

SENATE—Monday, June 27, 1994

(Legislative day of Tuesday, June 7, 1994)

The Senate met at 1 p.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer will be led by Richard C. Halverson, Jr., the son of the Senate Chaplain.

Mr. Halverson.

PRAYER

The Reverend Richard C. Halverson, Jr., of Arlington, VA, offered the following prayer:

Let us pray:

Almighty God, it is written of the prophet Elijah that he came to the mount of God to hear the voice of God.

"And, behold, the Lord passed by, and a great and strong wind rent the mountains, and break in pieces the rocks before the Lord; but the Lord was not in the wind: and after the wind an earthquake; but the Lord was not in the earthquake; and after the earthquake a fire; but the Lord was not in the fire: and after the fire a still small voice. And it was so * * * Elijah heard * * *"—I Kings 19:11-13.

Lord, cause us to discern Thy voice as we must and teach us to hear one another as we should. In the signs of the times we see a gathering storm of abuse and violence, unforgiveness, and judgmentalism.

We are grateful for the many calls which have come our way for, in them, we hear the voice of pain, resentment, anger, and concern which must be heeded if a storm is to be abated and healing is to come. Once again we ask for Thy comfort and wisdom for those who suffer neglect, abuse, and violence, even within their homes.

And as we seek to discern the way of peace, open our ears to Thy voice—not in the winds of deceitful doctrines, not in the earthquakes of changing popular appeals, not in the fires of gossip, slander, and divisive speech—but in the still, small voice of Thy spirit within.

We ask this in the name of the Prince of Peace. Amen.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning

business for not to extend beyond the hour of 2 p.m., with Senators permitted to speak therein for up to 5 minutes each.

QUORUM CALL

The PRESIDENT pro tempore. The Chair in its capacity as a Senator from the State of West Virginia suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Under the order entered previously, the Senator from Utah [Mr. BENNETT], is recognized to speak up to 30 minutes.

MEASURE PLACED ON THE CALENDAR—S. 2243

Mr. BENNETT. Mr. President, before beginning the 30 minutes, I ask unanimous consent I be allowed to offer two unanimous-consent agreements.

Mr. President, I ask unanimous consent that S. 2243, introduced by Senator STEVENS on Friday and now at the desk, be placed on the calendar.

The PRESIDENT pro tempore. Is there objection? Hearing no objection, it is so ordered.

AMENDING THE JOHN F. KENNEDY CENTER ACT

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 492, H.R. 3567, a bill relating to the operating responsibilities of the John F. Kennedy Center, that the committee substitute amendment be agreed to, the bill read a third time, passed, and the motion to reconsider be laid on the table; further, that any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDENT pro tempore. Without objection, the several requests are granted.

If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDENT pro tempore. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 3567), as amended, was passed.

The PRESIDENT pro tempore. The Senator from Utah is recognized for 30 minutes.

HEALTH CARE REFORM

Mr. BENNETT. Mr. President, the issue of health care reform has been the top issue before the Congress. Indeed, as I listen to some of my more senior colleagues, they suggest it is perhaps the top issue to come before this Congress during their service and perhaps even—not to put too fine a point on it—in the history of the Nation, because we are talking about a bill that will create a social entitlement of a size unknown.

We spent a good part of last year in this body talking about entitlements and the impact of entitlements on the budget, and the possibility that entitlements could indeed break the budget and force the country on the verge of bankruptcy. It is perhaps not overstating the matter, therefore, to say that health care that would create a huge new entitlement, is, indeed, one of the most serious social issues that we have ever debated within this body.

We are talking about regulating one-seventh of the total economy. Our transportation system is not that big. Our communications system is not that big. We do not have public utilities that are that big. Nothing approaching the size and complexity of this issue has ever come before us.

Given the importance of that, I have decided before I entered into a final vote on this matter that I had better do my homework, and I have tried to do that. I have talked to my constituents in town meetings all over my home State. I have talked to people outside of my home State. I have spent time with the various think tanks and study groups across the ideological spectrum, listening to their arguments—some of them in favor of a single-pay system, some of them in favor of alliances, some of them violently opposed to these things. I spent hours with the lobbyists who come to see us, presenting their points of view on this issue, including the lobbyists from the White House. Indeed, I have probably

spent as much time with the White House lobbyist as I have with any individual lobbyist. And I have spent time with my colleagues. Senator CHAFEE, on the Republican side, has held breakfasts every week to discuss health care and I have attended whenever possible. We have gone off on retreats and talked about it. I have spent time with my Democratic colleagues, talking about it, trying to understand the complexities of this issue.

Now that the time has come that we are nearing a vote, I think I need to rise and report what I have found and where I stand on this particular issue. This is what I have found.

First, there is, indeed, a problem. Our health care system needs fixing. Those who say, "Oh, minor tune ups" are wrong, in my view. President Clinton deserves credit for forcing the Nation to confront this basic fact. Indeed, others have talked about it and have worked around the fringes of it, but President Clinton is the one who has looked the issue in the eye and forced us to confront the seriousness of this problem. Whatever passes, whatever ultimately happens will be a tribute to President Clinton's courage. And as a Republican Senator I want to add my personal tribute to his willingness to confront this particular challenge.

Second, a major reason why there is a problem in health care is the fact that market forces do not work in health care. In order to operate, a market requires informed and empowered consumers and we do not have either one in the health care system. We are not informed as consumers because we do not have the proper medical training. When a doctor says, "You need a procedure," I cannot confront him and challenge him and say, "No, doctor, that is too expensive, I would prefer something else," the way I can challenge a used-car salesman. So the market does not work on the information side.

The market does not work on the empowered side. I am not empowered, as a consumer, to control my own destiny. Why is that? Because the health care coverage that I receive in the form of an insurance policy is determined by my employer. I do not get to decide what is in that policy. My employer decides.

Oh, you say, in the Government you have your choice. Yes, I have my choice of those plans that the employer—in this case the Federal Government—has decided would be good for me to make. When people say to me, we wish we could all have the health care plans that you in the Senate have, my response is, I wish I could have the health care plan I had before I came to the Senate, because I had a better plan prior to coming to the Senate. But because my current employer does not endorse that plan, I do not have that choice.

So as I say, market forces do not work because we do not have an informed consumer and we do not have an empowered consumer.

How did we get into this mess? You can go all the way back to the Second World War, and you will find that in one of its periodic attempts to repeal the law of supply and demand, the Government, in its wisdom, said we will enforce wage-and-price controls throughout the economy.

You have a booming economy. You are an employer, Mr. President, and I am your employee. Somebody offers me a job at a higher wage than you can pay and you cannot match it; the Government has forbade you from matching it. So you say to me: "Tell you what I'll do, Mr. BENNETT. I'll keep you as my employee. Instead of giving you a wage raise, which is illegal, I'll buy a health insurance plan for you, and that means I am increasing your compensation by the amount of the worth of that plan, but it will not be charged as a wage increase and this is the way I will get around wage controls."

So we started down the road of tying health coverage to the employer; we started down the road of giving the employer the right to determine what health care coverage the employee would have.

If I am right, the principal thing that is wrong with the system is that the market does not work. What is the solution? I have referred to the Second World War and how we got into our circumstance. If the Government caused the problem, the Government can solve the problem, and the solution is this, Mr. President: We must take the control of the health care payment system away from the employer and put the control in the hands of the individual consumer. Simply put, Mr. President, we must trust the American people.

The Clinton plan does not do this. The plan that we have received from President Clinton, from his wife, and from Ira Magaziner, and the others who have worked with him, does not break the link between employer ownership of health care policies. On the contrary, it cements it and perpetuates it. Market forces will never appear under the Clinton plan, which is why the Clinton plan will never achieve the kinds of savings that politically are being advertised.

The Clinton people themselves know this. There has been a recent book published that is the buzz of Washington. It is called "The Agenda" by Robert Woodward. Everybody is all abuzz because it shows that the decisionmaking process in the White House is untidy. My reaction to that is the decision-making process in every White House is untidy. Why is this news?

But within the book, there is news. And the news is, with respect to health care, that the Clinton advisers realize that wage-and-price controls are nec-

essary for them to be able to claim the kinds of savings they are talking about.

If I may take you to page 122 of the Woodward book and quote, referring to Ira Magaziner, the principal author and architect of the Clinton health care plan. The book says:

Magaziner said they had to consider some form of price controls on health care costs. He did not like explicit Government controls and knew all the arguments against them. He preferred to let competition in the marketplace set costs, but they needed health savings, and for the Government to clamp on controls by fiat would be more certain to pull in savings in the near future. The administration could not continue to allow health care costs to skyrocket while they wrote their detailed plans.

There was silence around the table. No one favored the controls, but no one seemed to want to speak up. Who was going to fall on the sword first? Alice Rivlin stepped forward and ripped the notion hard. "Nixon had tried price controls and they failed," she said. "An intricate health care system would require equally intricate price controls, a complicated task that would take weeks or months to figure out." Her remarks started an avalanche. Laura Tyson wondered how price controls might be put in place. "How would the Government gather the data? How would doctors and hospitals and others report? It probably would take a year to 18 months to implement even short-term price controls," she said, "and that would presumably be the point at which full reform would begin and price controls supposedly not be needed."

Alan Blinder said that one of the first messages from the new Democratic administration should not be to put one one-seventh of the American economy under the command and the control of the Federal Government. That would only reinforce the notion that Democrats didn't like free markets. Hillary was noncommittal.

Mr. President, Alice Rivlin was right. Laura Tyson was right. Alan Blinder was right. Price controls have never worked, do not work and will never work. Any bill that is founded on the forlorn hope that this time they just might work will produce dislocations in the economy that will be ruinous to us all.

Again, even the understanding of this began to dawn on some of President Clinton's people. Going back to the Woodward book, on page 120, it says:

During the transition, a 16-member team had sent an 84-page health care reform memo to Clinton warning that reform would be expensive and its actual cost would hinge on the extent to which you employ short-term price controls. It listed four options for proceeding. Each one included an analysis of 1996 election politics and each forecast a dreary road ahead.

And then, a little later on the same page, referring to James Carville, the President's primary political consultant:

This was serious, Carville realized. After the meeting, Carville told Magaziner, "I now see this as real. When I do a campaign and foul up, someone just loses. But if you foul up, you foul up the country." Magaziner just rolled his eyes.

I should note for the sake of historic accuracy, Mr. President, that in the book, Mr. Carville does not use the word "foul." He has another verb which I understand is improper for me to use on the Senate floor.

The Clinton plan and its clone, the Kennedy plan, are, in my view, poison. They are based on the assumption that the only way they can work is through Government-imposed price controls. They must be defeated even at the cost of gridlock. Yes, filibuster if that is what it takes. This Senator is prepared to engage in that to see to it that neither of these plans comes to be law.

And to my friends on the Democratic side of the aisle who wish to lambaste us for talking about gridlock and filibuster, I say the American people are with us on this one. The latest poll shows that 70 percent of the American people are willing to wait until next year for health care reform if they are convinced that that is what it takes in order to get it right. It is more important that we do it right than that we do it now.

How did the Clintons go so far astray? They had a 500-person task force to go through all of the data and sift through all of this and give them guidance as to how this plan should be put together.

Once again, it is clear from the Woodward book that the task force was window dressing. The Clinton people already had their minds made up before the task force was convened. Quoting once again from "The Agenda":

On Friday, February 5—

February 5, Mr. President, this is less than a month after Mr. Clinton's inauguration, before he has come to the Congress with his proposals.

On Friday, February 5, Bob Rubin sent a short memo to the President saying that the economic team was going to meet over the weekend to discuss Hillary and Ira Magaziner's desire to incorporate health care reform into the economic plan.

