made public statements about the importance of having such hearings. Others of my colleagues have discussed the matters with me privately. I do think it is important that hearings proceed and that other Senators and the public be aware of the status of this matter.

So I ask unanimous consent that the text of the letter from Senator HATCH to me dated May 8, with my reply to him dated May 9, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, May 8, 1995.

Hon. ARLEN SPECTER,
U.S. Senate,
Washington, DC.

DEAR ARLEN: I am writing with regard to your public statements concerning the convening of a hearing in the Terrorism, Technology and Government Information subcommittee to review the incidents at Waco, Texas and Ruby Ridge, Idaho. This letter is intended to settle any misunderstanding that may exist as to what the Senate Judiciary Committee's plans are surrounding a review of these matters.

As you know, I share your deep concern over these incidents and believe that a thorough Congressional review of these, and related federal law enforcement issues, is warranted. However, hearings on these matters would not be properly within the jurisdiction of the Subcommittee on Terrorism, Technology and Government Information. Indeed, when your staff raised this issue with Committee staff more than one week ago, my position on this matter was promptly conveyed. Due to the important nature of these issues and their ramifications for federal law enforcement, hearings should be held at the Full Committee. I intend that hearings will be held in the near future following Senate consideration of comprehensive anti-terrorism legislation. Indeed, I believe the House Judiciary Committee has announced hearings as well. It might prove beneficial to hold our hearings after the House completes its hearing.

The hearing you propose is an important one, but I believe that it is unrelated, in any true sense, to the broader issue of the prevention of domestic terrorism. Accordingly, to hold the hearing as you propose at this time will serve only to confuse these important issues. Indeed, by linking the Waco incident to the terrorism issue through hearings at this time, the Committee could inappropriately, albeit unintentionally, convey the wrong message regarding the culpability of those responsible for the atrocity in Oklahoma City. We must not do this.

I appreciate your concern over this matter. I look forward to working with you on this and all other matters before the Judiciary Committee.

Sincerely,

ORRIN G. HATCH,
Chairman.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, May 9, 1995.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC

DEAR ORRIN: I have your letter of May 8.

I disagree with you on three counts:

1. Hearings on Waco and Ruby Ridge, Idaho, should be held promptly (actually they are long overdue) rather than waiting to some unspecified time in the ''near future'' or ''after the House completes its hearings.''

2. My Subcommittee on Terrorism, Technology and Government Information has clear cut jurisdiction both as our authority relates to terrorism and government information.

3. I categorically reject your assertions that the Subcommittee's scheduled hearing will ''serve only to confuse these important issues'' and ''convey the wrong message regarding the culpability of those responsible for that atrocity in Oklahoma City.'' There can be no conceivable misunderstanding that there is no possible justification for the bombing in Oklahoma City regardless of what happened in Waco or Idaho. The public interest requires full disclosure of those incidents through hearings to promote public confidence in government.

Since I have had and am continuing to have media inquiries on these hearings, for your information I am releasing this exchange of correspondence.

Sincerely,

ARLEN SPECTER.

Mr. SPECTER. I thank the Chair and yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

EXTENSION OF MORNING BUSINESS

Mr. DORGAN. Mr. President, I ask unanimous consent that we extend the recess period—my understanding is the Senate was to stand in recess at 12:30—I ask it be extended to allow me to speak for 5 minutes.

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

MEDICARE AND THE BUDGET

Mr. DORGAN. Mr. President, the Senate Budget Committee is meeting today, and they are involved in, I think, a gripping, wrenching debate about how they will try to find a route toward a balanced budget. It is an effort that I think needs to involve all of us because I do not know of anybody in this Chamber who has stood on the floor and said they do not agree that a balanced budget is necessary and desirable for this country.

There were some presentations on the floor of the Senate earlier this morning talking about the issue of Medicare, and I wanted to stand and respond to a couple of those comments, because part of this issue of balancing the Federal budget involves the question of Medicare.

We are in a circumstance described, interestingly enough, by E.J. Dionne today in the Washington Post. I would like to read a paragraph or two from his column:

When the House Republicans passed their big tax cut earlier this year, they were not at all interested in what President Clinton or the Democrats had to say about it. They wanted credit for doing what they said they would do in the Contract With America. And they got it.

But now the time has come to pay both for the tax cut and for even a bigger promise, a balanced budget by year 2002. Suddenly, the Republicans are whining that the President has refused to take the lead in cutting Medicare and Medicaid, which is what the GOP needs to do to make any sense of its budget promises.

Mr. Dionne says:

Let's see: When it comes to passing around the goodies, the House Republicans are prepared to take full responsibility. When it comes to paying for the goodies, they want a Democratic President to take full responsibility. And they act shocked, shocked when he refuses to play along.

You can't blame the Republicans for trying. It's a clever, if transparent, strategy.

The point is, there has been a lot of protest on the floor of the Senate and the House in the last few days about concerns many of us have about the Medicare Program and the tax cut that was passed recently by the House of Representatives.

It seems to me that at least some in Congress dived off the high board and showed wonderful form as they did their double twists and have now discovered there is no water in the pool.

A tax cut first, for the middle class they said. Of course, the chart shows something different. Who benefits from the tax cut bill? If you earn over $200,000 as a family, you get $11,200 a year in tax cuts. If you are a family earning less than $30,000 a year, you get $120 a year in tax cuts. This is not a middle class I have seen anywhere in America. The fact is that it is a tax cut for the wealthy. That was passed, and now they say we should cut Medicare to pay for it.

Well, we are going to have to reduce the rate of growth in Medicare. No one disputes that. But before we engage in a discussion about what you do about Medicare and Medicaid, many of us believe that the first thing you ought to do is get rid of this tax cut for the rich. It is time to deep-six this kind of a proposal, then let us talk about Medicare. Otherwise, what you have is a direct circumstance that cannot be avoided.

The comparison is obvious: $340 billion in tax cuts, for $300 to $400 billion in Medicare and Medicaid health care cuts. Let us back away from the tax cut. As soon as the majority party does that—and I hope they will—then I think this Congress ought to begin, in a joint effort on Medicare and Medicaid and virtually every other area of the Federal budget, to sift through these things to find out where we achieve the means by which we balance the Federal budget.

But you know, some of us have been through all of this before. Talk is cheap. Talking about balancing the budget is very, very easy. Everyone talks about it.

Last week, I proposed a series of budget cuts, real budget cuts in a whole range of areas that totaled some $800 billion, and I am going to propose more. That package does not include Medicare and Medicaid, and I know we have to reduce the rate of growth on both of those. But I also feel very strongly that as we approach this problem, we should not allow the other party to pass a very big tax cut first and then say to others later, ''Now help us pay for that by taking it out of the hide of your constituents.''

Let us join together and work together, but let us do it in a way that gets rid of the tax cut that was ill-advised, bad public policy, not middle class, but essentially a tax cut that benefits the wealthy. Get rid of it, disavow it and then move on together in every single area of the Federal budget and do what is right for the country.

That is what the American people expect and deserve, and I think that is what will benefit this country's future in a real and meaningful way.

Let me thank the President for allowing me to extend the time. With that, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m., plus the unanimous consent for additional time, having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:37 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. What is the pending business and what is the status of the pending business?

The PRESIDING OFFICER. The pending unfinished business is H.R. 956, and the pending question is amendment No. 709. The Senate is operating under cloture.

Mr. GORTON. Is that the Gorton-Rockefeller-Dole amendment to the Coverdell-Dole amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. GORTON. Mr. President, since we are now under cloture and without the presence of my colleague, Senator ROCKEFELLER, I should like, very tentatively, to announce what I hope the course of action will be this afternoon.

I will, unless there is objection, within a reasonable period of time, ask unanimous consent for a minor but significant amendment to the Gorton-Rockefeller-Dole amendment, a proposition that does require unanimous consent to keep the undertaking that Senator ROCKEFELLER made with respect to the right of a new trial after a judge imposed additur.

After that, I would propose that we go forward by adopting the Gorton-Dole-Rockefeller amendment and the underlying amendment and then having a debate on any further amendments to the bill, some of which will require unanimous consent in order to bring them up, as I understand from the Parliamentarian, because of the position in which we find ourselves.

Senator ROCKEFELLER and I have agreed that amendments from the other side, during the pendency of cloture, that Members opposed to this bill want to bring up ought to be allowed to be brought up, and certainly we will grant unanimous consent for that taking place.

Each of these will require cooperation and essentially unanimous consent. Senator ROCKEFELLER is not back yet. One of the opponents to the bill is here. I am going to suggest the absence of a quorum so that Members can digest this request, so that the leaders can get together if they wish, and so we can proceed for the rest of the day. I hope that we will end up being able to finish the entire bill and having our final vote on final passage before the day is out, as the leader would like to go on to other bills.

Mr. HEFLIN. If the Senator will withhold the quorum call, regarding what the Senator has said about asking unanimous consent, I think Senator HOLLINGS should be on the floor to respond to that. I think he has some feelings on it. However, I do realize this: It is my information that unless that happens, then unanimous consent is going to be necessary for each and every amendment to occur. Now, I have been talking with various people on our side who are very knowledgeable on parliamentary proceedings. I think it is something we will want to look at. If we enter into a quorum call, we ought to investigate and see exactly what the parliamentary status is and what Senator HOLLINGS' feelings are on that. He articulated to me earlier rather strong feelings against it. But he may have reconsidered it since that time.

Mr. GORTON. I think the Senator from Alabama is correct about the parliamentary situation. Certainly, given Senator HOLLINGS' views on the subject, I want his full knowledge and participation before we go ahead. My announcement was just in hopes that we can get interested people here to make those decisions. Awaiting our ability to do so, 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. WELLSTONE. 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. WELLSTONE. Mr. President, am I correct that we are now on the product liability bill?

The PRESIDING OFFICER. The Senate is now on that matter, H.R. 956, the product liability bill under cloture.

Mr. WELLSTONE. I thank the Chair.

Mr. President, I want to speak about this legislation that is before the body, and I would like to talk about what I think is at stake in the vote that we just cast and what would be at stake in some votes that we will also be casting over the next day or day and a half.

As I see it, we started out with a bill that was unfair, which I think tipped the scale of justice away from consumer protection and in favor of corporate wrongdoers. Then as we went along, there was an overreaching by some of the insurance companies and other big corporate defendants, and yet more amendments were attached onto this bill making it truly awful. Then as a result of several cloture votes—when it was clear that this piece of legislation with all of the additional awful amendments could not pass—it was stripped down to now being just profoundly wrong for people in this country, which is not what I would call much of an improvement.

Mr. President, I am not a lawyer. But as I understand the features of this bill there is a tremendous amount of unfairness. I quite frankly cannot figure out why this body went ahead and invoked cloture. First of all, there is still a cap on punitive damages, as I understand it, of $250,000 or twice compensatory damages. Compensatory means both the economic and the noneconomic damages. So that, for example, if you were not an executive of a large company but a wage earner, if you did not make as much money, if you were a woman—women generally speaking make less than men in the work force—or if you were a senior citizen, and you were hurt by exactly the same behavior and received exactly the same harm from exactly the same defendant as some CEO, there would be differences in terms of what the award would be. The punishment would be greater for hurting the CEO.

This is still an absurd result and still an indefensible one. When I spoke last week I asked my colleagues to consider the faces of people who will be hurt by this provision. LeeAnn Gryc from my State of Minnesota was 4 years old when the pajama 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''. This latest proposal, the Gorton-Rockefeller substitute, would cap the punishment the defendant receives. How would this affect LeeAnn? It is not clear. All of that would depend upon what kind of compensatory damages the jury awards. Are we really willing to sit here in Washington, DC, and change that and preempt Minnesota law and make that kind of determination?

Mr. President, this proposed improvement has new language which would allow a judge to award higher punitive damages than the caps would otherwise provide if the judge thinks it is necessary to serve the twin purposes of punishment and deterrence. Again, first of all, what we do is set this cap and it is either $250,000 or twice a combination of economic and noneconomic damages which is discriminatory, by the way, toward low income, moderate income, middle income in terms of how that formula works out. Then we go on.

When you think about the case of LeeAnn Gryc, or the case of a whole lot of other people who are hurt in this country, who is prepared to say that the cap ought to be $250,000 or a little above? Who is prepared to say that a defendant should be punished less because he or she hurt a wage earner as opposed to a CEO of some of the largest companies in this country? I do not see the Minnesota standard of fairness.

The new language then, in what is apparently supposed to be an improvement, allows the judge to award more punitive damages than the caps would otherwise provide, if the judge thinks that it is necessary to serve the twin purposes of punishment and deterrence. But what happened to the jury? People on juries elect us to office. We have all

the confidence in the world in the people who sit on juries to elect us to office. But all of a sudden we do not trust them to sit in judgment of their peers. They sit in judgment of us, do they not? Are not they usually the finders of fact? I would think that it would be difficult to find some standard of fairness where we essentially remove juries from this important process.

Then I was surprised to find in what is apparently supposed to be an improvement a provision saying that if we are worried about the backlog of cases and paperwork reduction and all of the rest, we tell judges that it is OK to go above the caps whenever they think it is necessary, but we can also count on an additional court proceeding. On the bottom of page 22 in the Gorton-Rockefeller substitute, it says that if a defendant does not like the judge's decision to go above the caps, ''the court shall set aside the punitive damages award and order a new trial on the issue of punitive damages only.''.

So what we get back to is essentially a meaningless provision where we go to yet another trial if the defendant does not like the decision the judge has made. My colleague, Senator LEVIN from Michigan, I thought came out here with a lucid presentation of this problem.

Joint liability I think is the thorniest issue. Actually in the Labor Committee, when we were talking about this question, I may or may not have said thinking out loud that I struggled with this question. But I do not think the substitute does anything to correct the problem. It eliminates joint liability for noneconomic damages. Some of my colleagues have referred to this as the ''deep pocket pays problem.'' But I think they are wrong. This is really a ''victim pays problem.''

I will tell you that it is really a difficult question. Suppose a company is responsible for only a portion of what it would take to restore a victim to whole, compensatory damage. Yet with joint liability that company might have to be responsible for more than its fair share. That does not make a lot of sense. It does not seem as if it is fair.

But, Mr. President, now what we have is a provision which essentially says to the consumer, to the citizen that is hurt, to the citizen that is injured, maimed, that they will always have to assume some of those damages, if one of the responsible parties cannot pay. I do not see the standard of fairness. In my State of Minnesota we came up with what I think is a reasonable compromise; that is, we set a threshold. I think it was 15 percent. What we said was that, if you are responsible for less than 15 percent of the overall damage, then you would not have to be responsible for more than your fair share.

But, Mr. President, it does not make any difference what Minnesota has done. We have struggled with the problem. We have come up with a middle ground. But that all is preempted by this piece of legislation.

Mr. President, it just sounds like a clever political argument. But it really is not. So many people have talked about decentralization. So many people have talked about relying more on States and local governments being the decisionmakers. But in this particular case, we are preempting some of the good work that has been done in a good many States in this country, and I would put Minnesota at the very top.

Mr. President, there are huge problems with this piece of legislation. It is a giveaway to corporate wrongdoers. I think it is a profound mistake. We did not really have that much debate on the whole question of the 20-year statute of repose. But, again, let me just simply say, that regardless of how you look at it, I think again this is arbitrary and indefensible. What possible justification is there for it? After all, if a product is defective and does not hurt anybody until it is over 20 years old, is the harm to the victim any less? Is the responsibility of the manufacturer any less?

I talked about Patty Fritz from Minnesota. She is pretty well known in our State, and she is pretty well known in our country for her courage. In her particular case, her daughter, Katie, was crushed to death by a defective garage door opener.

If it had been after 20 years, if the company had produced this product which was defective from the word go but she had only been hurt after 20 years, does that mean the damage to that family is any less? Does that mean the responsibility of the company is any less?

Mr. President, we are closing the courthouse door to people who are hurt by products produced by some of the businesses—thank God, not many of the businesses—within our country. Some of my colleagues came out on the floor of the Senate with a bill last week. Then there were amendments, which, as I said before, made it a truly egregious piece of legislation. We were successful in opposing a good number of cloture motions. Now the bill has been stripped away of some of the worst provisions, but it is still a piece of legislation which is profoundly anti-consumer, profoundly antiordinary citizen, and I think it tips the scales of justice way too far in the direction of corporate wrongdoers and really denies people some of the redress for grievances that they currently have within our court system.

Finally, I think there is a gigantic problem with this Federal preemption. If a State like the State of Minnesota has come up with some reasonable middle-ground proposals to deal with the problems of excessive litigation, to deal with some of the problems of joint liability, to try to have some fairness between the businesses and the consumers and the lawyers, it seems to me States ought to be able to hold on to some of the legislation they passed and not be preempted by this national legislation.

So, Mr. President, I hope we will have further debate on this piece of legislation, and I hope my colleagues will oppose it.

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. STEVENS. 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. STEVENS. Mr. President, I would like to thank my southern neighbor, Senator GORTON from Washington, for agreeing to clarify a few points about S. 565, the Product Liability Fairness Act. I also want to thank Senator GORTON's staff for their willingness to work out some of the finer points of this legislation.

Section 102(c) of S. 565 lists a number of laws that are not superseded or affected by the act. My first question seeks to clarify the language in section 102(c)(2). Section 102(c)(2) provides: ''Nothing in this title may be construed to * * * (2) supersede or alter any Federal law;''

The committee report at page 28, footnote 101, gives examples of Federal statutes that are not superseded by S. 565. The examples in the committee report include the Federal Tort Claims Act, the Oil Pollution Act of 1990, and the Trans Alaska Pipeline Authorization Act.

My question to my friend is whether the language ''any Federal law'' in section 102(c) also includes Federal common law. I assume that it does and, therefore, that S. 565 does not supersede any Federal statutory or common law, such as admiralty law. Would my friend clarify this point for me, please?

Mr GORTON. The assumption of the Senator from Alaska is correct. Section 102(c)(2) provides that S. 565 does not supersede ''any Federal law,'' and that includes both Federal statutory law and Federal common law. The act, therefore, would not affect any causes of action or any remedies, including punitive damages, determined under Federal statutory or common law, including admiralty law.

Mr. STEVENS. I thank the Senator from Washington for that confirmation. My second question seeks to clarify the so-called environmental exclusion—section 102(c)(7)—which I support. Could you elaborate on the statutory exclusion and the statement in the committee report that provides: ''The exception for environmental cases in this section makes clear that this act does not apply to actions for damage to the environment.''?

Mr. GORTON. I would be happy to elaborate on this section for the Senator from Alaska. Section 102(c)(7) reads:

Nothing in this title may be construed to * * * (7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a state or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment * * * or the threat of such remediation.

As the Senator notes, the committee report explains that the exception for environmental cases is intended to exclude from S. 565 all causes of action and remedies that are available under Federal or State statutory or common law for damage to the environment. Therefore, this act would not place a cap on any punitive damage award or other remedy under any cause of action related to damage to the environment, including an action under a product liability theory.

Mr. STEVENS. Mr. President, I would like to focus on this point for a moment, if I may. Section 102(c)(7) excludes from coverage under the bill any actions for ''remediation of the environment.'' The section refers to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 for the definition of ''environment,'' which includes the navigable waters, the waters of the contiguous zone, the ocean waters of the United States, and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States. The section does not define ''relief for remediation,'' which is not a legal term of art.

It is not clear whether ''relief for remediation of the environment'' includes all other remedies to make injured parties whole, such as relief for damage to private property and lost revenues, or whether the exclusion is limited strictly to damage to the environment. I note that the committee report states with respect to section 102(c)(7) that the bill ''does apply to all product liability actions for harm'' which is defined as ''any physical injury, illness, disease, death, or damage to property caused by a product.'' I ask the Senator if he could please explain how this exclusion is intended to be applied in the case of an oilspill that causes damage to the environment and damage to private property?

Mr. GORTON. The exclusion in section 102(c)(7) would apply to all causes of action and remedies for damage to the environment. As the Senator from Alaska has correctly noted, the bill would apply to actions under State law for injury to persons or property that are caused by a product. As mentioned earlier, this bill would not apply to any Federal statutory or common law cause of action.

To expand on the Senator's question, in the case of an oilspill caused by the failure of a storage tank in which the plaintiffs seek to recover for both damage to the environment and loss of property, the rules in the bill would establish the standard of proof and the limit of punitive damages with respect to recovery on the basis of damage to property under any applicable State law.

The bill would not apply to any aspect of the recovery for environmental damages, including any recovery for cleanup costs, remedial measures, damages or penalties for loss of wildlife, or punitive damages that are assessed for damage to the environment, whether under State or Federal law and even if the cause of action is based on a product liability theory. As is noted on page 22 of the committee report in the discussion of the definition of ''harm'' ''it is the nature of the loss that triggers the application of the act'' with respect to State law, not the cause of action used.

Mr. STEVENS. I thank the Senator for that explanation. My final question is whether the owner or operator of a product, such as a tank which contains oil, who is sued following an environmental accident may sue the manufacturer of the ship or tank under a product liability cause of action without limitation by this bill if it was product failure that caused the damage to the environment? My concern is that the equipment operator will be unable to recover fully from the manufacturer. Ultimately, the original plaintiff may only be able to recover to the extent that the operator is able to recover.

Mr. GORTON. I appreciate the Senator's request for absolute clarity. Further reference to the example of the ruptured oil tank may best illustrate the answer to your question. Suppose the oil tank ruptures as a result of a manufacturing defect. It leaks oil, causing damage to the environment and the neighboring private property, as well as damage to the tank owner and the tank.

The statutory construction of the environmental exemption is clear. This bill will not alter any law under which any injured party could recover for damage to the environment.

To the extent that the owner or manufacturer of the tank is liable for civil damages or civil penalties, cleanup costs, restitution, cost recovery, punitive damages or any other form of relief ordered to restore, correct, or compensate for damage to the environment, the rules in this bill would not apply. The bill would apply to an action by the private property owner to recover under State law for damage to that property based on the failure of the tank or on the basis that the oil, which is also a product, caused the harm.

Similarly, under section 102(c)(7) this bill would not apply to third party actions related to environmental damages. For example, the tank owner could implead or cross-claim against the manufacturer of the tank for damages awarded against the tank owner for remediation of the environment under any theory, including product liability. S. 565 would not apply as a limitation on the causes of action or remedies available to the tank owner in an action against the manufacturer, but only to the extent that the tank owner is seeking to recover against the manufacturer for damages awarded against the tank owner for remediation of the environment. Applicable Federal or State law, other than this bill, would continue to govern the action with respect to environmental damage.

However, this bill would apply with respect to any action under a product liability theory by the tank owner against the manufacturer for harm, as defined by this bill, caused by the product. In the case of a tank owner which has been held liable under a strict liability regime such as that found in section 1002 of the Oil Pollution Act of 1990, any damages assessed against the tank owner, including damages for injury to real or personal property caused by the product, should be considered economic damages to the tank owner for purposes of this bill, and an action to recover those economic damages from the manufacturer under a product liability theory would be without limitation under this bill.

Mr. STEVENS. Mr. President, I thank my good friend from Washington for taking the time to clarify the scope of these two provisions. I want to thank, again, him and his staff for assisting me and Annie McInervey and Earl Comstock of my staff to clarify these issues which are of vital importance to my State.

Mr. GORTON. Mr. President, I do believe there is one other clarification that needs to be made. The questions that have been propounded by the Senator from Alaska refer to S. 565. Technically speaking, S. 565 is not before us. We are dealing with a House bill and a Senate amendment which incorporated all of the provisions of S. 565 in it. And so the questions and answers are applicable equally to that amendment as they would be if the identical S. 565 were before the Senate.

Mr. STEVENS. Will this still be called the Product Liability Fairness Act?

Mr. GORTON. It will be.

Mr. STEVENS. Then our comments should be addressed, for legislative history, to that act. I thank the Senator from Washington for clarifying that.

Mr. COATS. Mr. President, this has truly been a year of reform. Since the outset of this Congress, the pervasive theme has been to fundamentally change a system of government that has gone awry. Thus far, most of these efforts at reform have been targeted at the Congress, and rightfully so. As some have said, we must first stop the bleeding. However, there are many very formidable tasks before us. One of which we discuss today.

Mr. President, I rise today to dedicate my support to the effort to reform the product liability system.

Justice in America is fundamentally rooted in the principles of the equality,

expedience, and accessibility. Our current system of product liability is in conflict with all of these principles.

Where product liability cases are concerned, we certainly, cannot say that there is equality in the system. There is a total lack of uniformity in the current product liability system. Due to the broad diversity of legal standards from jurisdiction to jurisdiction, it is absolutely impossible to predict what, when and how you will be compensated for losses resulting from a faulty product. Where businesses are concerned, this unpredictability leads to disproportionately high risk calculations and insurance rates as companies are forced to calculate the worst-case-scenario in assessing liability risk.

These risk costs have, not only an adverse effect on those directly involved in any particular case, but on all Americans. Disproportionately high insurance costs have several negative effects on American business. In each case, that negative impact effect all of us.

Confronted with impossible-to-calculate liability costs, American businesses often choose not to introduce new technologies and innovations into the marketplace. Thus denying consumers the benefits of enhanced products and services.

Nowhere is this more evident than the biomedical industry. In my State of Indiana, there is a large biomedical industry. Among other things, these companies make artificial limbs. This is an industry that provides hope and freedom to so many people who may otherwise find their lives limited by disability. However, due to disproportionate liability costs, the manufacturers of the raw materials utilized in the construction of these prosthetic device are increasingly choosing to forego the market. The sales to the biomedical industry represent such a small percentage of total profits that liability costs outweigh benefits.

Furthermore, American businesses are confronted with insurance costs 20 times greater than their European competitors and 15 times greater than those of Japanese industries. In addition to making American products more expensive at home, this adversely effects competitiveness in a global marketplace. That means damage to job creation.

An excellent example of this is a case in Coatesville, IN. A small community of around 600 people, Coatesville is the home of the Magic Circle Corp.—a company employing around 30 people from Coatesville and Filmore, a small town next door.

Magic Circle is a small business that produces riding lawn mowers. The engine of these mowers is manufactured to automatically shut off when a person gets up from the mower seat. Unfortunately, in a cemetery in a nearby State, someone decided to tape down the seat so that the mower continued to run when that person left it unattended on a hillside. The mower rolled forward and injured their foot.

That person, the one who taped down the seat and left the mower unattended on the side of a hill, sued Magic Circle for $7 million. There was no alteration or misuse defense in the State in which the incident occurred. The amount of damages requested exceeded the total of all Magic Circle profits and assets. In the end, they were forced to pay $10,000 in attorney fees and its insurance company paid out $35,000 to the claimant.

There is an interesting footnote to this case. Officials of a foreign government later contacted the owners of Magic Circle to see if they would be interested in relocating in that country. One of the selling points of their presentation was the country's product liability laws.

There are those who argue that the threat of large punitive damages is what makes America's products safe. This argument is fundamentally flawed. What makes American products the best in the world is not a lottery-style product liability legal system. The American consumer operating in a free market, who demands quality and excellence, is what makes American manufactured products the most high-quality products in the world today. However, the impact of our current product liability system is beginning to take its toll. If we do not take action now, we will be in danger of losing our competitive edge.

Even the most adamant defenders of our current system certainly cannot say that it is expedient. A GAO report shows that product liability cases take an average of 2½ years to move from filing to verdict. One case cited took nearly 10 years to move through the judicial process.

The cynical result of these delays is that both parties are ultimately forced to negotiate compromises because they are overwhelmed with legal costs. These compromises often have little to do with guilt or innocence and much to do with predatory lawyers and a bizarre patchwork of legal standards and procedures.

Mr. President, I am an attorney. Many of my distinguished colleagues are attorneys. I am not here to attack lawyers. However, in the legal industry, as in any industry, there are those who lack scruples. There are those who will pursue personal financial interests above ethical considerations. In civil liability cases, lawyer's fees account for 61 percent of funds expended on product liability claims. These expenses include both defendant and plaintiff costs. The net effect of this incredible statistic is that realistic accessibility to the legal system and legal defense is a mere myth in most situations.

Mr. President, clearly there is a need for fundamental reform to the product liability legal system. We have debated this issue since I came to Washington.

Fundamental product liability reform offers the hope of removing one of America's most destructive obstacles to job growth. When frivolous suits are traded, when weak cases are brought, when litigation explodes, our economy is crippled. New technology never comes to market. Medical costs increase. The doors to factories close. Insurance costs increase. American products are unable to compete around the world. Perhaps most sorrily, a legal system that was once the envy of the world, has been twisted and distorted to a point where the very principles on which it was originally constructed cannot even be recognized. We must turn this tide.

A Rand Corp. study found that most of the money awarded in injury cases is taken by the legal process itself. Less than half actually gets through to victims. According to a GAO study, 50 percent or more of payments made by defendants in a product liability trial goes to lawyers. Victims get less than 50 percent. This same report discovered that when a case is appealed, defense costs can actually double.

Estimates vary, but one professor at the University of Virginia has estimated that when all the costs are finally counted, a mere 15 percent of injury litigation awards go to a victim.

Innocent victims must find relief and the help they deserve—and this bill preserves that obligation. But a runaway legal system must not be allowed to make victims of us all.

The current state of product liability law does not work for victims, it does not work for manufacturers, for consumers, for America.

Like so many of the reforms that we have already passed and stand to take action on, product liability reform is long overdue and at a critical stage. For the sake of our workers, for our economy, and for the victims trapped in a legal morass, I urge my colleagues to support this legislation.

Mr. STEVENS. I suggest the absence of a quorum.

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

The bill 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, by consent of all parties, I ask for action on the Gorton-Rockefeller-Dole amendment.

VOTE ON AMENDMENT NO. 709, AS MODIFIED

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment No. 709, as modified.

The amendment (No. 709), as modified, was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KYL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I ask unanimous consent to proceed as in morning business for the next 15 minutes.

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

Mr. DOLE. I thank the Chair.

(The remarks of Mr. DOLE pertaining to the introduction of S. 770 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. DOLE. 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. 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 ask unanimous consent that it be in order for me to offer the amendment I have in my hand which the Democrats have also seen and it be in order notwithstanding the provisions of rule XXII. This is the so-called additur fix amendment requested by the White House.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Mr. President, on behalf of Senator HOLLINGS, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. GORTON. 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. HEFLIN. 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. HEFLIN. Mr. President, during the course of debate in discussing the breadth of the products liability bill, I mentioned that a nuclear power plant or a component part thereof could be included within the purview of the products liability bill. I also stated that maybe the bill might not cover a nuclear power plant or a component part thereof.

I, in effect, raise two issues: One being the issue of pain and suffering, and the other being the statute of repose. In regard to these issues, I mention the Chernobyl melt-down.

Since that time, my office has been contacted by reliable and informed individuals who feel that I misspoke on this issue.

First, they say the difference between design and operation of the United States and Soviet plants make a Chernobyl-style accident virtually impossible.

Second, they state that the bill would not in any way prohibit compensation for injured parties in the event of a nuclear accident regardless of the time of the manufacture of the plant or components. They particularly point out that Congress has provided a sure and certain recovery system for any member of the public injured as a result of a nuclear power plant accident—the Price-Anderson Act—and, further, that Congress in 1988 increased the amount of funds available for claims to more than $6.8 billion and pledged to review the situation in the case of an accident where more funds were needed to compensate the injured. The nuclear power industry, I am told, has willingly agreed to be assessed up to $63 million against each licensed reactor in order to pay damage claims. The nuclear power industry has met this obligation to provide a clear and reliable source of liability compensation when it is justified.

While I have not researched this issue completely, I do find that following the case of *Klick* v. *Metropolitan Edison Co.* (1986, CA3 Pa) 784 F2d 490, which limited certain damages to an ''extraordinary nuclear occurrence,'' Congress did amend the Price-Anderson Act to include a ''nuclear incident.''

In the exclusion clause of the products liability bill there is a statement to the effect that the bill does not supersede any Federal law.

I have great confidence in the knowledge and reliability of the individuals who have brought this to my attention, and I would like to put the record straight. I will continue to research this matter; and if there is anything different from what I have been told, I will make it known to the Senate.

I yield the floor and 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. BURNS. 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. BURNS. Mr. President, I ask unanimous consent that I may be allowed to proceed as in morning business for the next 10 minutes.

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

(The remarks of Mr. BURNS pertaining to the introduction of S. 768 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

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

UNITED STATES-JAPAN TRADE RELATIONS

Mr. BYRD. Mr. President, I have a Senate resolution which has been cleared with both leaders, and they are both cosponsors. I have the clearance from them to take up the resolution and proceed with its immediate consideration. I therefore send a Senate resolution to the desk and I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will read the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 118) concerning United States-Japan Trade Relations.

The Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, this resolution is being jointly cosponsored by Senators DOLE, DASCHLE, BAUCUS, REID, ASHCROFT, WARNER, LEVIN, HOLLINGS, PRESSLER, DORGAN, BROWN, and SARBANES.

Mr. President, the long and difficult negotiations between the United States and Japan over United States access to the Japanese automotive market collapsed last Friday, May 5, 1995, in Whistler, Canada. Japan simply cannot kick the habit of a closed automotive market, that is the antithesis of free trade. It is not clear as to whether the Japanese will return to the negotiating table with a changed position, or whether Japan's automakers will themselves announce an agreement with specific measures of progress to allow American products to compete fairly there. Let us hope that they do break the impasse, but this disappointing result of strenuous, long-term efforts by the United States to get fair access to this lucrative market brings us to a watershed in our trading relations with Japan. This blow cannot help our overall relationship with a nation that we have worked with for decades to promote our mutual goals of security, stability, and peace in the Pacific.

My distinguished colleague from West Virginia, Senator ROCKEFELLER, stated on this floor this past Wednesday that the nature of the difficult problem in getting fair access to Japan's market. Japan rigs her market against us, despite economic pressures to be more open. Despite the recent increase in the value of the yen, which would make United States products more competitive in Japan, Japan keeps her market closed to cheaper imports and overprices goods offered to the Japanese consumer. Increased savings which should be passed on to Japanese consumers, resulting from the increased strength of the yen vis-a-vis other currencies are never passed on to the Japanese consumer. The increased profits which are accumulated by Japanese producers are used to subsidize exports, keeping prices for those same goods artificially low here in the United States, making Japan artificially

more competitive. It is a controlled pricing situation, not based on free market principles. The devastating result of these practices in the automotive industry, for both new cars and parts, has been an unacceptably high and persistent trade deficit with Japan.

The result in 1995 was a ballooning record trade deficit with Japan of $66 billion, up 10 percent over 1994, of which $37 billion, or 56 percent of the total is attributable to cars and auto parts. The automotive trade deficit with Japan constituted some 22 percent of our entire trade deficit with the world. American manufacturers cannot get Japanese distributors to put American cars in their showrooms. Overall, while Japanese automakers hold some 22.5 percent of the American market, the share of the Japanese market held by the Big Three United States automakers is less than 1 percent. As for parts, it is extremely difficult for United States parts, which are highly competitive from both a price and value standpoint, to break into the ''Karetsu'' system of interrelationships between Japanese car manufacturers, suppliers and dealers. Despite the fact that United States government studies show that Japanese aftermarket repair parts cost, on average, some 340 percent higher than comparable United States parts, the Japanese consumer is essentially denied the ability to buy those American parts. The result is that Japanese vehicle manufacturers control about 80 percent of the parts market, as compared to a wide-open American market in which independent replacement parts producers account for some 80 percent of the United States market. So, our market is open, Japan's is closed.

These important economic realities are well known to both governments and industry on both sides of the Pacific. The impact on our domestic auto industry is crucial. Every $1 billion of U.S. exports means some 17,000 jobs. The health of our aluminum, glass, steel, rubber, electronics, and many other industries is tied to the auto sector. It is our largest manufacturing industry, with some 700,000 people employed directly by the automakers, and another 2.3 million employed in the parts industry supplying the automakers.

There is extensive support across the board from industry and labor organizations for the current negotiations. They have been grinding on for some 18 months before the stinging Japanese rebuff on Friday in Canada. Last October 1994, our Trade Representative opened an investigation under section 301 of the Trade Act of 1974 of the unfair practices in the aftermarket parts market, which constitutes about a third of the automotive deficit with Japan. The unwillingness of Japan to address this unfair automotive trade balance demands a strong administration response and equally strong supportive actions by this body and American industry, both business and labor. President Clinton and our Trade Representative, Ambassador Kantor, have made it clear that the end of long, long American tolerance and give has now been reached on this issue. On Friday, Ambassador Kantor indicated that the ''government of Japan has refused to address our most fundamental concerns in all areas'' of automotive trade, and that ''discrimination against foreign manufacturers of auto and auto parts continues.'' The President indicated on the same day that the United States is ''committed to taking strong action'' regarding Japanese imports into the United States in the absence of an agreement.

Pursuant to the 301 case, trade sanctions, meaning tariff retaliation against a variety of Japanese goods imported into the United States, are now in order. Such retaliation has been openly discussed regarding these negotiations for months, and so the Japanese are saying, either ''we do not believe you will do it,'' or ''we do not care,'' or, lately, that ''you cannot impose sanctions under the 301 law bilaterally on Japan because it is illegal under the newly created World Trade Organization rules.''

Mr. President, the stakes of these automotive negotiations and U.S. actions under 301 are very high. The auto trade is very lucrative, and thus there is a major financial stake. But there is more at stake than money here. At issue is whether nontariff barriers, discriminatory treatment by foreign economic interests, aided by a maze of regulatory, bureaucratic obstacles to open trade, will dominate large sectors of international trade. As opposed to an open United States market, our major Asian trading partners practice wide discriminatory treatment against our goods. China and Korea appear to be taking a cue from Japanese behavior and the apparent success of these unfair practices. Other sectors will continue to follow suit, such as the highly explosive and rich trade in telecommunications, where we are experiencing similar problems.

The inability of our two nations to resolve our differences on trade in a way which demonstrates a real commitment to fairness by Japan will inevitably corrode our overall relationship. It is unrealistic to expect to insulate the costly effects to the U.S. economy, to jobs, and the health of so many of our important industries from the total relationship. Our economic health is critical to our national security and to our staying power as the key deployed military power in the Pacific. It all hangs together. The fabric of our economic health and Japan's national security is a seamless web, and a strong United States auto industry is an important strand in that web. I hope the Japanese will come to understand that this is all interrelated.

The Japanese have threatened to bring a case against United States imposition of sanctions under section 301 before the World Trade Organization, in the hope the WTO would rule against the United States and declare the imposition of sanctions a violation of WTO rules. I am gratified that Ambassador Kantor has said he would welcome such a challenge, because, according to his comments in the New York Times of May 7, 1995, ''it would give us an opportunity to make clear to the world the full range of Japan's discriminatory practices'' in the automotive market. I hope Japan does bring the case to the WTO. I am fully confident that our Trade Representative would conduct a vigorous defense of United States actions, and turn the tables against the Japanese, whose trade sanctuary regime is anathema to the goal of an open world trading system. We should insist on a complete review of Japan's practices. Either we are heading toward a more open world system or we are not. This would be a litmus test of the actions and posture of the WTO. It would be a key test of the future of the WTO. I cannot conceive of continued U.S. commitment to an organization that would reward blatant discrimination and the perpetuation of sanctuary behavior. Thus, the case would be a welcome, early test of what kind of world organization we have created.

Mr. President, I am offering this resolution as a sense-of-the-Senate resolution that puts the Senate on record as supporting the President's actions. First, it expresses the Senate's regret that negotiations between the United States and Japan for sharp reductions in the trade imbalances in automotive sales and parts, through elimination of restrictive Japanese market-closing practices and regulations have collapsed. Second, it states, if negotiations under section 301 of the Trade Act of 1974 fail to open the Japanese auto parts market, the United States Senate strongly supports the decision by the President to impose sanctions on Japanese products in accordance with section 301.

There is still opportunity for Japan to return to the negotiating table and satisfy the legitimate case of the United States that immediate action to open Japan's market is urgently needed. I hope the Japanese see the light before it is too late. There are press reports that the Japanese think we may shrink from the imposition of sanctions. I hope that we here in the Senate will send a strong message of support for the President on this matter, and help disabuse the Japanese of that view.

Mr. President, I yield the floor.

(Ms. SNOWE assumed the chair.)

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. DOLE. Madam President, I am a cosponsor of the resolution. I thank my distinguished colleague from West Virginia for adding me as a cosponsor of the resolution. I think it is very timely

and very important. I hope my colleagues will strongly support the efforts of Senator BYRD in this area.

This resolution is not an example of Japan-bashing. The United States has now negotiated in good faith for 2 years in this administration. Previous administrations tried to pry open the Japanese auto market through serious negotiation. The results have been disappointing, at best.

Congress has passed market-opening trade laws because U.S. negotiators have needed effective tools. They are there to be used, if negotiations fail. They are not empty threats.

Section 301 is not a threat, it is an effective tool. I happen to believe Ambassador Kantor has wielded this tool responsibly.

That is why, if a negotiated solution cannot be found, I support the use of section 301 to impose appropriate sanctions.

Madam President, this would be strong medicine. Some people might not like it. Some people might think it disruptive.

But there has always been bipartisan agreement that the United States must pursue more open markets. We have always provided leadership on this issue, and we will continue to do so.

There comes a time in every trade negotiation, when all other means have been exhausted, to take strong, decisive action. That time may have come, Madam President, if a last minute solution cannot be found. I urge my colleagues to support this sense-of-the-Senate and stand up for American commercial interests abroad.

In my view, if nothing else, a strong vote on this resolution will send an urgent message to the negotiators, more particularly the Japanese negotiators, that we are serious, we mean business, we stand behind the administration and their efforts to break the logjam.

So I encourage my colleagues on both sides of the aisle to support the sense-of-the-Senate resolution.

I ask unanimous consent that Senator SPECTER be added as a cosponsor.

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

Mr. BYRD. Madam President, I thank the distinguished majority leader for his cosponsorship and for his fine statement. I believe we would like to have the yeas and nays.

Mr. DOLE. Madam President, I ask for the yeas and nays on the resolution.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BRADLEY. Madam President, I rise to explain my opposition to this resolution. Although this resolution calls attention to a serious problem, the persistence of Japanese trade barriers, it does not identify a workable solution.

Japanese trade barriers need to come down. They need to come down because they contribute to America's bilateral trade deficit with Japan. Studies cited by the administration have found that removing every single Japanese barrier would reduce the bilateral merchandise trade deficit by around 20 percent.

Note, however, that Japanese trade barriers do not themselves account for America's global trade deficit, only its composition. As the administration itself admits in the President's 1994 annual report on the Trade Agreements Program:

> The United States still suffers from relatively low savings at a time when domestic investment is growing rapidly. The shortfall between domestic saving and investment was larger in 1994 and was filled by a net increase in foreign capital inflows. The United States thus had a large surplus on its international capital account and a large offsetting deficit on its trade or current account.

In plain English, our domestic budget deficit crowds out savings and requires us to import capital. This leads to our global trade deficit.

Japanese trade barriers also need to come down because they reduce the Japanese people's quality of life and impede the process of democratization in Japan. Japan's democratization is also in our interest; it is the only way we will have a stable, democratic, prosperous Japanese partner in our efforts to secure a stable international environment.

So, on this point, we agree, Japan's trade barriers must come down.

However, the administration's strategy, which this resolution supports, is the wrong way to do this. Declaring unilateral trade war on Japan—and, make no mistake, that is what we are talking about—would once again leave the United States isolated in the world. Europeans, Latin Americans, and Asians, fearing similar treatment from us in the future, would line up with Japan.

Currency markets will react badly. If you think a rate of 80 yen to the dollar is disadvantageous to this country, as I do, imagine a rate of 75 or even 70. I am not alarmist when I say that this could threaten the position of the dollar as the international reserve currency. Indeed, Japan is already talking of switching its reserves out of dollars and into deutschmarks.

This dispute is likely to end in the fledgling World Trade Organization. No matter what happened there, support would be weakened. Either the United States would lose, causing a tidal wave of calls to leave the World Trade Organization, or Japan would lose, leading to reduced Japanese support for the international trading system. Either way, we all lose.

Finally, by strengthening the power of the bureaucrats, who are standing up to the Americans, a trade war would cut across the forces of transparency, democratization, and accountable electoral politics which are the ultimate answer to our trade imbalance.

I have spoken many times of a better way to reduce Japan's trade barriers, one that works with the forces shaping Japan, does not cut across our interests in the new World Trade Organization, and depoliticizes the trade relationship. To repeat, I believe we can best address Japan's trade barriers by establishing a dispute resolution mechanism, similar to the ones in the United States-Japan and United States-Canada free trade agreements, to impartially adjudicate United States-Japan trade disputes.

Madam President, it is ironic that we are voting on this resolution. In many ways, it is like judo. What appears strength is actually revealed as weakness.

I, for one, believe in strength. This is why I believe we must take a strategic, long-term approach to the United States-Japan trade relationship. A strong America will negotiate and adjudicate, as I have described. A weak America will only, impotently, bash.

The PRESIDING OFFICER. Is there further debate on the resolution? If not, the question is on agreeing to the resolution. The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Minnesota [Mr. GRAMS], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Virginia [Mr. WARNER] are necessarily absent.

Mr. FORD. I announce that the Senator from New York [Mr. MOYNIHAN] is necessarily absent.

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

The result was announced—yeas 88, nays 8, as follows:

[Rollcall Vote No. 158 Leg.]

YEAS—88

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

NAYS—8

Bradley	Johnston	McCain
Hatfield	Kassebaum	Packwood
Inouye	Kyl	

NOT VOTING—4

Grams	Specter
Moynihan	Warner

So the resolution (S. Res. 118) was agreed to.

The preamble was agreed to

The resolution, with its preamble, is as follows:

S. RES. 118

Whereas, the United States and Japan have a long and important relationship which serves as an anchor of peace and stability in the Pacific region;

Whereas, tension exists in an otherwise normal and friendly relationship between the United States and Japan because of persistent and large trade deficits which are the result of practices and regulations which have substantially blocked legitimate access of American automotive products to the Japanese market;

Whereas, the current account trade deficit with Japan in 1994 reached an historic high level of $66 billion, of which $37 billion, or 56 percent, is attributed to imbalances in the automotive sector, and of which $12.8 billion is attributable to auto parts flows:

Whereas, in July, 1993, the Administration reached a broad accord with the Government of Japan, which established automotive trade as one of 5 priority areas for negotiations, to seek market-opening arrangements based on objective criteria and which would result in objective progress;

Whereas, a healthy American automobile industry is of central importance to the American economy, and to the capability of the United States to fulfill its commitments to remain as an engaged, deployed, Pacific power;

Whereas, after 18 months of negotiations with the Japanese, beginning in September 1993, the U.S. Trade Representative concluded that no progress had been achieved, leaving the auto parts market in Japan ''virtually closed'';

Whereas, in October, 1994, the United States initiated an investigation under Section 301 of the Trade Act of 1974 into the Japanese auto parts market, which could result in the imposition of trade sanctions on a variety of Japanese imports into the United States unless measurable progress is made in penetrating the Japanese auto parts market;

Whereas, the latest round of U.S.-Japan negotiations on automotive trade, in Whistler, Canada, collapsed in failure on May 5, 1995, and the U.S. Trade Representative, Ambassador Kantor, stated the ''government of Japan has refused to address our most fundamental concerns in all areas'' of automotive trade, and that ''discrimination against foreign manufacturers of autos and auto parts continues.''

Whereas, President Clinton stated, on May 5, 1995, that the U.S. is ''committed to taking strong action'' regarding Japanese imports into the U.S. if no agreement is reached. Now, therefore, be it

Resolved, That it is the Sense of the Senate that—

(1) The Senate regrets that negotiations between the United States and Japan for sharp reductions in the trade imbalances in automotive sales and parts, through elimination of restrictive Japanese market-closing practices and regulations, have collapsed;

(2) If negotiations under Section 301 of the Trade Act of 1974 fail to open the Japanese auto parts market, the United States Senate strongly supports the decision by the President to impose sanctions on Japanese products in accordance with Section 301.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

AMENDMENT NO. 693 TO AMENDMENT NO. 690

(Purpose: To provide that a defendant may be liable for certain damages if the alleged harm to a claimant is death and certain damages are provided for under State law, and for other purposes)

Mr. SHELBY. Madam President, I have an amendment at the desk—No. 693, I believe it is.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

The Senator from Alabama [Mr. SHELBY], for himself and Mr. HEFLIN, proposes an amendment numbered 693 to amendment No. 690.

Mr. SHELBY. Madam 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:

SEC. . LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to this section, but only during such time as the State law so provides.

Mr. SHELBY. Madam President, I offer today on behalf of myself and the senior Senator from Alabama [Mr. HEFLIN] an amendment to ensure that individuals guilty of wrongful deaths are not provided unfair and unwarranted protection by the product liability reform legislation we are considering today.

This amendment we are offering was accepted last week by both sides but was excluded from the Gorton-Rockefeller-Dole amendment today. I believe that all of my colleagues will support this measure once they take time to examine its merits. It is unique to the State of Alabama. My State of Alabama has a wrongful death statute, the damages of which are construed as only punitive in nature—not compensatory but only punitive in nature. Under the product liability bill that we are considering today, along with some of the proposed amendments to this bill, people who have committed or are guilty of a wrongful death in my State of Alabama, the damages available will be severely limited. While the bill here allows for additur, the additur procedures in this legislation are cumbersome at best and possibly unworkable.

Madam President, in 1852, I believe it was, the Alabama Legislature passed what is known as the Alabama Homicide Act. This act permits a personal representative to recover damages for a death caused by a wrongful act, omission, or negligence. For the past 140 years, the Alabama Supreme Court has interpreted this statute as imposing punitive damages for any conduct which causes death.

Alabama believes that all people have equal worth in our society so the financial position of a person is not used as a measure of damages in wrongful death cases in Alabama as it possibly is in other States. The entire focus of Alabama's wrongful death civil action is on the cause of death.

The amendment I am offering today on behalf of myself and Senator HEFLIN will provide that in a civil action where the alleged harm to the claimant is death and the applicable State law only allows for punitive damages, the punitive damages provision of this bill will not apply. In other words, this amendment will only apply to my State of Alabama.

Madam President, I believe there are legitimate reasons to exclude from the coverage of this bill actions such as those brought under Alabama's wrongful death statute. Cases of wrongful death are often some of the most legitimate instances where punitive damages should be awarded.

Everyone in this body knows that I have great reservation about this legislation now before us. However, I do believe the addition of this amendment will help ensure that this bill will not unduly, not unduly, Madam President, penalize the citizens of my State.

I urge my colleagues to support this important amendment.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. I join with the distinguished Senator from Alabama [Mr. SHELBY] in his amendment.

Of all of the 50 States, Alabama has a different method pertaining to the recovery of damages when a death occurs as a result of culpable action, regardless of whether it be simple negligence, gross negligence, willful conduct, intentional conduct, wanton conduct, any type of conduct that allows for the recovery. It allows under the interpretation given for this statute that punitive damages only can be recovered. It is different from other States where most of the other States allow a plaintiff, the executor or the administrator or the parent of the child, if deceased, to be able to introduce, for example, hospital bills.

A person may have died after 6 months in a hospital, and under hospital bills of today they can accumulate to over $150,000. Burial expenses in most States can be introduced into evidence and can be an element of compensatory damages. Loss of earning capacity, noneconomic damages, pain and suffering in some instances in some States can be introduced as an element

of damages, and so on down the list of all of the types of damages.

But in Alabama you are not allowed to introduce any of that. You attempt to introduce a hospital bill, and a doctor's bill, and whether they were $150,000 or whether, on the other hand, they amounted to $500 or $25, you cannot introduce that in evidence as an element of damages under the Alabama wrongful death statute as has been interpreted, and the charge to the jury is that it is a matter of punishment for the wrongdoer, and therefore it is limited to that.

Over the years, the companies, corporate America, in Alabama, insurance companies, defense counsel who represent them, have fought to maintain this, and over the years the plaintiffs' lawyers have come to live with it, and therefore it is accepted as being the measure of damages.

However, under the provisions that we have here under this bill in product liability cases the provisions pertaining to this would apply. And under the DeWine amendment, you would be limited in a situation with regard to that to almost zero, where there would be nothing that could be recovered, and it would limit it, restrict it substantially.

So I support the Shelby amendment in this regard. This is a situation that applies only to Alabama. The language of this bill is basically the same language that was considered in the 101st Congress and in the 102d Congress. They came out of the Commerce Committee. We had pointed this defect out, and the drafters of the bill, including people who had been working on product liability, put a provision in those bills that would allow for the Alabama law to prevail. We offered it as an amendment in regard to the Gorton and Rockefeller underlying substitute, and it was accepted after they made some changes in the language. Senator SHELBY and I are agreeable to any changes in the language of the Shelby amendment that they might want to propose provided it allows for recovery—it is limited strictly to the wrongful death cases, and therefore we are amenable to any change that they might make as long as it does not abolish, or greatly minimize the recovery under the Alabama statute.

So we feel that this is something which should be adopted. Otherwise, it is singling out Alabama, and Alabama has a very unique, they argue, uniformity, and the preemption matters ought to be uniform among all of the 50 States. But what it means is that in the preemption which does bring about some uniformity as it would apply to the preempted sections, that it will not apply to Alabama. And it is a very discriminatory act in regard to Alabama. I would think that it has, from a Federal constitutional basis, some imperfections in regard to it.

I urge my colleagues in the Senate to support the Shelby-Heflin amendment.

AMENDMENT NO. 693, AS MODIFIED

Mr. SHELBY addressed the Chair.

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

Mr. SHELBY. Mr. President, I ask unanimous consent to amend the amendment that I have filed that is the subject of debate.

I send the modification to the desk.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. HOLLINGS. Reserving the right to object. That is a modification to the Senator's amendment?

Mr. SHELBY. The Senator is correct. It just clarifies this amendment. I mention in the amendment section 107. That is all it does.

Mr. HOLLINGS. The distinguished Senator from Washington and I had a discussion about another amendment. I am sitting around making sure that unanimous consent is not given for that amendment.

Mr. GORTON. This is not that amendment.

Mr. HOLLINGS. I thank the Senator. I have no objection.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 693), as modified, is as follows:

At the appropriate place insert the following:

SEC. . LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to section 107, but only during such time as the State law so provides.

Mr. HEFLIN. I assume section 107, I ask Senator GORTON, is the section dealing with punitive damages.

Mr. GORTON. It is.

Mr. HEFLIN. So it is limited to that. But does that include the DeWine amendment and language in regard to small business, and the individual relative to the $500,000?

Mr. GORTON. It does. That is in section 107, as well.

Mr. HEFLIN. That is all included in section 107, all punitive damages?

Mr. GORTON. It is.

I simply pointed out to the distinguished junior Senator from Alabama that the way the amendment was set up it did not have any reference to any section, but it was about punitive damages. His correction is to see to it that it applies to the punitive damages section. But that is the section that has all the punitive damages in it.

Mr. HEFLIN. I thank the Senator.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I regret that I have to oppose the amendment sponsored by the two Senators from Alabama. In some respects, I am sorry that I have to do so, but I believe that I have good and sufficient reasons for doing so.

First, the senior Senator from Alabama said that this was included in previous product liability bills, which is certainly true. But those previous product liability bills did not have rules like this relating to punitive damages.

Mr. HEFLIN. Did not have what? I did not understand the Senator.

Mr. GORTON. There were no DeWine amendments and there were no Snowe amendments in previous bills.

Second, this is, Mr. President, to be candid, a very peculiar rule in the State of Alabama where negligence is accounted to be the subject of punitive damages. It is not the rule in any other State in the Union.

Nothing in this bill, without this amendment, prevents Alabama from providing any kind of damages for wrongful death that it wishes to, either through its legislature or through its court interpretations. So Alabama is not going to be penalized any more than any other State by this bill unless Alabama wants to be, and willfully refuses to conform its laws to those of other States.

But, more significant than that, Mr. President, are two other features about this amendment. The first, one of the most carefully worked out elements in this entire bill, the most carefully worked out element in this bill, is the triple set of requirements we have with respect to punitive damages, one of which, in the ultimate analysis, allows judges to impose unlimited punitive damages when they find the conduct of the defendant to have been sufficiently egregious. The second is the Snowe amendment which, in most cases, will limit punitive damages to twice the total amount of all compensatory damages. And the third, Mr. President, is the fact that this body, I think, with a wide majority, determined that we were not going to allow punitive damages in a single case simply to destroy small businesses or individuals of relatively modest assets, with total assets of less than $500,000.

Now, if this amendment passes, that will be the rule in 49 States—in 49 States, Mr. President. It will not be the rule in Alabama. In Alabama, there will not be any Snowe limitation in general cases, and there will not be any protection for small businesses or for individuals with net assets of less than half a million dollars.

Mr. President, this is only 1 State out of 50, but Alabama is the single most notorious State in the United States of America related to its size for punitive damage awards. It is a cottage industry in that State to award very, very large, huge punitive damages awards against, generally speaking but not necessarily limited to, out-of-State corporations.

So what we are saying is that the set of rules that we have adopted, in most of these cases by very large majorities in this body, will apply in every State except the State that comes first in the alphabet, Alabama, and none of the

limitations will apply in the State of Alabama. Why? Because it has a peculiar law which can be changed by one word by its State legislature or, for that matter, by its supreme court. And we are going to do this, for all practical purposes, permanently.

Finally, Mr. President, a profound change has taken place in this body since the time this amendment was first proposed in this debate. When it was first proposed in this debate, the absolute maximum for punitive damages was the Snowe amendment—twice compensatory damages—which, as the two Senators from Alabama pointed out, under this peculiar Alabama law, would be zero. And, of course, twice zero is zero. So that is no longer the case.

So the bill, the way it exists now, the way it has been amended now, allows the judge in any case on certain findings to impose punitive damages in unlimited amounts. That, in the bill as it exists now, without this amendment, of course, applies in Alabama, and will allow those Alabama judges to impose whatever they wish, if they meet the standards for punitive damages, themselves. So at that level, at least, this proposal is entirely unnecessary in a way that was not the case or not the argument just a few days ago in this bill.

So even if Alabama is perverse enough to keep its law in its present peculiar fashion, this will not mean that there cannot not be any recovery in wrongful death cases. But if it is passed, we set one rule for Alabama in which everything is the sky is the limit in a State where the sky is higher already than it is in any other State in the Nation, and a quite different rule for 49 other States.

Mr. President, that is absolutely unfair; that is profoundly unfair that this State, because of one peculiar rule, should be exempted from all of the rules which the great majority of Members here have said are appropriately applied to all of the States.

Mr. SHELBY addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I will be brief.

I would just like to say again, I believe it was in 1852, the Alabama Supreme Court decreed that there would be, in a wrongful death action, punitive damages only, and that has worked in my State since 1852. That is one reason I oppose all of this legislation.

Every State has different problems. Alabama, my State, is unique as far as measuring the wrongful death damages. They do it by punitive damages. It is not anything new. It goes back way over 100 years. But it has worked. It has worked for my State. This would only deal in wrongful death cases, nothing else. All we are asking the Senate to do is to preserve what we have and what we have had for over 100 years.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I am rather surprised to hear my good friend from Washington, who has long been an advocate of federalism, come forward with language from the screaming Federal Eagle over States saying: ''Alabama, you change your law or else you don't get even peanuts.''

In other words, this is federalism in reverse, the big Federal Government that we have heard so much about telling the Alabama Legislature and the Alabama courts, ''You change your law.'' Now you have preemption that takes place. This is a mandate as to whether a claimant is going to recover or not.

I am rather surprised that we would hear that language coming from such a strong supporter of the concept of federalism. If the Federal Government is going to tell a State you do this or not, we usually give them a carrot or some type of incentive. But my colleague's position is, to me, an example of brute force—''you change your law or you're not going to be able to protect your people.''

Then we have the additur provision pertaining to the judge. Clearly, that is unconstitutional. The Supreme Court of the United States, in the case of Dimick versus Schiedt, has already ruled on that issue. In practice what will occur is where an additur is made by the judge but the defendant does not want to accept the new amount, the defendant or defendants will request a new trial. However, that is what appeals are for—new trials.

So, automatically a defendant will ask for a new trial if he does not like what the judge added to the judgment. If the judge, therefore, feels that the punitive damage award was inadequate, because the defendant's conduct was extremely egregious and the plaintiff's injuries were great, the judge could award additional punitive damages.

In the normal course of events, when the judge adds that to the damage award, a defendant takes an appeal to reverse it where he could get a new trial. But, the punitive damages provisions of this bill give defendants the automatic opportunity to request a new trial.

Well, what defendant is going to not take advantage of it? Every defendant is going to say, ''Give me a new trial. I can keep my money, draw interest on my money in the meantime, and delay a new trial for 2 years.'' Therefore, if the overall award was $300,000, and if the judge added to it above the $250,000 cap that is in this bill, the defendant takes its $300,000 and draws interest or makes investments with it.

Defendants are going to follow that course of action with the idea also that they have to go back to a new trial which means that every issue will have to be litigated all over again. There is not much to lose in following this course of action. So automatically you are going to find that every defendant is going to demand a new trial. What happens? A defendant knows he is not going to get any more than what was originally put in the judgment, the amount he put there. Then it comes back to the judge again and the judge says, ''Well, I believe that that conduct was so egregious and find this is a terrible case and that the defendant ought to be punished, and therefore, I will again make an additur.''

What does the defendant say? ''Well, I have under this bill automatically a right to a new trial, and I demand a new trial.'' So the defendant delays it 2 more years, draws his interest, and makes his investments in the meantime.

Then he goes back and retries it and gets the same judgment. Then the defendant says, ''All right, I'm going to take advantage of my opportunity for a new trial'' and receives a new trial. So the case is tried a third time and, finally, the plaintiff says, ''It doesn't make any difference what the judge adds, there is no way in the world that I can collect it, and I just have to give in, there is nothing I can do.'' The judge and the jury felt that defendant's conduct was egregious and met the extremely high standards of this bill. However there is no way under this language that a defendant can ever recover because instead of having the normal event of trying to reverse a case on appeal and have a new trial, the defendant just has an automatic right to a new trial on punitive damages.''

When you think about it, the situation is just plain ridiculous. I think Alabama's legislature and its courts have the clear right to determine that its wrongful death statute is to be punitive in nature only, recognizing the sacredness and value of human life. The concept of federalism that every State has its right to choose its laws ought to respect that right of my state. But here we have the American Federal Government imposing, and intruding, and saying: ''All right, you can't recover for the death of an Alabamian or the death of a Washingtonian if you are traveling in Alabama or any other individual that might be there.''

What we are asking is, let us allow federalism to prevail, and if the State of Alabama wants to, it can continue to recognize the validity of its wrongful death statute which is designed to protect its citizens by making it of a punitive nature only.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, very briefly on the subject. No, I say, Mr. President, nothing in this law limits the State of Alabama from providing unlimited compensatory damages in the case of wrongful death. It is Alabama that has said that it will not grant compensatory damages in the case of wrongful death, and Alabama

can change that at any time that it wants. Nothing in this bill puts any limit on compensatory damages awarded by courts in the State of Alabama for wrongful death; absolutely nothing.

What this bill does do is to take a modest step toward bringing under a certain degree of control punitive damages with rules for small business, rules for larger organizations and an exception when a judge wishes to go above any of the latter limitation. That is all. This amendment seeks for a single State to be totally exempt from that rule, therefore, in the view of this Senator is wrong.

Mr. President, I am going to suggest the absence of a quorum because it is my hope that we are about to reach a unanimous consent agreement on all of the rest of the amendments that are to be offered and perhaps a chance to vote on them all and on final passage of this bill the same time tomorrow and serve the convenience of our colleagues. And so I will do that in just a moment, though I do not want to limit anyone else having a right to say something.

I do need to say two other things. First, with respect to this constant new trials for large punitive damage awards, the Senator from West Virginia considered that last night, worked with his friends and supporters on his side of the aisle on that subject last night and worked with staff on this side. We agreed to take that section or subsection out of the bill. Because of cloture rules, we can only do that by unanimous consent. Opponents of the bill—Senator HOLLINGS—have refused that unanimous consent.

I am here publicly to assure all Members that it will not appear in any bill coming out of conference, because Senator ROCKEFELLER and I have made that commitment. We will not bring back a conference report with that proposal in it. We wish that we could have the courtesy of such unanimous-consent agreement. But we cannot, and they are certainly operating under the rules. But it is not going to appear in any final bill. We can assure them of that.

With that, Mr. President, hoping that we will soon be able to reach a unanimous-consent agreement about votes, I will suggest—I withhold that.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, my distinguished colleague from Washington just made a very, very important point, one which he and I have already made in public at a press conference which we held several hours ago, and that is that we are, in spite of the fact that the Senator from South Carolina, my esteemed, cherished ranking member of the Commerce Committee—who is a very good friend and has been, and his wife and my wife for a long, long time—does not wish to give consent for us to be able to do this—I think with the idea being that if he does not give consent, then the chances that this bill would be less attractive to the White House would increase.

Senator GORTON and I are trying to make this more attractive to the Members of the Senate, Members of the House, and the White House. But I have also taken the same blood oath that the Senator from Washington has, and that is that we are so committed in terms of the additur amendment that we will not come back from conference without its being in the proper condition, and that, in fact, if it does not come back from conference in the proper condition, as we said at our press conference, we will vote against a motion for cloture.

I do not know how it is possible for any two floor managers to put anything in stronger terms, or to say anything with greater faith and, therefore, it grieves me very much that we will not be granted unanimous consent to do that here when we are being so direct and honest and forthright with our colleagues.

There were just timing problems in terms of submitting this, or else the amendment would have been filed and could have been brought up as a matter of the order. Nevertheless, that was not done. The Senator from South Carolina does have the power to grant us unanimous consent, but he chooses not to do so.

Mr. President, I also want to simply indulge my colleagues in a couple of thoughts, to make some comments on the discussion here about the section in the compromise now pending. We are there. It deals with punitive damages. No. 1, the whole section is the result of many, many months of negotiation and discussion on, in fact, how a product liability reform bill might best deal with the costs and the problems and the erratic nature which we all recognize is at play—punitive damages.

I have tried to represent the Clinton administration's discomfort—expressed discomfort—with the idea of imposing a flat cap on punitive awards, while accommodating the strong desires of Senators on both sides of the aisle to include some reform in this bill, to pursue the idea that the punishment impleaded in punitive damages should have some sense of connection, in fact, to the crime.

I also have to say that in my own personal experience, I do not like to vote for caps. I am on the Finance Committee, and when medical malpractice was before us last year and there was a vote on a cap on noneconomic damages, I voted against it. I do not like caps. It has been my own personal purpose in which I have negotiated in good faith with Members of my own party and the other party to find a way to make sure that the cap would be uncapped. I think we have done that. The Senator from South Carolina knows that. And I say this with respect because he is within his rights and he is a very skilled legislator and a very good friend. I repeat that. He understands that we are, in fact, trying to improve the bill in a way which would appeal to virtually all Members on my side of the aisle, including, in fact, in truth, I believe the Senator from South Carolina himself, because it would be a better amendment with the judge additur provision refined and nobody could dispute that.

It would be better than simply two times compensatory damages with an alternate ceiling of $250,000 because one can construe that—although one can never guess what noneconomic damages will be—one can construe that, in theory, to be a cap. So I have been trying my best in negotiating with both sides to try and get that out and have succeeded. I have some sense of accomplishment in that, which is now being put aside by the Senator from South Carolina.

Mr. President, I also want to make a correction for the record regarding the discussions of the constitutionality of the judge additur provision in the Gorton-Rockefeller amendment.

The judge additur provision in section 107 (b) of our amendment, as it exists now, creates a right to a new trial for defendants if they do not accept the additional punitive awards set by the judge. This provision was inserted to address a perceived constitutionality concern with the judge additur provision—perceived. Senator GORTON and I are now in agreement that this right to a new trial provision is in fact unnecessary to meet any constitutionality test.

The Associate Attorney General, in several conversations with my staff, has asserted that he believes the judge additur provision in Senator GORTON's and my amendment is constitutional on its own—free standing—without the provision creating a right to a new trial for the defendant should the defendant object to an award which results from the judge additur provision.

Indeed, the Department of Justice prepared a list of precedents and authorities for judicial determinations of the amount of punitive damages which I ask unanimous consent to have printed in the RECORD.

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

AUTHORITIES WHICH SUPPORT THE CONSTITUTIONALITY OF REQUIRING JUDGES TO DETERMINE THE AMOUNT OF PUNITIVE DAMAGES

SOME OF THE CASES

Tull versus United States, 481 U.S. 412 (1987), held it did not violate the Seventh Amendment to have a judge determine the amount of a civil penalty under the Clean Water Act. The Supreme Court indicated that ''[n]othing in the Amendment's language suggests that the right to jury trial extends to the remedy phase of a civil trial.'' 481 U.S. 426 n.9. It also reasoned that ''highly discretionary calculations that take into account multiple factors are necessary in order to set civil penalties * * * These are the kind of calculations traditionally performed by judges.'' 481 U.S. at 427.

Smith versus Printup, 866 P.2d 985 (Kan. 1993), upheld the constitutionality of Kansas

Stat. §60–3701, which requires courts to determine the amount of punitive damages. The Kansas Supreme Court reasoned: ''Because a plaintiff does not have a right to punitive damages, the legislature could, without infringing upon a plaintiff's basic constitutional rights, abolish punitive damages. If the legislature may abolish punitive damages, then it also may, without impinging upon the right to trial by jury, accomplish anything short of that, such as requiring the court to determine the amount of punitive damages * * *''

Federal statutes. Various existing federal statutes require judicial assessment of punitive damages. See Petroleum Marketing Practices Act (PMPA), 15 U.S.C. §2805(d)(2); Fair Credit Reporting Act, 15 U.S.C. §1681n(2); Patent Act, 35 U.S.C. §284; Equal Credit Opportunity Act, 15 U.S.C. §1691e(b). None of these statutes has ever been held unconstitutional See Swofford versus B & W, Inc., 336 F.2d 406 (5th Cir. 1964) (holding that plaintiffs in patent action were not entitled to jury trial on issues of exemplary damages).

Courts have also upheld judicial determination of punitive damages in a variety of other contexts. See, e.g., Tingely Systems, Inc versus Norse Systems. Inc., 49 F.3d 93 (2d Cir. 1995) (holding that remittitur of jury verict was not reversible error because judge was entiteld to determine punitive damages under the Connecticut Unfair Trade Practices Act).

SOME OF THE COMMENTATORS

Dean Dorsey D. Ellis, Jr., Punitive Damages, Due Process, and the Jury, 40 Ala. L. Rev. 975, 1005 (1989). (''Under a traditional legal analysis, punitive damages are more analogous to fines than to damages. The determination of the appropriate amount of a fine is traditionally treated as a question of law, hence an issue for the judge, and not a question of fact for the jury. By analogy, the judge, not the jury, should decide the amount of a punitive damage award * * *'')

Victor E. Schwartz & Mark A. Behrens, The American Law Institute's Reports' Study on Enterprise Responsibility for Personal Injury: A Timely Call for Punitive Damages Reform, 30 San Diego L. Rev. 263 (1993) (''Some critics have challenged judicial assessment of punitive damages as a violation of a defendant's right to jury trial under the Seventh Amendment * * * This criticism is unlikely to hold up if asserted in court. In the past, defendants in criminal cases have challenged judges' activity in sentencing as a violation of their Sixth Amendment right to a jury trial. The Supreme Court, however, has held that no violation exists because sentencing is not a determination of guilt or innocence.* * *[A] criminal defendant's Sixth Amendment right to trial by jury is given a broader scope than a civil defendant or plaintiff's rights under the Seventh Amendment. Thus, we believe that [judicial determination] is constitutional under the Seventh Amendment.'')

Robert W. Pritchard, The Due Process Implications of Ohio's Punitive Damages Law A Change Must Be Made, 19 U. Dayton L. Rev. 1207 (1994). (''Because assessing the amount of civil penalties is not a fundamental element of the right to trial by jury and because judges are better able to perform the highly discretionary calculations of punitive damage assessments, the statutory mandate of judicial assessment of punitive damages awards is constitutional.''

Colleen P. Murphy, Integrating the Constitutional Authority of Civil and Criminal Juries, 61 Geo. Wash. L. Rev. 723 (1993). (''The Constitution should not be deemed to guarantee jury calculation of punitive damages, just as it does not guarantee jury participation in either civil penalty assessment or in certain aspects of sentencing. Federal courts therefore will not violate the Seventh Amendment if they enforce legislation that * * * authorizes judges to calculate awards.'')

Jonathan Kagan, Toward a Uniform Application of Punishment: Using the Federal Sentencing Guidelines as a Model for Punitive Damage Reform, 40 U.C.L.A. 753, 767–68 (1993). (''While it seems clear that there is a right for juries to determine if plaintiffs have met their evidentiary burdens, it seems clear whether this right extends to the calculation of damages. The Supreme Court resolved this issue in Tull. It held that the defendant was entitled to a jury trial on the issue of liability, but not on the issue of civil damages.'')

Stanley L. Amberg, Equivalent and Claim Construction: Critical Issues En Banc in the Federal Circuit, P.L. Inst. (1994) (''Consistent with the right under the Seventh Amendment to have a jury determine entitlement to punitive damages, * * * Congress may authorize judges to assess the amount of punitive damages or civil penalties.'')

Mr. ROCKEFELLER. This list sets the precedents and authorities supporting the constitutionality of requiring judges to determine the amount of punitive damages. And is therefore valuable information to be considered in this debate.

I rely on the word and the integrity of the Associate Attorney General and his staff at the President's Justice Department. They believe, as I have indicated, that a freestanding judge additur provision as it is written in the Gorton-Rockefeller amendment, and we would like to modify it by striking section 107(b)(3)(C), passes constitutional muster. I have said that several times purposely.

In my view, as an author of this legislation, that is sufficient authority to say that a severability amendment regarding additur is superfluous.

To reiterate, relying on the Justice Department's determination that a judge additur provision is constitutional, I do not believe it is necessary to further amend this provision to sever the judge additur requirements of this bill in an effort to guard against a circumstance where this provision would be deemed unconstitutional. It will not be deemed unconstitutional for the reasons I have articulated.

Mr. President, I just want to take this opportunity to make my colleagues aware that we have, in fact, addressed the concerns raised about constitutionality.

The judge additur provision, coupled with the modification that strikes the defendant's right to a new trial, is a constitutional provision. Again, some of my colleagues on the other side of the aisle would like to add additional language which makes this particular provision severable, to make absolutely certain that the constitutionality of this bill will not be tested as a result of this provision.

I have assured them, based upon my conversations with the Department of Justice and others, that their extra cautious approach is not required.

In concluding, I cannot remember in the 10 years that I have been in the Senate where the two managers of different political persuasions have publicly said that they are so committed to rectifying something which is of concern to the Senator from South Carolina, to some of my colleagues, and to the White House; that the Senator from Washington has said, ''We will not come back from the conference with these provisions;'' and where the Senator from Washington this morning at a public press conference said that he would vote against the motion to invoke cloture, assuming that the conference report was filibustered. I share exactly that same view.

I think that is pretty strong and dealing in good faith. We would like to hope that we can be dealt with in good faith also.

Mr. President, I thank the presiding officer. I yield the floor.

Mr. MCCONNELL. Will the manager of the bill, Senator GORTON, yield for a question about a particular section of the bill?

Mr. GORTON. Yes, I would be glad to do so.

Mr. MCCONNELL. I thank the Senator. The bill, at section 106, sets out a provision to hold individuals who misuse or alter a product accountable for any injury resulting from the misuse or alteration. This provision would allow for the reduction of damages based on such misuse or alteration.

This section, at 106(b), also provides that this provision only supersedes State laws that do not already impose such apportioning of damages among responsible parties, including the injured party found to have misused or altered the product, is that not correct?

Mr. GORTON. That is correct.

Mr. MCCONNELL. But, this apportioning of damages would only occur if the court has found the defendant liable for at least some portion of the plaintiff's injuries. In other words, if, under State law, the defendant has no liability, for example under the ''common knowledge'' doctrine, then this provision would not change that result. Am I reading this section correctly?

Mr. GORTON. Indeed. Under the ''common knowledge'' doctrine the defendant is not held responsible for injuries to the plaintiff caused by the plaintiff's misuse of a product that is commonly known and recognized to be dangerous by ordinary users.

Mr. MCCONNELL. So, the Senator shares my understanding that this bill would not overturn the result in, for example, *Friar* v. *Caterpillar, Inc.*, (539 So. 2d 509, La. App. 5th Cir., 1988) or *Colson* v. *Allied Products Corp.* (640 F.2d 5, 1981)? Those both involved situations in which the plaintiffs were injured using products that the courts found presented a danger of which plaintiffs were aware.

Mr. GORTON. Yes. The Friar case involved a forklift and the Colson case involved the use of a lawnmower. In

both of those cases the courts held there was no duty to warn where the dangers are of common knowledge.

Mr. MCCONNELL. This basic principle is part of case law and it is also set forth in the Restatement of Torts, at section 402A, which I would like to include in the RECORD. The relevant part provides that defendants

> Are not required to warn with respect to products, or ingredients in them, which are only dangerous, or potentially so, when consumed in excessive quantity, or over a long period of time, when the danger, or potentiality of danger, is generally known and recognized. Again the dangers of alcoholic beverages, are an example, as are also those foods containing such substances as saturated fats, which may over a period of time have a deleterious effect upon the human heart.