Mr. President, we passed the economic plan in this body well over a year ago. We passed it under reconciliation, and one of the ideas that arose during that time was the possibility that it be included in reconciliation so that it not be subject to a filibuster. The 500-person task force was window dressing; it was giving lip service to receive input from other places. On the 5th of February, they already knew what it was they were going to propose.

I said that the solution was to trust and, therefore, empower the American people on health care. How do we do that? As I said, the Government created the employer control of health care in the first place, back in the Second World War. The Government can uncreate it by changing the tax laws now. Today, compensation for a worker comes in two forms: Taxable and untaxable—the wages that are reported on your W-2 form that are tax-

able and the benefits that the employer deducts as part of his payroll costs that are untaxable. But make no mistake, both of these are compensation to the individual. It makes no difference to the employer whether the compensation is in one category or the other. There are costs he has to pay and costs he can deduct in either case. But the difference is to the employee because the employee currently has no control over how the nontaxable portion is spent.

Let us change that. Let us give the employee tax-free dollars deductible to the employer but not taxable to the employee as long as the employee spends them on a health care plan of his or her choice. Let the individual decide what to do with those nontaxable dollars.

The individual, therefore, controls and owns the policy and affordability in the health care issue goes away because the employee takes the policy with him or her wherever the job trail may lead. Cost control I believe would be automatic. Problems with preexisting condition, of course, would go away along with affordability.

Why do I think cost control would be automatic? Because the individuals would now be measuring the cost to themselves. They would not be thinking they were spending other people's money as they do in the present circumstance. They could make the decision on their own: Do I want this kind of coverage or do I not?

I believe very quickly we would see individuals beginning to create a gap between catastrophic coverage and everyday, routine aches and pains kinds of coverage.

Let me give you an analogy which I realize is imperfect as all analogies are but which makes the point. Let me talk about homeowner's insurance. Now, in this country there is no Federal mandate that everyone have homeowner's insurance. The Government does not interfere and require this, and yet every homeowner has it because the market forces are so strong that it makes sense for everyone to have it. You have virtually universal coverage. What does your homeowner's insurance cover?

Well, in a time of catastrophe—my house burns down—it covers everything. My homeowner's insurance will not only replace the house; it will replace the carpet; it will replace the dishes and the shelves; it will replace the blankets on the beds; it will replace the pictures on the wall. I have absolute total coverage.

There is nothing, however, in my homeowner's policy that covers the cost of mowing the lawn or repainting the front door or replacing a broken window.

Now, I suppose I could get a policy like that, but the premiums would be astronomically high. Therefore, I

choose to take care of those things myself and save the premiums.

I have talked to insurance executives and said: What would happen if you provided only catastrophic? And they said: We could cover catastrophic insurance for everybody in the country for approximately 10 percent of the premiums now being paid.

An individual American faced with that fact would be intelligent enough to make the right kind of choice as to how much catastrophic he needed, where to draw the line, and where to say this much I will cover. If the individuals knew what first dollar coverage costs, the individuals would immediately make wise choices as to the size of deductibles and copays and the level of insurance that makes sense for them.

Now, moving in this direction, uncoupling the control of health insurance from the employer and passing it to the individual by changing the tax laws would be true structural and basic reform. Indeed, to use the language of the 1992, this would be real change of the kind for which President Clinton campaigned. It would require very careful study. It would require deliberate implementation over time because it is not a quick fix. But it is the right fix.

Now we come to the legislative situation. As I have said earlier, the Clinton bill and the Kennedy bill move entirely in the wrong direction in this matter, and I am prepared to fight them as firmly and totally as I know how. But it is becoming clear that neither the Clinton bill nor the Kennedy bill will be offered. The morning newspaper tells us of Senator MOYNIHAN's desire to offer a bill, Senator CHAFEE and some others working to fashion a bill. Senator DOLE has indicated his willingness to consider offering a bill.

So we come to the question should we pass one of these bills even as we reject the Clinton and Kennedy bill? I have not seen the details of them. I have not read them. But I ask this question of every bill that comes before us: What is the basic structural thrust of your proposal? Is it to perpetuate the notion that the American people cannot be trusted to decide their own health care future, that someone else—an employer, a Government agency, or a mandatory alliance—must do it?

If that is the thrust of your bill, I will not vote for it, and I would rather have no bill this year than that kind of a bill. However, I would say to a Senator offering a bill, if the basic thrust of your proposal is for a system that will move us toward the goal of allowing market forces to work their will, increasing the freedom of Americans to choose for themselves, then, yes, I would be willing to vote for a bill that goes in that direction.

In sum, Mr. President, the health care issue is tortuously complex and

huge in its implications. The chances that we might produce enormously difficult and costly problems if we do it wrong are overwhelming. But complex as it is, it can be solved as other complex social challenges have been solved throughout our history. Trust Americans to make their own individual decisions. That is the key. If we do, we will wend our way through the health care thicket as we always have when we have made liberty our full star. This has been the sum and essence of our success as a people. It will not fail us here.

I yield the floor.

GROUND-BREAKING CEREMONIES FOR NEW WALTER REED ARMY INSTITUTE OF RESEARCH, FOREST GLEN, MD

Mr. INOUE. Mr. President, on Friday, June 24, I participated in ground-breaking ceremonies for the new Walter Reed Army Institute of Research at Forest Glen, MD. This facility will provide laboratories and associated equipment for military medical scientists and researchers who are working on the critical infectious diseases of our time.

This facility is being erected because of the dedicated efforts and good work of Maryland's two very effective Senators—Senator BARBARA MIKULSKI and Senator PAUL SARBANES. Indeed, my good friend and colleague, the senior Senator from Maryland, was one of the speakers at the event. I was quite impressed by Senator SARBANES' remarks and wish to make them a part of the CONGRESSIONAL RECORD for today.

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

REMARKS OF SENATOR PAUL S. SARBANES

I am delighted to join in this ceremony marking the ground breaking for the new Walter Reed Army Institute of Research and dedication of WRAIR's new Vaccine Pilot Plant.

Today is indeed a very special or "rare" occasion and one which many of us have awaited with considerable anticipation.

At the very outset, I want to pay tribute to Senator Daniel Inouye and Congressman Jack Murtha, who have been longstanding proponents of WRAIR and the research conducted at the Institute. As Chairs of the Defense Appropriations Subcommittees in the Senate and House, their support and assistance with funding for WRAIR has been instrumental in bringing the modernization of WRAIR's facilities to fruition.

Senator Inouye has also been a leader in efforts to stave off attempts to close another outstanding institution in Montgomery County—the Uniformed Services University of Health Sciences—known as USUHS—and I have had the great pleasure of working with him in these efforts. We in Maryland are grateful to both Senator Inouye and Congressman Murtha for your help.

Today's ceremonies mark not only an important milestone in the effort to modernize WRAIR's facilities, but also in a larger sense, in the Institute's long and distin-

guished history. As you know, we are celebrating today the 101st anniversary of WRAIR. WRAIR was established on June 24, 1893 as the Army Medical School, the first such school of preventive medicine in the United States. Over the past century, WRAIR has compiled an impressive record of success and has earned a world-wide reputation for its contributions to tropical medicine, military psychiatry, and drug and vaccine development, to name only few.

In addition to Walter Reed's world famous research on yellow fever, WRAIR scientists developed the first mechanical liquid chlorine water purifier now in world-wide use; were the first to isolate Asian flu and measles viruses; developed the first large scale HIV screening program and successful HIV vaccine test; developed the first drugs and vaccines used against meningitis, typhoid fever, cholera, and malaria, and other diseases.

I think it is important to point out that the research conducted at WRAIR has not only benefited American soldiers, but people throughout our country and the world. It is not only in the forefront of efforts to address major international health crises such as AIDS, but has helped fight infectious diseases which have been the scourge of the third world.

Unfortunately, WRAIR's laboratories and other facilities have not kept pace with the outstanding research conducted here. Many of WRAIR's facilities are over 70 years old and completely inadequate for WRAIR's scientists and physicians to continue producing their extraordinary work. Today we are taking a significant step forward in addressing this situation. By breaking ground for the new WRAIR laboratory and dedicating the Pilot Vaccine Facility, we are laying the foundation for the military's medical research program for the 21st Century. When completed, this new \$147 million state-of-the-art research and development laboratory will provide WRAIR with the facilities and tools it needs to fulfill its important mission for years to come.

In addition to maintaining high standards of excellence for the military's biomedical research activities, the new WRAIR lab and Pilot Vaccine facility will play a major role in the high-tech future of Montgomery County and Maryland. WRAIR has among the highest number of Cooperative Research and Development Agreements or CRADAs with private industry of any federal institution including four right here in Montgomery County and has been a major catalyst for the burgeoning biotechnology and vaccine industry in Maryland. With the completion of the new WRAIR lab and the opening of the Pilot Vaccine Facility, we anticipate even more activity in this area. The new WRAIR and Pilot Plan will also provide a major boost to the local economy and the actions underway to revitalize the downtown Silver Spring area.

Senator Inouye, Senator Mikulski, Congressman Murtha, Congresswoman Morella, Congressman Wynn and I worked very hard to secure the authorization, funding and approvals necessary to move this project forward. It wasn't easy, despite the clear need for the new facility. I personally took this issue to two Secretaries of Defense, the Deputy Secretary, the Secretary of the Army, the White House and numerous other officials, Congressional Committees and the floor of the Senate. But today we have reached a critical milestone in the effort to preserve WRAIR's status as the military's preeminent center for biomedical research and medical readiness.

I want to close by commending the Secretary of the Army, Togo West, who, early on, recognized the need for this new facility and played a key role in moving its approval through the Pentagon; Col. Salvado, the director of WRAIR; Marv Rogul, WRAIR's Associate Director for Research, Marketing and Policy Development; the scientific, technical and support staff at WRAIR; and the many, many others who have worked to protect and foster the scientific mission of WRAIR and make the institute truly a national treasure.

I also want to thank Montgomery County Executive Neal Potter and the Members of the Montgomery County Council; Jorge Ribas, Sally Sternback, Bruce Lee, Dick Kauffinger, Nancy Schneider and all the other members of the Greater Silver Spring Chamber of Commerce, the Montgomery County Civil Federation, and the Committee for Montgomery. The strong support of the local community for this project was critical.

We take great pride in the accomplishments of WRAIR, in the people who work at WRAIR, and in having this outstanding facility located here in Maryland. I am confident that, with this new facility, WRAIR will continue to be on the frontier of medical research necessary to protect the health of our American soldiers and the American people alike.

Mr. SARBANES. Mr. President, today I had the great privilege of joining with my distinguished colleague from Hawaii, Senator INOUE, in a ceremony in Forest Glen, MD, marking the ground breaking for the new Walter Reed Army Institute of Research laboratory on the occasion of the institute's 101st anniversary.

Throughout his career in the Congress, Senator INOUE has worked tirelessly to ensure that our military medical research and health care for American soldiers are second to none in the world. He has been a stalwart supporter of WRAIR and the Uniformed Services University of the Health Sciences and has been instrumental in protecting and enhancing these important institutions.

I commend to my colleagues his insightful remarks on this occasion and ask unanimous consent that the full text of his speech be included in the RECORD.

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

REMARKS OF SENATOR DANIEL K. INOUE

Thank you for your warm introduction. I am very pleased to be able to join you today and to participate in this most happy occasion. One of the things that I love about my work as a United States Senator is the opportunity to work with good, hard-working, and dedicated people who serve, not just their own interests, but also the good of the community.