I thank my colleague for responding to my inquiries.

Mr. GORTON. I am glad we clarified the meaning of section 106.

Mr. HOLLINGS. Mr. President, I have been at the Budget Committee all afternoon, and so I have not been able to monitor all the nuances, but we are now hearing that reasoned objections need not be given to this provision because the distinguished Senators say that they are going to take care of this issue in conference.

That could be. I have served on many a conference committee and I have learned that you are never able really to control it. Each Senator is given a vote, along with the House Members.

Be that as it may, I will not give the reasons why I am concerned about this provision at this particular time, other than to say that I am also honestly objecting. I am courteously objecting. I do not know how to say it any better than that.

When the proponents make a request, a unanimous-consent request, and assume that theirs is the only honest request, courteous request, and sincere request, and how they can be more honest, then that constrains me to stand and say that I am just as courteously objecting and honestly objecting as I know how to object. And I object.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS CONSENT AGREEMENTS

Mr. DOLE. Mr. President, I ask unanimous consent that notwithstanding rule XXII, that the following amendments be the only remaining amendments in order to H.R. 956, and not be in order after the hour of 11 o'clock a.m. on Wednesday: Harkin, punitive damages; Boxer, harm to women; Dorgan, punitive cap; Heflin-Shelby, Alabama wrongful death cases; Heflin, punitive damage insurance.

I ask unanimous consent that the vote occur in relation to the Shelby-Heflin amendment number 693 at 9:45 a.m. on Wednesday, to be followed by a vote on or in relation to the Harkin amendment.

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

Mr. DOLE. I further ask that following the disposition of the above listed votes, if no other Senator on the list is seeking recognition to offer their amendment, the Senate proceed to the adoption of the Coverdell-Dole substitute, as amended, the Gorton substitute, and the bill be advanced to third reading without any intervening action or debate.

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

Mr. DOLE. I further ask that following third reading, the following Members be recognized for the following allotted times, to be followed immediately by a vote on H.R. 956, as amended:

Senator HEFLIN, followed by Senator ROCKEFELLER, 15 minutes each; followed by Senator GORTON, 15 minutes; followed by Senator HOLLINGS, 15 minutes; and followed by Senator LEVIN, 10 minutes.

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

ORDER TO PROCEED TO S. 534

Mr. DOLE. Mr. President, I ask unanimous consent, and this has been cleared by the Democratic leader, at 12 noon on Wednesday, May 10, the Senate proceed to calendar 74, S. 534, the Solid Waste Disposal Act.

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

Mr. DOLE. Mr. President, I think Senator HARKIN plans to offer his amendment in about 20 minutes, at 7 o'clock. I am not certain whether the amendments by Senator BOXER or DORGAN will be offered.

We have the agreement, in any event. I want to thank my colleagues on both sides of the aisle. This means no more votes tonight. We can alert our colleagues but there will be debate on the Harkin amendment, and I assume other amendments if they want to be called up. I thank the Chair.

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. ABRAHAM. 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. ABRAHAM. I thank the Chair.

Mr. President, I rise this evening in support of the product liability reform bill now under consideration, and I would like to just preface my remarks by offering my compliments to the bill's managers for their tenacity in sticking with this process as we have moved through all the various perspectives to find a point of common agreement between 60 Members of the Senate. I think both Senator ROCKEFELLER and Senator GORTON worked very effectively on this product liability reform effort.

I believe the bill represents an excellent start at reforming our civil justice system, a system that eats up over $300 billion a year in legal and court costs, awards, and litigants' lost time, not to mention the loss to consumers and the economy from higher prices for products, innovations and improvements not on the market, and unnecessarily high insurance costs.

By placing reasonable limitations on punitive damages in product liability suits, this legislation will begin the process of reforming our litigation lottery without harming anyone's right to recover for damages suffered.

I am especially pleased that the bill now includes a special provision limiting punitive damages for individuals with assets of less than $500,000 and for small businesses with fewer than 25 employees. This provision is modeled on a proposal that Senator DEWINE and I cosponsored and provides that the maximum award against such individuals or entities is the lesser of $250,000 or twice compensatory damages.

Mr. President, no one benefits when businesses go bankrupt because of arbitrary punitive damage awards. Small businesses are particularly susceptible to such problems as are the millions of Americans employed by them.

The bill will also eliminate joint liability for noneconomic damages in product liability cases. Thus the bill would end the costly and unjust practice of making a company pay for all damages when it is only responsible for, say, 20 percent just because the other defendants are somehow judgment proof.

The bill would replace the outmoded joint liability doctrine with proportionate fault in which each defendant would have to pay only the amount necessary to cover the damage for which he or she was responsible.

The bill also creates some important limitations on the liability of sellers of products generally as well as on the liability of suppliers of raw materials critical to the production of lifesaving medical devices.

These provisions go a good way toward restoring individual responsibility as the cornerstone of tort law. They also recognize an important fact about our legal system. Ultimately, in its current form, it is profoundly anticonsumer. By raising the prices of many important goods, our legal system makes them unavailable to poor individuals who cannot afford them when an exorbitant tort tax has been added. And in extreme cases our legal system can literally lead to death or misery by driving off the market drugs that, if properly used, can cure terrible but rare diseases or medical devices for which raw materials are unavailable on account of liability risks.

These are important reforms, Mr. President; reforms that will increase product availability, decrease prices and save jobs.

When we allow our tort system to stifle production and innovation the real losers are consumers—who must pay higher prices and choose between fewer and less advanced goods—and workers—whose job opportunities disappear.

By eating up 4.5 percent of our Gross Domestic Product, the tort system costs jobs. Besides causing companies to discontinue or not introduce products, it also hurts American businesses overall by making them less competitive in the world market.

A 1994 Business Roundtable survey of 20 major U.S. corporations reveals that they receive 55 percent of their revenue from inside our country, but incur 88 percent of their total legal costs here. Clearly such discrepancies in legal costs put our companies at a disadvantage in the world marketplace.

It is no secret that I wish we had gone farther with this bill, to protect the nonprofit organizations, the towns and villages and the ordinary Americans who remain victims of our current broken legal system. I hope that Members of this body who support this legislation but at this time do not want to apply its reforms more broadly will on further reflection see their way clear to taking the next step; to enact similar reforms to assist homeowners, accountants, farmers, volunteer groups, charitable organizations, all small businesses, State and local governments, architects, engineers, doctors and patients, employers and employees. But I feel strongly that the legislation under consideration, even limited to its present scope, is an important step toward making our civil justice system fair and efficient and improving the lives of our citizens. I urge its prompt final passage.

I urge its prompt final passage.

Mr. President, as I say, I hope that we will go further in the days ahead, whether in the form of independent legislation or as part of further discussions of legal reform that may come before the Senate in the context of securities litigation or some other issue before us, because I think that we need an overall and comprehensive reform of the system.

I know that I speak for a number of the Senators who are active and working on this bill in saying that we are delighted with the progress we have made so far and, while we may not think we are yet close to our final destination, we have taken a good first step. And, most importantly, I can say that, at least for this Senator, I am dedicated and committed to continuing the fight to keeping this whole issue of reforming our legal system before the Senate and I remain hopeful that we will enact more reforms in the months ahead.

Mr. President, I yield the floor, and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Mr. President, I ask unanimous consent that the pending amendment be set aside.

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

Mr. HARKIN. Mr. President, I ask unanimous consent that the amendment I am about to send to the desk be made in order.

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

AMENDMENT NO. 749 TO AMENDMENT NO. 690

(Purpose: To adjust the limitations on punitive damages that may be awarded against certain defendants)

Mr. HARKIN. 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 Iowa [Mr. HARKIN] proposes an amendment numbered 749 to amendment No. 690.

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

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

The amendment is as follows:

In section 107(b) of the amendment as amended by amendment No. 709 insert the following:

''(6)(i) Notwithstanding paragraph (1), the amount of punitive damages that may be awarded in any product liability action that is subject to this title against an owner of an unincorporated business, or any partnership, corporation, unit of local government, or organization that has 25 or more full-time employees shall be the greater of—

''(I) an amount determined under paragraph (1); or

''(II) 2 times the average value of the annual compensation of the chief executive officer (or the equivalent employee) of such entity during the 3 full fiscal years of the entity immediately preceding the date on which the award of punitive damages is made.

''(ii) For the purposes of this subparagraph, the term 'compensation' includes the value of any salary, benefit, bonus, grant, stock option, insurance policy, club membership, or any other matter having pecuniary value.''.

Mr. HARKIN. Mr. President, this is a very straightforward amendment. It simply provides that the caps on punitive damages that are in the amendment will not apply in cases where a business is sued and the chief executive officer's salary over the previous 3 years is greater than the total compensatory damages in the case for businesses with 25 or more employees.

This is less than 13 percent of all businesses, according to the Census Bureau. In those instances, the cap on punitive damages, in my amendment, would be raised to twice the compensation of the chief executive officer for 1 year averaged over the last 3 years.

Again, let me try to put it in plain English. What my amendment provides is that if a corporation is sued and it has over 25 employees, then the cap on punitive damages that is in the Gorton substitute amendment will not apply. The formula to be used would be that punitive damages would be capped at twice—just twice—the annual compensation of the chief executive officer of that corporation and that annual compensation would be determined by averaging the last 3 years.

Mr. President, we all agree that punitive damages that are paid should not be disproportionate, but proportionate to what? This legislation basically says that a multibillion-dollar corporation can consciously and flagrantly disregard the safety of others and have that conduct proven, not just by a preponderance of the evidence but by clear and convincing evidence. So what this means is that the legislation before us says this multibillion-dollar corporation can consciously, flagrantly disregard the safety of others, be sued and go to court, have it proven that they consciously and flagrantly disregarded the safety of others by clear and convincing evidence, and the maximum punitive damages for this kind of heinous conduct is only twice the compensatory damages of the plaintiff, even if those damages are such a small amount that they are only a tiny proportion of the company's profits and assets.

I believe the more important comparison in punitive damage cases is the proportion of the damages to the size and the financial strength of the business.

The compensation package of the CEO of a company with at least 25 employees, as my amendment provides, is inevitably going to be a reasonably fair proportion of the total cash flow of the company. Now, I have chosen to have it apply to only those businesses that have 25 or more employees so that a small business, a sole proprietor, who retains all of the profits of the company as his or her compensation is not affected.

There is only one purpose for punitive damages, and that is deterrence. That is the only purpose of punitive damages, to deter that flagrant, irresponsible action, that disregard from the safety of others, from happening in the future. Yet, who believes that a punitive damages award of a few hundred thousand dollars is going to have a significant impact on a company the size of, say, a major motor company, a multibillion-dollar corporation?

The CEO's of some companies make $250,000 a week. So how great of a deterrent will it be to a big corporation if their total punitive damages is $250,000? That is what they pay their CEO for 1 week.

So why did I choose the compensation packages of the CEO's of these large companies? Because I believe that unless executive compensation is

ruinously disproportionate to the resources of the company—and that is seldom the case—twice that compensation package will not be so large that it will cause the company to close. No one can argue that a multibillion-dollar corporation that pays its CEO, say, $5 million a year is going to close its doors because a punitive damage award comes to $10 million or 2 years' salary.

The other reason I have chosen executive compensation is because it is something that is entirely within the control and discretion of the company's management. And it also takes into account the cash flow of the company. It is, therefore, more fair than a system based on the total assets of the company which may be fixed productive resources.

Mr. President, let me read a few examples of the compensation packages in a few of the major corporations. This is from the recent issue of Forbes Magazine in the May 22 issue. The cover says ''Pigging it up: Corporate management who subdues their directors into submission.'' In this issue it says 800 chief executives are paid $1.3 million per year. That would be one of the lower ones. Some of them are extremely high. I am just going to read a few. These are some of the companies that may be involved in the potential lawsuit we are talking about here.

Here is the compensation of the CEO of General Electric: $8.6 million per year. Let us see now; that would come out to be about $300,000 every 2 weeks, or about $600,000 a month. So you can see, if General Electric were to make a product that they knew consciously, flagrantly disregarded the safety of others—and this was proven in a court of law by clear and convincing evidence—under the bill before us, they get $250,000, or twice the compensatory damages. Well, as I showed you, the CEO makes almost $250,000 a week. So what kind of a deterrent is that going to be?

Here is Trinity Industries. The CEO there makes $6.2 million a year. That is about $250,000 every couple of weeks.

Here is Morton International, where the CEO makes $7.5 million a year.

Here is Chrysler, where the CEO, Mr. Eaton, makes $6.2 million a year.

Here is Premark International. I do not even know what they do. They pay their CEO $12.121 million a year. Well, let us see, that is a million dollars a month. That is $250,000 a week, I guess. So if Premark consciously, flagrantly made a product in disregard of the health and safety of others and were sued and taken to court, and that was proved by clear and convincing evidence, one of the highest standards, they could have their damages capped for a figure as low as what their CEO makes in 1 week.

Do you think that is a deterrent? That is not a deterrent at all. They would laugh that off.

Here is Colgate-Palmolive. Mr. Mark makes $13.460 million a year as the CEO. I think you get the picture.

Here is Mattel Toys. Their CEO makes $7.6 million per year. Yet, we are going to say that some kid who got injured by a toy, permanently disabled for life—and again, let us think again; is it just some kid who got hurt by a toy because they were misusing it? No, they have to go to court and prove that the company flagrantly and consciously disregarded the safety of that child in making that toy. It has to be not by a preponderance of the evidence but by clear and convincing evidence, a higher standard. After all that, we will slap their hands and cap the punitive damages at a small fraction of their company's worth.

So, again, I think, Mr. President, you get the picture. There are 800 companies here. I am not going to run through them all. Again, I am not mentioning these companies because I want to cast aspersion on these companies. I have nothing against them. In fact, they are probably pretty decent, good companies. I have had dealings with some of them before. I am sure they want to be good citizens and want to employ people, and they want to make our country great. I am not saying these companies are bad. I am just using this as an example of the kinds of compensation they pay their CEOs.

Again, my amendment says that if you go through all of these hoops and you get punitive damages, we are going to cap it just at twice the annual compensation of the CEO. Mr. President, here is an article from the Tampa, Florida, Tribune, April 13th. I want to read the first couple of paragraphs. It says:

> The Nation's corporate chief executives find their jobs an enriching experience these days. ''Greed clearly is back in style,'' says Robert Mongs, a principal of Lenz, Inc., an activist investment fund in Washington. ''There is almost a feeling among CEO's that the money is there to be taken.''

If these companies want to pay their CEO's $12 million a year, or $7 million a year, that is their business. I believe it is our business as lawmakers charged with responsibility to provide for the general welfare of our people.

Now, Mr. President, the word ''welfare'' appears twice in the Constitution of the United States. Most people do not know that. It first appears in the Preamble of the Constitution, which is part of the Constitution, where it lays out the reasons for the Constitution. One of the reasons is to promote the general welfare. It does not say stand back and let the States do it. It charges Congress with promoting the general welfare of our people.

Then in article I, section 8, which lays out the duties and responsibilities of Congress to lay and impose duties and customs, to regulate the Army and Navy—it has a whole list—to regulate commerce, a whole list of things that Congress is specifically charged to do, in article I, section 8.

One of those is to provide for the common welfare of the people. That is our responsibility. We are charged by that when we raise our hand and swear our oath to uphold and defend the Constitution.

The Constitution says clearly that we are to provide for the general welfare. In providing for the general welfare, we want to make sure that people—average citizens of this country—have the assurance that when they buy a product, consume a product, or use a product, when they travel on our highways, that they can be reasonably certain that what they are using, what they are buying, what they are consuming, is not going to harm them. That is our responsibility.

That is why we pass safety and health laws. That is why we put stoplights on our intersections. Now a stoplight, Mr. President, restricts my freedom. I want to go down that street. I do not want to stop at a stoplight but that stoplight restricts my freedom of movement. We have decided for the public safety that we will regulate the flow of traffic and we put up stoplights.

That is why we have food inspection laws. That is why we have all kinds of safety laws. And that is another reason why we have left untouched in our country for these 200-plus years the common law that we inherited from Great Britain that goes back over 600 years, the concept of tort feasor, the concept that someone must take due care and concern that his actions do not harm others. If those actions do harm others, I am held accountable and responsible.

I believe it promotes responsibility. It makes people think twice about their actions and about what we make, how we act, and what we do. That is why I find this bill before the Senate so out of step with what we have been doing for 600 years and so out of line with what we in our offices and in our speeches say we want. We want people to act responsibly. We say if someone is not responsible we want them held accountable.

In the bill as it is, a corporation could make something, hurt somebody. As I pointed out, they could be maimed for life. How are they held accountable in terms of deterrence and punitive damages if we have these low caps?

I believe that is a modest amendment. It is not going to bust any company. There is no company—no company in this magazine, not one company—could say that if they had to give up 2 years of their CEO's compensation, that they will go broke. If they are, their board of directors will fire everybody running that company.

I believe that at least 2 years of compensation of what a CEO makes could be a deterrent to that company in terms of their future actions. Certainly, $250,000 is not a deterrent.

Does any person think that a company with the resources to pay one person $12 million a year would flinch from paying even $1 million in punitive damages? Some of the individuals make as much money as the salaries of

all the United States Senators combined, and no one thinks we are undercompensated here.

We all agree with the Dole proportionality of punitive damages award. It ought to be apportioned to the damages caused and the pain and suffering and the injury to the person. It also ought to be apportioned to the resources of the person or the company that caused that injury. This goal of proportionality has been served for centuries by the jury system, under the watchful eye of a judge.

Mr. President, I must also say that this bill surprises me. Many of the proponents of the bill keep talking about returning power to the local level. It does not get any more local than putting a decision in the hands of a jury of one's peers. These are not people who ran for office. These are not people who went through years of law school or other special training for their jobs.

The people who the proponents of this bill apparently think can apparently no longer be trusted to come up with fair verdicts are good citizens, the ones who serve on juries, pay their taxes, and go to the polls.

Now we are being told by the proponents of this bill, ''We cannot trust you.'' Well, considering that everyone here was put here by those same citizens who sit on the juries, how can we now doubt their wisdom? Juries, by and large, are fair and come up with reasonable verdicts. And they have been doing it since the dawn of our democracy.

What is it about juries that now makes them constantly make these so-called foolish decisions that the bill's proponents have been reading? Will the proponents of this bill say that the people who serve on juries are ignorant? If so, stand up and say so. Will the proponents of this bill say that the people who serve on juries are easily misled? If so, let them stand up and say so. Do the proponents of this bill say that the people who serve on juries lack common sense or they have no sense of fairness? If so, let them get up and say so. Do the proponents of this bill say that a jury cannot look at a person who has had a serious injury and then go on to decide that the product that was involved was not negligently manufactured? Do the proponents say that? If they believe so, let them get up and say it.

The facts are just the opposite. In fact, juries decide against plaintiffs about half the time. Juries have had a long track record in dispensing wisdom, a record about three or four times as long as the U.S. Senate.

I find it very interesting that the proponents of this legislation, some of them are the strongest voices about returning government to the local level, giving power back to the local level. There is nothing more local than a jury of your peers. Now the proponents of this bill are saying, ''We cannot trust you to make these kind of decisions. We will take it out of your hands.''

As far as I know, there is nothing more fair, there is nothing that dispenses wisdom and justice more evenly, than juries of our peers. I may not agree with every jury verdict. Sometimes I believe a jury makes a mistake. But I was not sitting there. I did not listen to all the testimony. I was not able to weigh all the pros and cons.

So what I read in the paper may upset me. I can honestly say that there are times when I have heard of jury decisions that make me mad. But then after I dig into it, find out about it, and read more about it, then I find out why the jury reached the decision they did.

So juries are not ignorant. Juries are our neighbors, our relatives, our friends, the people who put Members in this body in the first place.

All I say, Mr. President, is that I have opposed caps on damages, but if we are going to have a cap, and this bill says we are going to have a cap, let it at least be high enough that punitive damages can serve their purpose to deter truly heinous actions by the largest companies in this country.

We should not make it so that they would be so high as to bankrupt a company. We should not make it so that it would put small businesses out. That is why I have exempted those businesses of less than 25 employees.

I believe that the amendment I have offered accomplishes that fine balance and the balance of deterrence, punitive damages high enough to really deter that kind of action in the future. Not high enough to bankrupt the company. And not so low as in this bill as to where companies will just laugh it off. Just laugh it off—$250,000.

Now, I know the proponents of the bill will say, well, the judge can raise the $250,000 if he wants. True. But then the defendant can say, well, I do not like it. I want to go back to another trial and go right back to the process again. And again these multibillion-dollar corporations will get to write off, of course, all the attorney's fees and expenses as an ordinary business expense, and we taxpayers pick that up. They go right back through the process again. Thus, the cycle just keeps going. So really what we really have in this bill is a $250,000 cap. That is not enough to be a deterrence.

I believe this amendment will be a deterrence, I believe it is fair, and I believe it is reasonable.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, the Senator from Iowa assumes the question of deterrence, misconstrues the actual impact of punitive damages, and totally misstates the provision that he purports to amend. There is no $250,000 punitive damage cap. In the case of serious injuries, for anything other than the small business, which is exempted both in the bill and in the amendment of the Senator from Iowa, for anything other than a small business, the cap is $250,000 only if the damages to the plaintiff are minimal. In the cases repeatedly cited by the Senator from Iowa, the individual maimed for life—that was the last quotation I remember—it is obvious that the economic damages to that individual together with the award for pain and suffering, unlimited by any feature of this bill, added together and multiplied by two is infinitely greater than $250,000.

Every week in the United States we have compensatory damage awards well up into the millions of dollars, and in each of those cases, except for the very, very small business, the maximum award of punitive damages on the part of the jury under the bill as it exists now is twice whatever those damages are. The $250,000 figure was only put back into this proposal to say that you could go that high in case of a jury award for actual damages that was extremely small. And, Mr. President, if a claimant goes all the way through a trial and proves that his or her damages are only $10,000, why should we allow a $4 million punitive damage award? That is, of course, the essence of what this debate is about.

Moreover, even the figure twice the sum of economic and noneconomic or pain and suffering damages contained in the bill has an exception pursuant to which the judge can increase that award, if the judge finds the conduct of the defendant to be as egregious as the description propounded to us by the Senator from Iowa. The Senator from West Virginia and I have said that this bill in its final form will not contain any automatic new trial right for a defendant in any such cases.

So, Mr. President, the present bill that we are being asked to vote on does not have any ultimate cap at all on punitive damages in that extraordinarily rare case in which a judge felt that a very, very high such award was appropriate. So the Senator from Iowa is wrong that a badly injured, maimed individual is not going to have a $250,000 cap on punitive damages when an injury was caused by the deliberate acts or the outrageous acts of the large corporation. In fact, that individual is not going to be subject to any cap at all if he or she can prove the kind of case which was given us here as this horror story. But what we are doing in this bill is to provide some remote connection between the actual losses an individual suffers and how much can be added to that amount by a jury acting without any rules or instructions whatsoever. It is neither more nor less than that.

We should not have the legal system of the United States of America as a national lottery where, under certain circumstances with a handful of juries

in modest cases with almost no damages, the lottery can create a bonanza partly for an individual but basically, this is what the debate is all about—for the lawyer class in this country who find these actions to bring.

More fundamentally, and we have not gotten back to this point recently in this debate, and I speak not just of the remarks of the Senator from Iowa but of all of the opponents of this bill, none has shown that their slogans about deterrence have any true meaning. No single study has ever shown that punitive damages, the lottery of a huge punitive damage award, has any real effect on deterrence or on safety.

I am astounded that a Member of this body who believes so firmly in the presence of government in our life and of its regulatory capacities has so little faith in the ability of all of the statutes of the United States and of all of the statutes of the States dealing with safety in the production of products to cause them actually to be safe. We passed measures on automobile safety, on toy safety, and on all other kinds of product safety, and on the way in which we license drugs and the way in which we build airplanes to see to it that they are safe and effective. Yet, apparently, according to the opponents of this bill, nothing would be safe in America if we did not have unlimited punitive damages. That is the only way we can see to it that corporations behave, that we can have a reasonable society.

Mr. President, retired Justice Powell said—and I paraphrase him but I agree with him—the jury system of litigation taken as a whole is the most irrational method of business regulation imaginable.

It is not a criticism of a particular jury to say so, Mr. President. That jury deals with a single instance. It does not know what other instances there are in many cases. The Congress of the United States, the legislatures of the several States, when they determine on regulation, determine it on the basis of all of the evidence, of all of the weighing of how much we want to encourage certain kinds of production and what kind of cautions we put on them. This is the way in which the job is done.

No study shows that punitive damages do anything other than have an utterly irrational impact of telling many companies it is not worthwhile going into a new line of business—it is not worthwhile, as one of our major companies has said, to try to go into the business of finding a new drug which helps AIDS. We cannot make enough money on it to risk that lottery that some lawyer someplace will persuade some jury to whack us with a $25 million punitive damage award.

So we have had dozens of companies get out of the business of producing the vaccine against whooping cough. Is that a triumph of the American system, that the cost of whooping cough vaccine has gone up 500 percent and only one or two companies are even willing to make it?

Is it a triumph of the American system that 18 of the 20 companies that used to manufacture football helmets are not in the business anymore because it just simply is not worthwhile? Is it a vindication of the American system that a large company which produces plastic piping for heart implants, on which it might possibly make $1 million in a several-year period, has paid close to 40 times that in defending successfully product liability actions, and looks at the bottom line and says, what in the world are we doing this for? Why should we produce this particular product? Those legal fees adhere to defendants who win just as much as they do to those who lose. And when the company says it is just costing us too much, we will abandon this line of research; we will abandon this product; the American people are not benefited. Who is benefited? A tiny handful of lucky players and a larger group of trial lawyers.

So what we do in this bill, much more modestly than I would prefer, is to say at least in the great bulk of cases there ought to be some relationship to how badly the plaintiff or claimant is actually damaged and what the maximum punitive damages are. Let there be a ratio. If in fact the individual is maimed for life, then they are going to be entitled to huge punitive damages. But if in fact they are damaged $10,000 or $500, why should they win the lottery when there is no evidence that this does anything but to constrict our economy?

I say once again, the State immediately adjacent to the State of the Senator from Iowa, Nebraska, like my own State of Washington, just does not have punitive damages in the kind of cases we are talking about here. It does not allow them at all. Why? Because the Constitution of the United States protects anyone accused of a crime. They have fifth amendment rights. The case against them has to be proven beyond a reasonable doubt. There is a maximum sentence. But those who uphold those constitutional protections as fundamental to our system of justice say, oh, no, but a civil jury can punish without any limitation or without any guidelines whatsoever, rationally or totally or temporarily. There just is no connection between those two.

Moreover, there is also no relationship at all between the responsibility of business enterprises, the safety with which they build their products, that is related to whether or not they operate in a State which has punitive damages or one which bans punitive damages. Not a scintilla of evidence, not any instance has been imparted to this body that oh, boy, we better keep punitive damages because look at how irresponsible companies are that operate in Nebraska or Washington or one of the other States. Not a peep, Mr. President, about that.

The bottom line is we are dealing with a system that is a great system for a handful of lawyers in this country. They and their sidekicks get 60 percent of all of the money that goes into this product liability system. Claimants get 40 percent of it. We want to make it a little bit more rational.

The Harkin amendment does not make it more rational. The Harkin amendment does not even recognize the nature of the $250,000 cap, which does not apply to anything he talked about, or the fact that there is no cap at all when the judge finds that the conduct of the defendant has been particularly egregious, and the Harkin amendment should therefore be rejected.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, not only do I agree with everything that my able colleague from the State of Washington has said, the Harkin amendment adds a new section to the bill for setting punitive damages against businesses with 25 or more employees. It has to be greater than the amount recorded or using a formula laid out in the compromise bill which is twice compensatory damages or $250,000, whichever is greater, or twice the value of annual compensation of the business' chief executive officer.

Well, that last one obviously is an eye-catcher, ear-catcher. It sounds innocent enough—and fun. It is kind of fun, cute. But we are on a deadly serious bill. The people who voted today to make sure that we would continue to discuss and amend product liability reform were not trying to have fun with this.

We have been on this bill for several weeks now. I have been doing this for 9 years. I am sure the Senator from the State of Washington has been doing it for longer than that. There is nothing in any of my efforts to sort of do something to amuse myself, enjoy myself. I am trying to make America better. I am trying to help defendants who cannot get their claims in time. I am helping to make things more predictable for businesses so we can strike a balance between consumers and business.

One thing this is not is just kind of fun. When I say it is deadly serious, I mean deadly serious because I truly believe there are products not being developed today which could save lives, and that people are dying because that is not happening.

There are a couple of facts which I think are relevant. There is not a $250,000 cap in the Gorton-Rockefeller compromise on product liability reform, as suggested by the Senator from Iowa. There is not that cap.

I suggest to those who do read the bill, in product liability cases, if the jury agrees that the punitive damages should be awarded, the jury can, and under the bill punitive damages will,

set an alternative ceiling of $250,000, or twice the amount of compensatory damages. And then the judge, under the additur provision, decides if that is not enough, to take it up. So there is no floor.

We are not talking about treating people unfairly. In fact, I think we are trying to talk, for the first time in a long time, about treating people fairly.

To highlight some more information about the suggestion of the Senator from Iowa that there is any sort of special protection for businesses which are tempted to make defective or unsafe products, everybody needs to remember that juries under our bill can award compensatory damages in amounts that span from hundreds of dollars to millions and millions of dollars.

I have made this point several times, but I will make it again and I will give you a few more examples this time. I have already talked about the State of the Senator from Washington, not even considering punitive damages at all, and within the last 5 or 6 weeks there was an award of $40 million. I have no idea what the circumstances were. But that was economic plus noneconomic—compensatory damages, $40 million.

You do not need punitive damages to get a big award. I am for the punitive damages, but you do not need them to get major awards.

There was a $70 million compensatory award, again, not even considering punitive, to the family of a woman who died when a defective helicopter crashed—in, as it turns out, Missouri. But that did not stop the jury from awarding $70 million. So we are not kidding here. We are not doing anything fun here.

There was a $15 million compensatory award—again, not even considering punitive damages; but a compensatory award—to a boy in a case involving a defective seat belt. Now, I do not know the circumstances. This was in Los Angeles County, 1993. I do not know the circumstances, but this is just compensatory award.

Almost $20 million, Mr. President, in compensatory damages was awarded to a man injured in some circumstances in which a motorcycle spun around on the ground during a turn. My eloquence cannot exceed that, unfortunately, because I do not know what it was. But the man was injured by a motorcycle and got almost $20 million—I say again, in compensatory damages alone.

So there is no kind of joking around here. We are trying to do the right thing.

I might say, on the other side of it—and I do not want to stretch this out—that there are a lot of things that are not happening in this country because of the fact that our punitive damages situation is scaring people away from new products, new research, new improvements, or whatever.

I have used this case before and I will use it again, because I think it is devastatingly powerful.

I care a lot about health care and I have worked a lot on health care. I have been into kidney dialysis clinics. They are not a lot of fun to go into. The former Governor of Missouri knows what I am talking about, the Presiding Officer. It is kind of dark and people are lying back in chairs, and their blood is being completely changed. It is kind of depressing to be there. I do not think they enjoy it much. Nobody is talking to anybody else. They cannot work. They are tied into these huge machines which rise up beside them and behind them.

This was carried a little step further and they developed a dialysis machine that you could take home with you so that if you worked within 2 or 3 miles, or 4 or 5 miles away, you could come home to that dialysis machine, do it yourself and then go back to work. It was a tremendous improvement, because you could go back to work, if your work was close enough so that you could come back two or three times to do that.

But then Union Carbide comes along and really comes up with the answer. They put the whole thing into a suitcase-sized dialysis machine that you can take to your job with you and do the dialysis on the job.

My 15-year-old son has one of his best friends who, a couple of years ago, we discovered had diabetes. That is not a lot of fun for a young kid to find something like that out. I cannot get over the way that young man, 12 years old at the time, simply adjusted to his new circumstances and was able to give himself insulin; just disappear for a few minutes and do it. His courage—he actually grew, grew in my eyes, and I think he grew in his own realization in the sense of mortality and what he could do and how precious everything was. He is a remarkable boy. In fact, I think his aunt is Madeleine Albright, our Ambassador to the United Nations—a wonderful boy.

But Union Carbide, when they came up with this same kind of you-can-do-it-right-on-the-spot kidney dialysis machine, had to sell their business to a foreign company where uniform product liability laws did not give the same litigation potential because Union Carbide, an enormous company, determined that the potential liability risk made the product uneconomical.

So I have to assume there are hundreds of thousands of people who need these blood changes in this country who are deprived of that now because Union Carbide could not do that.

I have 20 examples. I will not give them. It is late.

So I know that the amendment has sort of a nice, populist ring to it—CEO's salary. But this is dead-serious business that we are involved in.

Product liability reform is something I have fought for as a nonlawyer because I want to see people's lives get better and I want to see products developed and I want to see—just on personal grounds, my mother spent years dying from Alzheimer's disease. There is a cure out there, but somebody has to put the money up to find that cure. It is probably not going to be the Federal Government, because we are cutting back.

So all of this is deadly serious. This is not a bill that should be used to beat up on business. This is a bill that should be used to beat up on a legal system which is failing us and, as the Senator from Washington said, in which the lawyers get 50 to 70 percent of the money. I do not respect that. I do not like that. I want to change that.

And for that, among other reasons, I oppose the amendment of the Senator from Iowa.

I thank the Chair.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

MORNING BUSINESS

Mr. GORTON. 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.

NOMINATION OF JOHN DEUTCH TO BE DIRECTOR OF CENTRAL INTELLIGENCE [DCI]

Mr. GLENN. Mr. President, I rise in strong support of the nomination of John Deutch to become Director of Central Intelligence [DCI]. As a longtime member of the Senate Armed Services Committee, I have enjoyed working with him in his various roles at the Department of Defense—and I look forward to working with him as DCI. Dr. Deutch has an extremely impressive résumé, and I ask unanimous consent that a copy of his biography be included in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GLENN. Mr. President, his background and training clearly indicates that Dr. Deutch brings a broad background to the DCI position. His scientific background makes him particularly prepared to deal with the many, formidable technical issues confronting the Intelligence Community from satellites to signals intelligence [SIGINT]. Dr. Deutch also brings significant administrative and national security expertise to the DCI job from his past and current senior management experiences at the Defense Department. His toughness in making difficult decisions and his knowledge of, and experience in, national security matters will make him a very capable manager of the U.S. Intelligence Community.

I have been especially pleased with the principal purposes Dr. Deutch has articulated for the Intelligence Community: Striving to assure that the President and other national leaders

have the best information available before making decisions; providing adequate support to military operations; the need for intelligence to address the growing problems of international terrorism, crime, and drugs; and that our counterintelligence capabilities are able to assure that America's enemies do not penetrate our national security apparatus.

The new CIA Director comes along at an important time for the U.S. intelligence community. For almost half a century, the intelligence community—indeed our Nation's entire national security infrastructure—has been focused primarily on the Soviet threat. And during the cold war period, our Government viewed most national security issues—justifiable or not—through the prism of the United States-Soviet competition.

Obviously, this is no longer the case as America is coming to terms with a rapidly changing world. And having a robust and effective intelligence community is an indispensable means to that end. Timely and accurate intelligence forms the foundation of our foreign policy and defines the threat to U.S. national security that is—or should be—the basis of our defense spending.

Yet with the end of the cold war, some have argued that the CIA is a relic which has outlived its usefulness, and we should do away with it. I strongly disagree with such views. In this unprecedented time of enormous change and uncertainty in the world—as the on-going problem of the proliferation of weapons of mass destruction and recent acts of terrorism at home and around the world clearly demonstrate, our need for the intelligence community and a robust intelligence budget is greater than ever before.

The requirement for an intelligence capability is by no means a cold war aberration. This year, we are celebrating the 50th anniversary of the end of World War II. And history has ultimately revealed to the public the important role of intelligence in that war.

Mr. President, like all veterans of that conflict, the 50th anniversary commemorations of specific events of World War II have special meaning to me. One of the most moving ceremonies I have ever attended was last June's ceremony in France commemorating the D-Day invasion of Normandy.

And unsurprisingly, intelligence made an extraordinary contribution to the success of D-Day's planning and implementation. Intelligence agents acquired an accurate map of the German Atlantic Wall fortifications, and an intelligence deception operation code-named Body Guard used German spies captured in England as double agents who sent false messages to the Nazis regarding the precise location of the planned invasion of Europe. This latter operation also successfully passed along false information regarding the location of Allied invasion forces in England.

Intelligence played a decisive role in Allied victory in World War II in many ways. Signals intelligence [SIGINT], for example, played an instrumental role in winning World War II as Allied intelligence successfully broke German and Japanese codes.

And as we enter one of the most unpredictable and dangerous periods in world history, we must ensure that our SIGINT as well as human intelligence [HUMINT] and other intelligence capabilities will be able to meet the intelligence challenges of tomorrow.

Mr. President, in addition to the other recommendations being made to Dr. Deutch, as DCI, I would like to add one more.

Next March, the Commission on the Roles and Capabilities of the United States Intelligence Community—which was initiated by this committee last year—will issue its report, including recommendations to reorganize the intelligence community in the postcold war era. While I look forward to reviewing the Commission's report, I must admit that I have been somewhat skeptical over the years about the utility of Government by ''Blue Ribbon Panel''—and have sought to educe the number of such commissions through oversight action of the Senate Governmental Affairs Committee, where I am now the ranking member.

As Dr. Deutch assumes his duties as DCI and he perceives significant problems—organizational and otherwise—that are impending the intelligence community's ability to meet its requirements, I sincerely hope that he will act expeditiously to remedy these problems and not wait for the Commission's report next March.

Mr. President, I urge my colleagues to vote in support of Dr. Deutch as DCI.

EXHIBIT 1

JOHN M. DEUTCH

The Honorable John M. Deutch was sworn in as Deputy Secretary of Defense on 11 March 1994, following a unanimous vote in the Senate. He previously served as the Under Secretary of Defense (Acquisition and Technology) from 15 April 1993 until his confirmation as Deputy Secretary.

Prior to his nomination to these positions, Mr. Deutch served in a number of educational government posts. Mr. Deutch became a member of the faculty of the Massachusetts Institute of Technology in 1970 and since then has been an associate professor and professor of chemistry, chairman of the Department of Chemistry, dean of science, provost, and Institute Professor.

His government assignments include service in the Department of Energy as Director of Energy Research, Acting Assistant Secretary for Energy Technology, and Under Secretary of the Department. In recognition of his contributions, he was honored with the Secretary's Distinguished Service Medal and the Department's Distinguished Service Medal. He has been a member of the White House Science Council, the Defense Science Board, the Army Scientific Advisory Panel, the Chief of Naval Operations Executive Panel, the President's Commission on Strategic Forces, the President's Foreign Intelligence Advisory Board, and the President's Nuclear Safety Oversight Committee. He also served as a consultant to the Bureau of the Budget.

He has been a trustee of the Urban Institute, a member and Chair of the National Science Foundation Advisory Panel for Chemistry, an overseer of the Museum of Fine Arts in Boston, a trustee of Wellesley College, a director of Resources for the Future, a member of the Trilateral Commission, and a member of the Governor of Massachusetts Technology and Economic Development Council.

A graduate of Amherst College with a B.A. in history and economics, he earned both a B.S. in chemical engineering and a Ph.D. in physical chemistry from M.I.T. He holds honorary doctoral degrees from Amherst College and the University of Lowell. Mr. Deutch has been a Sloan Research Fellow and a Guggenheim Fellow and is a member of Sigma Xi and the American Academy of Arts and Sciences.

Mr. Deutch was born in Brussels, Belgium, and became a U.S. citizen in 1946. He has three sons, and his permanent residence is in Belmont, Massachusetts.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

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–880. A communication from the Under Secretary of Defense (Acquisiton and Technology), transmitting, pursuant to law, a report relative to the M1A2 Abrams Upgrade; to the Committee on Armed Services.

EC–881. A communication from the Under Secretary of Defense (Acquisiton and Technology), transmitting, pursuant to law, a report relative to the Maneuver Control System; to the Committee on Armed Services.

EC–882. A communication from the Under Secretary of Defense (Acquisiton and Technology), transmitting, pursuant to law, a report relative to the ADDS, C-17, and Javelin programs; to the Committee on Armed Services.

EC–883. A communication from the Deputy and Acting Chief Executive Officer of the Resolution Trust Corporation, transmitting, pursuant to law, a report relative to the Affordable Housing Disposition Program for calendar year 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–884. A communication from the President and Chairman of the Export-Import

Bank, transmitting, pursuant to law, a report relative to a transaction involving Turkey; to the Committee on Banking, Housing, and Urban Affairs.

EC–885. A communication from the Deputy and Acting Chief Executive Officer of the Resolution Trust Corporation, transmitting, pursuant to law, the semi-annual reports of the RTC, FDIC and the TDPOB for the period October 1, 1994 to March 31, 1995; to the Committee on Banking, Housing, and Urban Affairs.

EC–886. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the fiscal year 1993 report of the Congregate Housing Services Program; to the Committee on Banking, Housing, and Urban Affairs.

EC–887. A comunication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the 1993 report pursuant to the Cigarette Labeling and Advertising Act; to the Committee on Commerce, Science, and Transportation.

EC–888. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report relative to the incidental harvest of sea turtles; to the Committee on Commerce, Science, and Transportation.

EC–889. A communciation from the Under Secretary of Commerce for Oceans and Atmosphere, transmitting, pursuant to law, a report on the National Marine Sanctuary Logo Pilot Project; to the Committee on Commerce, Science, and Transportation.

EC–890. A communication from the Secretary of Commerce, transmitting, pursuant to law, the annual report of the Department for fiscal year 1994; to the Committee on Commerce, Science, and Transportation.

EXECUTIVE REPORTS OF COMMITTEES

The following executive report of committee was submitted:

By Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation:

The following officer, NOAA, for appointment to the grade of Rear Admiral (O–8), while serving in a position of importance and responsibility as Director, Office of NOAA Corps Operations, National Oceanic and Atmospheric Administration, under the provisions of title 33, United States Code, section 853u: Rear Adm (lower half) William L. Stubblefield, NOAA.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. SIMON:

S. 766. A bill to protect the constitutional right to travel to foreign countries; to the Committee on Foreign Relations.

By Mr. DOMENICI:

S. 767. A bill to amend the Clean Air Act to extend the deadline for the imposition of sanctions under section 179 of the Act that relate to a State vehicle inspection and maintenance program, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GORTON (for himself, Mr. JOHNSTON, Mr. SHELBY, Mr. BREAUX, and Mr. PACKWOOD):

S. 768. A bill to amend the Endangered Species Act of 1973 to reauthorize the Act, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KOHL:

S. 769. A bill to amend title 11 of the United States Code to limit the value of certain real and personal property that the debtor may elect to exempt under State or local law, and for other purposes; to the Committee on the Judiciary.

By Mr. DOLE (for himself, Mr. KYL, Mr. INOUYE, Mr. D'AMATO, Mr. HELMS, Mr. BROWN, Mr. MACK, Mr. SPECTER, Mr. BOND, Mr. THURMOND, Mr. PRESSLER, Mr. DORGAN, Mr. FAIRCLOTH, and Mr. BRADLEY):

S. 770. A bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes; ordered held at the desk..

By Mr. PRYOR:

S. 771. A bill to provide that certain Federal property shall be made available to States for State use before being made available to other entities, and for other purposes; to the Committee on Governmental Affairs.

By Mr. DORGAN (for himself and Mrs. HUTCHISON):

S. 772. A bill to provide for an assessment of the violence broadcast on television, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. KASSEBAUM (for herself, Mr. GREGG, Mr. GORTON, Mr. COATS, Mr. JEFFORDS, Mr. FRIST, Mr. HARKIN, Mr. CRAIG, Mr. LUGAR, Mr. INHOFE, Mr. GRASSLEY, Mr. MCCONNELL, Mr. KYL, Mr. SANTORUM, Mr. HEFLIN, Mr. BOND, Mr. PRYOR, Mr. KERREY, Mr. BENNETT, and Mr. HELMS):

S. 773. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide for improvements in the process of approving and using animal drugs, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. MACK:

S. 774. A bill to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans; to the Committee on Labor and Human Resources.

By Mr. BAUCUS (by request):

S. 775. A bill to amend title 23, United States Code, to provide for the designation of the National Highway System, the establishment of certain financing improvements, and the creation of State infrastructure banks, and for other purposes; to the Committee on Environment and Public Works..

By Mr. CHAFEE (for himself and Mr. KERRY):

S. 776. A bill to reauthorize the Atlantic Striped Bass Conservation Act and the Aradromous Fish Conservation Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SIMON:

S. 777. A bill to amend the National Labor Relations Act to provide equal time to labor organizations to present information relating to labor organizations, and for other purposes; to the Committee on Labor and Human Resources.

S. 778. A bill to amend the National Labor Relations Act to permit the selection of an employee labor organization through the signing of a labor organization membership card by a majority of employees and subsequent election, and for other purposes; to the Committee on Labor and Human Resources.

S. 779. A bill to amend the National Labor Relations Act to require the arbitration of initial contract negotiation disputes, and for other purposes; to the Committee on Labor and Human Resources.

S. 780. A bill to amend the National Labor Relations Act to require Federal contracts debarment for persons who violate labor relations provisions, and for other purposes; to the Committee on Labor and Human Resources.

S. 781. A bill to amend the Occupational Safety and Health Act to require Federal contracts debarment for persons who violate the Act's provisions, and for other purposes; to the Committee on Labor and Human Resources.

S. 782. A bill to amend the National Labor Relations Act and the Labor Management Relations Act, 1947, to permit additional remedies in certain unfair labor practice cases, and for other purposes; to the Committee on Labor and Human Resources.

S. 783. A bill to amend the National Labor Relations Act to set a time limit for labor rulings on discharge complaints, and for other purposes; to the Committee on Labor and Human Resources.

S. 784. A bill to amend the National Labor Relations Act to impose a penalty for encouraging others to violate the provisions of the National Labor Relations Act, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. PACKWOOD:

S. 785. A bill to require the Trustees of the medicare trust funds to report recommendations on resolving projected financial imbalance in medicare trust funds; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ROTH (for himself, Mr. BAUCUS, Mr. D'AMATO, Mr. ABRAHAM, and Mr. KEMPTHORNE):

S. Res. 117. A resolution expressing the sense of the Senate that the current Federal income tax deduction for interest paid on debt secured by a first or second home located in the United States should not be further restricted; to the Committee on Finance.

By Mr. BYRD (for himself, Mr. DOLE, Mr. DASCHLE, Mr. BAUCUS, Mr. REID, Mr. ASHCROFT, Mr. WARNER, Mr. LEVIN, Mr. HOLLINGS, Mr. DORGAN, Mr. SARBANES, Mr. SPECTER, Mr. BROWN, and Mr. D'AMATO):

S. Res. 118. A resolution concerning United States-Japan trade relations; considered and agreed to.

By Mr. DOLE (for himself and Mr. DASCHLE):

S. Res. 119. A resolution to authorize testimony by Senate employees and representation by Senate legal counsel; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SIMON:

S. 766. A bill to protest the constitutional right to travel to foreign countries; to the Committee on Foreign Relations.

FREEDOM TO TRAVEL ACT

Mr. SIMON. Mr. President, today I introduce legislation dealing with the

constitutional right of American citizens and legal permanent residents to travel to foreign countries.

Last October 5, I held a hearing in my capacity as chairman of the Constitution Subcommittee of the Judiciary Committee on the Constitutional Right to International Travel. The hearing focused on the derivation of this well-established constitutional right, on the circumstances under which the right can be restricted, and on the wisdom as a policy matter of restricting the ability of Americans to visit nations with whom we may have political differences.

In the course of this hearing, it became clear to me that there are limited instances in which the right of Americans to travel abroad should be restricted—namely, instances where international travel endangers the safety of the traveler or implicates national security concerns. Otherwise, as a matter of both constitutional law, the first and fifth amendments as well as other constitutional provisions, and policy, the right to a free trade in ideas and to investigations into other nations and cultures should be not only left untrammelled, but encouraged.

When such restrictions on foreign travel are in place, they do great damage to a number of interests that we hold dear. When Americans are denied the right to travel to a foreign country:

Businessmen are prevented from exploring opportunities in that country that might confer economic benefits on this country;

American scholars are denied the opportunity to engage in a dialog with their foreign colleagues;

Americans with families abroad are prevented from visiting their loved ones;

Human rights organizations concerned about abuses abroad are prevented from seeing those abuses firsthand, and from giving corrupt foreign governments the kind of close scrutiny that forces reform of repressive systems;

Average Americans with an interest in world affairs are denied the opportunity to become better informed citizens by virtue of their direct exposure to nations that play an important role in our own foreign policy;

Finally, our own Government loses the ability to influence foreign governments through the transmission of American ideals of democracy and justice. It is no coincidence that in those nations to which American travel was not restricted—such as the nations of the former Soviet bloc—the infusion of American ideas contributed mightily to the downfall of repressive regimes.

The fact that travel abroad should in most cases be encouraged, and not restricted, however, has not prevented administrations both past and present from limiting the right of Americans to travel abroad. In response to these efforts, Congress has often stepped in to limit the President's right to restrict foreign travel. Most recently, last year's Foreign Relations Authorization Act limited the President's authority to impose travel related restrictions on Americans seeking to visit foreign countries that are not currently the subject of such restrictions. The Foreign Relations Authorization Act, however, permitted the President to continue to impose travel, restrictions to those countries now subject to such restrictions—even though none of these countries pose any threat to the health or safety of prospective visitors, or to America's national security. These countries include Libya, Iraq, North Korea, and, most controversially, Cuba.

The bill I now introduce—the Freedom to Travel Act of 1995—would extend the Foreign Relations Authorizations Act's limitations on the President's power to restrict travel to those countries that are currently the subject of travel restrictions. The bill would also make clear that the President may only restrict travel to countries with which the United States is at war, where armed hostilities are in progress, or where there is imminent danger to the public health or the physical safety of U.S. travelers. This is the standard that currently governs the Government's right to deny a passport to a U.S. citizen. I believe that this standard should apply to any Government effort to restrict foreign travel.

I believe this legislation to be necessary both as a matter of policy and as a matter of international and constitutional law. Protecting the right of Americans to travel abroad is constitutionally required, is internationally recognized as part of the Universal Declaration of Human Rights, and is an important way of safeguarding and furthering our intellectual, economic, and political interests. I hope my colleagues will join our efforts to work for this protection.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 766

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Freedom to Travel Act of 1995''.

SEC. 2. TRAVEL TO FOREIGN COUNTRIES.

(a) FREEDOM OF TRAVEL FOR UNITED STATES CITIZENS AND LEGAL RESIDENTS.—The President shall not restrict travel abroad by United States citizens or legal residents, except to countries with which the United States is at war, where armed hostilities are in progress, or where there is imminent danger to the public health or the physical safety of United States travelers.

(b) INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—Section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)) is amended—

(1) by striking ''or'' at the end of paragraphs (2) and (3); and

(2) by amending paragraph (4) to read as follows:

''(4) any of the following transactions incident to travel by individuals who are citizens or residents of the United States:

''(A) any transactions ordinarily incident to travel to or from any country, including the importation into a country or the United States of accompanied baggage for personal use only;

''(B) any transactions ordinarily incident to travel or maintenance within any country, including the payment of living expenses and the acquisition of goods or services for personal use;

''(C) any transactions ordinarily incident to the arrangement, promotion, or facilitation of travel to, from, or within a country;

''(D) any transactions incident to nonscheduled air, sea, or land voyages, except that this subparagraph does not authorize the carriage of articles into a country except accompanied baggage; and

''(E) normal banking transactions incident to the activities described in the preceding provisions of this paragraph, including the issuance, clearing, processing, or payment of checks, drafts, travelers checks, credit or debit card instruments, or similar instruments;

except that this paragraph does not authorize the importation into the United States of any goods for personal consumption acquired in another country other than those items described in paragraphs (1) and (3); or''.

(c) AMENDMENTS TO TRADING WITH THE ENEMY ACT.—Section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) is amended by adding at the end the following new paragraph:

''(5) The authority granted by the President in this section does not include the authority to regulate or prohibit, directly or indirectly, any of the following transactions incident to travel by individuals who are citizens or residents of the United States:

''(A) Any transactions ordinarily incident to travel to or from any country, including importation into a country or the United States of accompanied baggage for personal use only.

''(B) Any transactions ordinarily incident to travel or maintenance within any country, including the payment of living expenses and the acquisition of goods or services for personal use.

''(C) Any transactions ordinarily incident to the arrangement, promotion, or facilitation of travel to, from, or within a country.

''(D) Any transactions incident to nonscheduled air, sea, or land voyages, except that this subparagraph does not authorize the carriage of articles into a country except accompanied baggage.

''(E) Normal banking transactions incident to the activities described in the preceding provisions of this paragraph, including the issuance, clearing, processing, or payment of checks, drafts, travelers checks, credit or debit card instruments, negotiable instruments, or similar instruments.

This paragraph does not authorize the importation into the United States of any goods for personal consumption acquired in another country other than those items described in paragraph (4).''.

SEC. 3. EDUCATIONAL, CULTURAL, AND SCIENTIFIC ACTIVITIES AND EXCHANGES.

(a) INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—Section 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)) is amended by adding after paragraph (4) the following new paragraph:

''(5) financial or other transactions, or travel, incident to—

''(A) activities of scholars;

''(B) other educational or academic activities;

''(C) exchanges in furtherance of any such activities;

''(D) cultural activities and exchanges; or

''(E) public exhibitions or performances by the nationals of one country in another country,

to the extent that any such activities, exchanges, exhibitions, or performances are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 and to the extent that, with respect to such activities, exchanges, exhibitions, or performances, no acts are prohibited by chapter 37 of title 18, United States Code.''.

(b) TRADING WITH THE ENEMY ACT.—Section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) is amended by adding at the end the following new paragraph:

''(6) The authority granted to the President in this subsection does not include the authority to regulate or prohibit, directly or indirectly, financial or other transactions, or travel, incident to—

''(A) activities of scholars;

''(B) other educational or academic activities;

''(C) exchanges in furtherance of any such activities;

''(D) cultural activities and exchanges; or

''(E) public exhibitions or performances by the nationals of one country in another country,

to the extent that any such activities, exchanges, exhibitions, or performances are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 and to the extent that, with respect to such activities, exchanges, exhibitions, or performances, no acts are prohibited by chapter 37 of title 18, United States Code.''.

SEC. 4. FOREIGN ASSISTANCE ACT OF 1961.

Section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)) is amended by adding at the end thereof the following:

''(3) Notwithstanding paragraph (1), the authority granted to the President in such paragraph does not include the authority to regulate or prohibit, directly or indirectly, any activities or transactions which may not be regulated or prohibited under paragraph (5) or (6) of section 5(b) of the Trading With the Enemy Act.''.

SEC. 5. APPLICABILITY.

(a) INTERNATIONAL ECONOMIC EMERGENCY POWERS ACT.—The amendments made by sections 2(a) and 3(a) apply to actions taken by the President under section 203 of the International Emergency Economic Powers Act before the date of the enactment of this Act which are in effect on such date of enactment, and to actions taken under such section on or after such date.

(b) TRADING WITH THE ENEMY ACT.—The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act, do not include the authority to regulate or prohibit, directly or indirectly, any activity which under section 5(b)(5) or (6) of the Trading With the Enemy Act (as added by this Act) may not be regulated or prohibited.

By Mr. DOMENICI:

S. 767. A bill to amend the Clean Air Act to extend the deadline for the imposition of sanctions under section 179 of the act that relate to a State vehicle inspection and maintenance program, and for other purposes; to the Committee on Environment and Public Works.

CLEAN AIR ACT AMENDMENT LEGISLATION

Mr. DOMENICI. Mr. President, I am introducing a bill that I believe will help States and municipalities in their efforts to comply with the requirements of the Clean Air Act. Specifically, this bill will extend the deadline for sanctions under section 179 of the act that relate to State vehicle and inspection programs. Congressman SCHIFF has introduced similar legislation in the House of Representatives.

As you know, Mr. President, the 1990 amendments to the Clean Air Act set forth requirements for areas that are not in attainment for certain air pollutants. These requirements include submission and implementation by those nonattainment areas of extensive and detailed remediation plans. Since enactment of the 1990 amendments, many States and municipalities have made great strides in fulfilling these requirements.

Under section 179 of the act, however, the Environmental Protection Agency can levy sanctions on those areas that fail to meet the requirements, sanctions which include the cutting off of highway funding. Unfortunately, implementation of some of the requirements has proven to be much more time-consuming than originally thought. Prime examples of this problem are the provisions for vehicle inspection and maintenance programs, also known as I/M programs. The EPA has promulgated very complex—and often controversial—rules for I/M programs. Although States and municipalities are trying very hard to implement the I/M rules, and although many are getting very close to compliance, it has become clear that in some cases they will simply need more time.

This bill addresses this situation by delaying sanctions for failure to implement I/M programs by 12 months, thus allowing States and municipalities to finish coming into compliance with these Federal mandates without losing critically needed highway funds. I urge my colleagues to join me in this effort.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 767

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF SANCTIONS DEADLINE.

(a) EXTENSION.—Section 179(a) of the Clean Air Act (42 U.S.C. 7509(a)) is amended in the matter following paragraph (4) by inserting ''(or, in the case of a requirement relating to a State vehicle inspection and maintenance program, 30 months)'' after ''18 months''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect with respect to any finding, disapproval, or determination made under section 179(a) of the Clean Air Act after the date that is 18 months prior to the date of enactment of this Act.

By Mr. GORTON (for himself, Mr. JOHNSTON, Mr. BREAUX, Mr. SHELBY, and Mr. PACKWOOD):

S. 768. A bill to amend the Endangered Species Act of 1973 to reauthorize the act, and for other purposes; to the Committee on Environment and Public Works.

ENDANGERED SPECIES ACT REFORM ACT

Mr. GORTON. Mr. President, today is an important day for working people and their families across America whose lives have been impacted by the implementation of the Endangered Species Act. Today I am proud to introduce legislation, together with Senator JOHNSTON, Senator SHELBY, Senator BREAUX, and Senator PACKWOOD to amend the Endangered Species Act to require that the act consider people.

For 6 years, this Senator has fought to bring legislation before the Senate to amend the Endangered Species Act. For much of these 6 years, I have been unsuccessful in forcing the Senate to debate reauthorization of the act.

This year, however, is different. I believe that this year proponents of reform have a unique opportunity to bring legislation to reform the act before the Senate for debate. I intend to work very hard to see that this does, in fact, happen. I am committed to working with Senator CHAFEE, as the chairman of the Environment and Public Works Committee, and with Senator KEMPTHORNE, as chairman of the Drinking Water, Fisheries and Wildlife Subcommittee, to see that legislation to reauthorize the act is passed by the Senate this year.

The debate over the ESA is all about choices. Difficult, yet fundamental choices that as people who live in a free and productive society have to make. How important to society is this species?

What is the biological significance of the species? Is it the last of its kind? Will it provide a cure for a deadly disease? How many people will lose their jobs as a result of protecting this species? How will species protection impact the lives of people, their families, and their communities? In short, the debate will be about people, and choices we must make.

Earlier this year, a wonderful book entitled ''Noah's Choice'' focused on these choices. The title is designed to remind us of the story in the book of Genesis, where God commands Noah to build an ark to house his family and a male and female pair of every species. As the story goes, it then rained for 40 days and nights, and when the rain stopped, and the water dried, Noah had saved every living substance. The authors write:

Noah had it easy. The materials he needed to build his Ark were at hand and the design, provided by the Supreme Deity, was guaranteed to be sufficient for the task. Two by two, the creatures walked aboard, filling the vessel just to capacity. When the parade finished, Noah had fulfilled his obligations. He had saved ''every living substance.'' There had been no need to exercise judgement or agonize over tough choices. He and his sons

just stood on the gangplank and let everything in. When no creature was waiting outside, he shut the door and waited for rain.

Unfortunately our choices are not so simple. The act must be reformed to include choices, Mr. President, because currently it does not. The current act is all about uncompromising, intrusive, and unrelenting Federal mandates, and little about choices. To prove this point, you only have to take a look at the Pacific Northwest.

PACIFIC NORTHWEST AS A TEST CASE FOR THE ESA

Consider this: less than a decade ago, rural timber communities across my State were thriving. Families were strong and together. Fathers had a steady job at the mill, that paid a good family wage. Mothers could afford to stay home and take care of the children, to be there when they got home from school. Parents could save for their kids' education. Kids could be kids.

These were good places to live and work. Rural areas, surrounded by our national parks and forest lands. Communities built up around the timberlands. Families who had worked for generations in the woods, continued to pass the trade down to the next generation. These were communities where you didn't have to lock the front door. Places where strangers get a wave, or a nod of acknowledgement as they drive through town. That was 10 years ago.

Today it's different. Unemployment is up. Families that were once strong, and together, are falling apart. Divorce and incidents of domestic violence have dramatically increased. People can't find work. Mills have shut down. Food bank use has skyrocketed. Homes are for sale. Once proud, and productive members of our society, have, reluctantly, become society's burden.

All of this, Mr. President, in the period of 6 short years.

It began when the northern spotted owl was listed under the Endangered Species Act in 1989. And in the time since that listing, the destruction of rural timber communities has followed. But I want to make clear, it was not the listing of the owl that caused this devastation. It was the implementation of the act that caused it—the implementation of an act that does not consider the impacts on people, and their communities.

Last month, I held a timber family hearing in Olympia, WA. The purpose of my hearing was to hear from the people whose lives have been impacted by the Endangered Species Act, to hear from them, once again, as to why this act must be changed. Over the course of 6 years, I have heard the personal stories of people who live—or once lived—in my State's timber communities. Their stories are hard to listen to, because their stories could have been different—if only their Federal Government had listened to their plight. Here are a few of the stories I heard.

One man, probably close to 40 years old, told me that before the listing of the spotted owl, he went to work each day and came home to his wife and children. In other words, he lived a normal life. But today he's got to go across the State in order to find work. He's away from home for weeks at a time. He told me that he can't afford to buy a video camera or VCR to record his children as they grow up. He told me that he misses his children, that he misses his wife. He asked me if I could fix this law so that he could go home to stay, so that he could live with his family again.

Another story. Barbara Mossman and her husband used to own a logging truck company. Today they live day to day, and, if they are lucky enough to find work, paycheck to paycheck. Before the owl crisis, Barbara and her husband were hardworking small business owners.

Barbara told me about the first time she and her husband had to go to a food bank. They didn't want to do it, that's not the way they were raised. They were brought up to believe that if you are a hard worker, you will always find a job, that you should take care of yourself, your family, and help your neighbor. They were proud. But, as Barbara told me, they had to set aside their pride and go to the food bank, because they did not have anything to eat.

But if anything captured the spirit of my timber family hearing it was a plea from Bill Pickell, of the Washington Contract Loggers Association. The people in this room, he said, do not want a handout. They do not want a government program. They want to take care of their neighbors, help their community spring back to life. They want to work.

Mr. President, the stories are real. They are not made up. There are hundreds of stories like this from across my State. The message is the same—the act does not consider people.

Of course, if you read the newspapers, or listen to the nightly news you would never realize that people are suffering across my State, and the Nation, because of misguided Federal policies. The media spins a different tale. In 1990, in the media frenzy to pit people against nature, there was a rush to judgment. A judgment was made that people who live and work in natural resource-based industries cannot coexist with their environment. That the two are mutually exclusive. That the timber worker was an evil raper of the land. That the environment would perish because of his life's work.

In this rush to judgment, Time magazine put a spotted owl on its cover with the heading ''Who Gives a Hoot? The timber industry says that saving this spotted owl will cost 30,000 jobs. It isn't that simple.''

Time got one thing right—it is not that simple. But I wonder, in 1995, would Time put a picture of the unemployed timber worker and his community on the cover of its magazine, under the heading ''Can it be saved?'' The answer? Probably not.

It's a tactic often used by the media to oversimplify. To make it, us versus them. Jobs versus the environment. People versus owls. This Senator believes that the media does the public a great disservice in its efforts to provide trite, oversimplifications of complex issues. This Senator gives the American public more credit.

The legislation that I have introduced today, with that of my primary sponsors, recognizes that in order to find the appropriate balance between people and their desire to protect the environment difficult choices must be made. My legislation recognizes that these decisions are not simple, and that the people and the communities most directly affected by these decisions must have a say in the process. My legislation attempts to achieve the delicate balance that has long been absent from the current act.

THE ESA REFORM ACT OF 1995

Mr. President, 22 years ago Congress passed, and President Nixon signed, legislation creating the Endangered Species Act. The legislation was written in broad brush stokes—leaving the details to Federal bureaucrats to plug in. Not having been a Member of the U.S. Senate at the time the original law was enacted, one can only guess that most Members of Congress were enthusiastic about passing such legislation. This was legislation, after all, that would protect our Nation's symbol of freedom, the bald eagle, and the other precious and unique creatures that we identified with as Americans. Simply put, the legislation was as American as baseball and apple pie.

In writing the original legislation, Congress, in all its wisdom, decided that it could, in fact, become Noah. The Endangered Species Act was developed, as most laws are, to address a seemingly one-dimensional situation—to stop species from extinction. But 22 years later, the details of the legislation have been filled in, and slowly people have begun to realize that the original act was written without an eye to the consequences.

Mr. President, from the start of this debate in 1989, I have advocated for a balance—a delicate balance between the needs of people and that of their environment. The two are not mutually exclusive. In 1989, my call for balance was viewed as radical and extreme. In 1995, newspaper editorials in my State consistently use the word to describe how the act should be reformed. The administration has even put forward 10 principles for ESA reform that advocate for a more balanced decisionmaking process.

Under my legislation, sound, peer reviewed science would drive the listing process. Economic considerations are not included in the listing process. Upon a final decision to list a species, an interim management period would begin, in which the listed species would

be provided with the protection against a direct killing or injury to the species. This is a dramatic departure from current law. Under current law, with the final listing decision comes a whole host of regulations restricting the use of property and ongoing activities. Under my legislation, the Secretary is required to make a well informed decision before designating critical habitat or other regulations.

Once a final listing decision is made, the Secretary convenes a planning and assessment team to review the biological, economic, and intergovernmental impacts of the listing decision. The team would consist of representatives of affected local communities, as nominated by the communities, representatives from the State, as nominated by the Governor, and the appropriate biologists, economists, and land use specialists.

The cornerstone of the legislation is the development of the Secretary's conservation objective for the listed species. The team provides the Secretary with the information from which he will develop his conservation objective for the listed species. The team provides the Secretary with the answers to questions like this: What's the biological significance of the species? What is the critical habitat of the species? How many jobs would be lost if the species were afforded the full protections of the act? What would be the impact on the local economy? On social, and community values? In other words, the team provides the Secretary with the information to select the conservation objective for the species.

Under current law, the Secretary must provide for the full recovery of a species once it is listed. No flexibility. No questions asked. My bill changes this by providing the Secretary with a range of options.

In developing a conservation objective for the species, the Secretary selects an objective from a range consisting of, but not limited to: full recovery of the species, conservation of the existing population of the species, or a prohibition against direct injury or killing of the species. The Secretary must always provide protection for the listed species from direct injury or killing. The selection of this objective is solely at the Secretary's discretion. This is a revolutionary concept. No longer will the Secretary's hands be tied to an inflexible standard.

In selecting a conservation objective, and, if necessary, developing a conservation plan for the listed species, the Secretary is provided the broadest discretionary authority. The only challenge to the Secretary's decision in the courts would be if it could be proven that the Secretary grossly abused his authority, traditionally a very hard challenge to meet. What does this mean? In real life terms it means that the Secretary cannot hide behind the law he is charged with implementing in making a decision to conserve a species. The administration could no longer say that a plan it put together to protect a species, although it might be bad for people, was the best plan it could put forward under the law. Under my legislation, there would be no more excuses. The Secretary would be held politically accountable for his or her decision.

After the Secretary develops a conservation objective for the species, the Secretary is directed to look toward voluntary, non-Federal conservation proposals that meet the objective. My legislation recognizes that the Federal Government is not the solution to every problem—that individuals, and State and local governments, if given the incentive and opportunity, can effectively provide for the conservation of a listed species.

There is, however, a degree of risk to my legislation. The Secretary has the discretion to totally disregard all of the information—all of the social and economic consequences of draconian recovery measures—and mandate full recovery, for every single species, every time. And, if the Secretary makes this decision, under the full sunshine of public review, then so be it. But the people affected by his decision will know that it was his decision—and his alone—to make. If the people affected by the decision don't like it, they have a recourse. Their recourse comes every other November in the voting booth. Under my legislation, the Secretary and his boss, the President of the United States, will be held politically accountable for their decision.

Throughout my legislation everyday citizens are included in the process. Contrary to old ways of thinking, I believe that people, their families, and local communities know best. They know how to run things better than Washington, DC bureaucrats. To some people—especially for the opponents of change—this is a revolutionary way of thinking. For me, and for the people I have been fighting alongside for 7 years, these are not revolutionary ideas. It is just the way it should be.

ADMINISTRATION'S 10 ESA REFORM PRINCIPLES

Two short months ago, after years of insisting that the ESA did not need to be reformed, the administration put forward 10 principles for ESA reforms. When I read the reforms, I found myself nodding in agreement with each one. ''Minimize Social and Economic Impacts of the Act'' reads one. This Senator certainly agrees with that principle. ''Base ESA Decisions on Sound and Objective Science'' reads another. I agree with this principle too. In fact, Senator JOHNSTON, Senator SHELBY, and I, agreed with each and every principle put forward by the administration and included them in our legislation. I applaud the administration for recognizing that the act must be reformed.

PEOPLE MUST BE CONSIDERED

The fundamental flaw of the current act is that it does not consider people. In the case of the spotted owl in the Pacific Northwest, people, their jobs, and their communities were not considered at all in the decisionmaking process. Their life's work was denigrated. Their views were not considered. Their Federal Government did not care about their plight.

The decisions we must make to protect endangered or threatened species will involve choices. Sometimes these choices will be easy, and most often they will not. But we must give the people whose lives are directly affected by these decisions an opportunity to have their voices heard. To know that they have a say in the decisions that will forever change their lives.

Six years ago, I wish that the people in timber communities in my State had the opportunity to have a say in the decisionmaking process. To tell the Secretary on how their lives would forever be changed by his decision. Maybe the Secretary would have ignored their views, but at least they could say that they had given it a shot. That they had participated in the process. That they went down swinging. But they were not given that opportunity.

We must change the act to give people the opportunity to be heard.

I recall again, Bill Pickell's request of me last month at my timber family hearing:

> The people in this room do not want a handout. They don't want a government program. They want to take care of their neighbors, help their community spring back to life. They want to work.

A simple, heartfelt plea that speaks more eloquently than I can about the need for us to bring balance to this act. To give communities across our Nation the ability to work, to provide for their families, and be productive members of our society.

The debate that we will have this year will be about choices. Choices that will impact people's lives, their families, their communities. This Senator believes that the people who are directly affected by these decisions should have the opportunity to be heard. That is what my legislation seeks to accomplish, and I hope that my colleagues will join me in this effort.

Mr. SHELBY. Mr. President, the defenders of the current wording of the Endangered Species Act have engaged in a desperate attempt over the past few years to claim that the act is flexible, that it takes account of human economic and social needs and that it actually works at recovering species. They are dead wrong on each of these points. The ESA currently takes almost no account of human economic concerns, provides less flexibility for private land owners than for Federal agencies, and is an open-ended statute with no focus on the recovery of endangered species.

Less than 20 species have ever been delisted and most of these actions were the result of listing errors. The effort to reform this law is about bringing flexibility, common sense and effectiveness to the statute. Something

that is sorely lacking under the current law. With 4,000 listed and candidate species and virtually the entire country covered by the range of one or more endangered species, the imperative to act to change the law has never been stronger.

As currently constructed, the bill makes many needed changes to what is, in its design and application, a misguided and overly broad statute. The current law provides no mandatory requirement for the independent review of the science supporting listing decisions. This legislation would make such a peer review mandatory, upon request of an affected party. In addition, the bill would create a binding conservation and recovery plan for each listed species.

Currently, recovery plans are not required for each listed species and have no binding effect on the Secretary of Interior even when they are promulgated. As a result, a species listing becomes an open ended commitment with no focus on recovering and ultimately delisting a species.

The bill also provides important flexibility and discretion to the Secretary of the Interior in carrying out the requirements of the act.

Under this legislation, the Secretary will be given broad discretion as to how to proceed with a species' recovery or to decide whether recovery is at all feasible for some species. In addition, the Secretary will be given the authority to issue regional exemptions from the take provisions of the act for particular activities that may or may not affect the habitat of a given species. Such an exemption process could have dramatic effects in preventing future regional train wrecks where entire categories of commercial activities are halted by a species listing.

The bill also narrows the definition of harm to a species back to its congressionally intended scope of meaning actual injury to a member of species. The current broad interpretation of ''take'' under the act is the single most egregious provision in the law with respect to assaulting the property rights of individuals caught in the path of the ESA.

Finally, I would be remiss if I did not mention that I do not regard this bill as perfect legislation, but instead as an excellent starting point for reform.

Indeed, I would have liked for this legislation to include more substantive protections under the act for private property owners. Comprehensive private property rights legislation becoming law is far from guaranteed in this Congress and I believe that this legislation should have included a provision to compensate property owners for lost land value as a result of the act. Eighty-five percent of the land in Alabama is privately owned and the State is fourth in the Nation in candidate and listed species.

These two statistics speak volumes for the concerns I have about protecting private property rights.

In addition, I would have preferred that the legislation eliminate the ability of the Interior Department to list population segments of larger, healthy species. In Alabama, and across the country, a substantial percentage of new listings and proposed listings deal with arcane population segments like snuffbox mussels and shoal sprite snails.

Preserving these population segments is less often about concerns for the larger species and more likely to be a convenient way to slow or impede commercial activity. Not surprisingly, the Fish and Wildlife Service was prepared last year to list the Alabama Sturgeon as a population segment after failing for years to establish it as a distinct species.

However, we have a long way to go in this process and as part of the team effort to reform the ESA, I will work to further strengthen this legislation in concert with my colleagues here today.

Mr. JOHNSTON. Mr. President, I am pleased today to join my colleagues, Senator GORTON and Senator SHELBY, in introducing the Endangered Species Act Reform Amendments of 1995. This is the first step in reforming and reauthorizing a law that, although well-intentioned, has proven to be unworkable and unnecessarily burdensome. Our purpose is to address the very real shortcomings of the law while maintaining our Nation's commitment to the vitality of our living natural resources.

Mr. President, Louisiana has plenty of experience with the Endangered Species Act. Its provisions have been applied with respect to the Louisiana black bear, the red cockaded woodpecker, and several species of sea turtles. My experience is that the act sometimes requires private parties to take extraordinary and unreasonable actions, such as the overly burdensome measures that are imposed on the shrimping industry with respect to the sea turtle. The result is that the act has become enormously unpopular with large groups of our citizens, particularly in the West and Southeast, which the Act has been applied most frequently.

Since I entered the Senate in 1972, I have witnessed the evolution of the Endangered Species Act from a noncontroversial bill that passed the Senate by voice vote in 1973 to our most restrictive and controversial environmental law. I particularly remember the prolonged controversy that arose when a creature known as a snail darter was discovered late in the construction of the Tellico Dam in Tennessee. As some of my colleagues may recall, that led to the Supreme Court's decision in TVA versus Hill, which held that the Endangered Species Act is supreme to all other Federal, State, and local law. Congress then created the so-called ''God Committee'' to resolve conflicts between the act and other national goals, but this mechanism has proved to be almost entirely unworkable. Ironically, the only good news is that the snail darter has been found in many others rivers since the battle over the Tellico Dam.

The time has come to thoroughly reexamine the act and its implementation. The act has been due for reauthorization since 1993, and we should delay no further. I intend to do everything I can to enact legislation in 1995, and I believe that it is vitally important that the debate be conducted on a solidly bipartisan basis. Although I have no doubt that there is room for improvement in the bill, I think it is a sound starting point for that debate.

As we begin the process of reforming this enormously complex law, we should be guided by certain principles that I believe we all share. Secretary Babbitt did an admirable job of articulating a set of principles in his March 6 publication, ''Protecting America's Living Heritage: a Fair, Cooperative, and Scientifically Sound Approach to Improving the Endangered Species Act.''

Those 10 principles are:

First, Base ESA decisions on sound and objective science; second, minimize social and economic impacts; third, provide quick, responsive answers and certainty to landowners; fourth, treat landowners fairly and with consideration; fifth, create incentives for landowners to conserve species; sixth, make effective use of limited public and private resources by focusing on groups of species dependent on the same habitat; seventh, prevent species from beginning endangered or threatened; eighth, promptly recover the delist threatened and endangered species; ninth, promote efficiency and consistency; and last, provide State, tribal, and local governments with opportunities to play a greater role in carrying out the ESA.

I believe that our bill reflects these principles. However, I understand that the devil is in the details, and am quite open to suggested modifications that will better achieve these principles.