This building is a milestone in such an effort. It marks a point along the path of human progress; a point from which we can measure our renewed commitment to medical research in the military and from which we can measure both how far we have come and how far we must go in the future. It is also a signpost indicating the commitment that our Government and military are making to ensure that military medical research

is unparalleled in dedication and in achievement. The United States Army, the Congress, and now the executive branch—all have worked together on this. Today, we break ground on a common endeavor which I believe will bring uncommon success.

In 1991, during a public witness hearing before the subcommittee which I am privileged to chair, one witness, Dr. Robert Shope, spoke about the condition of the WRAIR facilities located at and near Walter Reed Army Medical Center. He stated that the facilities did not meet minimum occupational safety and health standards, nor did they meet environmental quality or laboratory animal care standards.

Frankly, it was difficult for me to believe then that our Government would allow a premier research facility to become so decrepit and run down. But, Dr. Shope spoke with such conviction and such sincerity that I told him, "We were not aware the Walter Reed research facility was in such bad shape. We will look into that immediately. If it turns out that is really bad, we will make this an emergency matter."

Well, "really bad" is an understatement of classic proportions. Things were terrible. Some of the most sophisticated medical research in this country was being done in a facility that should probably have been torn down; top scientists were working in labs not much bigger than large closets—some so small it was difficult for two people to move around in the labs at the same time. I was shocked to learn that wild animals—raccoons—had fouled labs and destroyed research files. The conditions were appalling and, unfortunately, in many places, they remain so. But, today, we begin anew.

It pleases me that, after listening to you and learning of your plans, I was able to convince my colleagues of the merit of the restoring WRAIR to its rightful position as the premier medical research laboratory in the Department of Defense. The construction of a new facility here—starting now—will open the way for consolidation and continued improvement of the facilities the WRAIR scientists and medical researchers need to conduct their very important work.

We were able to secure funding for WRAIR because of the support and assistance of those who are sharing this platform, and, of course, many others.

Who knows, when I look at the power of the House of Representatives on this platform, it occurs to me that it just might be possible for us to find additional funding for WRAIR and Army research activities in next year's bill. I think it is safe for me to say that, for as long as I am chairman of the Senate Subcommittee on Defense Appropriations, the Army and WRAIR will get a generous share of Federal Government support for programs and projects which serve our national medical research objectives.

I am pleased to have had an opportunity to work with many of you who are gathered here on this project. I am particularly pleased that my colleagues had faith in the future of WRAIR and faith in the commitment and ability of the people who study and work here. We will not forget the contribution your efforts have made to the betterment of mankind.

To me, this is how things should be: people of good will coming together to create, to build, to grow. I thank all of you for giving me the opportunity to join with you.

Mahalo and aloha.

IS CONGRESS IRRESPONSIBLE? YOU BE THE JUDGE OF THAT

Mr. HELMS. Mr. President, before we ponder today's bad news about the Federal debt, let us have a little pop quiz: How many million would you say are in a trillion? And when you figure that out, just consider that Congress has run up a debt exceeding 4½ trillion.

To be exact, as of the close of business on Friday, June 24, the Federal debt stood—down to the penny—at \$4,600,321,064,126.02. This means that every man, woman, and child in America owes \$17,645.29, computed on a per capita basis.

Mr. President, to answer the question (how many million in a trillion?) there are a million, million in a trillion. I remind you, the Federal Government, thanks to the U.S. Congress, owes more than \$4½ trillion.

TRIBUTE TO MAJ. GEN. JOHN G. CASTLES, VIRGINIA NATIONAL GUARD

Mr. WARNER. Mr. President, today I ask that my colleagues join with me in paying tribute to an outstanding individual as he prepares to retire following an illustrious and dedicated career. Maj. Gen. John G. Castles, Adjutant General of Virginia's National Guard, agency head of the Virginia Department of Military Affairs, has devoted a lifetime to serving his country and his State. Since 1982, he has been responsible for the management of the 8,800-member Virginia Army National Guard and the 1,200-member Virginia Air National Guard.

General Castles' record of accomplishment was best summarized by his successor, Brig. Gen. Carroll Thackston. Gen. Thackston recently pointed out that, when Gen. Castles assumed the Adjutant General's position in 1982, the Virginia National Guard was ranked 51st in the country in the management of its resources; national recognition was nonexistent.

Three years later, thanks to Gen. Castles' leadership and management, Virginia ranked No. 1 in the Nation, a position it has maintained since that time. Additionally, national awards too numerous to mention have been bestowed on Virginia units during Gen. Castles' 12 years of stewardship. The Kerwin Trophy, given to the most outstanding Battalion-size unit in the National Guard and Army Reserve, has been awarded to Virginia in two of the past 4 years. Thanks to Gen. Castles' guidance and command, Virginia enjoys a well-deserved reputation nationwide as a leader.

Gen. Castles' commitment to military service began early: he was graduated from Valley Forge Military Academy in Pennsylvania in 1943. He enlisted in the U.S. Army in May of that year, completing Infantry Officer Candidate School and earning a com-

mission as second lieutenant in 1944. He was first assigned as a rifle platoon leader in the 345th Infantry, 87th Infantry Division, 3d Army during the Ardennes campaign. Following subsequent assignments as battalion patrol leader and weapons platoon leader through the Rhineland and Central Europe campaigns, he served in the 30th and 4th Infantry Divisions prior to being discharged on April 15, 1946.

General Castles joined the Virginia Army National Guard while a student at the University of Virginia. He was assigned to the Monticello Guard, Company K, 116th Infantry located in Charlottesville, VA. After serving as commander of this company, he was assigned as the logistics officer of the 3d Battalion, 116th Infantry Regiment for 4 years. This was followed by 7 years as operations officer at the battalion, battle group and brigade levels.

In 1964, he took command of the 2nd Battalion, 116th Infantry, headquartered in Lynchburg. Four years later he was assigned to the Virginia Emergency Operations Headquarters as operations officer and, later, as chief of staff. He then assumed command of the 224th Field Artillery Group, where he remained until he was named chief of staff of the Virginia Army National Guard.

On February 8, 1974, he was given Federal recognition and promoted to the rank of brigadier general. In 1977, he assumed command of the 116th Infantry Brigade (Separate), best known as the Stonewall Brigade. He held that post until his retirement in 1979.

In August of 1982, he was appointed adjutant general by the then-Governor of Virginia and now my colleague, Senator ROBB. He was promoted to major general the following year.

The roster of General Castles' military decorations and awards is as impressive and illustrious as that garnered by Virginia under his command. They include the Army Distinguished Service Medal; the Legion of Merit with oak leaf cluster; the Bronze Star; the Meritorious Service Medal; the American Campaign Medal; the European-African-Middle Eastern Campaign Medal with three stars; the World War II Victory Medal; the Army of Occupation Medal (Germany); the Humanitarian Service Medal; the Armed Forces Reserve Medal; the Army Reserve Components Achievement Medal; the combat infantry badge; the National Guard Bureau Distinguished Service Medal; the Virginia Distinguished Service Medal with gold dogwood blossom; Virginia Service Medal with six gold dogwood blossoms; the American Legion District of Virginia Distinguished Service Medal; the McArthur Chapter of the Association of the U.S. Army Meritorious Service Medal; the Order of Founders and Patriots of America Distinguished Service Medal. Appropriately enough, he is

also a member of the Infantry Officers' Candidate School Hall of Fame.

A beef cattle farmer in civilian life, General Castles and his wife, the former Dorothy T. Rowe, make their home in Caroline County. He has passed his love of military life on to his children: his daughter, Sally, is a captain in the Individual Ready Reserve, and his son, John, is an Army captain in the 2d Ranger Battalion, 75th Ranger Regiment at Fort Lewis, WA.

General Castles' civic affairs reflect his career commitments. He is a member of the National Guard Association of the United States, the Virginia National Guard Association, and the Alumni Association of Valley Forge Military Academy. Additionally, he serves as a member of the Virginia Military Institute Board of Visitors.

Few individuals have given so much to the service of their country, on active duty in wartime, with the National Guard and ultimately as adjutant general. General Castles' record of achievement will long be remembered, and emulated, by those who follow in his footsteps.

I am pleased to have this opportunity to pay tribute to General Castles, to thank him for his many contributions, and to extend every best to him and to his family for joyous, fruitful and prosperous years ahead. I know that my colleagues join with me in this well-deserved recognition for a lifetime of service.

IN RECOGNITION OF DAVID T. CHASE OF CONNECTICUT

Mr. LIEBERMAN. Mr. President, I rise today to honor a close friend and one of Connecticut's leading citizens, Mr. David T. Chase. Few people have as impressive a record of professional accomplishment and community service as David Chase. It is indeed fitting that he has been selected by the Joint Commission on the American Promenade in Israel as a Founding Father from the State of Connecticut.

The United States and Israel enjoy a strong and productive relationship because of our historic ties and our common political, economic, and cultural values. Ours is a relationship of two great democracies which understand the importance and need to maintain a vibrant and open strategic partnership. The people of Israel are building a national park called the American Promenade at the gateway to the city of Jerusalem as an expression of the warm friendship which flourishes between our two countries. The park will consist of 50 marble, 20-foot high monuments to exhibit the flags and official seals of each of the States, as well as a United States-Israel Friendship Botanical Garden. A stainless steel time capsule containing historical documents and materials will be buried 25 feet below each State's monument and

these will be opened in the year 2048 at the celebration of Israel's 100th anniversary.

In addition to the names of the current Governor and U.S. Senators, each State obelisk will have permanently inscribed on it the name of an outstanding person from that State who has been designated a Founding Father. David T. Chase has been chosen from the State of Connecticut for this honor in recognition of the leadership role he has played in strengthening the United States-Israeli relationship. This is an honor which David deserves.

David Chase was born on May 6, 1929, in Poland. At the age of 14, he was placed in a concentration camp. He escaped from Auschwitz during a forced death march and immigrated to the United States with the assistance of the United Jewish Appeal. David moved to Hartford, CT, to pursue his education where he attended both Hillyer College and the University of Connecticut. In 1952, he established Chase Enterprises in Hartford, where he remains chairman and chief executive officer.

David's memberships and affiliations are numerous. He is the chairman of the board of the Rabbinical College of America and Machine Israel Development Fund and a founder of the U.S. Holocaust Memorial Museum and the David T. Chase Free Enterprise Institute at Eastern Connecticut State University. In addition, he belongs to the board of the Polish Investment Agency in Warsaw, Poland. David is affiliated with the Hartford Ballet, Hartford Arts Council, Greater Hartford Chamber of Commerce, Juvenile Diabetes Foundation, Greater Hartford Jewish Federation and Community Center, Chabad House of Greater Hartford, and Connecticut Opera, among many other organizations. His honorary degrees include a doctor of laws from the Rabbinical College of America, doctor of laws from the University of the District of Columbia, and doctor of humane letters from Eastern Connecticut State University.

The American Promenade is a testament to the strength of the relationship between the United States and Israel and it has been embraced by Americans and Israelis alike. It is with great pride that I recognize David Chase as the designated Founding Father from Connecticut. He is a man of strength and integrity who has overcome hardship to achieve the success he has today. The Joint Commission of the American Promenade in Israel is to be commended for its choice of David T. Chase as Connecticut's Founding Father for the American Promenade and David is to be congratulated for this well-earned honor.

THE AGENCY FOR AMERICAN DEVELOPMENT?

Mr. LEAHY. Mr. President, over the past year I have made several statements on the need for the Agency for International Development to redefine its goals now that the cold war is behind us. No longer is the threat of communism our primary security threat and motivation for providing foreign assistance. With the end of the cold war, the most serious problems facing us today are unchecked population growth, widespread poverty, ethnic and regional conflicts, degradation of the Earth's environment, and the proliferation of conventional and, still, nuclear arms.