Although I will not attempt to summarize the entire bill, there are several provisions that should be emphasized. First, the bill requires that the decision to list a species be based solely on sound science, and that the science be independently peer-reviewed. Specifically, the Secretary of the Interior or the Secretary of Commerce, as the case may be, appoints a three-person peer review panel from among qualified persons recommended by the National Academy of Sciences. As my colleagues know, the promotion of sound science is a high priority of mine, and there is no place where science is more important than in implementing the Endangered Species Act.

Second, the bill instills political accountability by requiring the Secretary to establish a specific conservation objective for each listed species. Before we expend tens of millions of public and private dollars on efforts to restore a particular species, we need a high-ranking member of the Federal

Government to stand up and take responsibility for that decision. We need the official to explain to us why the species is important. And if the species is important, we need that official to set forth a conservation plan, based on the best reasonably obtainable science, that will actually achieve that conservation goal. And if the species is important, and there is a conservation plan that will actually work, we need to know that the Secretary has formulated that plan after considering the economic and social impacts of the plan.

Third, the bill encourages and facilitates cooperative actions between the Federal Government and States, local governments, and the private sector to conserve species without the need to trigger the more restrictive provisions of the act. The most effective and efficient way to protect species is to take cooperative measures as early as possible, before a species declines to the point that more restrictive and expensive steps are needed.

Finally, I want to mention a matter that we are not addressing in the bill. At least one of the outside groups urging reform of the ESA asked Senator GORTON and me to include a provision that would have compensated private landowners whose property values are lowered by the restrictions of the act. I concluded, and Senator GORTON concurred, that this legislation is not the place to try to resolve the incredibly complex issue of when to compensate landowners for reductions in property value due to governmental regulations. That issue cuts across all of our environmental laws, not just the ESA, and it should be addressed in that larger context. Furthermore, I believe that the reforms of the act that we are proposing in this bill, along with the requirement that the bill be administered so as to minimize impacts on private property, will greatly reduce the frequency and severity of the impacts of the act on the value of private property.

I look forward to working with Senator GORTON and Senator SHELBY, the members of the Environment and Public Works Committee, and other interested Senators to revise the ESA in a way that allows us to effectively protect our natural heritage without imposing unnecessary burdens on our citizens. The present act is not working, and failure to address its problems can only lead to further crisis and confrontation, followed by calls to scrap the act altogether. The bill we are introducing today marks the opening of the debate on how to reform the ESA so as to save it. This bill is a work in progress, and I invite all interested parties to contribute their efforts toward improving it as we move through the legislative process.

Mr. BURNS. Mr. President, this morning, the Senator from Washington State, Senator GORTON, introduced his reauthorization of the Endangered Species Act. I would just like to make a few comments about that act and also the amendments that will be offered in its reauthorization.

Congress was scheduled to reauthorize it this year and, of course, last year, and it has been a while since it has been done. I think it is about time that this Congress take a look at the Endangered Species Act and try to make it more workable.

Currently, there are about 60 listed or candidate species in Montana on the Endangered Species Act. There always seems to be new species from some group that wants it put on the list just about every week. In a recent effort by a group based in Colorado, they want the black-tailed prairie dog placed on the candidate list. This petition is related to the black-footed ferret.

If you want to hear some stories about one act and how it impacts a State or community, we can probably write an entire book about this. But our largest industry in the State of Montana is agriculture. If you ask Montana farmers and ranchers what law they want Congress to fix, most will say this act, the Endangered Species Act. If you are in the western part of the State, near the wood products industry and those folks that work in the woods, and you ask them what law needs fixing, they would also reply the Endangered Species Act, because half of the economy of western Montana is based on wood products. They will tell you a lot of stories about infringing on their ability to make a living for their families, about the grizzly bears, the road closures, and once again, coming back to the old Endangered Species Act.

There is no doubt that we must reform the law. It is the single most restrictive law that Montanans and other Americans who rely on the land to make a living must deal with. The communities in Montana lack the economic stability and the predictability that they deserve.

When we have 38 percent total land mass in one State that belongs to the Federal Government, it is hard to find that stability and predictability about the policies carried out on those public lands. The current law has many communities in Montana and throughout our Nation living on pins and needles. Jobs have been lost because of this act. The bottom line, of course, is the economic well-being of communities, and our communities are suffering.

We need to change the act, that it really does protect the species and recover species, that it does not cost millions of dollars per species and it will protect the private property rights and also perhaps bring some economic viability and predictability to our communities.

This act should be amended so we can recognize species in trouble and emphasize restoring the populations to healthy levels. Emphasis must be placed on recovery, however.

The current law emphasizes the listing of species instead of protecting and recovering species. In order to do this, the new act should contain the following principles. The new act needs to be amended so it is based on better science. We know that our science has not been too good in the past. Peer review procedures need to be added to improve the overall data collected so that the right decision can be made, or at least to arrive at some decision based on proper science. We must have these decisions made outside of politics, and instead done by objective individuals who have a background in that science.

As I stated earlier, above all, we must concentrate our efforts on recovery plans. I think if we want a simplified solution to it, we have to decouple the listing process from the recovery process. If we do that, we would focus on the least costly alternative and we would have access to impacting the decisions made under the act, and of course take into consideration local economics.

In addition, this would force priorities to be set and would generate recovery plans which are reasonable. And yes, they are attainable. I think that is very, very important. The decoupling process may be the toughest part of this entire debate.

The best decisions are those that are made at the local level. I believe we need increased private participation in our conservation efforts. The fact is that local individuals are the best people to support any kind of a conservation plan. We are finding that out now, with the farm bill, in the 1985 farm bill, which required conservation plans on farms and ranches in order to participate in the farm program.

We need people who live and work in the areas that are affected, because they have a stake in what happens in their own backyard. Washington should not forget that these people want to maintain the quality of life that they have for their families now.

The act should encourage cooperative management agreements for non-Federal efforts. We just talked this morning about several activities going on in Montana that have the cooperation not only of private landowners, but also several environmental groups and Federal land management agencies that are cooperating now in order to provide the best use of a natural resource on public lands, but also to protect the environment and hang onto the economic viability of the area. Just to mention a couple, there are Willow Creek and Fleecer up in Montana and, of course, the Blackfoot challenge that we talked about this morning in our office.

However, we cannot solely rely on these cooperative management agreements. Some landowners and communities will not have the resources to pay for some of these agreements.

It is in these instances that the Federal Government will have to play a larger role. Local involvement is still essential to carry out the objectives of recovering species. Any proposal

should require local public hearings in the affected communities.

Local communities must be given the opportunity to express their support, comments and, yes, their areas of concern. Also, the conservation and recovery process must recognize State and local laws. Federal agencies should not be allowed to run roughshod over State management agencies, State laws, or their agreements.

Without a doubt, compensation must be given individuals who lose the use of their private property under a Federal Government conservation plan. Our Constitution and property rights need protection on every front. Anything short of that is selling our constitutional rights down the river.

It is also, if one has to wonder why we take property rights so seriously, because when we pass that property on to our children and our offspring, it is our only thing that we can pass along to them that ensures their freedom for generations to come.

The Endangered Species Act has a good goal. It does make everyone aware of the world. However, since it has become law, it has been twisted and misused for other purposes.

We need some common sense to put back in not only recovering the species but also taking into account the human factor. After all, part of the system, the ecosystem, is man himself. Starting from a new viewpoint in crafting the act, which would truly reflect what we want to do is to conserve and recover the species, has to be the focus.

It cannot let the existing law and regulations run multiple use off of our lands. Most of our lands are under multiple use, use for the highest economic benefit. Of course, most of the time, that is either logging, mining, running of livestock, or grazing, but sometimes it is also recreation. Even recreation can be in conflict with the recovery of the Endangered Species Act.

The bill, introduced by Senators GORTON, JOHNSTON, and SHELBY, is a good starting point. I have added my name as a cosponsor because I am very supportive of this process moving forward. I am supportive of the basic concepts of this reform bill.

The bill makes sure that better science is used. It provides peer review. It also allows for more local participation incentives and non-Federal efforts, and encourages cooperative agreements and habitat conservation plans.

This bill places the emphasis on recognizing the species that are in trouble, coming up with a plan to protect them, and most importantly, recovering the species.

We have a great job ahead of Members. It takes a great deal of cooperation between private landowners, Government agencies, and State and local communities in order to get it done. However, I am a supporter of the bill.

I have some reservations about it. The current act is complicated. I would like to see it reformed, simplified, and made easier for landowners and people who use the public lands to be in compliance with the law.

Basically, the law needs to be streamlined. I also strongly believe in private property compensation if the need arises. The bill ensures that people are not denied reasonable use of their property. However, there is no compensation provision. The consultation provision needs to be strengthened. There are just too many instances where other Federal agencies cannot use plain old common sense because the Interior or Commerce Departments will not let them, based on this and other areas of the law which I think we need to take a closer look at.

I am glad that we have finally started moving the process forward. I am thankful for the work that has been done by the sponsors of this legislation.

In addition, I have made a request to Senator KEMPTHORNE that a hearing on this issue be held in the State of Montana. I do not know whether there is a State in the Union that is impacted more by this action than the State of Montana. After all, we have been dealing with the grizzly bear a long, long time.

By the way, the recovery has been very successful. In fact, biologically, the animal now can be delisted and taken off the list of those endangered.

I hope this summer Senator KEMPTHORNE's Subcommittee on Clean Water, Fisheries and Wildlife will be able to come to my home State of Montana and hear the testimony from us folks who live in Montana.

Reforming the Endangered Species Act is essential. It is essential to our economy. Our four largest industries, agriculture, timber, mining, and oil and gas, rely on the use of those lands. It is these industries which supply the jobs and the tax base for the State of Montana.

Changing the laws on conserving and recovering endangered species is important for jobs for Montana. It is important for sound land management activities. It is time we took a look at this area. I want to reiterate on how, possibly, we can make the act work. There has to be a different process of listing a species and then the process of how to recover the species.

Right now the law is pretty hard and tough. Once a species is listed as threatened or endangered, the law kicks in and kicks out all conversation or any flexibility, in order to recover the species without large impacts where the species is to be recovered.

I applaud my colleagues for their work on this bill. I am a cosponsor of it. It is a bill that needs reforming and the time has come.

I urge all my colleagues in the Senate to get involved in this debate and let us reform the Endangered Species Act so it will work for this country and the species we are trying to recover.

By Mr. KOHL:

S. 769. A bill to amend title 11 of the United States Code to limit the value of certain real and personal property that the debtor may elect to exempt under State or local law, and for other purposes.

BANKRUPTCY ABUSE REFORM ACT

Mr. KOHL. Mr. President, I rise today to introduce legislation—the Bankruptcy Abuse Reform Act of 1995—to address a problem that threatens Americans' confidence in our Bankruptcy Code. The measure would cap at $100,000 the State homestead exemption that an individual filing for personal bankruptcy can claim. Let me tell you why this legislation is critically needed.

In chapter 7 Federal personal bankruptcy proceedings, the debtor is allowed to exempt certain possessions and interests from being used to satisfy his outstanding debts. One of the chief things that a debtor seeks to protect is his home, and I agree with that in principle. Few question that debtors should be able to keep roofs over their heads. But in practice this homestead exemption has become a source of abuse.

Under section 522 of the code, a debtor may opt to exempt his home according to local, State or Federal bankruptcy provisions. The Federal exemption allows the debtor to shield up to $15,000 of value in his house. The State exemptions vary tremendously: some States do not allow the debtor to exempt any of his home's value, while a few States allow an unlimited exemption. The vast majority of States have exemptions of under $40,000.

My amendment to section 522 would cap State exemptions so that no debtor could ever exempt more than $100,000 of the value of his home.

Mr. President, in the last few years, the ability of debtors to use State homestead exemptions has led to flagrant abuses of the Bankruptcy Code. Multimillionaire debtors have moved to one of the 8 States that have unlimited exemptions—most often Florida or Texas—bought multi-million-dollar houses, and continued to live like kings even after declaring bankruptcy. This shameless manipulation of the Bankruptcy Code cheats creditors out of compensation and rewards only those whose lawyers can game the system. Oftentimes, the creditor who is robbed is the American taxpayer. In recent years, S&L swindlers, insider trading convicts, and other shady characters have managed to protect their ill-gotten gains through this loophole.

One infamous S&L banker with more than $4 billion in claims against him bought a multi-million-dollar horse ranch in Florida. Another man who pled guilty to insider trading abuses lives in a 7,000-square-foot beachfront home worth $3.25 million, all tucked away from the $2.75 billion in suits against him. These deadbeats get wealthier while legitimate creditors—including the U.S. Government—get the short end of the stick.

Simply put, the current practice is grossly unfair and contravenes the intent of our laws: People are supposed to get a fresh start, not a head start, under the Bankruptcy Code.

In addition, these unlimited homestead exemptions have made it increasingly difficult for the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to go after S&L crooks. With the S&L crisis costing us billions of dollars and with a deficit that remains out of control, we owe it to the taxpayers to make it as hard as possible for those responsible to profit from their wrongs.

Mr. President, the legislation I have introduced today is simple, effective, and straightforward. It caps the homestead exemption at $100,000, which is close to the average price of an American house. And it will protect middle class Americans while preventing the abuses that are making the American middle class question the integrity of our laws.

Indeed, it is even generous to debtors. Other than the eight States that have no limit to the homestead exemption, no State has a homestead exemption exceeding $100,000. In fact, 38 States have exemptions of $40,000 or less. My own home State of Wisconsin has a $40,000 exemption and that, in my opinion, is more than sufficient.

Mr. President, this proposal is an effort to make our bankruptcy laws more equitable. We owe it to the average American to ensure that the Bankruptcy Code is more than just a beachball for millionaires who want to protect their assets. I urge my colleagues to support this important measure, and I ask that a copy of the legislation be printed in the RECORD.

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

S. 769

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bankruptcy Abuse Reform Act of 1995''.

SEC. 2. AMENDMENTS.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(2)(A) by inserting ''subject to subsection (n),'' after ''(2)(A)'', and

(2) by adding at the end the following:

''(n) As a result of electing under subsection (b)(2)(A) to exempt property under State or local law, the debtor may not exempt an aggregate interest of more than $100,000 in value in real or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.''.

By Mr. DOLE (for himself, Mr. KYL, Mr. INOUYE, Mr. D'AMATO, Mr. HELMS, Mr. BROWN, Mr. MACK, Mr. SPECTER, Mr. BOND, Mr. THURMOND, Mr. PRESSLER, Mr. DORGAN, Mr. FAIRCLOTH, and Mr. BRADLEY):

S. 770. A bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes; ordered held at the desk.

JERUSALEM EMBASSY RELOCATION IMPLEMENTATION ACT

Mr. DOLE. Mr. President, today I am introducing legislation, along with the Senator from Arizona, Senator KYL, the Senator from Hawaii, Senator INOUYE, the Senator from New York, Senator D'AMATO, and others, to move the United States Embassy in Israel to the capital of Jerusalem. I am pleased to be joined by a number of my colleagues, and I ask unanimous consent at this time that when I send the bill to the desk, it be held at the desk until noon tomorrow for additional cosponsors.

Mr. President, I know the interest in this legislation is considerable, and that is why I have asked it be held at the desk.

The issue of Jerusalem has many elements—emotional, religious, cultural, spiritual, historical, and political. Jerusalem may be the most remarkable city in the world. Three of the world's great religions have roots in Jerusalem. No other city has been the capital of the same country, inhabited by the same people speaking the same language worshipping the same God today as it was 3,000 years ago. And yet the United States does not maintain its Embassy in Jerusalem.

This issue of where to place the American Embassy in Israel has a long history in the United States Congress. Successive Congresses and successive administrations have been on opposite sides.

At the outset, I want to commend the leadership of some of my colleagues on this issue, in particular Senator MOYNIHAN and Senator D'AMATO. They have led congressional efforts to relocate the U.S. Embassy for many years.

Years ago, I was one of those who expressed concerns about the timing of proposals to move the American Embassy from Tel Aviv to Jerusalem. I felt that doing so could have undermined our efforts and ability to act as a peacemaker. However, much has changed since those earlier efforts. The Soviet Union is gone. We successfully waged war—with Arab allies—to liberate Kuwait. Jordan and the PLO have joined Egypt in beginning a formal peace process with Israel. The peace process has made great strides and our commitment to that process is unchallengeable. Delaying the process of moving the Embassy now only sends a signal of false hopes.

I was proud to join with 92 of my colleagues—Republican and Democratic—in signing the D'Amato-Moynihan letter last March urging the administration to move our Embassy no later than May 1999. As the letter pointed out to Secretary Christopher, the United States enjoys diplomatic relations with 184 countries—but Israel is the only country in which our Embassy is not located in the functioning capital.

Yesterday, I met with Prime Minister Rabin, and we discussed this legislation. As Prime Minister Rabin said after our meeting, the people of Israel ''would welcome recognition of the fact that Jerusalem is the capital'' of Israel, and ''we will welcome embassies that will come.''

The time has come to move beyond letters, expressions of support and sense of the Congress resolutions. The time has come to enact legislation that will get the job done—to move the United States Embassy in Israel to Jerusalem by May 1999. The Jerusalem Embassy Relocation Act of 1995 is that legislation.

This is not a partisan effort, and this is not an effort to undermine the peace process. Democrats have historically supported efforts to move the Embassy. In fact, as the Democratic leader TOM DASCHLE pointed out in a speech last night, support for moving the Embassy to Jerusalem has been in the Democratic Party's platform since 1968. It has been in the Republican platform for many years as well.

Placing the American Embassy in Jerusalem is an idea whose time has come. Construction will take time, but we should begin soon. The fact is that Jerusalem has been and should remain the undivided capital of Israel. Let me close by quoting from a speech I gave 18 years ago in Jerusalem:

> In the search for a solution to the dilemma which Israel's first President called ''a conflict of right with right,'' whatever else may be negotiable, the capital of Israel clearly is not.

Let me also thank my colleague from Arizona, Senator KYL, who has actually been in the forefront of this legislation, who had the initial idea. We have been working with him and now put together, I believe, legislation that can be sponsored or cosponsored by nearly all of my colleagues on both sides of the aisle. We certainly welcome cosponsors. The legislation will be held at the desk under the previous consent agreement until noon tomorrow. So anybody wishing to cosponsor the legislation just notify the clerk.

Mr. President, I ask unanimous consent that a summary of the legislation be printed in the RECORD.

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

S. 770, THE JERUSALEM EMBASSY RELOCATION IMPLEMENTATION ACT OF 1995

Provides that construction begin on a new United States Embassy in Jerusalem in 1996, and the new Embassy open by May 31, 1999.

Section 1 states the short title of the legislation is the Jerusalem Embassy Relocation Implementation Act of 1995.

Section 2 states Congressional findings on the history and status of Jerusalem as the capital of Israel.

Section 3 establishes a timetable for the relocation of the United States Embassy including groundbreaking by December 31, 1996, and official opening no later than May 31, 1999. Section 3(b) withholds 50% (approximately $200–250 million) of fiscal year 1997

State Department foreign construction funds until the Secretary of State determines and reports to Congress that construction has begun. Section 3(c) withholds 50% of fiscal year 1999 foreign construction funds until the Secretary of State determines and reports to Congress that the embassy has opened.

Section 4 earmarks $5 million of already appropriated fiscal year 1995 funds for immediate costs associated with relocating the Embassy.

Section 5 authorizes $25 million for fiscal year 1996 and $75 million for fiscal year 1997. Estimates are based on new embassy construction in a high-threat area.

Section 6 requires a report within 30 days by the Secretary of State detailing the Department's plan to implement the Act, including estimated dates of completion and costs.

Section 7 requires semiannual reports to Congress on implementation of the Act.

Section 8 defines ''United States Embassy'' to include both the offices of the diplomatic mission and the residence of the chief of mission.

MOVING THE U.S. EMBASSY TO JERUSALEM

Mr. KYL. Mr. President, as a member of the committee to commemorate—in 1996—the 3,000th anniversary of Jerusalem as the capital of the Jewish people, I am pleased to join Senator DOLE and introduce the Jerusalem Embassy Relocation Implementation Act of 1995, to begin immediate construction on a United States Embassy in Jerusalem.

It is historic and important that the majority leader and the Speaker of the House are the primary sponsors of this legislation in the Senate and House.

For three millennia—since King David established Jerusalem as the capital of the Jewish people—Jerusalem has been the center of Jewish liturgy. Twice a year, for the last 2,000 years, Jews from around the world have offered a simple prayer: ''Next Year in Jerusalem.''

And throughout the Jewish people's long exile from the land of Israel, through the Holocaust, pogroms, and countless expulsions the ''City Upon a Hill'' served as the focal point of their aspiration to rebuild Israel.

In addition to Israel's undisputable historical and biblical claim to Jerusalem, upon regaining control over East Jerusalem in 1967, Israel has restored the holy city as a place open to all for worship.

Memories may be short, but it is important to remember that while Jordan occupied East Jerusalem—1948–1967—Jews were expelled and many Christians, feeling persecuted, emigrated. During this period, proper respect was not given to the spiritual importance of the city. A highway was even built on ancient burial grounds and religious sites desecrated.

Yet, successive United States administrations since 1948—for fear of interfering with the ability of the United States to serve as an honest broker for Arab and Israeli claims—have refused to recognize Israeli sovereignty over Jerusalem, and have refused to locate the United States Embassy in the capital of Israel. While there is superficial logic to that concern, I believe it bases United States policy on a disingenuous position—that if Arab leaders hold out long enough, the United States might abandon our ally and force it to do the one thing Israel has made clear it will never do—abandon its claim to Jerusalem as its eternal and undivided capital.

The fact is, the United States will not do that. Better that all parties understand that at the outset, rather than learning it at the unsuccessful conclusions of negotiations.

United States Middle East diplomacy should be based on honesty and on the power and loyalty to our friends and our principles. Moving the Embassy to Jerusalem should aid in any peace between Israel and her neighbors by sending a clear, unambiguous message that the status of Jerusalem is not and never will be negotiable.

Israel cannot under any circumstances negotiate this issue any more than Americans would negotiate over Washington being our Capital.

Moving the United States Embassy to Jerusalem does no injustice to the Arab people, nor is it intended, in any way, to be disrespectful to them. During the hundreds of years in which Jerusalem was under Arab or Moslem rule, Jerusalem never served as a capital city for the rulers. And while East Jerusalem was under Jordanian control, Jordan's capital remained in Amman and was never moved to Jerusalem. Islam's holiest text, the Koran, does not mention Jerusalem a single time.

Even Moslems who pray at the Al-Aksa Mosque in Jerusalem face Mecca when they pray. No one can dispute, however, the historical and spiritual vitality of Jerusalem to Israel.

It is time for the United States to locate its embassy in the capital city of Israel, as is the case for every other country that the United States recognizes, whether it be ally or enemy.

Those who have expressed support for United States recognition of Jerusalem as the capital of Israel now have a way to convert words to action, by supporting the Dole-Kyl-Inouye resolution, so that construction of the United States Embassy in Jerusalem will commence in time for the city's 3,000 year anniversary as the capital of the people of Israel. ''Next Year in Jerusalem.''

Mr. D'AMATO. Mr. President, I rise today to join the distinguished majority leader, Senator DOLE, as an original cosponsor of the Jerusalem Embassy Relocation Implementation Act of 1995.

It is outrageous that the United States has diplomatic relations with 184 countries throughout the world and in every one, but Israel, our Embassy is in the functioning capital. In Israel, our Embassy is in Tel Aviv. I see no reason why this should be the case. It is wrong and it must end now. Jerusalem should not be thrown around like a bone to Yasir Arafat.

Israel has endured much throughout her history and for her to have to suffer the indignity of her main ally refusing to place its Embassy in her functioning capital is an insult. With the exception of the Sinai given back under the treaty with Egypt, she has had to fight again and again for the same pieces of land. Jerusalem, however, is a different case. Jerusalem, the holy city and ancient capital of Israel, must never again become divided.

It was for this reason that Senator MOYNIHAN, myself, and 91 other Members of the Senate sent a joint letter to the Secretary of State urging him to begin planning now for the relocation of the Embassy to Jerusalem by no later than May 1999. This letter was sent in March of this year. To date, there has been no reply. This is unfortunate.

The matter is simple. Jerusalem is and will remain the permanent and undivided capital of a sovereign Israel. I'm not going to let the State Department bureaucrats forget that.

I call on the President to recognize this and to begin the process toward moving the U.S. Embassy to Jerusalem. It is shameful that the United States continues to bend to pressure to place the American Embassy in Tel Aviv and not in Jerusalem.

Mr. President, while I understand that the present negotiations are delicate, I do not want this administration to be under the impression that Jerusalem is some prize to be claimed by the Palestinians or anyone else. Let the message be clear: A united Jerusalem is off limits for negotiation. Jerusalem belongs to Israel and our Embassy belongs in Jerusalem.

I urge my colleagues to support this important bill and I urge its swift passage so that our Embassy in Israel can finally be rightfully located in Jerusalem.

Mr. President, I ask unanimous consent that my remarks appear in the RECORD along with those of Senator DOLE and the other cosponsors of this legislation.

Mr. HELMS. Mr. President, the distinguished majority leader, Mr. DOLE, is right on target with his legislation to move the United States Embassy from Tel Aviv to Jerusalem. Action by Congress is long overdue, and I'm delighted to be a principal cosponsor of Senator DOLE'S legislation.

There has been some murmuring during the past few days by those who oppose moving the United States Embassy from Tel Aviv to Jerusalem. Their contention is that this is a sensitive time in the peace process. Fair enough, but I need to be informed as to when no sensitive time in the peace process exists.

I remember well a time in 1988 when I offered legislation to move the United States Embassy to Jerusalem. After extensive negotiations with the Department of State—that also was a sensitive time in the peace process—we ended with what I understood to be an agreement to acquire land for an Embassy in Jerusalem. I am sorry to hear that my efforts of 1988 are being used

today as an argument against passage of the legislation before us today.

Mr. President, the mere acquisition of land in Jerusalem is not enough. My purpose then, as now, was to get the United States Embassy to Jerusalem, not to begin real estate negotiations.

The point, Mr. President, is this: There is only one nation in this world where the United States mission is not in the capital city, and that is Israel.

Jerusalem, the Holy City, was divided by barbed wire for almost two decades. Worshippers were denied access to the Holy places under Jordanian rule in East Jerusalem. In the 28 years during which Israel has presided over a united city of Jerusalem, the rights of Christians, Jews and Moslems have been fully respected.

Time and again, the Senate has voted overwhelmingly in favor of recognizing United Jerusalem as the Capital of Israel.

I commend Senator DOLE for his leadership in this and other matters.

By Mr. PRYOR:

S. 771. A bill to provide that certain Federal property shall be made available to States for State use before being made available to other entities, and for other purposes; to the Committee on Governmental Affairs.

SURPLUS PROPERTY LEGISLATION

Mr. PRYOR. Mr. President, I rise today to discuss a matter that receives far too little attention here in Washington, but is of vital importance to all of our States. I am speaking about the surplus property donated by the Federal Government to various entities.

As my colleagues know, once a Federal agency has decided that a desk or a computer or some other item of personal property has been declared ''excess'' to that agency, that piece of property is then offered to other Federal agencies for their use. If no other Federal agency has a need for that property, then the surplus property can be donated to the States or other entities for their use. In 1992, 603 million dollars worth of surplus property was sent to the States.

Mr. President, the surplus property that goes to our States is very important to local jurisdictions throughout the country. For example, the State of Arkansas has received high quality equipment that enables local jurisdictions to fight forest fires, carry out rescue operations, and repair State and county highways. In each and every State, this surplus property, from trucks to air compressors, provides critical equipment to help jurisdictions to carry out their programs. Furthermore, the local jurisdictions receive this equipment at a vastly reduced rate which provides some much-needed financial relief to their budgets.

However, as a result of years of legislation amending the property disposal program, States are being denied some useful and desirable surplus property. While these legislative initiatives were well-intended, they changed the priorities and placed other entities at the front of the line, limiting the property available to States.

For example, in 1986, the Defense authorization bill contained a provision that permitted the Pentagon to make some of its excess supplies available for humanitarian relief. Originally, this program was designed to assist the refugee and resistance groups in Afghanistan. While this program had a very modest beginning, and involved only 4 million dollars worth of property the first year, which was mainly clothing, this program has grown rapidly. Some 25,802 items, worth $227 million, were shipped in 1993. Today, our States are concerned that they are losing opportunities to bid on Federal surplus property. While none of our States object to shipping surplus blankets and food items to needy people, this program has expanded and now includes heavy construction equipment as well. These road graders, front loaders, and pick-up trucks were bought and paid for by U.S. taxpayers, but our States did not even get to look at them. This is the type of surplus property that the States would very much like to receive.

Mr. President, I share the concern of our States about this program. While I am glad that our Nation can assist refugees around the world with blankets and surplus food, I think the time has come to examine this donation program. A program that began by shipping clothes to one or two countries now involves hundreds of millions of dollars worth of items going to 117 countries. We already have a number of foreign-aid programs and I do not think we should operate yet another one out of the Pentagon.

Furthermore, Mr. President, I have heard of sketchy reports that quite often this excess equipment is not being used by the recipient country. There are basically two ways that this well-intended program may be abused. First of all, this equipment can be sold immediately by the recipient nation. Instead of being put to good use, this valuable equipment can be sold and the money spent on anything the recipient nation wants. Second, there have been reports that some of this heavy construction equipment is sitting idle due to the lack of skilled mechanics and the resources to repair it. I have been disappointed to discover that despite these reports, there has been no comprehensive review of the final end-use of this equipment. Today I am writing to the Inspector General at the Pentagon to ask her to fully investigate this program to determine if these reports are factual.

Another provision of my legislation addresses another program that has caused concern in many of our States. In 1990, the Congress passed a provision that permitted DOD to make available to certain African countries property for use in the preservation of wildlife. While everyone wants to help preserve elephants, the States have a legitimate question as to why does this program receive a higher priority than the interests of U.S. taxpayers? The simple solution is to put the States first. My legislation would allow the States to take a first look at this surplus property to see if they can use any of it. Then, and only then, it could be shipped to help preserve African wildlife.

Mr. President, the legislation I am introducing today returns to the basic principal of the fair and equitable distribution of surplus Government personal property. While there are many worthy entities interested in this property, I think it is time to again put our States first in line.

My bill puts States at the head of the list before the Humanitarian Assistance program at the Department of Defense and the Foreign environmental protection program; ensures the State agencies for surplus property are part of the process in the Small Business donation program; repeals the authority for the Department of Energy to dispose of personal property outside of the regular process involving the State agencies; allows DOD to continue to donate surplus small arms and ammunition to local law enforcement agencies while excluding surplus motor vehicles from the program; and requires the General Services Administration to review the entire range of surplus personal property programs to determine how effective these programs are, the amount of property donated through these programs, and to suggest any legislative recommendations to improve the process and ensure the States participation in this process. GSA, in the course of its review, will not be able to limit the access of local communities impacted by the closure of a military base.

Mr. President, I think it is time to put our States first in line when it comes to receiving surplus property. My bill does just that and I urge my colleagues to support it. I ask unanimous consent that the bill and a summary be printed in the RECORD. I also have a letter from Mr. Gerald Marlin, manager of Federal surplus property in Arkansas that I ask unanimous consent be printed in the RECORD.

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

S. 771

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PRIORITY TO STATES FOR THE TRANSFER OF NONLETHAL EXCESS SUPPLIES OF THE DEPARTMENT OF DEFENSE.

Section 2547 of title 10, United States Code, is amended—

(1) in subsection (a), by striking out ''The Secretary of Defense'' and inserting in lieu thereof ''Subject to subsection (d), the Secretary of Defense'';

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following new subsection (d):

''(d) Nonlethal excess supplies of the Department of Defense shall be made available to a State, a local government of a State, a Territory, or a possession, upon the request of the State, local government, Territory, or possession pursuant to authority provided in another provision of law, before such supplies are made available for humanitarian relief purposes under this section. The President may make such supplies available for humanitarian purposes before such supplies are made available to a State, local government, Territory, or possession under this subsection in order to respond to an emergency for which such supplies are especially suited.''.

SEC. 2. AUTHORITIES OF SECRETARY OF DEFENSE REGARDING DISPOSAL OF EXCESS AND SURPLUS PROPERTY.

(a) SUPPORT OF COUNTER DRUG ACTIVITIES.—Section 1208(a)(1) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 10 U.S.C. 372 note) is amended by inserting ''and excluding motor vehicles'' after ''small arms and ammunition''.

(b) SUPPORT FOR REGIONAL EQUIPMENT CENTERS.—

(1) NEWPORT TOWNSHIP CENTER.—Section 210 of Public Law 101–302 (104 Stat. 220) is repealed.

(2) CAMBRIA COUNTY CENTER.—Section 9148 of Public Law 102–396 (106 Stat. 1941) is repealed.

SEC. 3. TRANSFERS OF PROPERTY FOR ENVIRONMENTAL PROTECTION IN FOREIGN COUNTRIES.

Section 608(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2357(d)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by striking ''(d) The'' and inserting ''(d)(1) Except as provided in paragraph (2), the''; and

(3) by adding at the end the following:

''(2) No property may be transferred under paragraph (1) unless the Administrator of General Services determines that there is no Federal or State use requirements for the property under any other provision of law.''.

SEC. 4. AMENDMENT TO SMALL BUSINESS ACT.

Section 7(j)(13)(F) of the Small Business Act (15 U.S.C. 636(j)(13)(F)) is amended by adding at the end the following: ''This subparagraph shall be carried out under the supervision of the Administrator of General Services in consultation with State agencies responsible for the distribution of surplus property.''.

SEC. 5. DEPARTMENT OF ENERGY SCIENCE EDUCATION ENHANCEMENT ACT AMENDMENT.

Section 3166(b) of the Department of Energy Science Education Enhancement Act (42 U.S.C. 7381e(b)) is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively.

SEC. 6. STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980 AMENDMENT.

(a) REPEAL.—Section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(i)) is repealed.

(b) DELEGATION OF AUTHORITY TO DIRECTORS OF FEDERAL LABORATORIES.—Section 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)) is amended by adding at the end the following new paragraph:

''(6) Under such regulations as the Administrator may prescribe, the Administrator may delegate to the director of any Federal laboratory (as defined in section 12(d)(2) of the Stevension-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)) the authority of the Administrator under this subsection with respect to the transfer and disposal of scientific and technical surplus property under the management or control of that Federal laboratory, if the director of the Federal laboratory certifies that the equipment is needed by an educational institution or nonprofit organization for the conduct of scientific and technical education and research.''.

SEC. 7. REPORT ON DISPOSAL AND DONATION OF SURPLUS PERSONAL PROPERTY.

No later than 180 days after the date of the enactment of this Act, the Administrator of General Services shall review all statutes relating to the disposal and donation of surplus personal property and submit to the Congress a report on such statutes including—

(1) the effectiveness of programs administered under such statutes (except for any program that grants access to personal property by local communities impacted by the closure of a military base), and the amount and type of property administered under each such program during fiscal years 1993 and 1994; and

(2) legislative recommendations to integrate and consolidate all such programs to be administered by a single Federal authority working with State agencies while accomplishing the purposes of such programs.

BILL SUMMARY

Purpose: To ensure that certain surplus Federal personal property is available to States for their use before being made available to other organizations.

Background: In 1977 Congress approved legislation permitting Federal personal property no longer needed by an agency to be offered to other Federal agencies and afterward to State and local governments through designated state agencies for surplus property within each state (Public Law 94–519). The regulations require that the General Services Administration administer the disposition of this personal property to ensure its fair and equitable distribution.

This program was a good example of Federal-State cooperation. However, beginning in 1986 Congress has enacted legislation that placed a variety of interests higher on the priority list to receive surplus property. The National Association of State Agencies for Surplus Property (NASASP) has compiled a partial listing of these legislative provisions:

1986—Humanitarian Assistance Program. (Section 2547), 10 USC) Program gives foreign countries excess DOD property before it is available to the States.

1987—Southern Regional Amendment. Congress authorized DOD to make equipment available to base rights countries prior to its being available to other Federal agencies or states.

1989—Small Business Administration. Congress authorized SBA to make Federal surplus property available to 8A contractors before the states.

1990—Wildlife Preservation in Africa. Congress authorized DOD to make available to certain African countries excess property for use in the preservation of wildlife, prior to its becoming available to other Federal agencies or states.

1990—Law Enforcement Assistance. Authorized DOD to make property available directly to state law enforcement agencies to combat drugs prior to its becoming available to other Federal agencies or states.

The total effect of these, and other provisions, has been to erode the idea that one agency within each state would work with the Federal government and with localities to ensure ''fair and equitable distribution,'' While these programs are worthwhile, taken as a whole, they fragment our surplus property disposal system.

Summary of bill: The bill has seven sections:

Section 1—Places States before foreign countries. The humanitarian assistance program (HAP) began as an effort to get food and blankets to the Afghanistan refugees. It has grown to include the shipping of construction equipment and motor vehicles. The dollar value of the property shipped in 1994 was $136 million. Of particular interest to the States is construction equipment that is being sent overseas. The bill would leave HAP intact, but would allow states to review the DOD inventory and bid on any item for which they have a need. The truly humanitarian portion of the property (i.e. food rations, blankets) would continue without disruption.

Section 2—Excludes motor vehicles from the DOD program to aid law enforcement. The states are concerned that the larger local jurisdictions are receiving trucks and other vehicles before other jurisdictions have a chance to bid for them. DOD would still be able to provide surplus ammunition and firearms directly to local police departments, however, motor vehicles would be distributed through the state property agencies. This section also repeals the provisions creating the special equipment depots that receive the surplus before the States bid on it.

Section 3—Amends the Wildlife preservation program so that property may not be transferred unless there is a determination that there is no Federal or State use for the property. The Administrator of the General Services Administration shall make this determination.

Section 4—Amends the Small Business program to ensure distribution of property through the State agencies. The property would still be designated for and allocated to small businesses, but it would be coordinated through the existing state agency for surplus property. This has been an underutilized program and this section should increase the amount of property going to small businesses.

Section 5—Eliminates the Department of Energy's Science education program. The program is designed to give DOE the authority to give its excess property directly to schools. However, this allows certain jurisdictions to benefit to the detriment of others. By eliminating this special program this property will be distributed through the state agencies and give each and every school system an opportunity to receive this equipment.

Section 6—Modifies the Stevenson-Wydler Technology program. Instead of equipment going directly from the Federal laboratories to educational institutions without any direction from the General Services Administration, this provision requires that the laboratory certify to GSA that the particular equipment is needed for scientific and educational research. This will bring this program into the overall surplus property program and alleviate concern that some of the scientific equipment has been sold when an institution receives it.

Section 7—Requires a report on disposal and donation of surplus personal property. While the other sections of this bill will begin the process of returning our property disposal system to its original focus of fair and equitable distribution nationwide, there are still other issues and special exemptions to review. The GSA is able to study this matter and report to Congress on the volume of property going out under other authorities and whether legislative changes should be considered to alleviate any concern of unfair treatment of various entities.

The bill will not allow GSA to recommend any change to the base closure authority. Congress has only recently begun this program which gives local jurisdictions access to the personal property on the military base that is being closed. This exemption is widely supported and can be justified due to the adverse economic impact on the local jurisdiction of the closing of the base.

ARKANSAS DEPARTMENT OF EDUCATION,
North Little Rock, AR, March 14, 1995.

Hon. DAVID PRYOR,
U.S. Senate, Washington, DC.

DEAR SENATOR PRYOR: I want to thank you for the support of Federal Surplus Property Donation Program. This program has been a great help to the state for the many years it has been operating.

I am sure that our Donees that serve all segments of our state are pleased with your support. Many of our small school districts, counties, cities, and rural fire departments tell us they would not be able to provide needed services without help from this donation program.

I received, from our National Association of State Agencies for Surplus Property, a draft of your Bill to provide that Federal Surplus Property be made available to states before being made available to other entities. The Chairman of our Legislative Committee tells me our association is working with your staff on this and is thankful for the opportunity.

In fiscal year 1994, there were 17,184 line items valued at $136,752,392.00 transferred to the Humanitarian Assistance Program. The State of Arkansas receives approximately $7,500,000.00 per year, and this is property that the Humanitarian Assistance Program has rejected.

We really appreciate your work as our Senator!

Sincerely,

GERALD D. MARLIN,
Manager, Federal Surplus Property.

By Mr. DORGAN (for himself and Mrs. HUTCHISON):

S. 772. A bill to provide for an assessment of the violence broadcast on television, and for other purposes; to the Committee on Commerce, Science, and Transportation.

TELEVISION VIOLENCE REPORT CARD ACT

Mr. DORGAN. Mr. President, today my colleague Senator HUTCHISON and I are introducing legislation that will help empower parents and all consumers to take the responsibility to address the problem of television violence. Our legislation, the Television Violence Report Card Act of 1995 would authorize grants to private, not-for-profit entities to conduct quarterly assessments of violence on television.

This legislation is similar to a bill I introduced in the last Congress, but it has some significant differences. The primary difference is that this bill would not involve any direct governmental assessment of the content of television. Under this legislation, the governmental role would be limited to identifying credible and qualified research entities which will be awarded a nominal amount of funding to ensure that regular assessments of the violent content of television programming is conducted and that the public has access to this information.

Ninety-eight percent of all American households have a least one television set. More Americans have televisions than have telephones or indoor plumbing. The average American watches over 4 hours of TV each day and the average household watches over 7 hours a day. Children between the ages of 2 and 11 watch television an average of 28 hours per week.

Television is, beyond a doubt, the most influential cultural and social teacher of American children. Consider the fact that the average American teenager spends less than 2 hours per week reading, only 5½ hours doing homework and 21 hours per week watching television.

The problem is that children and adults are getting a steady diet of violence through television. According to a 1992 University of Pennsylvania study, a record 32 violent acts per hour were recorded during children's shows and several other studies have found that television violence increased during the 1980's during prime-time and children's television hours. The American Academy of Pediatrics estimates that violence on television tripled in the 1980's and the National Coalition on Television Violence found that 25 percent of prime-time television shows contain ''very violent'' material. The average child watches 8,000 murders and 100,000 acts of violence on television before finishing elementary school.

Television enables the television industry to bypass parents, slip past the front door of the home, and enter the family living room where they can speak directly to children. For better or worse, TV is one of the most powerful instruments of social and behavioral instruction in the life of a child.

Television, unfortunately, uses its potency and influence to portray violence as sexy and glamorous, not to mention Hollywood's obsession with the more violence, the better. To the networks, violence is a quick tool to better ratings. To our children, violence becomes the way of life that is taught over the airways and into the fabric of our culture.

The fact is that television is more than just entertainment, it is a potent force that shapes everyday life in American culture and society. The question is: What kind of a force is it. Newton Minow, former FCC Chairman under the Kennedy administration, referred to television as a ''vast wasteland * * * of blood and thunder, mayhem, violence, sadism, murder.'' He also said: ''In 1961, I worried that my children would not benefit much from television, but in 1991 I worry that my children will actually be harmed by it.'' And according to a March 3, 1993 poll by Times Mirror, three-fourths of the public find TV too violent and even a higher percentage of TV station managers agree (Electronic Media poll, Aug. 2, 1993). Even children believe television is a bad influence. According to a ''Children Now'' survey released in February, most children say what they see on television encourages them to engage in aggressive behavior, to take part in sexual activity too soon, to lie, and to show disrespect for their parents.

Children that are continually exposed to television violence do not perceive their own aggressive behavior as deviant or unusual, they see it as the way life is and that's how one goes about solving problems. Aggressive behavior is learned.

THE PROBLEM OF TV VIOLENCE:

Public concern about TV violence is not a new issue, Congress has been down this road before. Congressional hearings were held 40 years ago, at the beginning of the television age, on the impact that television and radio was having on children and youth. In the sixties and seventies, Congress held more hearings.

Each time, the pattern has been the same. The public expresses outrage and concern over the bloodshed that a handful of media magnates pour into the Nation's living rooms. The industry either denies the problem, or offers earnest promises of reform, but no results. The Nation's attention shifts to other problems, as it always does.

Television is a habit. One student of the industry called it a ''plug-in drug,'' especially where children are concerned. Violence on TV is an addiction too—children become addicted to watching. Television violence viewing leads to heightened aggressiveness, which in turn leads to more television violence viewing. As with any addiction, it takes constantly bigger doses to achieve the same effect.

According to ''Prime Time: How TV Portrays American Culture,'' by Lichter et al., a review of 1 month of prime-time fictional series episodes found over 1,000 scenes involving violence. One out of five violent scenes involved gunplay, and nearly half included some kind of serious personal assault. The review also showed that weekly fictional series averaged between three and four scenes of violence per episode.

In addition, Lichter's study found that violent crime is far more pervasive on television than in real life. A comparison between real life crime statistics (FBI's ''Uniform Crime Reports: Crime in the United States'') and television's crime levels shows that:

Since 1955 television characters have been murdered at a rate 1,000 times higher than real world victims. In the 1950's, there were 7 murders for every 100 characters seen on TV—this was over 1,400 times higher than the actual murder rate for the United States during the same period.

Violent crimes not involving murder accounted for 1 crime in 8 on TV during the decade 1955 to 1964, which occurred at a rate of 40 for every 1,000 characters. At that same time, the real world rate for crimes involving murder was only 2 in every 1,000 inhabitants.

During the decade covering 1965 to 1975 crime rose both on TV and the real world, but TV crime rate remained more than five times that of the real world, at 140 crimes per 1,000 characters.

While the FBI-calculated rate for violent crime also doubled to 3 incidents per 1,000 inhabitants, the TV rate for violent crimes was over 30 times greater than reality at a rate of 114 incidents per 1,000 characters.

Although television crime and real life crime have moved closer together in the past 20 years, FBI statistics showed that serious crime was about half the rate in real life than on television. Violent crime rates were only one-eighth the rate seen on television.

TV crime not only presents a higher rate of violent crime than the real world, it portrays a different type of crime. On TV, violent crime is more often calculated and felony in nature, whereas in real life, most—40 percent—of the murders committed are committed out of passion or the result of an argument.

Guns are more pervasive on TV. In the real world, about one-fourth of all violent crimes, and a majority of murders, involve guns. Almost all of television's violent crimes involve some type of gun.

Television is not only more crime-ridden than real life, it also highlights the most violent serious crimes. A majority of crimes portrayed on TV involve violence and 23 percent are murders.

There is no disputing the link between television content and human behavior. Twenty-six people died from self-inflicted gunshot wounds to the head after watching the Russian roulette scene in the movie ''The Deer Hunter'' when it was shown on national TV. It has been alleged that the cartoon Beavis and Butt-head's depiction of setting objects on fire recently led a 5-year-old in Ohio to set his family's mobile on fire, causing the death of his 2-year-old sister.

The American Psychological Association has found that ''since 1955, about 1,000 studies, reports, and commentaries concerning the impact of television violence have been published * * * the accumulated research clearly demonstrates a correlation between viewing violence and aggressive behavior.'' Here are just a few of those research studies and reports. These studies, lead to one conclusion: violence on television is a threat to our Nation's children and our society at large:

First, report to the Surgeon General, ''Television and Growing up: The Impact of Televised Violence,'' 1972. The Surgeon General concluded that there is indeed a causal effect of viewing violent television programs and subsequent aggressive behavior in children.

Second, a technical report to the Surgeon General, volume III: Lefkowitz, Eron, Walder, and Huesman, ''Television Violence and Child Aggression: A Follow-up Study.'' (Television and Social Behavior, 1972.) ''A violent television diet is related to violent behavior.'' This study shows a direct positive correlation between the amount of television viewed by third-grade boys and aggressiveness 10 years later. Early aggression in boys is a predictor of and a basis for later aggression.

Third, National Institute of Mental Health [NIMH], ''Television and Behavior,'' 1982. After 10 more years of research, in 1982, the NIMH did a follow-up report to the 1972 Surgeon General's report and concluded that violence on television does lead to aggressive behavior by children and teenagers who watch the programs. It also concluded that television violence is as strongly correlated with aggressive behavior as any other behavioral variable that has been measured.

Fourth, ''U.S. Attorney General's Task Force on Family Violence,'' 1984. This report says that ''the evidence is overwhelming—TV violence contributes to the acting out of real violence. Just as witnessing violence in the home may contribute to normal adults and children learning and acting out behavior, violence on TV and in the movies may contribute to the same result.''

Fifth, Huesmann, Eron, Lefkowitz and Walder, ''The Stability of Aggression Over Time and Generations,'' 1984. (Developmental Psychology.) After studying the viewing habits and behavior of 875 children in a rural New York county at ages 8, 19, and 30, this study concludes that the more a subject watched television at 8, the more serious the crime he was convicted for at age 30.

Sixth, Singer, Singer and Rapaczynski, ''Family Patterns and Television Viewing as Predictors of Children's Beliefs and Aggression,'' 1984. This study concluded that children who watch more than 4 hours of television violence per day during preschool years, exhibit later aggressive behavior. Children who view violent adult programs were suspicious or fearful of their neighborhood and world. And they tended to be restless when required to wait.

Seventh, American Psychological Association [APA], ''Violence on Television: APA Board of Social and Ethical Responsibility for Psychology,'' 1985. In the early 1980's, the APA did a complete review of reports and literature on television violence. As a result, the APA adopted the position that television violence has a causal effect on aggressive behavior.

Eighth, David Phillips, ''Natural Experiments on the Effects of Mass Media Violence on Fatal Aggression,'' 1986. This study provides evidence that some types of mass media violence tend to elicit fatal aggression—suicide, homicide, and accidents—among adults in the United States.

Ninth, L. Rowell Husemann and Laurie S. Miller, ''Long-Term Effects of Repeated Exposure to Media Violence in Childhood,'' 1994. The violent scenes that a child observes on television can serve to teach a child to be aggressive through several learning processes, as the child not only observes aggressive patterns of behaviors but also witnesses their acceptance and reinforcement. This study finds that there is a severe negative outcome for children who display antisocial behavior, and that televised violence is regarded as one contributor to the learning environment of children who eventually go on to develop aggressive and antisocial behavior.

Tenth, George Comstock and Haejung Paik, ''The Effects of Television Violence on Antisocial Behavior: A Meta-Analysis,'' 1994. This study suggests that the influence of violent television portrayals is not confined to childhood or early adolescence and concludes that the findings obtained in the last 15 years strengthen the evidence that television violence increases aggressive and antisocial behavior.

THE SOLUTION—PUBLIC INFORMATION AND FREE MARKET REGULATION

In my judgment, this legislation is as critically important as ever. We have to make the television industry accountable, and the way to do this is through public information. It is not the role of Government in this country to tell people what they can watch. Nor should we try to tell broadcasters and sponsors what they can put on the air. But it is the role of Government to help make the free marketplace work, by providing information to the public—information on which they can make their own free choices. That's what I'm proposing regarding violence on TV.

Under this approach, the Government wouldn't regulate; parents would. Government would do for them no more than it does for business of all kinds: gather information that would help parents express their own free choices.

Why shouldn't the Government start helping parents, the way it helps corporations? The Federal Government spends millions and probably billions of dollars a year, gathering data for use by business. The Census Bureau alone provides a treasure drove of demographic research for ad agencies and corporate marketing departments. Corporations use this Government data to target consumers. Now it's time to give parents data by which they can target advertisers who are abusing their children.

If Americans don't really care about this violence, then it would continue. If they do care about it, and send their market message accordingly, then it would change. That's the way a democracy and a market economy are supposed to work.

INDUSTRY ACTIONS

As I mentioned earlier, public concern over television violence is not new. Several hearings were held in the 103d on this issue. In addition, the industry, in response to public concern,

has adopted some measures to address this problem.

In 1990, the Congress passed legislation, the Television Violence Act of 1990, which provided the television industry a 3-year antitrust exemption to allow it to develop standards on television violence. In December 1992, the three major networks adopted ''Standards for the Depiction of Violence in Television Programs'' which included commitments by the industry to:

Only include depictions of violence when such depictions are relevant and necessary to the plot;

Reject gratuitous or excessive depictions of violence as ''unacceptable''; and

Not use depictions of violence to shock or stimulate the audience.

The National Cable Television Association adopted an industry policy in January 1993 to address the problems of television violence. The program includes voluntary industry standards and encourages cable program networks to adopt their own standards and practices.

In July 1993, the networks adopted an additional plan to impose warning labels on programming that contained violence, ''The Advance Parental Advisory Plan'' which will use the following warning label preceding violent shows: ''Due to some violent content, parental discretion advised.'' A similar advisory program was adopted by the Independent Television Association.

And late last year, both the broadcast networks and the cable industry agreed to finance independent studies that are currently monitoring and analyzing violence on television. These actions are good and I applaud the industry's efforts. In particular, I believe their monitoring studies will provide a positive contribution to the debate over television violence.

In addition to television industry actions, the Electronic Industries Association [EIA], representing television manufacturers, has been working diligently over the past year and a half toward establishing a voluntary standard which will allow for the implementation of technology to block violent programming. EIA's efforts reflect the fact that television manufacturers recognize consumers' desires and are attempting to provide adequate choice in the marketplace.

EIA's leadership demonstrates that voluntary efforts can be effective. It is my preference that voluntary industry efforts would be the solution, as opposed to a Government mandate. It is my hope that all sectors of the television industry work together with the EIA in their effort toward empowering parents and providing consumers the tools to control what is broadcast into their homes.

CONCLUSION

Although industry actions are commendable, legislation is necessary that will augment the industry-led monitoring programs. The fundamental purpose of this legislation is to ensure that consumers, especially parents, have access to useable information about what violent shows are on television and who sponsors those shows. Despite all the research and the monitoring studies established by the broadcast and cable industries, there is still a void in assuring consumers that regular, usable information in the form of a report card will be available.

It seems to me that the approach of establishing television violence report cards, created by private entities, is a very modest and appropriate response for the Congress. I encourage my colleagues to support this legislation and I ask unanimous consent that the bill be printed in the RECORD.

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

S. 772

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Television Violence Report Card Act of 1995''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Three out of every four people in the United States consider television programming too violent, according to a 1993 poll by Electronic Media.

(2) Three Surgeon Generals, the National Institute of Mental Health, the Centers for Disease Control, the American Medical Association, the American Academy of Pediatrics, and the American Psychological Association have concurred for nearly 20 years as to the deleterious effects of televised violence on children.

(3) In conjunction with other societal factors such as poverty, drug and alcohol abuse, and poor education, the depiction of violence in all forms of media contribute to violence in United States society.

(4) The entertainment industry is becoming increasingly sensitive to public sentiment against excessive violence in television programming. A recent survey of 867 entertainment executives by U.S. News and World Report and the University of California in Los Angeles reveals the following:

(A) 59 percent of such executives consider violence on television and in movies a problem.

(B) Nearly 9 out of 10 such executives say that violence in the media contributes to the level of violence in the United States.

(C) 63 percent of such executives believe that the entertainment media glorify violence.

(D) 83 percent of such executives believe that the debate on excessive violence in television programming has affected the programming decisions made by the broadcast television industry.

(5) The broadcast television and cable programming industries have undertaken efforts to decrease violence on television through joint standards on violence, implementation of an advance parental advisory plan, and the establishment of independent efforts to monitor the incidence of violence in television programming, analyze the portrayal of violence in network television programming and in other forms of video programming, and analyze the trends and changes in the treatment of violent themes by the media.

(6) The American Psychosocial Association finds that approximately 1,000 studies and reports on the effects of violence on television have been published since 1955. The accumulated research clearly demonstrates a correlation between the viewing of violence on television and aggressive behavior.

(7) To the fullest extent possible, parents and consumers should be empowered to choose which television programs they consider appropriate for their children and which programs they consider too violent.

SEC. 3. TELEVISION VIOLENCE REPORT CARDS.

(a) IN GENERAL.—The Secretary of Commerce shall, during fiscal years 1996 and 1997, make grants directly to one or more not-for-profit entities for purposes of permitting such entities to carry out in such fiscal years an assessment of the violence in television programming. The amount of the grants shall be sufficient to permit such entities to carry out the assessment.

(b) ASSESSMENT.—(1) In carrying out an assessment under this section, an entity shall——

(A) review current television programs (including programs on broadcast television, on independent television stations, and on cable television) in order to determine the nature and extent of the violence depicted in each program;

(B) prepare an assessment of the violence depicted in each program that describes and categorizes the nature and extent of the violence in the program; and

(C) take appropriate actions to make the assessment available to the public.

(2) An entity shall carry out a review under paragraph (1)(A) not less often than once every 90 days.

(3) In making an assessment public under paragraph (1)(C), an entity shall identify the sponsor or sponsors of each television program covered under the assessment.

(c) GRANT PROCEDURES.—The Secretary shall determine the entities to which the Secretary shall make grants under this section using competitive procedures. Applications for such grants shall contain such information as the Secretary may require to carry out the requirements of this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to make the grants required under this section.

By Mrs. KASSEBAUM (for herself, Mr. GREGG, Mr. GORTON, Mr. COATS, Mr. JEFFORDS, Mr. FRIST, Mr. HARKIN, Mr. CRAIG, Mr. LUGAR, Mr. INHOFE, Mr. GRASSLEY, Mr. MCCONNELL, Mr. KYL, Mr. SANTORUM, Mr. HEFLIN, Mr. BOND, Mr. PRYOR, Mr. KERREY, Mr. BENNETT, and Mr. HELMS):

S. 773. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide for improvements in the process of approving and using animal drugs, and for other purposes; to the Committee on Labor and Human Resources.

ANIMAL DRUG AVAILABILITY ACT

Mrs. KASSEBAUM. Mr. President, today, together with a bipartisan group of colleagues, I am introducing the Animal Drug Availability Act of 1995. This legislation will reform the Food and Drug Administration's animal drug approval and export processes and policies.

There is a serious lack of drugs for treating animals, in part because the drug review process at the Food and Drug Administration's Center for Veterinary Medicine is cumbersome and

unpredictable. This discourages the development of new drugs. The FDA has approved only four new chemical entities (new drugs) for food-producing animals in the last 5 years. Further, an internal study by the Center for Veterinary Medicine found that the agency was taking an average of 58 months to approve drug applications. By law, the process should take no more than 6 months.

The extra-label drug bill that was signed into law last year is a short-term response to this problem. It assures that veterinarians can legally prescribe drugs approved for one use or species for other uses or species. But all involved in the extra-label bill last year agreed that the real answer to the problem was reforming the animal drug approval process.

Second, because our approval process is so slow, unpredictable, and cumbersome and our export policies very restrictive, many animal drug manufacturers are moving research and manufacturing facilities—and jobs—abroad to take advantage of more efficient and predictable review and approval processes and lucrative, growing world markets.

This legislation has the broad support of the animal producer groups, the Animal Health Institute, and the American Veterinary Medical Association.

I would welcome additional cosponsors of the Animal Drug Availability Act of 1995.

Mr. HARKIN. Mr. President, I am pleased to cosponsor this legislation, which is intended to streamline and expedite the Food and Drug Administration's approval process for animal drugs without diminishing the human health protections contained in current law. This bill represents a commendable effort to address a serious impediments to the effective treatment of animal health problems, and is thus particularly important to veterinary practitioners and livestock and poultry producers.

For some time there has been an insufficient number of suitable, fully approved and labelled drugs for the treatment of animals. In significant part, this lack of approved drugs is attributable to delays in the approval process used by FDA's Center for Veterinary Medicine. Last year legislation was enacted to sanction the extra-label use of FDA-approved drugs by or at the direction of veterinarians. Even at the time that legislation was passed, however, there was general agreement that the best solution to the lack of fully-approved and labelled animal drugs is to remedy the unnecessary delays and other problems in FDA's animal drug approval process.

The legislation introduced today is a strong and substantial step toward improving FDA's animal drug approval process by reducing the potential for delays, making the process more predictable and rational, and lessening burdensome aspects of the current procedures. Again, this bill is not designed or intended to lessen human health protections in any way. Its primary focus, from a substantial perspective, is on the proof of efficacy required to gain approval.

As we continue to work on this legislation, we will need to give additional consideration to its various possible ramifications in actual practice. I will be closely following the analysis of these issues in order to ensure that the bill is appropriately modified to address concerns that may arise. In particular, we must carefully consider whether that may arise. In particular, we must carefully consider whether the bill might have the unintended consequence of diminishing human health protections in some way that is not now evident or anticipated. I also want to obtain additional information on the operation of the export provisions of the bill, including assurance that FDA will continue to have sufficient authority to limit exports of animal drugs on the basis of unacceptable risk to human health, either in this country or in foreign countries.

In conclusion, this legislation addresses a pressing need in the field of animal health. A good deal of work and thought have gone into the bill thus far, and I look forward to working with Chairman KASSEBAUM and other senators in further shaping the measure and gaining its enactment.

By Mr. MACK:

S. 774. A bill to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans; to the Committee on Labor and Human Resources.

PENSION PROTECTION ACT

Mr. MACK. Mr. President, today I am introducing legislation which will help protect the pensions of our Nation's seniors. The Pension Protection Act will stop the administration's ongoing efforts to raid our Nation's pension funds.

In an effort to find capital for its social projects, the Clinton administration has effectively been chipping away at the strict fiduciary standards set up by the Employee Retirement Income Security Act [ERISA]. The Department of Labor has issued new interpretations of ERISA fiduciary standards which challenge the requirement that pension funds be invested for the sole purpose of increasing the economic benefit of the pension's beneficiaries. This relaxing of ERISA standards combined with a well-defined strategy to encourage pension plan managers to invest in social projects puts at risk the hard-earned pension benefits of current and future retirees. It is no surprise that this administration wants to finance its social projects and pet political programs with private pension funds. Currently, these funds hold over $3.5 trillion in assets. Many see this pot of money as a lucrative and untapped source of funding to finance their own political agenda.

Mr. President, the Clinton administration has always viewed pension funds as a convenient source of public funding. In fact, in his book ''Putting People First,'' President Clinton proposed a $20 billion investment program paid for with pension funds. These economically targeted investments [ETI's] would use pension funds to pay for Government programs. This nice-sounding term is merely a disguise for the systematic raiding of our pension funds.

My legislation would put the brakes on a dangerous course of action which is being orchestrated by the Department of Labor. Specifically, this legislation would abolish the ETI Clearinghouse recently established by the Department of Labor. This Clearinghouse is designed to identify investments that the administration deems socially beneficial. The legislation would also nullify Secretary Reich's 1994 Interpretive Bulletin that encourages ETI's and would in effect ensure that pension managers do not select investments which have a purpose other than serving the ''sole interest of the plan participant.'' In addition, this legislation would instruct the Labor Department to cease acting as a promoter of ETI's and instead act as the enforcer of ERISA's fiduciary standards. Finally, this bill would deny funding to any Government agency for the purpose of operating an ETI database or list.

Last year, the American people sent a loud and clear mandate for less spending, less taxes, and less government. But this administration has decided to ignore that mandate by trying to increase spending on Government programs. First they raised taxes to pay for their programs and now they seek to spend our retirees' hard-earned pension funds. This is wrong.

Mr. President, directing private pension funds to replace public funding of Government programs is yet another example in a long line of ''spend now, pay later'' policies that the Federal Government has adopted over the years. Encouraging pension funds to participate in risky investments deserves our strongest opposition. We should not be compromising fiduciary standards and the financial security of our Nation's retirees in order to meet partisan, political goals.

I urge my colleagues to support this important legislation.

By Mr. CHAFEE (for himself and Mr. KERRY):

S. 776. A bill to reauthorize the Atlantic Striped Bass Conservation Act and the Anadromous Fish Conservation Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

STRIPED BASS ACT

Mr. CHAFEE. Mr. President, the legislation that I introduce today reauthorizes a law that has been a great success: The Atlantic Striped Bass

Conservation Act. This legislation will allow the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to continue their important research and oversight role in support of state efforts to conserve the Atlantic striped bass fishery.

From Maine to North Carolina, the striped bass has been an important species for Atlantic coast fishermen for centuries. And, the presence of the striped bass fishery has provided significant economic and cultural benefits to the Atlantic Coastal States, and to the Nation.

Striped bass—often called rockfish in the Chesapeake Bay area—are anadromous fish. They spawn in freshwater streams and migrate to estuarine or marine waters. During their relatively long lives—up to 29 years—stripers are on the move. They migrate north during the summer and south during the winter. Consequently, striped bass pass through the jurisdictions of several States, and conservation efforts must be well coordinated.

In 1979, I offered an amendment to the Anadromous Fish Conservation Act that directed the Fish and Wildlife Service and the National Marine Fisheries Service to conduct an emergency study of striped bass. Why was this study necessary? Fishermen had sounded the alarm that striped bass landings had declined precipitously. The commercial striped bass harvests dropped from 15 million pounds in 1973 to 3.5 million pounds in 1983. The Federal study found that, although habitat degradation played a role, overfishing was the primary cause of the population decline.

In order to prevent overfishing, restrictions on the striped bass harvest were necessary in 14 jurisdictions. The Atlantic Striped Bass Conservation Act helped promote a coordinated approach to management by requiring that the States fully implement a striped bass fishery management plan developed by the Atlantic States Marine Fisheries Commission. If a State is found to be out of compliance with the Commission's management plan, a Federal moratorium on striped bass fishing is to be imposed jointly by the Secretary of the Interior and the Secretary of Commerce. It is a testament to the efficacy of the Atlantic Striped Bass Conservation Act and the cooperative efforts of countless Federal and State biologists and managers, and commercial and recreational fishermen, that the Federal sanction has only been applied once in the past 10 years.

What else has happened over the past decade? The Atlantic striped bass populations have made a dramatic recovery. All Atlantic striped bass populations are recovering or improving. In the Chesapeake Bay, the spawning ground for 90 percent of the Atlantic striped bass, the population has been declared recovered. The Delaware stock is recovering. The Albemarle Sound/Roanoke River stock is improving. According to the U.S. Fish and Wildlife Service, without the State-imposed moratoria and restrictions on harvest, fishing mortality rates on the Chesapeake Bay striped bass stock would have exceeded the level where the population could be maintained. In other words, without the State-Federal partnership promoted through the Atlantic Striped Bass Conservation Act, the striper might have been fished to oblivion.

The striped bass have proven once again that, given half a chance, nature will rebound and overcome tremendous setbacks. But, we must give it that half a chance. Reauthorization of the Atlantic Striped Bass Conservation Act will allow the U.S. Fish and Wildlife Service to continue its coastwise tagging program, populations monitoring, and other data collection efforts to provide information that informs the management decisions essential to maintaining healthy populations of striped bass. The oversight authority shared by the Interior and Commerce Departments regarding the management of the striped bass fishery will ensure that States move cautiously as they reopen the harvest. I believe that a continued Federal involvement is important at this crucial time—a time to celebrate, and to monitor closely, the recovery of the Atlantic striped bass.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 776

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Striped Bass Act of 1995''.

SEC. 2. ATLANTIC STRIPED BASS CONSERVATION ACT

Section 7(a) of the Atlantic Striped Bass Conservation Act (Public Law 98–613; 16 U.S.C. 1851 note) is amended by striking ''1986'' and all that follows through ''1994'' and inserting ''1995 through 1998''.

SEC. 3. ANADROMOUS FISH CONSERVATION ACT.

Section 7(d) of the Anadromous Fish Conservation Act (16 U.S.C. 757g(d)) is amended by striking ''1991, 1992, 1993, and 1994'' and inserting ''1995 through 1998''.

Mr. KERRY. Mr. President, today I am pleased to join my friend from Rhode Island, Senator CHAFEE, in introducing the Atlantic Striped Bass Act of 1995. This legislation reauthorizes the Atlantic Striped Bass Conservation Act and the Anadromous Fish Conservation Act. Atlantic striped bass is an important commercial and game fish that ranges from Maine to North Carolina. Its comeback from overfishing and habitat destruction in the late 1980's is one of the great success stories of fisheries management. One of the most critical contributors to that recovery was the enactment of the Atlantic Striped Bass Conservation Act in 1984.

The Striped Bass Act has provided the incentive for implementing coordinated and comprehensive management of a wide-ranging species that migrates throughout Atlantic coastal waters. The affected States came together, made the hard decisions, and enacted the restrictions on fishing that were necessary for the stocks to recover. Although great sacrifices were required during the rebuilding period, now sport anglers and commercial fishermen are seeing the benefits of effective management. In Massachusetts, the commercial quota has been increased substantially, and bag limits for the recreational fisherman have doubled. These harvest increases are even more heartening since the management program for striped bass is still very conservative—only 25 percent of the available adult population may be taken this year. This success proves that conservative fishery management can work and provides a blueprint for other fisheries that face difficult management problems. I complement the Senator from Rhode Island for his leadership on this legislation and I encourage my colleagues to join with us in supporting the extension of the Striped Bass Act and the Anadromous Fish Conservation Act.

By Mr. SIMON:

S. 777. A bill to amend the National Labor Relations Act to provide equal time to labor organizations to present information relating to labor organizations, and for other purposes; to the Committee on Labor and Human Resources.

S. 778. A bill to amend the National Labor Relations Act to permit the selection of an employee labor organization through the signing of a labor organization membership card by a majority of employees and subsequent election, and for other purposes; to the Committee on Labor and Human Resources.

S. 779 A bill to amend the National Labor Relations Act to require the arbitration of initial contract negotiation disputes, and for other purposes; to the Committee on Labor and Human Resources.

S. 780. A bill to amend the National Labor Relations Act to require Federal contracts debarment for persons who violate labor relations provisions, and for other purposes; to the Committee on Labor and Human Resources.

S. 781. A bill to amend the Occupational Safety and Health Act to require Federal Contracts debarment for persons who violate the act's provisions, and for other purposes; to the Committee on Labor and Human Resources.

S. 782. A bill to amend the National Labor Relations Act and the Labor Management Relations Act, 1947, to permit additional remedies in certain unfair labor practice cases, and for other purposes; to the Committee on Labor and Human Resources.

S. 783. A bill to amend the National Labor Relations Act to set a time limit for labor rulings on discharge complaints, and for other purposes; to the

Committee on Labor and Human Resources.

S. 784. A bill to amend the National Labor Relations Act to impose a penalty for encouraging others to violate the provisions of the National Labor Relations Act, and for other purposes; to the Committee on Labor and Human Resources.

LABOR RELATIONS LEGISLATION

Mr. SIMON. Mr. President, today I am introducing legislation that will promote a more even playing field for workers and employers. Conditions have worsened for workers and their families in recent years. It is time to reexamine our labor laws and see if we can't make them fairer for the average working man and woman.

To improve working conditions and enhance workplace productivity, we must reject both the adversarial approach to worker-management relations and the oppressive, let's hold them down, attitude held by some in management and government. Both of these extreme approaches reduce productivity by destroying workplace comity. What we need to enhance our productivity is a strong spirit of cooperation in the workplace. And in order to bring this about, we need strong, vital labor unions.

While unions have remained strong in other industrialized nations over the past two decades, they have been steadily declining here in the United States. Union membership has now fallen to about 15 percent of the American workforce, and to 10.9 percent of private non-agricultural workers. In Canada, by contrast, about 37 percent of the workers belong to a union; in Germany, about 39 percent, in Great Britain, 41 percent; and in Japan, about 24 percent. Of all the industrialized democracies, only South Korea ranks below the United States in union membership.

Not coincidentally, as union membership has declined, so had the average manufacturing wage. As late as 1986, the average hourly manufacturing wage in the United States was higher than that of any other nation. Today, 10 nations have average manufacturing wages higher than ours.

This decline in American workers' wages relative to those of workers in other industrialized countries has been accompanied by increased income disparities within our country. A recent study of worldwide wealth and income trends by Prof. Edward Wolff of New York University concludes that the United States now has the widest wealth and income disparities of any advanced industrialized nation. The wealthiest 1 percent of Americans now own 40 percent of all the Nation's wealth. By contrast, in England, a nation which we tend to think of as much more class-based than our own, the top; 1 percent own only 18 percent of the wealth, less than half the share of the wealthiest 1 percent of Americans.

The distribution of income in the United States is similarly skewed. While the top 20 percent of households—those making $55,000 per year or more—take home 55 percent of all after-tax income paid to individuals, the lowest-earning 20 percent of Americans receive only 5.7 percent of all after-tax individual income. Since 1979, the 20 percent of families in the lowest income brackets have seen their average real wages decline by 15 percent. Those in the second 20 percent have suffered a 7 percent decrease. In contrast, those in the top 20 percent income bracket have enjoyed an 18 percent increase.

To reverse these unfortunate trends, we need to take steps to facilitate the revival of organized American labor.

In addition to their importance in fighting for a fair wage for American workers, American labor unions have played a vital role in enhancing workplace safety and in supporting progressive social legislation such as child labor laws, minimum wage laws, and Social Security. And there is no question in my mind but that we would have a much better health care delivery system in the United States if we had as high a percentage of our workers organized as do Canada, Germany and many other nations.

The causes of the decline of unions in America are numerous and complex. Our large and persistent trade deficits have certainly played a role in this decline, as have our Federal budget deficits. Part of the decline has also been caused by past failures on the part of a few unions to include women and minorities in their membership.

But the principal cause of this decline, in my view, has been a public policy that has permitted and even encouraged some employers to actively resist union organizing activities.

The legislation I am introducing today seeks to reverse this trend by facilitating workers' efforts to organize and bargain collectively for better wages and working conditions, to receive prompt adjudication of their grievances when problems arise, and to enjoy better working conditions.

I am well aware that we face firm opposition to these reforms. Steps taken in recent months by the majority party would drive down the wages of working families, threaten workplace health and safety, and further weaken labor unions. Among the changes that have been proposed in recent months are: repeal of the Davis-Bacon Act, which would lower the wages of workers in the construction industry; the weakening of workplace safety and health laws; and a watering down of the time-and-a-half provisions of the Fair Labor Standards Act. Even proposals to help those at the lowest rung of the income ladder by raising the minimum wage, after fifteen years of decline in its real purchasing power, have been greeted with scorn or indifference by many of those in power.

Still, I believe that once we take a serious look at the conditions of the hardest working and most vulnerable members of our society, the conclusion will be unavoidable that we must do more to ensure that their interests are represented fairly and equitably.

Following are brief descriptions of the eight bills I am introducing today; and I ask unanimous consent that a copy of each bill be printed in the RECORD following my statement.

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

S. 777

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Labor Organizations Equal Presentation Time Act of 1995''.

SEC. 2. EMPLOYER AND LABOR ORGANIZATIONS PRESENTATIONS.

Section 8(c) of the National Labor Relations Act (29 U.S.C. 158) is amended—

(1) by inserting ''(1)'' after the subsection designation; and

(2) by adding at the end the following new paragraphs:

''(2) If an employer or employer representative addresses the employees on the employer's premises or during work hours on issues relating to representation by a labor organization, the employees shall be assured, without loss of time or pay, an equal opportunity to obtain, in an equivalent manner, information concerning such issues from such labor organization.

''(3) Subject to reasonable regulation by the Board, labor organizations shall have—

''(A) access to areas in which employees work;

''(B) the right to use the employer's bulletin boards, mailboxes, and other communication media; and

''(C) the right to use the employer's facilities for the purpose of meetings with respect to the exercise of the rights guaranteed by this Act.''.

S. 778

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Labor Relations Representative Amendment Act of 1995''.

SEC. 2. RECOGNITION OF SELECTED LABOR REPRESENTATIVE.

Section 9 of the National Labor Relations Act (29 U.S.C. 159) is amended by adding at the end the following new subsection:

''(f)(1) Not later than 30 days after the receipt of signed union recognition cards, which designate an entity as the employee's labor organization, from 60 percent of the employees of the employer, the Board shall direct an expedited election with respect to the selection of the entity as the exclusive collective bargaining representative of such employees.

''(2) The expedited election, as directed by the Board, may not be delayed for any reason or purpose.

''(3) The Board shall promulgate regulations that implement rules and procedures to address any challenges with respect to the designation or selection of an exclusive collective bargaining representative under this subsection.

''(4) The challenges described in paragraph (3) may be brought only after the expedited election described in paragraph (1).''.

S. 779

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Labor Relations First Contract Negotiations Act of 1995''.

SEC. 2. INITIAL CONTRACT DISPUTES.

Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended by adding at the end the following new subsection:

''(h)(1) If, not later than 60 days after the certification of a new representative of employees for the purpose of collective bargaining, the employer of the employees and the representative have not reached a collective bargaining agreement with respect to the terms and conditions of employment, the employer and the representative shall jointly select a mediator to mediate those issues on which the employer and the representative cannot agree.

''(2) If the employer and the representative are unable to agree upon a mediator, either party may request the Federal Mediation and Conciliation Service to select a mediator and the Federal Mediation and Conciliation Service shall upon the request select a person to serve as mediator.

''(3) If, not later than 30 days after the date of the selection of a mediator under paragraph (1) or (2), the employer and the representative have not reached an agreement, the employer or the representative may transfer the matters remaining in controversy to the Federal Mediation and Conciliation Service for binding arbitration.''.

S. 780

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Contractor Labor Relations Enforcement Act of 1995''.

SEC. 2. DEBARMENT.

The National Labor Relations Act (29 U.S.C. 151 et seq.) is amended by adding at the end the following new section:

''FEDERAL CONTRACTS DEBARMENT

''SEC. 20. (a) Any person or entity that, with a clear pattern and practice, violates the provisions of this Act shall be ineligible for all Federal contracts for a period of 3 years.

''(b) The Secretary of Labor shall promulgate regulations regarding debarment provisions and procedures. The regulations shall require that Federal contracting agencies shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any person or entity described in subsection (A) during the 3-year period immediately following a determination by the Secretary of Labor that the person or entity is in violation (as described in subsection (a)) of this Act.