Under the strong leadership of Brian Atwood, AID has begun to redefine its mission and address some of the management problems that have plagued it for years. Administrator Atwood has tackled not only the bureaucratic morass that has impeded AID's effectiveness, he has refocused the agency's efforts on promoting sustainable economic growth, supporting democratic institutions and building foreign markets for American exports, and addressing basic humanitarian needs facing vulnerable groups like children and refugees.

Mr. President, as chairman of the Foreign Operations Subcommittee, I know that foreign aid is not popular. But I have never believed that is because the American people are not generous. There is ample evidence that they are. Rather, it is due to foreign aid being used to prop up corrupt dictators or wasted on grandiose projects that fall into disrepair after a few years. None of us want to see that, and Administrator Atwood is determined to see that it does not happen.

But while it is always easy to criticize, and there are grounds to do so, too little attention has been given to AID's accomplishments. Foreign aid not only helps people around the world who are less fortunate than we are, it also promotes American exports and it can even contain lessons for people here at home.

Recently AID cosponsored a conference in Baltimore entitled "Lessons Without Borders: Local Problems, Global Solutions." The conference focused on issues like family health and economic entrepreneurship, and how we can apply lessons learned through our foreign aid programs to problems here in the United States. Vice President GORE was the keynote speaker. Senator SARBANES, Representative MFUME, and Mayor Kurt Schmoke also took part in what has become a partnership between AID and the city of Baltimore, a partnership AID hopes to duplicate with other American cities.

The theory behind these partnerships is that some lessons are universal. In areas like agriculture, health and small-business development, America

can learn from its foreign assistance programs. In fact, AID has been working closely with community leaders nationwide in an effort to find solutions to problems which know no borders.

An example of this interactive sharing between cities in the United States and abroad is a program in Sarasota, FL, called school year 2000. It was sponsored by Florida State University, funded through an AID grant, and directed toward a change in the school system in South Korea. The project created a new model for public education centered around the learner, based on competency and supported by technology. Originally started to reduce costs, the focus has expanded to improving the quality of education. The results of the program were so impressive that Florida legislators and organizations have used it to justify further investment in educational reform in their own State.

In Baltimore, research has been carried out to combat diarrheal disease, which kills millions of children each year. As many as 600 children in the United States die each year from this disease which, left untreated, can cause dehydration, while thousands of others are hospitalized. A solution of oral rehydration salts, developed through AID-funded research in Bangladesh, is being used to reduce these common ailments inexpensively.

The lesson here is that many of Baltimore's citizens are not aware of the availability of this low-cost remedy. An astonishing 150,000 of Baltimore's 730,000 inhabitants are functionally illiterate, and unable to read the signs that were meant to inform them of programs to protect their children's health. AID, which routinely works in countries with high illiteracy rates, has years of experience in innovative communication techniques for getting the message out about child health, family planning and other programs. These same methods are now being used to educate needy people in Baltimore.

These are just two examples of how what we are accomplishing with our foreign aid dollars abroad can be used for our own benefit here at home.

The Florida State interactive program and the Baltimore conference show how AID is taking seriously its role in the global community. The focus is on solving problems that do not pay attention to State, national, or international borders. The Lessons Without Borders Conference demonstrates how our foreign aid programs can help us find solutions to current American problems, and to current foreign problems which may become future problems in our country. I applaud the Agency for International Development's efforts. While I do not suggest that it should change its name to the Agency for American Development, American taxpayers should be encour-

aged that it is putting these lessons to good use here at home as well as abroad.

Mr. President, I ask unanimous consent that an article from this Sunday's New York Times about "Lessons Without Borders" be printed in the RECORD.

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

[From the New York Times National, June 26, 1994]

FOREIGN-AID AGENCY SHIFTS TO PROBLEMS
BACK HOME

(By Thomas L. Friedman)

BALTIMORE, June 22.—It is hard to know whether this a good news story or a bad news story, but here it is: The Agency for International Development, which spent the cold war fighting Communism with foreign aid and helping poor countries like Bangladesh immunize children, has found a new customer for its services: America's inner cities.

The good news is that A.I.D. has something to offer. The bad news is that parts of Los Angeles, Boston and Baltimore now need it as much as Bangladesh.

Over the years A.I.D. developed a reputation in Washington as a bloated and ineffective bureaucracy. But the Clinton Administration has been engaged in a major overhaul of A.I.D. The Clinton team is trying to shed what the agency did worst, supporting anti-Communist dictators, and focus on what it did best—fostering cheap, low-tech methods for accelerating immunization, literacy and agricultural development and for nurturing small businesses.

The agency's shift in focus from Bangladesh to Baltimore was an accident waiting to happen. With no cold war, it was eager to justify its usefulness to taxpayers dubious of foreign aid, and it discovered American mayors so beleaguered by the problems of their inner cities that they were ready to take help from anywhere, even if it meant comparisons between their inner cities and the third world.

While A.I.D.'s charter prohibits it from actually financing programs money in the United States, nothing prevents the agency from sharing its expertise.

While talking this past spring with Marian Wright Edelman, the longtime head of the Children's Defense Fund, about the health problems faced by American children, the agency's director, J. Brian Atwood, was struck by the similarities with the problems his agency was fighting in Mali and Egypt, he recalled on Tuesday in an interview.

Ms. Edelman, he said, was struck by how in some respects Mali and Egypt seemed to be doing much better than the United States.

In particular, Mr. Atwood recounted, they noted that measles vaccination rates among inner-city children under age 2 were averaging around 40 percent in the United States. Yet, Governments in Egypt, the Philippines, India, Sri Lanka and Indonesia, using some of their own programs and some financed and planned by A.I.D., had achieved childhood immunization rates in the high 70 percent range, according to the Unicef Progress of Nations report.

During an interview on C-span a few days later, Mr. Atwood mentioned this discussion and mentioned that his agency hoped to become more involved in sharing ideas with American cities.

An aide to Mayor Kurt L. Schmoke of Baltimore happened to be watching, and the city immediately contacted Mr. Atwood and

volunteered Baltimore for the first test case. Other cities followed.

Mr. Atwood, recognizing a new market for his agency's expertise, ordered aides to come up with a program, eventually christened "Lessons Without Borders." On June 6, a team of the agency's senior health and development experts held a day-long seminar with their Baltimore counterparts at Morgan State University, discussing A.I.D. programs that had worked or, often just as important, had not worked.

Another conference is now planned for Boston this fall, and the agency is laying out a two-year schedule for other cities that have asked for advice.

Still, it was not an easy thing for Mayor Schmoke. The headline in The Baltimore Sun the day of the conference read: "Baltimore to Try Third World Remedies." In fairness to Baltimore, it is one of the most thriving cities on the East Coast, with its rebuilt inner harbor, National Aquarium and downtown stadium of Camden Yards, anchoring a real urban renaissance.

But that renaissance is a work in progress. Just a few miles from the inner harbor, areas of Baltimore's inner city are rife with AIDS, illiteracy, family breakdown, joblessness and drugs.

LIKE A THIRD WORLD COUNTRY

"We have to let everybody know that we are not suggesting that our entire city has the same problems as a third world country," said Mayor Schmoke. "But we ought to recognize that there are sections of the city that are similar to the problems of less-developed countries."

Baltimore officials say they learned a number of things from their A.I.D. visitors. Although Baltimore has well-financed social programs, many people do not come in to use them. One reason is that 150,000 out of Baltimore's population of 730,000 are functionally illiterate.

"We found that people could not read the signs," said Mr. Tawney. A.I.D. operates in so many countries where illiteracy is taken for granted, and at the conference A.I.D. officials discussed many of the techniques they have developed for getting around illiteracy and promoting immunization, population control and other remedies. These ranged from using soap opera characters to entice people into clinics, to cartoons, to jingles, to having beer truck drivers distribute condoms as they drop off beer kegs at pubs in Jamaica. They also discussed A.I.D.'s "barefoot factor" program of paying local villagers to go out and recruit people to come to clinics.

"You want to know what the real irony is?" asked Dr. Peter Beilenson, Baltimore's Commissioner of Health. "The company that develops these communications programs for A.I.D. is from Baltimore. Its office is about three blocks from here."

A SMALL GRANT GOES FAR

Another big issue discussed was job creation. Twenty years ago, the biggest employer in Baltimore was Bethlehem Steel, with about 35,000 employees. Today, the biggest employer in Baltimore is Johns Hopkins University Medical Center. Twenty years ago, a high school dropout was able to get a job at the steel plant, and buy a house and raise a family. Today, even a college degree would not guarantee a job at Johns Hopkins. This has left many inner city youth in Baltimore stranded, but one of the things discussed by A.I.D. and the Baltimoreans, was trying to fill the void with a program A.I.D. has fostered with third world governments, called microenterprise development.

In Bolivia, for instance, the Banco Sol, partially supported by A.I.D., has been giving tiny loans, sometimes only \$10 or \$20, to men, and particularly women, who are working out of their homes and who, with just a little capital, might not only be able to sustain their own business but employ others as well. Sometimes the money goes for a sewing machine, sometimes it goes for teaching bookkeeping or commercial laws.

Michael A. Gaines Sr., head of Baltimore's Council for Economic and Business Opportunity, said that he learned from the AID seminar was that "Third world governments did not provide a social security net, but their policies increasingly allow for free flowing microentrepreneurship. We provide a social security net, but it comes with policies, restrictions and guidelines that preclude entrepreneurship."

Mr. Gaines is now running a pilot project in Baltimore intended to show how micro-entrepreneurs—the mother who does hair styling out of her home or the mechanic who works out of his garage—can grow with a small loan and a business plan.

Mr. Gaines said he would like not only A.I.D.'s advice, but also a slice of its \$7 billion budget. Indeed, there is such a hunger for its expertise, and money, that it may justify itself right out of existence or be asked to become A.A.D.—"Agency for American Development."

Mr. Gaines said: "If you were able to fold some of those AID resources and knowledge with the Housing and Urban Development agency and the Commerce Department, and start working in a coordinated way in this country, oh man, the potential would be tremendous."

BUDGET SCOREKEEPING REPORT

Mr. SASSER. Mr. President, I hereby submit to the Senate the Budget Scorekeeping Report prepared by the Congressional Budget Office under section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32, the first concurrent resolution on the budget for 1986.

This report shows the effects of congressional action on the budget through June 24, 1994. The estimates of budget authority, outlays, and revenues, which are consistent with the technical and economic assumptions of the concurrent resolution on the budget (H. Con. Res. 287), show that current level spending is below the budget resolution by \$4.9 billion in budget authority and \$1.1 billion in outlays. Current level is \$0.1 billion above the revenue floor in 1994 and below by \$30.3 billion over the 5 years, 1994-98. The current estimate of the deficit for purposes of calculating the maximum deficit amount is \$311.7 billion, \$1.1 billion below the maximum deficit amount for 1994 of \$312.8 billion.

Since the last report, dated June 21, 1994, Congress has approved for the President's signature the Federal Housing Administration supplemental (H.R. 4568), changing the current level of budget authority and outlays.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 27, 1994.

Hon. JIM SASSER,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the 1994 budget and is current through June 24, 1994. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the Concurrent Resolution on the Budget (H. Con. Res. 64) This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated June 20, 1994, Congress has approved for the President's signature the Federal Housing Administration Supplemental (H.R. 4568), changing the current level of budget authority and outlays.