''(c) A debarment may be removed, or the period of debarment may be reduced, by the Secretary of Labor upon the submission of an application to the Secretary of Labor that is supported by documentary evidence and that sets forth appropriate reasons for the granting of the debarment removal or reduction, including reasons such as compliance with the final orders that are found to have been willfully violated, a bond fide change of ownership or management, or a fraud or misrepresentation of the charging party.''.

S. 781

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Contractor Safety and Health Enforcement Act of 1995''.

SEC. 2. DEBARMENT.

The Occupational Safety and Health Act (29 U.S.C. 651 et seq.) is amended—

(1) by redesignating sections 33 and 34, as sections 34 and 35, respectively;

(2) by inserting after section 32 the following new section:

''FEDERAL CONTRACTS DEBARMENT

''SEC. 33. (a) Any person or entity that, with a clear pattern and practice, violates the provisions of this Act shall be ineligible for all Federal contracts for a period of 3 years.

''(b) The Secretary shall promulgate regulations regarding debarment provisions and procedures. The regulations shall require that Federal contracting agencies shall refrain from entering into further contracts, or extensions or modifications of existing contracts, with any person or entity described in subsection (a) during the 3-year period immediately following a determination by the Secretary that the person or entity is in violation (as described in subsection (a)) of this Act.

''(c) A debarment may be removed, or the period of debarment may be reduced, by the Secretary upon the submission of an application to the Secretary that is supported by documentary evidence and that sets forth appropriate reasons for the granting of the debarment removal or reduction, including reasons such as compliance with the final orders that are found to have been willfully violated, a bona fide change of ownership or management, or a fraud or misrepresentation of the charging party.''.

S. 782

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Labor Relations Remedies Act of 1995''.

SEC. 2. BOARD REMEDIES.

Section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) is amended by inserting after the fourth sentence the following new sentence: ''If the Board finds that an employee was discharged as a result of an unfair labor practice, the Board in such order shall (1) award back pay in an amount equal to three times the employee's wage rate at the time of the unfair labor practice and (2) notify such employee of such employee's right to sue for punitive damages and damages with respect to a wrongful discharge under section 303 of the Labor Management Relations Act, 1947 (29 U.S.C. 187), as amended by the Labor Relations Remedies Act of 1995.''.

SEC. 3. COURT REMEDIES.

Section 303 of the Labor Management Relations Act, 1947 (29 U.S.C. 187), is amended by adding at the end the following new subsections:

''(c) It shall be unlawful, for purposes of this section, for any employer to discharge an employee for exercising rights protected under the National Labor Relations Act (29 U.S.C. 158).

''(d) An employee whose discharge is determined by the National Labor Relations Board under section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) to be as a result of an unfair labor practice under section 8 of such Act may file a civil action in any district court of the United States, without respect to the amount in controversy, to recover punitive damages or if actionable, in any State court to recover damages based on a wrongful discharge.''.

S. 783

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Labor Relations Board Ruling Time Limit Act of 1995''.

SEC. 2. BOARD RULING.

Section 10(b) of the National Labor Relations Act (29 U.S.C. 160(b)) is amended by inserting after the second sentence the following new sentence: ''In the case of an unfair labor charge filed with the Board that involves the discharge of an employee, the Board shall rule on such charge within 30 days of the receipt of such charge by the Board.''.

S. 784

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Labor Relations Penalty Act of 1995''.

SEC. 2. PENALTIES.

The National Labor Relations Act (29 U.S.C. 151 et seq.) is amended by adding at the end the following new section:

''PENALTY

''SEC. 20. (a) It shall be unlawful for any person including a consulting firm or legal firm to encourage an employer or labor organization to violate the provisions of this Act.

''(b) If a person described in subsection (a) violates the provisions of such subsection, the person shall be fined by the Secretary not more than $10,000.''.

BILL SUMMARIES

The ''Labor Organizations Equal Presentation Time Act of 1995'' will counteract the unfair advantage employers enjoy in using company time and resources to discourage union organizing by giving labor organizations equal time to present their side of the story.

This Act provides that if an employer addresses employees on issues relating to representation by a labor organization, the employees shall then have an equal opportunity to obtain, without loss of time or pay, information concerning such issues from the labor organization. The Act also promotes fair access to company work areas, bulletin boards, mailboxes, and other facilities, to facilitate the free flow of information to employees.

The ''Labor Relations Representative Amendment Act of 1995'' is designed to streamline the union election and certification process by eliminating undue administrative delays at the Federal level.

At present, the union election and certification process can be very time-consuming. In many instances, employees have had to wait for years for this process to be completed. My bill provides that once the NLRB receives union recognition cares from 60 percent of the employees of a given firm, the Board shall have 30 days to determine whether the labor organization shall be recognized as the bargaining representative representative of employees.

In the United States, approximately one-third of unions never get a first collective bargaining agreement once they have been

certificated. To address this problem, I am introducing the ''Labor Relations First Contract Negotiations Act of 1995,'' a bill which will require the arbitration of initial contract negotiation disputes.

Under this Act, if an employer and a newly elected representative have not reached a collective bargaining agreement within 60 days of the representative's certification, the employer and the representative shall jointly select a mediator to help them reach an agreement. If they cannot agree on a mediator, one will be appointed for them by the Federal Medication and Conciliation Service. In the even that the parties do not reach an agreement in 30 days, the remaining issues may be transferred to the Federal Medication and Conciliation Service for binding arbitration.

The Federal government can do more to sanction firms that demonstrate a pattern and practice of National Labor Relations Act violations. By debarring such firms from Federal contracts, the ''Federal Contractor Labor Relations Enforcement Act of 1995'' will encourage higher levels of compliance with the law.

Under the Act, firms that are determined by the Secretary of Labor to have shown a clear pattern the practice of NLRA violations will be debarred from receiving contracts, extensions of contracts, or modifications of existing contracts with agencies of the Federal government for a period of three years.

Similarly, the ''Federal Contractor Safety and Health Enforcement Act of 1995'' directs the Secretary of Labor to withhold Federal contracts in cases where firms show a clear pattern and practice of Occupational Safety and Health Act violations. This Act will help to ensure that employees who repeatedly disregard the safety and health of their workers will face consequences for their failure to abide by the law.

The ''Labor Relations Remedies Act of 1995'' protects workers by making it unlawful for an employer to discharge an employee for exercising rights protected under the National Labor Relations Act. The Act also directs the National Labor Relations Board to award additional damages in the event that it finds that an employee has of his right to sue for punitive damages and damages under any other state or Federal law.

The ''National Labor Relations Board ruling Time Limit Act of 1995'' will require that employees receive a prompt ruling on claims of wrongful discharge. The Act provides that the National Labor Relations Board shall rule on wrongful discharge complaints within thirty days of receiving them.

I am also introducing legislation today that will address the problem of law firms and consulting firms that stray over the line into counseling their clients to implement illegal policies or practices. Under the ''National Labor Relations penalty Act'' persons or firms who encourage an employer or a labor organization to violate the National Labor Relations Act will be subject to a fine of up to $10,000.

By Mr. PACKWOOD:

S. 785. A bill to require the trustees of the Medicare trust funds to report recommendations on resolving projected financial imbalance in Medicare trust funds; to the Committee on Finance.

MEDICARE LEGISLATION

Mr. PACKWOOD. Mr. President, the 1995 annual reports of the trustees on the status of the two Medicare trust funds, released on April 3, 1995, raise serious concerns about future financial viability of the Medicare Program.

The trustees conclude that the Federal hospital insurance trust fund—called Medicare part A:

First, has taken in less in Medicare payroll taxes than it has paid out in Medicare benefits every year since 1992;

Second, starts having to liquidate assets next year, 1996; and

Third, will run out of money by the year 2002.

The status of the supplemental medical insurance trust fund—called Medicare part B—is not much better. The trustees ''note with great concern the past and projected rapid growth in the cost of the program.''

Four Cabinet members of this administration are trustees of the Medicare trust funds—the Secretary of the Treasury, the Secretary of Labor, the Secretary of Health and Human Services, and the Commissioner of the Social Security Administration. These Cabinet members all signed the 1995 trustee report, agreeing with the conclusions that the Medicare trust fund is in serious financial trouble.

But this administration refuses to become engaged in proposing any solutions. Repeatedly, the President and his Cabinet members have said they are waiting for the Republicans' budget resolution before they offer any suggestions to save Medicare.

In my memory, this is the first time an administration has so completely refused to be a part of the budget process. The administration claims to have done its part because it submitted its 1996 budget to the Congress. However, the President's 1996 budget leaves Medicare virtually untouched. Medicare proposals in that budget do not even do enough to delay Medicare insolvency for 1 year.

The financial problems of the Medicare Program are real. They exist regardless of whether or not there is a budget resolution, or the content of a budget resolution. We simply cannot avoid addressing this issue, and the sooner the better.

Today, I am introducing a bill requiring the trustees of the Medicare trust funds to report back to Congress by June 30, 1995, with their recommendations for the specific program legislation to deal with Medicare's financial condition that they call for in their 1995 annual reports on the Medicare trust funds. This is an urgent responsibility of this administration and they must come forward with initiatives so that we can preserve the Medicare Program, not only for future generations, but for our current senior population.

I ask unanimous consent that the bill be printed in the CONGRESSIONAL RECORD.

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

S. 785

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TRUSTEES' CONCLUSIONS REGARDING FINANCIAL STATUS OF MEDICARE TRUST FUNDS.

(A) HI TRUST FUND.—The 1995 annual report of the Board of Trustees of the Federal Hospital Insurance Trust Fund, submitted on April 3, 1995, contains the following conclusions respecting the financial status of such Trust Fund:

(1) Under the Trustees' intermediate assumptions, the present financing schedule for the hospital insurance program is sufficient to ensure the payment of benefits only over the next 7 years.

(2) Under present law, hospital insurance program costs are expected to far exceed revenues over the 75-year long-range period under any reasonable set of assumptions.

(3) As a result, the hospital insurance program is severely out of financial balance and the Trustees believe that the Congress must take timely action to establish long-term financial stability for the program.

(b) SMI TRUST FUND.—The 1995 annual report of the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund, submitted on April 3, 1995, contains the following conclusions respecting the financial status of such Trust Fund:

(1) Although the supplementary medical insurance program is currently actuarially sound, the Trustees note with great concern the past and projected rapid growth in the cost of the program.

(2) In spite of the evidence of somewhat slower growth rates in the recent past, overall, the past growth rates have been rapid, and the future growth rates are projected to increase above those of the recent past.

(3) Growth rates have been so rapid that outlays of the program have increased 53 percent in aggregate and 40 percent per enrollee in the last 5 years.

(4) For the same time period, the program grew 19 percent faster than the economy despite recent efforts to control the costs of the program.

SEC. 2. RECOMMENDATIONS ON RESOLVING PROJECTED FINANCIAL IMBALANCE IN MEDICARE TRUST FUNDS.

(a) REPORT.—Not later than June 30, 1995, the Board of Trustees of the Federal Hospital Insurance Trust Fund and the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund shall submit to the Congress recommendations for specific program legislation designed solely—

(1) to control medicare hospital insurance program costs and to address the projected financial imbalance in the Federal Hospital Insurance Trust Fund in both the short-range and long-range; and

(2) to more effectively control medicare supplementary medical insurance costs.

(b) USE OF INTERMEDIATE ASSUMPTIONS.—The Boards of Trustees shall use the intermediate assumptions described in the 1995 annual reports of such Boards in making recommendations under subsection (a).

ADDITIONAL COSPONSORS

S. 16

At the request of Mr. ROCKEFELLER, his name was added as a cosponsor of S. 16, a bill to establish a commission to review the dispute settlement reports of the World Trade Organization, and for other purposes.

S. 256

At the request of Mr. DOLE, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for

determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 354

At the request of Mr. BREAUX, the name of the Senator from Mississippi [Mr. LOTT] 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.

S. 469

At the request of Mr. GREGG, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 469, a bill to eliminate the National Education Standards and Improvement Council and opportunity-to-learn standards.

S. 471

At the request of Mr. BIDEN, the names of the Senator from Hawaii [Mr. AKAKA] and the Senator from Nevada [Mr. BRYAN] were added as cosponsors of S. 471, a bill to provide for the payment to States of plot allowances for certain veterans eligible for burial in a national cemetery who are buried in cemeteries of such States.

S. 495

At the request of Mrs. KASSEBAUM, the names of the Senator from Utah [Mr. BENNETT], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 495, a bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes.

S. 508

At the request of Mr. MURKOWSKI, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 508, a bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities.

S. 615

At the request of Mr. AKAKA, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor 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 name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 641, a bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

S. 674

At the request of Mr. EXON, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 674, a bill entitled the ''Rail Investment Act of 1995''.

S. 738

At the request of Mr. THOMAS, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of 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.

S. 749

At the request of Mr. AKAKA, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 749, a bill to amend title 38, United States Code, to revise the authority relating to the Center for Women Veterans of the Department of Veterans Affairs, and for other purposes.

SENATE CONCURRENT RESOLUTION 9

At the request of Mr. MURKOWSKI, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Senate Concurrent Resolution 9, a concurrent resolution 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.

SENATE RESOLUTION 83

At the request of Mr. FEINGOLD, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of Senate Resolution 83, a resolution expressing the sense of the Senate regarding tax cuts during the 104th Congress.

SENATE RESOLUTION 97

At the request of Mr. THOMAS, the names of the Senator from Delaware [Mr. ROTH] and the Senator from Hawaii [Mr. INOUYE] 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 name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor 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. 709

At the request of Mr. GORTON the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of amendment No. 709 proposed to H.R. 956, a bill to establish legal standards and procedures for product liability litigation, and for other purposes.

SENATE RESOLUTION 117—RELATING TO DEDUCTIONS FOR HOME MORTGAGES

Mr. ROTH (for himself, Mr. D'AMATO, and Mr. KEMPTHORNE) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 117

Whereas homeownership is an important factor in promoting economic security and stability for American families;

Whereas homeownership is a fundamental American ideal, which promotes social and economic benefits beyond the benefits that accrue to the occupant of the home;

Whereas homeownership promotes and stabilizes neighborhoods and communities;

Whereas it is proper that the policy of the Federal Government is and should continue to be to encourage homeownership;

Whereas the increase in the cost of housing over the last 10 years has been greater than the increase in family income;

Whereas for the first time in 50 years, the percentage of people in the United States owning their own homes has declined;

Whereas the percentage of people in the United States between the ages of 25 and 29 who own their own homes has declined from 43 percent in 1976 to 38 percent today;

Whereas the current Federal income tax deduction for interest paid on debt secured by first homes located in the United States has been a valuable cornerstone of this Nation's housing policy for most this century and may well be the most important component of housing-related tax policy in America today;

Whereas the current Federal income tax deduction for interest paid on debt secured by second homes located in the United States is of crucial importance to the economies of many communities; and

Whereas the Federal income tax deduction for interest paid on debt secured by a first or second home has been limited twice in the last 6 years, and was further eroded as a result of the Omnibus Budget Reconciliation Act of 1990: Now, therefore, be it

Resolved, That it is the sense of the Senate that the current Federal income tax deduction for interest paid on debt secured by a first or second home located in the United States should not be further restricted.

Mr. ROTH. Mr. President, of the challenges confronting America today—challenges that must be addressed by this Congress—the security of the American family is paramount. Much has been written and spoken about the welfare of family life, about the need to keep the family unit strong in our effort to secure a bright and productive American future.

One of the significant resources our families have is home ownership. Indeed, this resource is of such value that home ownership is considered the icon of the American dream. It lends to economic, physical, and emotional security. It keeps our neighborhoods strong and contributes to a necessary sense of community. It gives families not only a stake in the future, but a means to improve the future. Home equity and ownership often become the means by which we send our children to college, finance small businesses, or prepare for retirement.

It's clear that the benefits of home ownership go far beyond the family; they contribute to society as a whole. For example, the property tax base is often the foundation for public education. And as a Nation we have been richly rewarded by the Government policies that have encouraged people to realize the American dream.

What concerns me today, Mr. President, is that a full 60 percent of Americans can no longer afford a median-priced home. It concerns me that the increase in the cost of housing over the last 10 years has been greater than the increase in family income. And it concerns me that for the first time in 50 years, the percentage of people in the United States owning their own homes has declined.

When trends like these threaten the American Dream, and these trends are being felt, Mr. President, I was troubled by a Gallup-CBS polls taken recently that showed that 8 out of every 10 Americans believe it will be harder for the next generation to achieve the American Dream—8 out of every 10. When these trends threaten the American Dream of home ownership, we must be clear in our policies here in Washington, that we will continue to work to promote an environment of security and opportunity.

Mr. D'AMATO. Mr. President, I am pleased to join my distinguished colleague from Delaware, Senator ROTH, in submitting a resolution to prevent further restriction of the Federal income tax deduction for home mortgage interest. To further limit or eliminate the deductibility of mortgage interest for homeowners—the majority of which are middle-income Americans—would be to restrict their ability to buy into the American dream.

It is no secret that homeownership is a fundamental American ideal. Cutting or wiping out this deduction, which has been available to Americans since 1913, will simply put the possibility of homeownership out of reach for many Americans. The mortgage interest deduction is one of a number of tax benefits that serves a good social purpose. It is not an unintended loophole but, rather, a provision created to foster investment by the private sector. The home mortgage interest deduction has served as one of the cornerstones of our national housing policy, making us one of the best housed countries in the world and creating safe and secure neighborhoods.

Further restrictions could also have a disastrous effect on the American housing industry, especially if interest rates continue to rise. People simply will not be able to buy homes, which would have a devastating impact on the economy, particularly the banking, lending and construction industries. Higher unemployment rates would result and local governments would suffer, as shrinking homeownership would, in turn, mean a dwindling tax base.

Mr. President, the National Association of Home Builders estimates that eliminating the home mortgage interest deduction would reduce the value of an average American home by about 20 percent. For all intents and purposes this would have the effect of a heavy tax increase. For the sake of the economy and middle-income Americans we cannot erode the American dream: homeownership.

SENATE RESOLUTION 118—CONCERNING UNITED STATES-JAPAN TRADE RELATIONS

Mr. BYRD (for himself, Mr. DOLE, Mr. DASCHLE, Mr. BAUCUS, Mr. REID, Mr. ASHCROFT, Mr. WARNER, Mr. LEVIN, Mr. HOLLINGS, Mr. PRESSLER, Mr. DORGAN, Mr. SARBANES, Mr. SPECTER, Mr. BROWN, and Mr. D'AMATO) submitted the following resolution; which was considered and agreed to:

S. RES. 118

Whereas, the United States and Japan have a long and important relationship which serves as an anchor of peace and stability in the Pacific region;

Whereas, tension exists in an otherwise normal and friendly relationship between the United States and Japan because of persistent and large trade deficits which are the result of practices and regulations which have substantially blocked legitimate access of American automotive products to the Japanese market;

Whereas, the current account trade deficit with Japan in 1994 reached an historic high level of $66 billion, of which $37 billion, or 56 percent, is attributed to imbalances in automotive sector, and of which $12.8 billion is attributable to auto parts flows;

Whereas, in July, 1993, the Administration reached a broad accord with the Government of Japan, which established automotive trade as one of 5 priority areas for negotiations, to seek market-opening arrangements based on objective criteria and which would result in objective progress;

Whereas, a healthy American automobile industry is of central importance to the American economy, and to the capability of the United States to fulfill its commitments to remain as an engaged, deployed, Pacific power;

Whereas, after 18 months of negotiations with the Japanese, beginning in September 1993, the U.S. Trade Representative concluded that no progress had been achieved, leaving the auto parts market in Japan ''virtually closed'';

Whereas, in October, 1994, the United States initiated an investigation under Section 301 of the Trade Act of 1974 into the Japanese auto parts market, which could result in the imposition of trade sanctions on a variety of Japanese imports into the United States unless measurable progress is made in penetrating the Japanese auto parts market;

Whereas, the latest round of U.S.-Japan negotiations on automotive trade, in Whistler, Canada, collapsed in failure on May 5, 1995, and the U.S. Trade Representative, Ambassador Kantor, stated the ''government of Japan has refused to address our most fundamental concerns in all areas'' of automotive trade, and that ''discrimination against foreign manufacturers of autos and auto parts continues.''

Whereas, President Clinton stated, on May 5, 1995, that the U.S. is ''committed to taking strong action'' regarding Japanese imports into the U.S. if no agreement is reached.

Now, therefore, be it

Resolved, That it is the Sense of the Senate that—

(1) The Senate regrets that negotiations between the United States and Japan for sharp reductions in the trade imbalances in automotive sales and parts, through elimination of restrictive Japanese market-closing practices and regulations, have collapsed;

(2) If negotiations under Section 301 of the Trade Act of 1974 fail to open the Japanese auto parts market, the United States Senate strongly supports the decision by the President to impose sanctions on Japanese products in accordance with Section 301.

SENATE RESOLUTION 119—AUTHORIZING REPRESENTATION BY LEGAL COUNSEL

Mr. GORTON (for Mr. DOLE, for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 119

Whereas, in the case of *United States* v. *George C. Matthews*, Case No. 95–CR–11, pending in the United States District Court for the Eastern District of Wisconsin, a subpoena for testimony has been issued to Darin Schroeder, an employee of the Senate on the staff of Senator Feingold;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2) (1994), the Senate may direct its counsel to represent committees, Members, officers and employees of the Senate with respect to subpoenas or orders issued to them in their official capacity: Now, therefore, be it

Resolved, That Darin Schroeder and any other employees in Senator Feingold's office from whom testimony may be necessary are authorized to testify and to produce records in the case of *United States* v. *George C. Matthews*, except concerning matters for which a privilege should be asserted.

SEC. 2. That the Senate Legal Counsel is directed to represent Darin Schroeder and any other employee in connection with the testimony authorized under section 1.

AMENDMENTS SUBMITTED

COMMONSENSE PRODUCT LIABILITY REFORM ACT

BYRD (AND OTHERS) AMENDMENT NO. 730

(Ordered to lie on the table.)

Mr. BYRD (for himself, Mr. DOLE, Mr. BAUCUS, Mr. REID, Mr. LEVIN, and Mr. ASHCROFT) submitted an amendment intended to be proposed by them to amendment No. 690, proposed by Mr. COVERDELL 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

Inasmuch as, the United States and Japan have a long and important relationship which serves as an anchor of peace and stability in the Pacific region;

Inasmuch as, tension exists in an otherwise normal and friendly relationship between the United States and Japan because of persistent and large trade deficits which are the result of practices and regulations which have substantially blocked legitimate access of American products to the Japanese market;

Inasmuch as, the current account trade deficit with Japan in 1994 reached an historic high level of $66 billion, of which $37 billion, or 56 percent, is attributed to imbalances in automotive sector, and of which $12.8 billion is attributable to auto parts flows;

Inasmuch as, in July 1993, the Administration reached a broad accord with the Government of Japan, which established automotive trade regulations as one of 5 priority areas of negotiations, to seek market-opening arrangements based on objective criteria and which would result in objective progress;

Inasmuch as, a healthy American automobile industry is of central importance to the American economy, and to the capability of the United States to fulfill is commitments to remain as an engaged, deployed, Pacific power;

Inasmuch as, after 18 months of negotiations with the Japanese, beginning in September, 1993, the U.S. Trade Representatives concluded that no progress has been achieved, leaving the auto parts market in Japan ''virtually closed;''

Inasmuch as, in October, 1994, the United States initiated an investigation under Section 301 of the Trade Act of 1974 into the Japanese auto parts market, which could result in the imposition of trade sanctions on a variety of Japanese imports into the United States unless measurable progress is made in penetrating the Japanese auto parts market;

Inasmuch as, the latest round of U.S.-Japan negotiations on automotive trade, in Whistler, Canada, collapsed in failure on May 5, 1995, and the U.S. Trade Representative, Ambassador Kantor stated the ''government of Japan has refused to address our most fundamental concerns in all areas'' of automotive trade, and that ''discrimination against foreign manufacturers of autos and auto parts continues;''

Inasmuch as, President Clinton stated, on May 5, 1995, that the U.S. is ''committed to taking strong action'' regarding Japanese imports into the U.S. if no agreement is reached: Now, therefore, be it

Declared, That it is the Sense of the Senate that—

(1) The Senate regrets that negotiations between the United States and Japan for sharp reductions in the trade imbalances in automotive sales and parts, through elimination of restrictive Japanese market-closing practices and regulations, have collapsed;

(2) The Senate therefore strongly supports the decision by the President to impose trade sanctions on Japanese products in accordance with Section 301 of the Trade Act of 1974 unless an acceptable accord with Japan is reached in the interim that renders such action unnecessary.

HOLLINGS AMENDMENTS NOS. 731–745

(Ordered to lie on the table.)

Mr. HOLLINGS submitted 15 amendments intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON, to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 731

At the appropriate place, insert the following:

SEC. . TRULY UNIFORM STANDARDS FOR ALL STATES.

(a) PUNITIVE DAMAGES.—Notwithstanding any other provision of this Act or any limitation under State law, punitive damages may be awarded to a claimant in a product liability action subject to this title. The amount of punitive damages that may be awarded may not exceed 2 times the sum of—

(1) the amount awarded to the claimant for the economic loss on which the claim is based; and

(2) the amount awarded to the claimant for noneconomic loss.

(b) STATUTE OF REPOSE.—Notwithstanding any other provision of this Act, no product liability action subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed more than 20 years after the time of delivery of the product. This subsection supersedes any State law that requires a product liability action to be filed during a period of time shorter than 20 years after the time of delivery.

AMENDMENT NO. 732

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law—

(1) if the legislature of that State considered a legislative proposal dealing with that provision in connection with reforming the tort laws of that State during the period beginning on January 1, 1980, and ending on the date of enactment of this Act, without regard to whether such proposal was adopted, modified and adopted, or rejected; or

(2) adopted after the date of enactment of this Act.

AMENDMENT NO. 733

At the appropriate place, insert the following:

SEC. . TRULY UNIFORM STANDARDS FOR ALL STATES.

(a) PUNITIVE DAMAGES.—Notwithstanding any other provision of this Act or any limitation under State law, punitive damages may be awarded to a claimant in a product liability action subject to this title. The amount of punitive damages that may be awarded may not exceed the greater of—

(1) an amount equal to 3 times the amount awarded to the claimant for the economic loss on which the claim is based, or

(2) $250,000.

(b) STATUTE OF REPOSE.—Notwithstanding any other provision of this Act, no product liability action subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed more than 20 years after the time of delivery of the product. This subsection supersedes any State law that requires a product liability action to be filed during a period of time shorter than 20 years after the time of delivery.

AMENDMENT NO. 734

At the appropriate place, insert the following:

SEC. . APPLICATION OF ACT LIMITED TO DOMESTIC PRODUCTS.

Notwithstanding any other provision of this Act, this Act shall not apply to any product, component part, implant, or medical device that is not manufactured in the United States within the meaning of the Buy American Act (41 U.S.C. 10a) and the regulations issued thereunder, or to any raw material derived from sources outside the United States.

AMENDMENT NO. 735

At the appropriate place, insert the following:

SEC. . STATE IMPLEMENTATION REQUIRED.

Notwithstanding any provision of this Act to the contrary, nothing in this Act shall supersede any provision of State law or rule of civil procedure unless that State has enacted a law providing for the application of this Act in that State.

AMENDMENT NO. 736

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law adopted after the date of enactment of this Act.

AMENDMENT NO. 737

At the appropriate place, insert the following:

SEC. . NO PREEMPTION OF RECENT TORT REFORM LAWS.

Notwithstanding any other provision of this Act to the contrary, nothing in this Act preempts any provision of State law inconsistent with this Act if the legislature of that State considered a legislative proposal dealing with that provision in connection with reforming the tort laws of that State during the period beginning on January 1, 1980, and ending on the date of enactment of this Act, without regard to whether such proposal was adopted, modified and adopted, or rejected.

AMENDMENT NO. 738

At the appropriate place, insert the following:

SEC. . Notwithstanding section 101(7) of this Act, the term ''harm'' includes commercial loss or loss of damage to a product itself; and notwithstanding section 102(a) of this Act, the provisions of title I apply to any product liability action brought for loss or damage to a product itself or for commercial loss.

AMENDMENT NO. 739

At the appropriate place, insert the following:

SEC. . Notwithstanding section 102(e) of this Act, nothing in this Act shall require that any decision of a circuit court of appeals interpreting a provision of this Act be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court.

AMENDMENT NO. 740

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, nothing in this Act shall preclude the district courts of the United States from having jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered by this Act.

AMENDMENT NO. 741

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, nothing in this Act requires the trier of fact in a product liability action, at the request of any party, to consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

AMENDMENT NO. 742

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, nothing in this Act limits the amount of punitive damages that may be awarded in a product liability action or any other civil action.

AMENDMENT NO. 743

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, this Act shall not apply to the award of punitive damages in any product liability action or any other civil action.

AMENDMENT NO. 744

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, the term ''product liability action'' means a civil action brought on any theory for harm caused by a product, against a manufacturer, seller, or any other person responsible for the distribution of the product in the stream of commerce, that involves a defect or design of the product.

AMENDMENT NO. 745

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of this Act, nothing in this Act requires that, in a product liability action, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

BREAUX AMENDMENTS NOS. 746–747

(Ordered to lie on the table.)

Mr. BREAUX submitted two amendments intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON, to the bill, H.R. 956, supra; as follows:

AMENDMENT NO. 746

In lieu of the language proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Product Liability Fairness Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

TABLE OF CONTENTS

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Definitions.
Sec. 4. Applicability; preemption.
Sec. 5. Jurisdiction of Federal courts.
Sec. 6. Effective date.
TITLE I—EXPEDITED JUDGMENTS AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES
Sec. 102. Alternative dispute resolution procedures.
TITLE II—STANDARDS FOR CIVIL ACTIONS
Sec. 201. Civil actions.
Sec. 202. Uniform standards of product seller liability.
Sec. 203. Uniform standards for award of punitive damages.
Sec. 204. Uniform time limitations on liability.
Sec. 205. Workers' compensation subrogation standards.
Sec. 207. Defenses involving intoxicating alcohol or drugs.

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) ''claimant'' means any person who brings a civil action pursuant to this Act, and any person on whose behalf such an action is brought; if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(2) ''clear and convincing evidence'' is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established; the level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt;

(4) ''commerce'' means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside of that State; or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A);

(5) ''commercial loss'' means any loss incurred in the course of an ongoing business enterprise consisting of providing goods or services for compensation;

(6) ''economic loss'' means any pecuniary loss resulting from harm (including but not limited to medical expense loss, work loss, replacement services loss, loss due to death, burial costs, loss of business or employment opportunities and the fair market value of any property loss or property damage), to the extent recovery for such loss is allowed under applicable State law;

(7) ''exercise of reasonable care'' means conduct of a person of ordinary prudence and intelligence using the attention, precaution, and judgment that society expects of its members for the protection of their own interests and the interests of others;

(8) ''harm'' means any bodily injury to an individual sustained in an accident and any illness, disease, or death of that individual resulting from that injury; the term does not include commercial loss or loss or damage to a product itself;

(9) ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs, formulates or constructs the product (or component part of the product) or has engaged another person to design, formulate or construct the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design, formulate or construct, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of a product;

(10) ''noneconomic loss'' means subjective, nonmonetary loss resulting from harm, including but not limited to pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; the term does not include economic loss;

(11) ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(12) ''preponderance of the evidence'' is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur;

(13) ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(14) ''product seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, or otherwise is involved in placing a product in the stream of commerce; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(15) ''State'' means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 4. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY TO PRODUCT LIABILITY ACTIONS.—This Act applies to any civil action brought against a manufacturer or product seller, on any theory, for harm caused by a product. A civil action brought against a manufacturer or product seller for loss or damage to a product itself or for commercial loss is not subject to this Act and shall be governed by applicable commercial or contract law. A civil action for negligent entrustment is similarly not subject to this Act and shall be subject to applicable State law.

(b) SCOPE OF PREEMPTION.—(1) Except as provided in paragraph (2), this Act supersedes any State law regarding recovery for harm caused by a product only to the extent that this Act establishes a rule of law applicable to any such recovery. Any issue arising under this Act that is not governed by any such rule of law shall be governed by applicable State or Federal law.

(2) The provisions of title I shall not supersede or otherwise preempt any provision of applicable State or Federal law.

(c) EFFECT ON OTHER LAW.—Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules including those with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) 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 forum non conveniens; or

(7) supersede any statutory or common law, including an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief resulting from contamination or pollution of the environment (as defined

in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; 42 U.S.C. 9601(8)), or the threat of such contamination or pollution.

(d) CONSTRUCTION.—This Act shall be construed and applied after consideration of its legislative history to promote uniformity of law in the various jurisdictions.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Any decision of a United States court of appeals interpreting the provisions of this Act shall be considered a controlling precedent and followed by each Federal and State court within the geographical boundaries of the circuit in which such court of appeals sits, except to the extent that the decision is overruled or otherwise modified by the United States Supreme Court.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on the date of its enactment and shall apply to all civil actions pursuant to this Act commenced on or after such date, including any action in which the harm or the conduct which caused the harm occurred before the effective date of this Act, but shall not apply to claims existing prior to the effective date of this Act.

TITLE I—ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) IN GENERAL.—A claimant or defendant in a civil action subject to this Act may, within the time permitted for making an offer of judgment under section 101, serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the civil action is brought or under the rules of the court in which such action is maintained. An offeree shall, within ten days of such service, file a written notice of acceptance or rejection of the offer; except that the court may, upon motion by the offeree make prior to the expiration of such ten-day period, extend the period for response for up to sixty days, during which discovery may be permitted.

(b) DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.—The court shall assess reasonable attorney's fees (calculated in the manner described in section 101(f)) and costs against the offeree, if—

(1) a defendant as offeree refuses to proceed pursuant to such alternative dispute resolution procedure;

(2) final judgment is entered against the defendant for harm caused by a product; and

(3) the defendant's refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith.

(c) GOOD FAITH REFUSAL.—In determining whether an offeree's refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith, the court shall consider such factors as the court deems appropriate.

TITLE II—STANDARDS FOR CIVIL ACTIONS

SEC. 202. UNIFORM STANDARDS OF PRODUCT SELLER LIABILITY.

(a) STANDARDS OF LIABILITY.—In any civil action for harm caused by a product, a product seller other than a manufacturer is liable to a claimant, only if the claimant establishes by a preponderance of the evidence that—

(1)(A) the individual product unit which allegedly caused the harm complained of was sold by the defendant; (B) the product seller failed to exercise reasonable care with respect to the product; and (C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty, independent of any express warranty made by a manufacturer as to the same product; (B) the product failed to conform to the product seller's warranty; and (C) the failure of the product to conform to the product seller's warranty caused the claimant's harm; or

(3)(i) the product seller engaged in conduct representing a conscious or flagrant indifference to safety or in conduct representing intentional wrongdoing; and

(ii) such conduct was approximate cause of the harm that is the subject of the complaint.

(b) CONDUCT OF PRODUCT SELLER.—(1) In determining whether a product seller is subject to liability under subsection (a)(1), the trier of fact may consider the effect of the conduct of the product seller with respect to the construction, inspection, or condition of the product, and any failure of the product seller to pass on adequate warnings or instructions from the product's manufacturer about the dangers and proper use of the product.

(2) A product seller shall not be liable in a civil action subject to this Act based upon an alleged failure to provide warnings or instructions unless the claimant establishes that, when the product left the possession and control of the product seller, the product seller failed—

(A) to provide to the person to whom the product seller relinquished possession and control of the product any pamphlets, booklets, labels, inserts, or other written warnings or instructions received while the product was in the product seller's possession and control; or

(B) to make reasonable efforts to provide users with the warnings and instructions with it received after the product left its possession and control.

(3) A product seller shall not be liable in a civil action subject to this Act except for breach of express warranty where there was no reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(c) TREATMENT AS MANUFACTURER.—A product seller shall be deemed to be the manufacturer of a product and shall be liable for harm to the claimant caused by a product as if it were the manufacturer of the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(d) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 314(a)(b)(c) shall be subject to liability in a product liability action under subsection (a), but shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 203. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may be awarded in any civil action subject to this Act to any claimant who establishes by clear and convincing evidence that the harm suffered by the claimant was the result of conduct manifesting a manufacturer's or product seller's conscious or flagrant indifference to the safety of those persons who might be harmed by the product. A failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions, or warnings is not of itself such conduct. Punitive damages may not be awarded in the absence of an award of compensatory damages.

(b) JUDICIAL DETERMINATION.

SEC. 204. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—Any civil action subject to this Act shall be barred unless the complaint is filed within two years of the time the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that any such action of a person under legal disability may be filed within two years after the disability ceases. If the commencement of such an action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

(b) STATUTE OF REPOSE FOR CAPITAL GOODS.—(1) Any civil action subject to this Act shall be barred if a product which is a capital good is alleged to have caused harm which is not a toxic harm unless the complaint is served and filed within twenty-five years after the time of delivery of the product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive compensation under any State or Federal workers' compensation law for harm caused by the product.

(2) A motor vehicle, vessel, aircraft, or train, used primarily to transport passengers for hire, shall not be subject to this subsection.

(3) As used in this subsection, the term—

(A) ''capital good'' means any product, or any component of any such product, which is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which was—

(i) used in a trade or business;

(ii) held for the production of income; or

(iii) sold or donated to a governmental or private entity for the production of goods, for training, for demonstration, or for other similar purposes; and

(B) ''time of delivery'' means the time when a product is delivered to its first purchaser or lessee who was not involved in the business of manufacturing or selling such product or using it as a component part of another product to be sold.

(c) EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of this section would shorten the period during which a civil action could be brought under otherwise applicable law, the claimant may, notwithstanding such provision of this section, bring the civil action pursuant to this Act within one year after the effective date of this Act.

(d) EFFECT ON RIGHT TO CONTRIBUTION OR INDEMNITY.—Nothing in this section shall affect the right of any person who is subject to liability for harm under this Act to seek and obtain contribution or indemnity from any other person who is responsible for such harm.

(e) Paragraph (b)(1) does not bar a product liability action against a defendant who made a warranty in writing as to the safety of the specific product involved which was longer than 25 years, but it will apply at the expiration of that warranty.

SEC. 205. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) IN GENERAL.—(1) An employer or workers' compensation insurer of an employer

shall have a right of subrogation against a manufacturer or product seller to recover the sum of the amount paid as workers' compensation benefits for harm caused to an employee by a product if the harm is one for which a civil action has been brought pursuant to this Act. To assert a right of subrogation an employer or workers' compensation insurer of an employer shall provide written notice that it is asserting a right of subrogation to the court in which the claimant has filed a complaint. The employer or workers' compensation insurer of the employer shall not be required to be a necessary and proper party to the proceeding instituted by the employee.