Sincerely,

ROBERT D. REISCHAUER, Director.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, FISCAL YEAR 1994, 103D CONGRESS, 2D SESSION, AS OF CLOSE OF BUSINESS JUNE 24, 1994

(In billions of dollars)

	Budget resolution (H. Con. Res. 64) ¹	Current level ²	Current level over/under resolution
On-budget:			
Budget Authority	1,223.2	1,218.4	-4.9
Outlays	1,218.1	1,217.1	-1.1
Revenues:			
1994	905.3	905.4	0.1
1994-1998	5,153.1	5,122.8	-30.3
Maximum Deficit Amount	312.8	311.7	-1.1
Debt Subject to Limit	4,731.9	4,512.3	-219.6
Off-budget:			
Social Security Outlays:			
1994	274.8	274.8	(0)
1994-1998	1,486.5	1,486.5	(0)
Social Security Revenues:			
1994	336.3	335.2	-1.1
1994-1998	1,872.0	1,871.4	-0.6

¹ Reflects revised allocation under section 9(g) of H. Con. Res. 64 for the Deficit-Neutral reserve fund.

² Current level represents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

³ Less than \$50 million.

Note.—Detail may not add due to rounding.

Mr. ROCKEFELLER. I am very pleased to be able to celebrate veterans' employment today on this 50th anniversary of the Veterans Preference Act. We have had much to celebrate over the past days as we have commemorated passage of the GI bill and taken stock of what education and home loan benefits have meant in the lives of veterans and to our society.

The importance of being able to find work upon returning from the service of our country has also long been recognized by veterans and by a grateful citizenry. Public support for the employment of veterans dates back to the Civil War. Efforts to promote the hiring of veterans were motivated by a sense of obligation and the desire to

compensate for the disruption of careers and the financial setback that military service meant for many veterans.

Historically, that support has taken the form of preferential treatment in hiring by Government agencies. Veterans preference has made it possible for many veterans to find employment in the Federal work force. Veterans are employed in the Federal Government at twice the rate of the private sector. Disabled veterans are seven times more likely to be employed by the Government.

Today, the importance of helping veterans adjust to a civilian labor market has taken on a new dimension. Service members leaving the modern military still deserve our gratitude. Their service continues to ensure our security and freedom in an increasingly unpredictable world. But these individuals are also highly skilled. They receive exceptional training and experience in a variety of occupational specialties in the modern military. They are a valuable resource that we cannot afford to waste.

Veterans entering today's complex and changing labor market must be programs designed to help them meet today's challenges.

One such program, the Transition Assistance Program initiated in 1990, helps service members adjust to the civilian work force by providing job search assistance and information on the types of civilian jobs that require their skills.

Another program, the Service Members Occupational Conversion and Training Act, encourages employers to hire and retrain separating service members for skilled positions by helping to defray the cost of retraining.

Support of these programs, both in terms of resources and commitment at all levels, will enable service members to make the transition to a civilian labor force with minimal hardship, and will enable the economy to take full advantage of the skill and abilities these individuals have acquired while in the Armed Forces.

The Defense Department's Defense Diversification Program, enacted in 1993, was designed to help involuntarily separated service members get training assistance, if needed, to find civilian employment. The program recognizes that many people entered the modern military intending to provide lifetime service. The U.S. military was to be their career.

Because of the defense downsizing, however, they were not able to continue in their chosen career. The Defense Diversification Program will terminate with the end of the drawdown. Involuntary separation will continue to occur after the drawdown, however, to the extent necessary to maintain the mix of skills and rank required by our Armed Forces. The people involuntarily separated after the drawdown

will experience the same trauma and face the same difficulties that those separated during the drawdown faced. That is why I am working to make sure that involuntarily separated service members will be served under the administration's proposed worker adjustment program known as the Reemployment Act.

Because employment for all veterans continues to be our goal, and all veterans—particularly disabled veterans—deserve assistance in finding work regardless of when they served, we must maintain, and, in fact, strengthen, the ability of local veterans' employment representatives [LVER's] and Disabled Veterans' Outreach Program staff [DVOP's] to serve veterans, and only veterans. LVER's and DVOP's have been instrumental in reaching out to unemployed veterans and developing job opportunities for veterans. They inform employers who do not yet know about the advantages of hiring veterans. There is, as we all know, no such thing as an idle LVER or DVOP.

Just as the work of LVER's and DVOP's is never finished, we must never stop recognizing the debt we owe our veterans, the contribution they have made to our security and that they can make to our economy, and the value of work in providing structure and meaning to their lives.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

PRODUCT LIABILITY FAIRNESS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 687, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 687) to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

The Senate resumed consideration of the bill.

Mr. HOLLINGS. Mr. President, our distinguished colleague, Senator ROCKEFELLER, will lead for the committee majority as the primary sponsor of this product liability measure. I happen, as chairman, to be among the minority. The distinguished Senator from Missouri, the ranking member, is with the Senator from West Virginia on this particular matter. I did not want to preempt his presentation and was awaiting his attendance here on this particular matter. The committee is ready.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HOLLINGS. Mr. President, I understand my distinguished colleague is momentarily on his way and could be delayed. So to save a little time, I will begin.

With regard to product liability, I would quote former President Ronald Reagan in a different context: "Here we go again."

Some 17 years ago, Mr. President, the Senator from Kansas, Senator Pearson, a standing member of our Commerce Committee, presented a product liability measure, and it was referred for study. Incidentally, when we say "referred," we have had over 50-some hearings in both the House and the Senate. We have had over 28 hearings, 20 bills of one kind or another, in 17 years. Of course, a bill has never been on the floor seriously on the House side. We never have received a bill from the House side. It has been received and heard over 28 times between the Committees on Commerce and Judiciary on this side of the Capitol. It has been turned back on four different occasions here on the floor.

The bill has been changed somewhat, but its general thrust remains the same, Mr. President. It seeks to raise the hurdles for the injured party who seeks to take his case to court, to prove his case. Numerous burdens are imposed.

In the original instance—to give you a feel for this particular measure—it was totally unconstitutional. It has been very interesting to watch the development of the bill, because after Senator Pearson first proposed it, after President Carter with a special commission made his report on product liability for the States to model their changes, and after another 17 years, 43 States have changed their laws one way or the other.

And now there is no—none whatsoever—Federal problem whatever with respect to product liability.

They have politically gained commitments over the years on this particular measure. They originally argued, back in the late seventies and early eighties, that this bill was needed because you could not get insurance. The argument, then, was that there was a tremendous crisis, whereby Little League playgrounds were being closed down, hospitals were being closed; you could not obtain product liability insurance. Of course, that line of argument was fabricated out of the whole cloth. It was not the case whatsoever. Insurance companies were in trouble at that time, much the same as in the 1980's, when the S&L's that had invested in real estate ran into financial difficulties. But the cause was not product liability.

Proponents of this bill then changed their tune. Now they argued that their bill was needed because the Nation was in the midst of a litigation explosion, with everybody suing or being sued. Vice President Quayle said there were 100 million cases, with 70 percent of them involving product liability. That, too, was fabricated totally out of the whole cloth. Only 10 percent of people injured from a defective product ever make a claim, and less than 1 percent of the 10 percent ever get to court. So there was not a litigation explosion.

We cooled the tempers and politics momentarily in the mideighties with the help of a GAO inquiry. The General Accounting Office concluded that there was not a litigation explosion.

Then proponents shifted to the argument of competitiveness, competitiveness. You remember when that disease hit and everybody was going to be competitive and every bill around had the word "competitive" in the title, everything to make America more competitive.

They were trying to cite, at that particular time, the European Economic Community. We found that, to the contrary, the European Economic Community was following the United States' example with respect to strict liability and punitive damages. And these are the measures adopted in EC-92.

The best proof, of course, for this particular Senator, has been in the role of product liability laws in attracting the blue chip corporations of America and of attracting foreign investment. I never, in my 40 years of work in this particular field, ever had any of the blue chip corporations come and say, Senator—or, Governor at that particular time—we are worried about product liability laws, their effect and impact on our competitiveness.

I remember when the distinguished Emperor of Japan came down the gangway last week in my hometown of Charleston. We rolled out the red carpet. South Carolina has 48 Japanese plants. We have over 100 German plants in little South Carolina.

I never heard a single one of those foreign entities say, wait a minute, we cannot relocate to your State on account of your product liability laws. We are protected in Europe, but we do not get the protection here.

The Rand Corp. finally got the executives together, 287 of them. Of the 287, the risk managers for those corporations, the vice president and chairman of this particular endeavor, found that the costs of product liability amounted to less than 1 percent of their sales; it was not a problem.

So, they then abandoned the competitiveness argument and went to the uniformity argument. It was their last-ditch argument. In this bill, S. 687, you will see it in black and white, because we said at the time that if you really want uniformity, make it a Federal

cause of action. Every other day we are on the floor of the Congress making this or that crime a Federal offense.

When the Supreme Court justices came before the subcommittee of State, Justice, and Commerce on appropriations asking for their 1995 budget, the cry was, Senators, for Heaven's sake cool down. You are making everything a Federal crime, everything a Federal offense, and you are turning the U.S. Supreme Court into a police court. We just cannot handle the volume. We are having a tough enough time with respect to uniformity with our own circuit courts of appeals, the interim courts of appeals on the way up to the U.S. Supreme Court. But for Heaven's sake everybody who is trying to get reelected or identify with a cause wants to make this, that, and the next thing, a Federal offense.

You would think in 17 years, Mr. President, they would have said there is here, by a finding by the Congress, a need that we create a Federal cause of action, and that would end it. And you would not have the discombobulation of S. 687.

Some people never have read the bill. We will go through it. But it is not that long a bill. I do not read it to kill time. I read it to show the discombobulation, the contradictions.

You have 50 States interpreting Federal guidelines to be appealed to their own supreme courts; legal language that has been interpreted many years now under the common law and the various product liability statutes. These are to be thrown out the window now and States must take these particular words.

If you want to see real confusion, look to the Association of State Supreme Court Justices. The Chief Justice of the Supreme Court comes to the Government and says, for Heaven's sake, kill this bill. The National Association of Attorneys General from the different States come and say, for Heaven's sake, kill this bill. It is not needed. It is in the wrong direction. It is just political. That is why the National Conference of State Legislators comes and says, kill this bill. That is why law professors say kill this bill, and they are good at picking out this and picking out that. They were picking out real hurdles in this bill, and they said this is bad law and kill this bill.

You begin to understand, Mr. President, why we have been on it 17 years. The only thing driving this bill now is the politics, because they finally come now not because of the inaccessibility of insurance, not on account of a litigation explosion, not on account of competitiveness, not on account of uniformity, which if there were any uniformity it has been totally destroyed now. But now they come after lawyers. They are on to what, reading political polls, they know is a great hot-button

issue, red meat. They have a bill against lawyers.

I have an editorial—they know how to put them out when they want them—entitled "Lawyer Heaven" in the Washington Post of last week. We are going to show you that particular one because I am sure my friend from West Virginia will be showing it. But if we can get to the lawyers, and not to the facts of the case, they tie into this thing, we will just vote it and go on and get it through, get it passed, and really destroy any uniformity, and put in these insurmountable hurdles for an injured party. And corporate America will sit back and smile to themselves and say, well, we really have them now because it just will not pay to sue.

With the workmen's compensation provisions in here, we have pitted the employer against the employee. We have the employer's lawyer on the side of the insurance company's lawyer, so the employee has two lawyers bearing down, and the pressure is being brought on him to settle, settle, settle; get out of this. And he says, "Well, I'm not taking care of my injury, but I want to keep my job. I guess I had better go ahead and settle this thing."

I mean, it is just outrageous when you come right down to it.

Let us see what American industry looks like today in Business Week, the July 4 issue. Here is what the business community reads, their bible, so to speak. In the economic trends lead article, there is nothing at all on product liability. I think this ought to be read because it is good. Listening to debate here in Congress, you would think like Chicken Little that the sky is falling. Instead, the headline reads, "American Industry Looks Like It's Boosting Capacity"; the sky is up and blue.

And I quote from Business Week:

Don't look now, but there are growing signs that the U.S. manufacturing sector may finally be starting to raise its capacity at a more rapid pace.

Over the past eight quarters, capital investment has accounted for some 36 percent of the economy's growth, and capital spending plans for 1994 remain strong.

Mr. President, the article goes on to paint an exceptionally rosy picture. And I just emphasize that there is no reference at all to any need to change product liability laws. If we need anything, we need, as we all agree, the strengthening of the dollar. We are all watching that very closely.

But all the different rationales and subterfuges of nonaccessibility, of litigation explosion, of uniformity, of competitiveness, of lawyer bashing and the rest, none of that is the case. The States are handling it well and, as a result, we are prepared, I take it, to move on.

My distinguished colleague here, the author of the bill, is present, and I yield the floor.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Missouri [Mr. DANFORTH].

Mr. DANFORTH. Mr. President, the issue of product liability has been lingering in the Senate for many, many years. I had not realized the long history described by the Senator from South Carolina, our chairman, until he stated it. But I did know that, certainly, since I arrived in the Senate, it has been an issue which has been around for a very long period of time without anything significant happening to it.

Since 1981, the Senate Commerce Committee has held 21 days of hearings on product liability and it has reported six product liability reform bills to the floor of the Senate. So it has been a matter that has been contentious. It has been a matter that has been exhaustively considered.

The bill that is now before us is barebones legislation, but at least it is something; at least it is a start. My hope would be that the Senate could pass this legislation and we could at least do something with respect to the present system that exists on product liability.

I do not understand any group in the country that is benefiting from the present state of affairs, except for the trial lawyers. Even the plaintiffs are not benefiting from this situation. It is estimated by the General Accounting Office that it takes today 3 years to resolve a product liability lawsuit—3 years. And, of course, some of them go much longer than that.

But anytime you have a wrong—a tort—and it takes 3 years to make that wrong right, that in itself is a miscarriage of justice. Justice delayed is justice denied. The problem is that when there is a long period of time between an occurrence and when it is resolved in court, the people who are the most vulnerable, the most severely injured people, are the ones who have to have a resolution and, therefore, they are liable to settle for anything. And that, in fact, is what the facts show. If a person is severely injured and has great losses and medical expenses and lost employment opportunities and is in very desperate condition, that person settles, and settles quickly, and settles for an estimated 15 percent of his losses.

It is the people that are not so seriously injured that turn it into a lottery. They can afford to wait. They do not have to have an instant resolution. The people with relatively minor injuries who can wait around can enter what has been referred to as the product liability lottery and they can strike it rich. The Insurance Services Office says that the victim of a product liability-related injury can expect to receive nearly nine times his losses if his injuries are minor—nine times your losses if you have had minor injuries;

15 percent of your losses if it is a major injury. What is right with that? What is good about that from the standpoint of plaintiffs?

This is not simply a matter that pertains to employers or manufacturers or people who develop new products and are worried about developing new products. Even if the debate pertained only to injured people, only to plaintiffs and lawsuits, the present state of affairs is unfair. It rewards those who are not injured much and it penalizes those who are injured a lot, and it creates such unpredictability that it is hard to know what is going to happen.

There was a famous case a few years ago of a 70-year-old man who lost the eyesight in his left eye. Now, the loss of eyesight in one eye is not a minor matter. But what is the just result of a 70-year-old man losing the eyesight in one eye? What is the reasonable compensation that such an individual should receive? Should it be in the thousands of dollars? In the tens of thousands? The hundreds of thousands? Should it be in the millions of dollars?

This person filed a lawsuit, a product liability case, against the Upjohn Co. and his recovery was \$127 million. A quirky case; yes, it was a quirky case. But the fact of the matter is that quirky cases are what drive insurance rates.

We are having a major debate right now—in fact Senator ROCKEFELLER and I are both on the Finance Committee and it is meeting right now on the question of health care and health care reform, the cost of health care. One of the issues there is medical malpractice. But when you consider the cost of health care—one of the components of the cost of health care is the 70-year-old man who lost the sight of one eye. And he recovered \$127 million. It is quirky, it is unpredictable, and clearly it has negative effects on America's competitiveness.

The U.S. machine tool industry says that it has lost nearly 25 percent of its market share to foreign competitors in recent years due, in its opinion, mainly to excessive product liability costs.

Forty-seven percent of the companies surveyed in 1988 by The Conference Board indicated that they had discontinued product lines; 16 percent have laid off workers; and 21 percent have discontinued research and development. They will not even bring products to the market, and they will not even proceed with research. One company in my State spent years developing a product line and the chief executive officer of the company—at the 11th hour, just before the product was to be brought into the marketplace, without any doubts at all on the part of the company about the efficacy of the product or the safety of the product—the chief executive officer made his own decision not to bring the product to the market because, he said, it was

just too risky. There would be lawsuits.

People are shellshocked by litigiousness. They are shellshocked. They are afraid to act, afraid to bring new products to the marketplace. I do not know that this legislation does enough, but at least it is a start. At least it is a recognition of the fact that the product liability system does not serve the interests of justice, it does not serve the interests of people who are injured, and it does not serve the interests of manufacturers to continue with the same product liability system that we have today.

One study says defending a product liability claim costs 70 cents for every \$1 of compensation paid. That is the cost to the defendant alone. Add to that the cost of the plaintiffs in a typical contingent fee case and the cost to litigate the matter is already over the amount paid out in damages. It cannot be in the interest of justice to have such high transaction costs as we have today.

Then we consider the fact that people we do not even know are suffering from the present system. One of the great disasters—scourges, really, of modern times is the scourge of AIDS. People are frantic about it, desperate—where is the cure going to be for AIDS? What are we doing to develop a cure? The chief executive officer of a company called Biogen testified before the Commerce Committee last year that Biogen canceled plans to develop an AIDS vaccine because he was unwilling to, in his words, "bet the future of Biogen on the random lottery of the American product liability system." He would not develop an AIDS vaccine because he would not bet the future of his company on it, despite the fact that the whole reason for the Food and Drug Administration is to test vaccines, drugs, and medical devices to see whether they work or not and to determine whether they are safe or not. I do not know of anybody who has criticized the Food and Drug Administration for not being careful enough in what it does. It takes a long time to get products cleared by the FDA.

One of the things this legislation does is to say if your product is approved by the FDA, you have some measure of protection so long as you did not proceed fraudulently or hide information from the FDA. But under the present state of the product liability law, it does not matter if you have been cleared by the FDA or not. If you have conducted your own research and presented the evidence of that research to the Food and Drug Administration and the Food and Drug Administration has analyzed and cleared it, that is no protection today. Some lawyer will take you to court.

So the Biogen company says it is not even going to proceed to develop an AIDS vaccine because it is frightened

of lawyers. Is that not a state of affairs? To be frightened of lawyers? I am a lawyer. When I went to law school I thought the purpose of my profession was to serve people, serve their interests. Not to scare them to death. Not to create a system which is described as a lottery. Not to keep products off the market, even though they have been cleared by the Food and Drug Administration. Not to deny seriously injured people their just compensation and to overcompensate those who have not been seriously injured. That is not the purpose of the legal profession.

So I congratulate Senator ROCKEFELLER and Senator GORTON and all those who have worked on this legislation so hard for such a long period of time. It is an idea whose time came a long time ago.

My hope is that this legislation is going to be enacted into law.

The PRESIDING OFFICER (Mr. FORD). Who seeks recognition?

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, today the Senate has been given another chance to debate whether to make changes designed to improve a very important aspect of our legal system—or alternatively, whether to leave it alone entirely, with all of its problems that hurt America's consumers, workers, and businesses. We have, happily, at least the next 2 days to consider this legislation—which is interesting. It has grabbed the attention of a lot of people. It is Senate bill 687, the Product Liability Fairness Act, and it was introduced March 31, 1993, by myself, by Senators GORTON, LIEBERMAN, DANFORTH, and DODD.

This particular quintet of Senators does not find itself working this closely together very often on a single piece of legislation. But because we do share a common view that reform is urgently needed and a collective commitment to a balanced system, we have pursued this legislation together every single step of the long way.

I must say, I regret the fact that even before debate began on this bill, which it now just has, it was made obvious that it might wreak havoc with the Senate's ability to get to other important business. For those of us who have pushed for product liability reform, we are more than used to finding ourselves on the Senate floor when there is too little time to deal with this issue and far too many important issues waiting in the wings. That is why we accepted the limited time available for consideration of this bill.

I want to say that, basically, Mr. President, so that colleagues and people who work for my colleagues on both sides of the aisle understand that it was not our desire to have just 2 days. We were hoping we could have

more, but that is the way it had to work out.

It is also why I hope Senators will resist the temptation to pursue issues or amendments that have nothing to do with our product liability system during this short period of time. The problems of the system as they affect or hurt American consumers, businesses, workers and injured people are serious enough, and they have earned our undivided attention. So let us keep our focus on them.

As Senator DANFORTH just said, the time has finally come when this body in a bipartisan way should demonstrate its intent to actually do something about these problems. Well, there is that old adjective: "If it ain't broke, don't fix it." Mr. President, the product liability system is most definitely broke.

We present Senate bill 687 as our blueprint for making some of the most obvious repairs. Our goals are to make the system more fair, more responsive and more predictable to everyone whom it is designed to serve. We believe that it will promote the development of a safer, even life-saving range of products; that it will reduce or stabilize legal costs that are the great sponge of the current system; it will speed up compensation to injured men, women, and children, who are now waiting years for justice.

One can argue, was it 3, 4, or 5 years? But if you have a mangled hand, what difference does it make if you have no recompense for your injury and that is the situation now. We want to bring recompense to those injured more quickly and also that it will curb one of the biggest disadvantages that saddle American industries and workers in trying to survive rather than compete in the global marketplace against foreign companies and those foreign companies' foreign workers.

It should be noted that since 1981, the Senate Commerce Committee has favorably reported six product liability reform bills to the full Senate. Over these 13 years, interested Senators have worked together to make many changes to the legislation in response to input, advice and new information and criticisms of the legislation.

In the last Congress, which was the 102d, the bill began to kind of pick up steam, pick up support and finally won time on a very crowded Senate agenda in the final weeks of the session. Even in these circumstances, with no possibility of further result, 58 Senators were recorded through a cloture vote in favor of considering the bill. Though, once again, we continue to face the challenge of jumping a hurdle called a cloture vote, another effort to block the very possibility of dealing with the problems of our product liability system, I want to emphasize that a great deal has changed.

This time, most Senators have demonstrated that they recognize the need

or obligation, or both, to pay close attention to the issues involved with the current form of product liability. It really has hit our radar screen. People understand something does have to be done. An enormous amount of education has taken place through hearings and two committees in this body over the past year and a half, through contact from constituents and advocacy groups, through meetings among Senators—a lot of those—and through discussions of every conceivable form.

The bill itself is different from earlier versions. To somebody who is stuck with this process now for 8 years, I believe it is the most balanced reform proposal we have ever had before us. Each provision is carefully targeted and, frankly, is very carefully thought through. It also includes six major changes to the version of the previous Congress, all in direct response to constructive input, some very specifically designed to make our system even more responsive to consumers and injured people.

And in November, this bill was approved in the Senate Commerce Committee by a vote, Mr. President, of 16 to 4, which is not inconsequential. Now a total of 45 Senators are now signed on as cosponsors of the bill.