(2) In any proceeding against or settlement with the manufacturer or product seller, the employer or the workers' compensation insurer of the employer shall have an opportunity to assert a right of subrogation upon any payment and to assert a right of subrogation upon any payment made by the manufacturer or product seller by reason of such harm, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise. The employee shall not make any settlement with or accept any payment from the manufacturer or product seller without notifying the employer in writing prior to settlement. However, the preceding sentence shall not apply if the employer or workers' compensation insurer of the employer is made whole for all benefits paid in workers' compensation benefits or has not asserted a right of subrogation pursuant to this section.

(3) If the manufacturer or product seller attempts to persuade the trier of fact that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the issue whether the claimant's harm was caused by the claimant's employer or coemployees shall be submitted to the trier of fact. If the manufacturer or product seller so attempts to persuade the trier of fact, it shall provide written notice to the employer. The employer shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the trier of fact as to this issue as fully as though the employer were a party although not named or joined as a party to the proceeding. Such issue shall be the last issue submitted to the trier of fact. If the trier of fact finds by clear and convincing evidence that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the court shall proportionally reduce the damages awarded by the trier of fact against the manufacturer or product seller (and correspondingly the subrogation lien of the employer) by deducting from such damages a sum equal to the percentage at fault found attributable to the employer or coemployee multiplied by the sum of the amount paid as workers' compensation benefits. The manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer for such sums. However, the employer shall not lose its right of subrogation because of an intentional tort committee against the claimant by the claimant's coemployees or for acts committed by coemployees outside the scope of normal work practices.

(4) If the verdict shall be that the claimant's harm was not caused by the fault of the claimant's employer or coemployees, then the manufacturer or product seller shall reimburse the employer or workers' compensation insurer of the employer for reasonable attorney's fees and court costs incurred in the resolution of the subrogation claim, as determined by the court.

(b) EFFECT ON CERTAIN CIVIL ACTIONS.—(1) In any civil action subject to this Act in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, no third party tortfeasor may maintain any action for implied indemnity or contribution against the employer, any coemployee, or the exclusive representative of the person who was injured.

(2) Nothing in this Act shall be construed to affect any provision of a State or Federal workers' compensation law which prohibits a person who is or would have been entitled to receive compensation under any such law, or any other person whose claim is or would have been derivative from such a claim, from recovering for harm caused by a product in any action other than a workers' compensation claim against a present or former employer or workers' compensation insurer of the employer, any coemployee, or the exclusive representative of the person who was injured.

(3) Nothing in this Act shall be construed to affect any State or Federal workers' compensation law which permits recovery based on a claim of an intentional tort by the employer or coemployee, where the claimant's harm was caused by such an intentional tort.

SEC. 206. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) IN GENERAL.—Except as provided in subsection (b), in any civil action subject to this Act, the liability of each defendant for noneconomic loss shall be joint and several.

(b) DE MINIMIS EXCEPTION.—Notwithstanding subsection (a), in any civil action subject to this Act, the liability for noneconomic loss of each defendant found to be less than 15% at fault shall be several only and shall not be joint. Each such defendant shall be liable only for the amount of noneconomic loss allocated to such defendant in direct proportion to such defendant's percentage of responsibility as determined under subsection (c). A separate judgment shall be rendered against such defendant for that amount.

(c) PROPORTION OF RESPONSIBILITY.—For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(b) OTHER CIVIL ACTIONS.—In any civil action subject to this Act in which not all defendants are manufacturers or product sellers and the trier of fact determines that no liability exists against those defendants who are not manufacturers or product sellers, the court shall enter a judgment notwithstanding the verdict in favor of any defendant which is a manufacturer or product seller if it is proved that the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug and that as a proximate cause of such intoxication or the influence of the alcohol or drug the claimant was more than 50 percent responsible for the accident or event which resulted in such claimant's harm.

(c) INTOXICATION DETERMINATION TO BE MADE UNDER STATE LAW.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

(d) DEFINITION.—As used in this section, the term ''drug'' means any non-over-the-counter drug which has not been prescribed by a physician for use by the claimant.

In lieu of the language proposed to be inserted, insert the following:

AMENDMENT NO. 747

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Product Liability Fairness Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

TABLE OF CONTENTS

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Definitions.
Sec. 4. Applicability; preemption.
Sec. 5. Jurisdiction of Federal courts.
Sec. 6. Effective date.

TITLE I—EXPEDITED JUDGMENTS AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Sec. 102. Alternative dispute resolution procedures.

TITLE II—STANDARDS FOR CIVIL ACTIONS

Sec. 201. Civil actions.
Sec. 202. Uniform standards of product seller liability.
Sec. 203. Uniform standards for award of punitive damages.
Sec. 204. Uniform time limitations on liability.
Sec. 205. Workers' compensation subrogation standards.
Sec. 207. Defenses involving intoxicating alcohol or drugs.

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) ''claimant'' means any person who brings a civil action pursuant to this Act, and any person on whose behalf such an action is brought; if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(2) ''clear and convincing evidence'' is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established; the level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt;

(4) ''commerce'' means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside of that State; or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A);

(5) ''commercial loss'' means any loss incurred in the course of an ongoing business enterprise consisting of providing goods or services for compensation;

(6) ''economic loss'' means any pecuniary loss resulting from harm (including but not limited to medical expense loss, work loss, replacement services loss, loss due to death, burial costs, loss of business or employment opportunities and the fair market value of any property loss or property damage), to the extent recovery for such loss is allowed under applicable State law;

(7) ''exercise of reasonable care'' means conduct of a person of ordinary prudence and intelligence using the attention, precaution, and judgment that society expects of its members for the protection of their own interests and the interests of others;

(8) ''harm'' means any bodily injury to an individual sustained in an accident and any illness, disease, or death of that individual resulting from that injury; the term does not include commercial loss or loss or damage to a product itself;

(9) ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs, formulates or constructs the product (or component part of the product) or has engaged another person to design, formulate or construct the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design, formulate or construct an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of a product;

(10) ''noneconomic loss'' means subjective, nonmonetary loss resulting from harm, including but not limited to pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; the term does not include economic loss;

(11) ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(12) ''preponderance of the evidence'' is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur;

(13) ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(14) ''product seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, or otherwise is involved in placing a product in the stream of commerce;

the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(15) ''State'' means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 4. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY TO PRODUCT LIABILITY ACTIONS.—This Act applies to any civil action brought against a manufacturer or product seller, on any theory, for harm caused by a product. A civil action brought against a manufacturer or product seller for loss or damage to a product itself or for commercial loss is not subject to this Act and shall be governed by applicable commercial or contract law. A civil action for negligent entrustment is similarly not subject to this Act and shall be subject to applicable State law.

(b) SCOPE OF PREEMPTION.—(1) Except as provided in paragraph (2), this Act supersedes any State law regarding recovery for harm caused by a product only to the extent that this Act establishes a rule of law applicable to any such recovery. Any issue arising under this Act that is not governed by any such rule of law shall be governed by applicable State or Federal law.

(2) The provisions of title I shall not supersede or otherwise preempt any provision of applicable State or Federal law.

(c) EFFECT ON OTHER LAW.—Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules including those with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) 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 forum non conveniens; or

(7) supersede any statutory or common law, including an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief resulting from contamination or pollution of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; 42 U.S.C. 9601(8)), or the threat of such contamination or pollution.

(d) CONSTRUCTION.—This Act shall be construed and applied after consideration of its legislative history to promote uniformity of law in the various jurisdictions.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Any decision of a United States court of appeals interpreting the provisions of this Act shall be considered a controlling precedent and followed by each Federal and State court within the geographical boundaries of the circuit in which such court of appeals sits, except to the extent that the decision is overruled or otherwise modified by the United States Supreme Court.

SEC. 5. JURISDICTION OF FEDERAL COURTS.

The district courts of the United States shall not have jurisdiction over any civil action pursuant to this Act, based on section 1331 or 1337 of title 28, United States Code.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on the date of its enactment and shall apply to all civil actions pursuant to this Act commenced on or after such date, including any action in which the harm or the conduct which caused the harm occurred before the effective date of this Act, but shall not apply to claims existing prior to the effective date of this Act.

TITLE I—ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) IN GENERAL.—A claimant or defendant in a civil action subject to this Act may, within the time permitted for making an offer of judgment under section 101, serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the civil action is brought or under the rules of the court in which such action is maintained. An offeree shall, within ten days of such service, file a written notice of acceptance or rejection of the offer; except that the court may, upon motion by the offeree make prior to the expiration of such ten-day period, extend the period for response for up to sixty days, during which discovery may be permitted.

(b) DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.—The court shall assess reasonable attorney's fees (calculated in the manner described in section 101(f)) and costs against the offeree, if—

(1) a defendant as offeree refuses to proceed pursuant to such alternative dispute resolution procedure;

(2) final judgment is entered against the defendant for harm caused by a product; and

(3) the defendant's refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith.

(c) GOOD FAITH REFUSAL.—In determining whether an offeree's refusal to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith, the court shall consider such factors as the court deems appropriate.

TITLE II—STANDARDS FOR CIVIL ACTIONS

SEC. 201. CIVIL ACTIONS.

A person seeking to recover for harm caused by a product may bring a civil action against the product's manufacturer or product seller pursuant to applicable State or Federal law, except to the extent such law is inconsistent with any provision of this Act.

SEC. 202. UNIFORM STANDARDS OF PRODUCT SELLER LIABILITY.

(a) STANDARDS OF LIABILITY.—In any civil action for harm caused by a product, a product seller other than a manufacturer is liable to a claimant, only if the claimant establishes by a preponderance of the evidence that—

(1)(A) the individual product unit which allegedly caused the harm complained of was sold by the defendant; (B) the product seller failed to exercise reasonable care with respect to the product; and (C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty, independent of any express warranty made by a manufacturer as to the same product; (B) the product failed to conform to the product seller's warranty; and (C) the failure of the product to conform to the product seller's warranty caused the claimant's harm; or

(3)(i) the product seller engaged in conduct representing a conscious or flagrant indifference to safety or in conduct representing intentional wrongdoing; and

(ii) such conduct was approximate cause of the harm that is the subject of the complaint.

(b) CONDUCT OF PRODUCT SELLER.—(1) In determining whether a product seller is subject to liability under subsection (a)(1), the trier of fact may consider the effect of the conduct of the product seller with respect to the construction, inspection, or condition of the product, and any failure of the product seller to pass on adequate warnings or instructions from the product's manufacturer about the dangers and proper use of the product.

(2) A product seller shall not be liable in a civil action subject to this Act based upon an

alleged failure to provide warnings or instructions unless the claimant establishes that, when the product left the possession and control of the product seller, the product seller failed—

(A) to provide to the person to whom the product seller relinquished possession and control of the product any pamphlets, booklets, labels, inserts, or other written warnings or instructions received while the product was in the product seller's possession and control; or

(B) to make reasonable efforts to provide users with the warnings and instructions with it received after the product left its possession and control.

(3) A product seller shall not be liable in a civil action subject to this Act except for breach of express warranty where there was no reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(c) TREATMENT AS MANUFACTURER.—A product seller shall be deemed to be the manufacturer of a product and shall be liable for harm to the claimant caused by a product as if it were the manufacturer of the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(d) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 314(a)(b)(c) shall be subject to liability in a product liability action under subsection (a), but shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 203. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may be awarded in any civil action subject to this Act to any claimant who establishes by clear and convincing evidence that the harm suffered by the claimant was the result of conduct manifesting a manufacturer's or product seller's conscious or flagrant indifference to the safety of those persons who might be harmed by the product. A failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions, or warnings is not of itself such conduct. Punitive damages may not be awarded in the absence of an award of compensatory damages.

(b) JUDICIAL DETERMINATION—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, 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) FACTORS.—Notwithstanding any other provision of this Act, in determining the amount of punitive damages awarded in 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.

SEC. 204. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—Any civil action subject to this Act shall be barred unless the complaint is filed within two years of the time the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that any such action of a person under legal disability may be filed within two years after the disability ceases. If the commencement of such an action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

(b) STATUTE OF REPOSE FOR CAPITAL GOODS.—(1) Any civil action subject to this Act shall be barred if a product which is a capital good is alleged to have caused harm which is not a toxic harm unless the complaint is served and filed within twenty-five years after the time of delivery of the product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive compensation under any State or Federal workers' compensation law for harm caused by the product.

(2) A motor vehicle, vessel, aircraft, or train, used primarily to transport passengers for hire, shall not be subject to this subsection.

(3) As used in this subsection, the term—

(A) ''capital good'' means any product, or any component of any such product, which is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which was—

(i) used in a trade or business;

(ii) held for the production of income; or

(iii) sold or donated to a governmental or private entity for the production of goods, for training, for demonstration, or for other similar purposes; and

(B) ''time of delivery'' means the time when a product is delivered to its first purchaser or lessee who was not involved in the business of manufacturing or selling such product or using it as a component part of another product to be sold.

(c) EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of this section would shorten the period during which a civil action could be brought under otherwise applicable law, the claimant may, notwithstanding such provision of this section, bring the civil action pursuant to this Act within one year after the effective date of this Act.

(d) EFFECT ON RIGHT TO CONTRIBUTION OR INDEMNITY.—Nothing in this section shall affect the right of any person who is subject to liability for harm under this Act to seek and obtain contribution or indemnity from any other person who is responsible for such harm.

(e) Paragraph (b)(1) does not bar a product liability action against a defendant who made a warranty in writing as to the safety of the specific product involved which was longer than 25 years, but it will apply at the expiration of that warranty.

SEC. 205. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) IN GENERAL.—(1) An employer or workers' compensation insurer of an employer shall have a right of subrogation against a manufacturer or product seller to recover the sum of the amount paid as workers' compensation benefits for harm caused to an employee by a product if the harm is one for which a civil action has been brought pursuant to this Act. To assert a right of subrogation an employer or workers' compensation insurer of an employer shall provide written notice that it is asserting a right of subrogation to the court in which the claimant has filed a complaint. The employer or workers' compensation insurer of the employer shall not be required to be a necessary and proper party to the proceeding instituted by the employee.

(2) In any proceeding against or settlement with the manufacturer or product seller, the employer or the workers' compensation insurer of the employer shall have an opportunity to assert a right of subrogation upon any payment and to assert a right of subrogation upon any payment made by the manufacturer or product seller by reason of such harm, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise. The employee shall not make any settlement with or accept any payment from the manufacturer or product seller without notifying the employer in writing prior to settlement. However, the preceding sentence shall not apply if the employer or workers' compensation insurer of the employer is made whole for all benefits paid in workers' compensation benefits or has not asserted a right of subrogation pursuant to this section.

(3) If the manufacturer or product seller attempts to persuade the trier of fact that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the issue whether the claimant's harm was caused by the claimant's employer or coemployees shall be submitted to the trier of fact. If the manufacturer or product seller so attempts to persuade the trier of fact, it shall provide written notice to the employer. The employer shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the trier of fact as to this issue as fully as though the employer were a party although not named or joined as a party to the proceeding. Such issue shall be the last issue submitted to the trier of fact. If the trier of fact finds by clear and convincing evidence that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the court shall proportionally reduce the damages awarded by the trier of fact against the manufacturer or product seller (and correspondingly the subrogation lien of the employer) by deducting from such damages a sum equal to the percentage at fault found attributable to the employer or coemployee multiplied by the sum of the amount paid as workers' compensation benefits. The manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer for such sums. However, the employer shall not lose its right of subrogation because of an intentional tort committee

against the claimant by the claimant's coemployees or for acts committed by coemployees outside the scope of normal work practices.

(4) If the verdict shall be that the claimant's harm was not caused by the fault of the claimant's employer or coemployees, then the manufacturer or product seller shall reimburse the employer or workers' compensation insurer of the employer for reasonable attorney's fees and court costs incurred in the resolution of the subrogation claim, as determined by the court.

(b) EFFECT ON CERTAIN CIVIL ACTIONS.—(1) In any civil action subject to this Act in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, no third party tortfeasor may maintain any action for implied indemnity or contribution against the employer, any coemployee, or the exclusive representative of the person who was injured.

(2) Nothing in this Act shall be construed to affect any provision of a State or Federal workers' compensation law which prohibits a person who is or would have been entitled to receive compensation under any such law, or any other person whose claim is or would have been derivative from such a claim, from recovering for harm caused by a product in any action other than a workers' compensation claim against a present or former employer or workers' compensation insurer of the employer, any coemployee, or the exclusive representative of the person who was injured.

(3) Nothing in this Act shall be construed to affect any State or Federal workers' compensation law which permits recovery based on a claim of an intentional tort by the employer or coemployee, where the claimant's harm was caused by such an intentional tort.

SEC. 206. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) IN GENERAL.—Except as provided in subsection (b), in any civil action subject to this Act, the liability of each defendant for noneconomic loss shall be joint and several.

(b) DE MINIMIS EXCEPTION.—Notwithstanding subsection (a), in any civil action subject to this Act, the liability for noneconomic loss of each defendant found to be less than 15% at fault shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic loss allocated to such defendant in direct proportion to such defendant's percentage of responsibility as determined under subsection (c). A separate judgment shall be rendered against such defendant for that amount.

(c) PROPORTION OF RESPONSIBILITY.—For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(b) OTHER CIVIL ACTIONS.—In any civil action subject to this Act in which not all defendants are manufacturers or product sellers and the trier of fact determines that no liability exists against those defendants who are not manufacturers or product sellers, the court shall enter a judgment notwithstanding the verdict in favor of any defendant which is a manufacturer or product seller if it is proved that the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug and that as a proximate cause of such intoxication or the influence of the alcohol or drug the claimant was more than 50 percent responsible for the accident or event which resulted in such claimant's harm.

(c) INTOXICATION DETERMINATION TO BE MADE UNDER STATE LAW.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

(d) DEFINITION.—As used in this section, the term ''drug'' means any non-over-the-counter drug which has not been prescribed by a physician for use by the claimant.

McCONNELL AMENDMENT NO. 748

(Ordered to lie on the table.)

Mr. BREAUX submitted an amendment intended to be proposed by him to amendment No. 690, proposed by Mr. COVERDELL to amendment No. 596, proposed by Mr. GORTON, to the bill, H.R. 956, supra; as follows:

In amendment No. 655, add the following new subsection (c):

(c) This Section shall not apply to foreign manufacturers located in a country:

(i) with which the United States has an Agreement of Friendship, Commerce and Navigation, or the equivalent, which provides for nationals of that country to receive national treatment with respect to access to the courts of justice within the territory of the United States;

(ii) with that is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;

(iii) with that is a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters; or

(iv) with which the United States has a Consular Agreement, or the equivalent, permitting consular service of process within that country;

at the time a relevant product liability action is initiated.

HARKIN AMENDMENT NO. 749

Mr. HARKIN proposed an amendment to amendment No. 690 proposed by Mr. COVERDELL to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

In section 107(b) of the amendment as amended by amendment No. 709, insert the following:

(6)(i) Notwithstanding paragraph (1), the amount of punitive damages that may be awarded in any product liability action that is subject to this title against an owner of an unincorporated business, or any partnership, corporation, unit of local government, or organization that has 25 or more full-time employees shall be the greater of—

(I) an amount determined under paragraph (1); or

(II) 2 times the average value of the annual compensation of the chief executive officer (or the equivalent employee) of such entity during the 3 full fiscal years of the entity immediately preceding the date on which the award of punitive damages is made.

(ii) For the purposes of this subparagraph, the term 'compensation' includes the value of any salary, benefit, bonus, grant, stock option, insurance policy, club membership, or any other matter having pecuniary value.''.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. STEVENS. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SD–106, Dirksen Senate Office Building, on Thursday, May 11, 1995, at 9:30 a.m., to receive testimony on the Smithsonian Institution: Management Guidelines for the Future.

For further information concerning this hearing, please contact Christine Ciccone of the committee staff on 224–5647.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources to review Nuclear Regulatory Commission licensing activities with regard to the Department of Energy's civilian nuclear waste disposal program and other matters within the jurisdiction of the Nuclear Regulatory Commission.

The hearing will take place Tuesday, May 16, 1995, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

Witnesses may testify by invitation only. For further information, please call Karen Hunsicker at (202) 224–4971.

SUBCOMMITTEE ON PARKS, HISTORIC PRESERVATION AND RECREATION

Mr. CAMPBELL. Mr. President, I would like to announce for the public that an oversight hearing has been scheduled before the Subcommittee on Parks, Historic Preservation and Recreation.

The hearing will take place Tuesday, May 23, 1995, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this oversight hearing is to review the Department of the Interior's programs, policies, and budget implications on the reintroduction of wolves in and around Yellowstone National Park.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Parks, Historic Preservation and Recreation, Committee on Energy and Natural Resources, U.S. Senate, 304 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Jim O'Toole of the subcommittee staff at (202) 224–5161.

SUBCOMMITTEE ON FORESTS AND PUBLIC LANDS

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Forests and Public Lands to receive testimony on the property line disputes within the Nez Perce Indian Reservation in Idaho.

The hearing will take place on May 25, 1995, at 9:30 a.m. in room SD 366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to testify or who which to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Andrew Lundquist at (202) 224–6170.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. ROTH. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Tuesday, May 9, 1995, beginning at 9:30 a.m. in room SD–215, to conduct a hearing on Medicare solvency.

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

SUBCOMMITTEE ON DISABILITY POLICY

Mr. ROTH. Mr. President, I ask unanimous consent that the Subcommittee on Disability Policy, Committee on Labor and Human Resources, be authorized to meet during the session of the Senate on Tuesday, May 9, at 9 a.m., to conduct a hearing on ''Part B of the Individuals with Disabilities Education Act.''

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

SUBCOMMITTEE ON PERSONNEL

Mr. ROTH. Mr. President, I ask unanimous consent that the subcommittee on personnel and the Subcommittee on Readiness of the Committee on Armed Services be authorized to meet at 9 a.m. on Tuesday, May 9, 1995, in open session, to receive testimony regarding military family housing issues in review of S. 727, the national defense authorization bill for fiscal year 1996, and the Future Years Defense Program.

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

SUBCOMMITTEE ON SEAPOWER

Mr. ROTH. Mr. President, I ask unanimous consent that the Subcommittee on Seapower of the Committee on Armed Services be authorized to meet at 9:30 a.m. on Tuesday, May 9, 1995, in open session, to receive testimony on the Department of the Navy's implementation of its strategy for littoral warfare in review of S. 727, the Defense Authorization Act for fiscal year 1996 and the Future Years Defense Program.

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

SUBCOMMITTEE ON SUPERFUND, WASTE CONTROL, AND RISK ASSESSMENT

Mr. ROTH. Mr. President, I ask unanimous consent that the Subcommittee on Superfund, Waste Control, and Risk Assessment be granted permission to conduct an oversight hearing Tuesday, May 9, at 9 a.m., regarding the Comprehensive Environmental Response, Compensation, and Liability Act.

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

ADDITIONAL STATEMENTS

REGARDING IRAN

● Mr. D'AMATO. Mr. President, I rise today to discuss the ongoing situation in Iran.

Clearly, the situation in Iran today is one of desperation. The Iranian people, suffering the depredations of 16 years of rule by a corrupt, terrorist, regime, deserve better. They deserve to have a government that respects the rich and dignified history of the Iranian people. Unfortunately, what they have gotten is a government that violates their human rights and has brought a formerly rich and varied economy down upon the shoulders of the people, suffocating them.

While we know that the regime in Teheran practices terrorism with great frequency throughout the world, most people forget that they also inflict terror against their own people. If they will torture and execute their own people, what respect will they have for those of other nations?

Mr. President, today we must understand one simple fact: the terrorist regime in Iran does not represent the Iranian people. It represents murder, terror, and destruction, nothing more and nothing less. The Iranian people deserve better, and they deserve freedom from the corrupt rule of the terrorist regime that calls itself the Government of Iran.●

GOVERNOR EDWARDS ON THE CONTRACT WITH AMERICA

● Mr. BREAUX. Mr. President, I ask unanimous consent that a speech by Louisiana Gov. Edwin Edwards be printed in the CONGRESSIONAL RECORD. Governor Edwards recently made remarks concerning the House-passed Contract With America and its effect on Louisiana. I found Governor Edward's remarks very informative, and I wanted to share them with my colleagues.

The speech follows:

SPEECH BY GOVERNOR EDWARDS

I have said repeatedly that I do not believe the actions of American voters last fall were an endorsement of the so-called Republican ''Contract with America'' so much as a general dissatisfaction with the status quo and a desire for new faces.

National surveys indicate that few voters knew anything about the contents of the so-called contract when they went to the polls, and still fewer based their votes on support for its provisions.

As the Republican Congressional leaders continue to act upon what they claim is a mandate for their so-called contract, however, it has been necessary for me as a responsible Governor of a small state (1.7 percent of U.S. population) with a large percentage of poor people to take a closer look at just what the provisions mean to the people of Louisiana.

I don't like what I see. I am convinced that Louisianians, at least, would not have voted for the contract. I am alarmed because it appears that the end result effectively will be a contract ''on'' the children of Louisiana and, ultimately, on the well-being of the entire state.

Neither Louisiana nor our nation can afford to balance the federal budget on the backs of its most vulnerable and its most precious resources—its children. But what makes these particular efforts even more onerous is that the cuts will not be applied to reduce the federal deficit and, thus, reduce the price these same children will be paying on behalf of the nation in the future. Rather, the cuts will be used to compensate for tax breaks to wealthy individuals and corporations.

This ''contract on Louisiana children'' means that while families with incomes of $200,000 a year get tax breaks that will put cash in their pockets, many of our poor children will have food taken out of their mouths. Literally, 59,000 of Louisiana's poor children will lose school lunches; 28,500 poor children will lose meals and snacks in childcare and Head Start programs, and about 410,000 children will lose 10 percent of their food stamp benefits.

Under the welfare block grant proposal of House Speaker Newt Gingrich, Louisiana will lose about $1.68 billion over the next five years that otherwise would be used for our children—especially those who are poor, hungry, disabled, abused or neglected, or sick.

Even setting aside the devastating human effect, the state would suffer economically. The $1.68 billion potentially lost to the state's economy represents almost twice as much as Louisiana's annual, net income-tax revenues. The ripple effect throughout our business community—whether it be ''Mom and Pop'' service stations, shoe shops or grocery chains would be a disaster that would have a ruinous ''trickle down'' effect on our parishes and towns.

Louisiana already is struggling to meet its obligations to serve the health-care needs of our poor people under new federal Medicaid requirements that have reduced federal aid to the state and threaten to wipe out new economic gains the state is making. We cannot afford this contract on our state's economy.

And that would only be the start. Louisiana would get a smaller share of federal dollars that it does today, despite having a larger proportion of poor people than most other states and an average per-capita income that is only 80 percent of the U.S. average. History shows that block grants tend to shrink over years as the spotlight fades away from them. Further, if the national economy fell into a decline, there would be no strengthening of the assistance safety net.

And there is more. The contract threatens the 433,958 children under age 21 who received Medicaid-covered services in 1993 in Louisiana at a cost of about $1,928 per child.

In 1991, 31,420 births were financed by Medicaid, and payments for maternity and newborn care were 4.5 percent of total Medicaid expenditures in the state. Meanwhile the infant mortality rate decreased by 22 percent between 1984 and 1992—from 12.1 to 9.4 per 1,000 live births—obviously a result of better access to health care, among other factors.

What will happen to the birth rate, to the pregnant mothers, the infants, and to our children if that access is reduced because of budget cuts? That is a campaign ''contract'' victory I for one would not care to claim.

I am the very embodiment of the difference a good education can make in the future of a poor child. However, if Republicans succeed with their stated intentions: 101,621 Louisiana college students—who already pay more than the Southern states' average in tuition—will pay more for student loans; 670 of Louisiana's young people will not participate in national service jobs that allow them to earn college tuition; 62 of our state's 66 school districts will lose money now available to help them make their schools safe and drug-free; 2,400 Louisiana students with special needs will lose extra help they need to learn and to succeed, and 27,000 teenagers in Louisiana will lose summer jobs.

Our young people cannot afford this ''contract on their future.''

And there is more: 7,460 Louisiana children are at risk of losing access to safe, affordable child care—a move which not only threatens the well-being of the children but also the

psychological well-being of the parents while they are at work; another 1,700 abused and neglected children will lose foster care; 28,500 blind and disabled children lose SSI cash assistance immediately, and 114,000 low-income children lose cash assistance.

The contract falls also on 41,531 senior citizens and families with children in our state who will lose assistance they depend upon to provide heat during the winter, and 17,747 Louisiana families who otherwise could count on an FHA loan, their only access to an affordable home loan, to help them buy their first houses.

These are only some of the disastrous effects of the contract on Louisiana that threaten the young, the weak and the poor—in short, the very people who need our help the most. I do not believe that was the intent of the American voters nor is the wish of Louisiana voters. And I do not believe it is in the best interests of either the American people or their elected representatives.

I am reminded of the words of Jesus who described in the Gospel of St. Matthew (Chapter 25, verses 44–45) how on Judgement Day those on the left hand of God would ask: 'Lord, when saw we Thee an hungred, or athirst, or a stranger, or naked, or sick, or in prison, and did not minister unto Thee? Then shall He answer them, saying, Verily I say unto you, Inasmuch as ye did it not to one of the least of these, ye did it not to Me.'

May I respectfully suggest as we open our ears to listen to the popular political rhetoric of tax cuts and budget balancing that we pause for a moment and open our eyes to the consequences on those who can least afford to bear the burdens which will be heaped upon them in the attempt to achieve these goals.●

TRIBUTE TO CATONS CHAPEL-RICHARDSON COVE VOLUNTEER FIRE DEPARTMENT

● Mr. FRIST. Mr. President, I rise today to commend the Catons Chapel-Richardson Cove Volunteer Fire Department in Sevierville, TN, for their dedication and service to their community. In east Tennessee's Sevier County, the county-operated fire department is often unable to reach the remote areas of Catons Chapel and Richardson Cove in time to save a burning house or building—the distance is just too great. As a result, residents in those areas of the county obtained a State charter in 1992 to create a volunteer fire department that could better serve those communities.

The fire department began with a handful of volunteers, who met in the basement of a local store to plant the development and cost of a fully operational fire department. With about $18,000 from the county to get started, the volunteers held small fundraisers and obtained a bank loan to raise the additional money they needed to construct a firehouse and purchase fire trucks and other equipment. A local resident donated land, and in November 1993, the community broke ground for the firehouse.

Mr. President, not only did the Catons Chapel-Richardson Cove volunteers do much of the construction on the fire station themselves, they have built this entire department from the ground up. These volunteer firefighters are the true definition of public servants—they recognized a need in their community and have worked hard to satisfy it.

Now, all of that work is beginning to pay off. The fire department has 22 volunteer firefighters, most whom have been trained by the Sevier Firefighters School. The department also has three fire trucks, including one that can pump more than 1,000 gallons of water per minute, protective clothing, air packs, and experience—volunteers from the Catons Chapel-Richardson Cove department have responded to and assisted on many calls in the area.

Mr. President, the most important thing about these firefighters is that they are all volunteers. Every time the department receives a call to respond, these citizens leave their families and risk their lives to help save a neighbor's life and home or to prevent a local business from losing everything that it has. Mr. President, this country is full of dedicated public servants like the volunteers in Sevier County, but all too often, their work goes unnoticed. Today, I would like to recognize the firefighters in the Catons Chapel-Richardson Cove Volunteer Fire Department and the nine members of the department's volunteer advisory board and thank them for their efforts and dedicated service to their community.●

THE 75TH ANNIVERSARY OF OUR LADY OF REDEMPTION CHURCH

● Mr. LEVIN. Mr. President, I would like to recognize an impressive milestone which will soon be achieved by a church in Warren, MI. On May 13, 1995, Our Lady of Redemption Church will celebrate its 75th anniversary. The church serves over 4,000 parishioners in the Detroit area. In fact, it is the largest Melkite-Catholic Eastern Rite Parish in the United States.

The Detroit community benefits from a number of community service activities performed by members of this historic church. Our Lady of Redemption regularly holds food drives and their contributions reach far and wide to Detroit area food banks. Parishioners provide volunteer help to area hospitals, they support the Hunger Action Coalition, and they participate in the Metro Detroit Youth Day. The parish annually donates its facilities for use by the city of Warren's Parks and Recreation Department. Not only is Our Lady of Redemption the spiritual center for its members, but the church regularly organizes activities with parishes of other denominations to interchange fellowship in the spirit of ecumenism.

Please join me in saying congratulations to an integral member of the Detroit community—Our Lady of Redemption Church. I thank the clergy and members of this church for their dedicated service and wish them many more years of fellowship.●

SUBMISSION OF MOTION ADOPTED IN THE COMMITTEE ON THE BUDGET

● Mr. DOMENICI. Mr. President, pursuant to paragraph 2 of rule XXVI of the Standing Rules of the Senate, I submit for printing in the CONGRESSIONAL RECORD a motion adopted in the Committee on the Budget on May 6, 1995, governing consideration of amendments during deliberations on the fiscal year 1996 budget resolution.

The motion follows:

PAY-AS-YOU-GO MOTION MAKING OUT OF ORDER AMENDMENTS THAT ARE NOT DEFICIT NEUTRAL

Motion that, during deliberations on the fiscal year 1996 budget resolution, it not be in order for the committee to consider any perfecting amendment to the Chairman's Mark that is not deficit neutral in each year as measured against that Mark or any complete substitute amendment that fails to achieve and sustain balance by fiscal year 2002 under a Unified budget; provided that the President Clinton's fiscal year 1996 budget shall be in order as a complete substitute.●

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h–276k, as amended, appoints the Senator from California [Mrs. FEINSTEIN] as a member of the Senate delegation to the Mexico-United States Interparliamentary Group during the first session of the 104th Congress, to be held in Tucson, AZ, May 12–14, 1995.

The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d–276g, as amended, appoints the Senator from Hawaii [Mr. AKAKA] as a member of the Senate delegation to the Canada-United States Interparliamentary Group during the first session of the 104th Congress, to be held in Huntsville, ON, Canada, May 18–22, 1995.

ADDITIONAL COSPONSORS—S. 768

Mr. GORTON. Mr. President, I ask unanimous consent that the Senator from Louisiana [Mr. BREAUX], and the Senator from Oregon [Mr. PACKWOOD], be added as original cosponsors to S. 768, the Endangered Species Act Reform Amendments of 1995, which I introduced earlier today.

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

SEQUENTIAL REFERRALS—S. 776 AND H.R. 1139

Mr. GORTON. Mr. President, I ask unanimous consent that if and when the Senate's Commerce Committee reports S. 776, a bill to authorize the Atlantic Striped Bass Conservation Act, introduced by Senators CHAFEE and KERRY, it be sequentially referred to the Senate Committee on Environment and Public Works for a period not to exceed 20 session days of the Senate;

and that if the bill has not been reported by that time, it be automatically discharged and placed on the Senate Calendar; provided further, that if and when the Senate Commerce Committee reports H.R. 1139, it be sequentially referred to the Senate Committee on Environment and Public Works for a period not to exceed 20 session days of the Senate; and that if the bill is not reported by that time, it be automatically discharged and placed on the calendar.

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

AUTHORIZING TESTIMONY BY SENATE EMPLOYEE AND REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 119, submitted earlier today by Senators DOLE and DASCHLE, authorizing representation by Senate legal counsel.

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

The legislative clerk read as follows:

A resolution (S. Res. 119) to authorize testimony by Senate employee and representation by Senate legal counsel.

Mr. GORTON. Mr. President, I ask unanimous consent that the resolution be considered and agreed to, the preamble be agreed to and the motion to reconsider be laid upon the table; and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

So the resolution (S. Res. 119) was considered and agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

Whereas, in the case of *United States* v. *George C. Matthews*, Case No. 95–CR–11, pending in the United States District Court for the Eastern District of Wisconsin, a subpoena for testimony has been issued to Darin Schroeder, an employee of the Senate on the staff of Senator Feingold;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2) (1994), the Senate may direct its counsel to represent committees, Members, officers and employees of the Senate with respect to subpoenas or orders issued to them in their official capacity: Now, therefore, be it

Resolved, That Darin Schroeder and any other employees in Senator Feingold's office from whom testimony may be necessary are authorized to testify and to produce records in the case of *United States* v. *George C. Matthews*, except concerning matters for which a privilege should be asserted.

SEC. 2. That the Senate Legal Counsel is directed to represent Darin Schroeder and any other employee in connection with the testimony authorized under section 1.

Mr. DOLE. Mr. President, the United States has issued a subpoena for Darin Schroeder, an employee on the staff of Senator FEINGOLD, to testify at the trial of a defendant who was indicted last January for threatening to bring a bomb to a post office building in Milwaukee to kill or injure individuals and to damage or destroy the building. The defendant is alleged to have made the threat in a telephone conversation with Mr. Schroeder, who handles postal service constituent casework for Senator FEINGOLD.

This resolution would authorize Mr. Schroeder, as well as any other employees on Senator FEINGOLD's staff from whom testimony may be required, to testify and to produce records at trial, and to be represented by the Senate Legal Counsel.

ORDERS FOR WEDNESDAY, MAY 10, 1995

Mr. GORTON. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m., Wednesday, May 10, 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 the Senate then immediately resume consideration of H.R. 956, the product liability bill.

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

PROGRAM

Mr. GORTON. Mr. President, for the information of all Senators, the Senate will resume consideration of the product liability bill at 9:30 a.m. At 9:45 a.m., there will be at least two stacked rollcall votes on, or in relation to, amendments to the substitute amendment.

ORDER FOR LENGTH OF TIME OF VOTES

Mr. GORTON. Mr. President, I ask unanimous consent that the first vote of the 9:45 a.m. voting sequence be 15 minutes in length, with the remaining votes in the sequence limited to 10 minutes each.

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

ORDER OF PROCEDURE

Mr. GORTON. Mr. President, a final passage vote is expected on the product liability bill at approximately 11:30 a.m. Also, at 12 noon, the Senate will begin consideration of calendar No. 74, the solid waste disposal bill. Therefore, votes can be expected to occur throughout the day on Wednesday.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. GORTON. 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 8:13 p.m., recessed until Wednesday, May 10, 1995, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 9, 1995:

DEPARTMENT OF DEFENSE

JOHN P. WHITE, OF MASSACHUSETTS, TO BE DEPUTY SECRETARY OF DEFENSE, VICE JOHN M. DEUTCH.

CONFIRMATION

Executive nomination confirmed by the Senate May 9, 1995:

CENTRAL INTELLIGENCE

JOHN M. DEUTCH, OF MASSACHUSETTS, TO BE DIRECTOR OF CENTRAL INTELLIGENCE.