I regret, obviously, very much that our very distinguished chairman of the Commerce Committee still has not been persuaded by our arguments and proposal, but he has not been. I do want to emphasize we have pursued this effort openly through the regular legislative process and have gained increasing support as we have gone along. I want to thank the chairman of the Commerce Committee, Senator HOLLINGS, for his cooperation and even temper in dealing with this issue once again.

But I want to suggest that it does not make sense any longer to use procedural means to stifle or to thwart this effort with the hope that it will disappear into thin air. We, the sponsors of this bill, are not responsible for the problems that we are trying to solve. We are simply trying to fix them. We believe the problems are real—that is our view; it is sincerely held—and that they affect and even harm in different ways American consumers, business, workers, injured women, men, and children.

As legislators, we feel a very strong obligation to deal with these problems and feel we absolutely must attempt to make whatever changes are possible to serve the objectives of justice and fairness.

In fact, here is where I want to say something about my own coming at this matter, my own commitment to this issue. The explanation is really very simple. As somebody who has served in different elected offices in behalf of West Virginia and, like the Presiding Officer, served as a Governor, I

always have been bothered by situations when the system stops serving the people for which it is designed. I do not like that. I am extremely familiar with the arguments against trying to change a system and keep the existing rules of bureaucracy or patterns just the way they have always been. But let me give you an example.

I was first sworn in for Governor on one of the coldest days in the history of this continent on the steps of the Capitol in Charleston, WV, in 1977. I made the inaugural address which was listened to by several very cold people, but I made only four points in my inaugural address. You would think I would kind of lay out the plan. I did not. I stuck to four points. You can guess roads, education, and jobs were three of them. What you might not guess is that the third one was something I was passionately committed to then and was totally frustrated by because at that time it took an injured worker in West Virginia 77 days on average to receive compensation for an injury that he or she had received in the workplace. I pledged in my inaugural address, as sort of a basic tenet of what my administration was going to serve for, that I would reduce that time from 77 days down to 4 days. And to the Presiding Officer and a former fellow Governor, I am very proud to say that I was able to do that, and it is one of the proud achievements of my life.

But I was furious that a bureaucracy—in this case a State bureaucracy—and a system—in this case a State system—could do that. I wanted it changed.

Then, Mr. President, when I joined the Senate, I was horrified to learn of the backlogs that were keeping people suffering from black lung waiting for months and even years, as the Presiding Officer knows even better than I do. I helped to force the Department of Labor to change its rules and hire the necessary judges to speed up that system. And ever since I have been in the Senate I have tried to convince every part of our health care system that it is in our collective interest to make major reforms.

Soon after coming to the Senate, I began running into a steady slew of complaints and reports about the impact of the current product liability system. What I heard from the manufacturers of West Virginia was a catalyst for me. Like the experience of the McJunkin Co. in Charleston, WV, which is our State capital, that had to close a manufacturing facility when it could not handle its liability costs. Was the victim a high-paid CEO or a huge corporation? No, of course, not. The losers were the 25 men and women, not great in number but in their lives very great in significance, 25 men and women in West Virginia who lost their jobs—and they were good-paying ones—after the plant closed down as a result of the costs of a broken tort system.

Now, this story and many like it led me to dig in much harder. It led me to try to figure out why, Mr. President, a patchwork system of 55 State and territorial product liability laws, with confusing and conflicting signals to American manufacturers, should be defended.

When 70 percent of U.S. products are in fact sold outside of the State where they were made, one begins to understand why even the National Governors Association endorses the idea of making the rules more uniform, predictable and consistent by federalizing them. The Governors have been on record in so saying. In fact, I believe—I am not entirely sure of this—our President, as a Governor, twice voted for uniform product liability reform as a Member of the National Governors Association.

The status quo is not the friend of consumers, Mr. President, or victims, whether they be men, women or children. We now have studies, testimony, and specific examples endlessly that tell of companies dropping or fleeing the pursuit of new drugs, new drugs that we need, perhaps safer products, and the parts needed for medical devices because of the excessive costs of the system or the fear that they will get hammered by any one of the system's capricious rules. The status quo is what keeps people, men and women, waiting for years to get justice in the form of compensation for their injuries. And as the Senator from Missouri said, justice delayed is justice denied.

Also, this system allows lawyers on both sides—you will not find this Senator speaking of trial lawyers or defense lawyers; I talk about lawyers on both sides—lawyers who eat up more money themselves than whatever eventually gets to successful plaintiffs, the ones who are injured. Yes, that is true. Lawyers get more money from this system than do the people that they are defending who are injured. That is true. That has been true. That always will be true until we change the system.

These are the reasons that we want to take a hard look at the current system and consider the modest changes in the bill that has evolved over many, many years and built such strong, as it appears now, support. Sometimes reform can help everybody affected by a system, or institution. And I think that this is one of those times.

As a result, now outside this body S. 687 enjoys widespread public support and the endorsement of leading academics who have studied the bill and who know what they are talking about, such as Cornell Law School Professor James Henderson, a noted tort law scholar and reporter for the American Law Institute's Project on Products Liability; the American Legislative Exchange Counsel; and, as I mentioned, the Governors Association, groups that are usually fiercely protective of

States rights, who are against Federal intervention. But these groups are saying endorse Federal product liability reform, do something about it, federalize some of it, not all of it, not the majority of it, but just where you have to.

The idea of this bill is to remove some of what is unfair and arbitrary in the law and substitute reasonable and uniform, nationwide rules in a few more areas within our product liability system. A reading of S. 687 should convince even the most skeptical observer that this bill will not impose confusing or widespread changes in the product liability laws of the States or affect the ability of litigants to obtain full recovery for damages in anything but the frivolous or rare case.

Our legislation is intended, Mr. President, to also promote long-term economic growth. We do not base our case on this, but it is a factor. We want to protect U.S. competitiveness. Some people call this a jobs bill. Our legislation will encourage the development and distribution of innovative new products from protective sporting goods equipment to lifesaving drugs and medical devices, among countless others, without depriving injured persons of redress for their harms. And that is why I call it a consumers bill.

I wish to emphasize again there is nothing in this bill anywhere but pure daylight between any clause in the bill and the right of a jury trial—clear daylight. Numerous examples exist of safe and effective products that go unmarketed, Mr. President, or withdrawn from the market because of liability concerns. Senator DANFORTH gave one. I will give one. Last July, for example, Abbott Laboratories announced that because of liability fears, it was dropping plans for human trials of a drug to prevent HIV-infected mothers from transmitting the deadly virus to their unborn children. Similar explanations have been reported by the American Medical Association and the Brookings Institution, the National Academy of Sciences, the New England Journal of Medicine, and many others. S. 687 seeks to benefit consumers in additional ways—not defendants I am talking about but consumers, plaintiffs.

We include a proplaintiff discovery rule, a statute of limitations that will apply in all product liability actions in every State. An example: In Virginia today—I believe in Virginia; in Arkansas it is 3 years, in Virginia I think it is 2 years—you only have 2 years from the date of your injury in Virginia to bring a case.

What if your injury is something that comes from medicine, or some drug, or something that you are breathing, and you do not know about your injury for a long period of time? The cause may have started at a certain time, but you do not know that you were injured or what the cause was

of your injury until much, much later. We, therefore, wrote this bill so that people will have that ability. We say that you can now have 2 years to bring a case from the time that you found out about your injury, and knew the cause of your injury. From that point, the 2-year statute of limitation runs. That is very, very significant.

More generally, the bill will remove the product liability tax now incorporated into the price of many products, making them more affordable. Employees will benefit from the provision intended to encourage employers to maintain safe workplaces.

Some have suggested that the legislation to help business is, by definition, harmful to the public; just the fact that a bill might have in it some parts which help business means that the bill is automatically against the interests of the consumer; victims, so to speak. I think this is untrue. Of course, it could be true if one set out to do that. But I think it is very untrue in this case. And I think we should, frankly, reject that kind of what I call blanket cynicism. If the system is unfair to business, that unfairness is what is wrong, not the fact that somebody runs or works for a business.

Study the bill, I say to my colleagues. Know the bill. You will see that each of the proposed reforms is clear, reasonable, and carefully targeted. The bill does not repeal the doctrine of strict liability. It does not abolish or impose caps on punitive damages or caps on anything else. And it does not abolish or impose caps on noneconomic damages. There are some who would like to do that. And I consistently have said no, as I will when we get to medical malpractice.

Fixing a broken system can—and under S. 687 will—be a win-win proposition, a victory for our Nation's businesses and for its consumers. It was 1978 when the Federal Interagency Task Force suggested the need to stabilize our product liability law. It was in 1981 when Congress began to develop uniform product liability law. The Europeans began around the same time, and they already have uniform product liability standards—not in just their provinces or their states, but they have uniform liability laws for all 13 countries.

This is what we will be competing against in the future if we do not make adjustments to help our workers. It is time to separate the suspicion and cynicism from reality and the willingness to try to solve difficult problems.

The reality is that S. 687 will reduce legal costs. Will it end them? No. Will it reduce them? Yes—through a push for alternative dispute resolution, and something called expedited settlement procedures. We can discuss those later.

This bill will place incentives for injury prevention on employers when necessary, on manufacturers when necessary, on wholesalers when necessary,

on people who use products when they are drunk or subject to illegal drugs. It will not let wrongdoers off the hook. It will not let manufacturers of drugs or medical devices who fail to comply with law escape punishment; full punishment. It will create positive incentives for the manufacture of good and useful drugs, medical devices and other products.

I urge my colleagues to take a hard look at the actual contents of this legislation. I am not a lawyer. But I went through and I read the bill. It does not take very long. It is all right there. Except for a few clauses, I understood it. So it is available. I urge my colleagues to actually look at this legislation and not the deceptive labels that are being slapped on by others to mask what we are sincerely trying to fix and sincerely trying to improve.

There were press conferences held in this city last week saying that DES, the Dalkon shield, and breast implants would no longer be subject to punitive damages under this bill. All of that is untrue, Mr. President; absolutely untrue. But it was said by responsible people at public press conferences, and some of our colleagues heard that and believed that.

I can understand that because these were so-called responsible people saying that, people who are lawyers. They were saying something that was not true: That somebody who had DES, or problems with the Dalkon shield, or breast implants—jell or otherwise—could not sue the manufacturer for punitive damages. Under this bill, one could and should sue for punitive damages.

I also make a plea to all of my colleagues to help avoid the bill becoming an avenue for issues that have not been considered in connection with this particular legislation which we have been considering for well over a decade.

So I hope that there are amendments that will be germane and on point. We do not have a lot of time. This is the Senate's opportunity to make a clear and coherent statement to the American people as consumers, as workers, and manufacturers, and to our trading partners throughout the world. We stand for fairness in product liability by passing S. 687, the Product Liability Fairness Act.

Mr. President, I thank the Presiding Officer, and I yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER (Mr. REID). The Senator from Ohio.

Mr. METZENBAUM. Mr. President, there are few Members of this body for whom I have greater respect than my colleague from West Virginia. It is only fair to say that I do not think that this bill is quite as good as he would represent it to be. In fact I rise in opposition to S. 687, the so-called Product Liability Fairness Act. The

bill is anything but fair, and the Senator should not move forward with this legislation.

Proponents of this bill attempt to characterize it as a moderate bill, as a watered-down version of draconian measures rejected by the Senate year in and year out. They say that because it is less draconian than it was, we should accept it now. They even had the audacity to proclaim that it is somehow proconsumer.

Let me set the record straight. This bill has gotten better. It has gone from horrible to very bad. No matter how hard proponents try to justify this bill as needed to stem supposedly out-of-control insurance rates, out-of-control litigation, out-of-control legal fees, or to prevent the decline of American competitiveness, there is no hiding the fact that it is nothing but a base attempt by manufacturers and product sellers to escape liability for defective products that injure or kill innocent Americans.

No matter how far proponents stretch to characterize this bill as proconsumer, it is still the most comprehensive anticonsumer piece of legislation that has been or will be considered in this Congress. Let no one be fooled about that.

This bill is opposed by every major consumer protection organization in this country. It is opposed by dozens of leading groups representing senior citizens, labor, the environment, and victims of defective products. It is opposed by the AFL-CIO; the American Bar Association; the American Association of Retired Persons; the Conference of State Chief Justices; the National Conference of State Legislatures opposes this bill; the American Public Health Association opposes this bill; and 100 law professors around the country. This is a bad piece of legislation.

Who is on the other side supporting this bill? The corporate world—big and small. This alignment should tell you a lot. This legislation intrudes upon an area of law that, for over 200 years, has been reserved to the States, and suddenly those who always talk about States rights are now coming here to the Congress and saying that we should intrude upon those States rights. That is why the Conference of State Chief Justices and the National Conference of State Legislatures oppose this bill.

I am not saying the Federal Government should never preempt State law, but the changes proposed in S. 687 represent an unjustified and unprecedented usurpation of the States long-established authority over tort law. If we do it here, where else do we move in? The former candidate of the States Rights Party of the United States, who ran as their Presidential candidate, will oppose this bill. What a contradiction in terms to run as a candidate of the States rights people in this country and then support this bill, which in-

trudes upon those very same States rights.

This bill is being driven by myths and anecdotes and wornout scare tactics. The original justification for this bill was that it was necessary to forestall an insurance crisis and to prevent an alarming increase in insurance costs. But that argument went out the window after the insurance industry publicly testified that the bill would have virtually no effect on insurance costs, and evidence showed that the availability of affordable insurance is governed by insurance companies' underwriting practices rather than product liability. That should have put that argument to bed. But you still hear proponents resorting to it.

Another justification traditionally offered for this bill is that there is an "explosion" of product liability suits. That simply is not true. That is not in accord with the facts. Proponents focus on increases in product liability claims between 1980 and 1988, but there was a specific reason for that. That was due to the cases filed by reason of asbestos claims, Dalkon Shield, and Copper-7 IUD legislation. What they ignore is the fact that the number of product liability cases in Federal courts, other than asbestos cases, has been shrinking steadily in recent years. The 1991 annual report for the National Center for State Courts reports that the number of tort filings fell by 1 percent between 1990 and 1991.

If proponents were really concerned with an increase in suits, they would be acting against commercial litigation. Business-against-business suits have increased in recent years. Businesses suing businesses in contract disputes accounted for nearly half of all the Federal court cases between 1985 and 1991. In State courts, such suits accounted for 14 percent of filings, while product liability suits accounted for less than 4 percent of filings in 1991.

But business has craftily exempted itself from this bill. This means that if a defective machine explodes in a factory, a worker who was killed or injured would be forced to sue under the severe constraints of this bill, while the employer could sue completely free of any such restrictions. The worker would not even be able to recover a penny if the machine was more than 25 years old, because the bill cuts off the right of consumers—but not businesses—to recover for 25-year-old capital goods.

So businesses want to preserve their suits against each other; they just do not want injured consumers to sue them.

It is the little guy who is left out. It is the average individual person who is precluded from going forward with his litigation. But the businesses are still left in a position to sue one another.

Yet, another traditional justification for this bill has been that jury awards

are erratic and excessive, giving windfalls to undeserving plaintiffs. Again, the facts show otherwise. In fact, under our current system, injured people absorb and pay for much, if not most, of their injuries themselves. A recent Rand Corp. study found that only 1 out of every 10 Americans that are injured due to product hazards ever seeks compensation through the tort system. Of these cases, two-thirds involve motor vehicle accidents. In addition, injured Americans recover only about 60 percent of their costs of nonfatal injuries through public and private sources. They, the individuals, must shoulder the remaining 40 percent out of their own pockets. The 1992 report by the National Insurance Consumer Organization showed that the average payment to victims of all claims closed during the previous decade was \$3,767.

Punitive damages are not out of control, as proponents of this bill would have you believe. There have been only 355 punitive damage verdicts in State and Federal product liability cases since 1965. Did you hear that? Only 355 punitive damage awards since 1965—almost 30 years ago.

Would the proponents think that the punitive award of \$5 million for the death of a family member was excessive? Or \$1 million for the permanent loss of sight or fertility? What if it were your mother, or your sister, or your brother, or your father, or your child?

Over one-quarter of these punitive award cases involved asbestos. Asbestos aside, that means there have only been 266 cases in which punitive damages have been awarded in a product liability case in nearly 30 years. With the exception of asbestos, the number of punitive verdicts in product liability cases has been declining in the last 6 years.

Another holdover theme from the Bush administration shifts blame away from manufacturers of defective products and onto lawyers. This amounts to little more than lawyer bashing. The 1992 report by the National Insurance Consumer Organization estimated the average fee paid to victims' attorneys for all product liability claims during the previous decade at \$1,256. That is the average fee.

The bill's proponents claim that S. 687 will create a nationwide uniform product liability law. It will do nothing of the kind. The provisions of S. 687 would be grafted onto the different product liability laws and standards in the 50 States. The result will be a hodgepodge of State and Federal standards which will create new uncertainties for tort litigation in State courts and diminish the authority of State judicial systems to define and enforce their own rules governing product liability.

Mr. President, there is much more that I have to say about this particular

piece of legislation. I think there are others waiting to be heard. I do not wish to assume up to myself all of the time that is available, and I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, there are a few things that should be clarified.

One, with respect to the claim made by my distinguished colleague to the effect that punitive damages do not have any cap. Oh, no, they are indirectly capped.

If you look at the particular bill as introduced, you will find two things with respect to punitive damages—and they know exactly what they are. Incidentally, this is a point that should be remembered. On page 18, line 11 of the bill, "punitive damages may, if otherwise permitted by applicable law, be awarded."

Here they are talking about uniformity. That in and of itself "if otherwise applicable." In some States there are punitives but in other States there are not. There is no uniformity. There is no intent to be uniform here.

But when you come down to the caps, here is what they put in lieu thereof. They say that, first, the harm suffered by the claimants must be proved as a result of conduct manifesting a manufacturer's or product seller's conscious, flagrant indifference to the safety of those persons who might be harmed—product seller's conscious, flagrant indifference to safety.

And how should that be proved? Not by the greater preponderance of the evidence but rather by clear and convincing evidence.

So they have raised the hurdles. They have raised the barriers. They have increased the burdens, and that should be recognized throughout the comments made.

I was somewhat amused by the remarks concerning a lottery, by the distinguished Senator from Missouri, joining in support of product liability. I have never found that. I have three on staff looking for it. I do not know about any lottery that they get into that they make a lot of money.

I can tell you and explain firsthand why the conclusion was made that perhaps plaintiffs are compensated more for slight injuries and not sufficient compensation, let us say, for serious injuries.

I practiced, and I must qualify now, Mr. President, on a personal basis of having tried cases on both sides of the aisle. I have represented plaintiffs. I have represented defendants. I have organized the State Life Insurance Co., the Equity Life Insurance Co. I came to Washington with Guaranty Insurance Trust and before the Securities and Exchange Commission set an all-time record of 13 days of wanting a corporation. No water, no monkeyshines, no

options, and all of those things that go into one of these prospectuses.

On the contrary, it was clean and went through the Securities and Exchange Commission in 19 days an insurance company, and I was the general counsel for that particular company.

So I represented on both sides, and I know the lawyers on both sides. And I became the lawyer for the local power company at one time. I had been suing them on personal injury cases, and a good friend of mine who was a professor at the law school came to me, and talking friend to friend, I said, "Well, the reason you lose is your crowd is so lazy."

He said, "What do you mean?"

I said, "You won't try the cases. You know, that stuffed shirt crowd. They are up with the big offices with the big mahogany desk and oriental rugs and secretaries running to an fro. They do not like to get out in the field and investigate a case and if the adjuster had not investigated, they just blame it on him, and when it comes to actually going to court to try the case, they are not about to do that. They are a lazy bunch."

And he said, "Why don't you try them?"

It was an unfortunate moment for me, because I said, "I could save you millions of dollars if I started trying the case."

To cut the story short, I did. And we got what we called the Christmas Club. At that time, just after Thanksgiving everybody starts falling down and slipping down in the bus. They get their arms caught in the door. I call it the Christmas Club for the local bus company. You just could not get a bus down the streets without everybody falling, slipping, tripping over the step, the driver was closing the door on them, and everything was going wrong. And they had all these cases backed up, and heretofore where they had settled them all out and that is the blame not of the plaintiff's lawyer or the poor injured party, that is the blame of the defense attorneys.

I saved millions of dollars. That is a matter of record in my own hometown.

So I know exactly what he is talking about. And when he is not receiving enough, heaven's above, that is like the famous couplet: "A politician makes his own little laws and sits in attendance to his own applause."

That is this crowd; it is the defendant lawyers, not the plaintiff lawyers, who are responsible for that.

That goes right to the heart, Mr. President, to this article, Robert J. Samuelson's "Lawyer Heaven." You see that is the advertisement to get the votes for this bill. Robert J. Samuelson does not know from sic'um about law cases, but he is a good economist and we give him credit for that. I read this first little paragraph:

Seventy percent of manufactured products are sold outside the State where they are

made. If interstate commerce means anything, this fact alone warrants a national product liability law to govern defective and dangerous products. Instead companies can be sued under a bewildering array of State laws. In 1992, there were an estimated 40,000 such suits. Congress may now curb this chaos by adopting a national law. The Senate takes up a proposal this week and if it passes, the House may do likewise.

Do they get a national law? He obviously had not read the bill. He could not have read it here because it does not leave any doubt, and there are 20-some laws like this submitted over the years now in the 17-year period.

They used to have a little debate as to whether we had a national law, whether there was a Federal cause of action. But now we can look right here on page 11 at the top of the page, section 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.

Now, Mr. President, where do you get a national law when you have, as I have explained to the distinguished colleagues here and their staffs, hopefully, and anyone else within the sound of my voice, heaven's above, they say specifically affirmatively no chance of this being a national law. All they had to do was institute a Federal cause of action. If they had done that, we would not have had all this gobbledygook back and forth. They intentionally do not form a national cause of action.

Now, Mr. President, I speak as chairman of the Committee on Commerce, Science, and Transportation which has jurisdiction over what? Insurance—insurance.

President after President, company after company have come to this Senator as the committee chairman, and said, "Don't let them federalize insurance. We don't want to get under the Federal system."

Oh, when they have to try their cases, "Senator, really, now, they have got a multiplicity here." As this gentleman says here, 40,000 such suits in 50 States.

Well, how many policies do you think they have to register and get approved, like trying a case in the 50 States? Literally hundreds of different fire, casualty, property and life policies, but they all come. They have their lawyers hired. They keep them down at the State insurance. In fact, they control them too much.

I found that out in the State of South Carolina. And that is one thing, as Governor, I was known for of having cleaned that one up.

We had, I say to the Senator, 38,000 life insurance agents licensed to sell insurance. The State of New York, substantially larger, had only 32,000. If you were on skid row, if you were down and out, if you were in the gutter, you could do one thing: You could still be

licensed for insurance in South Carolina. In fact, when I was there, I had to start cleaning it up with a blue ribbon commission.

But this crowd, they say they want uniformity. On, no, they keep coming to me and say, "Don't give me no uniformity. I don't want any Federal law."

Now, over here, they have all kinds of provisions. I hear all the debate on health insurance, I say to the Senator. They say, "No, we are not going to get President Clinton's bill for national health insurance to cover everybody. We are going to get insurance reform." Insurance reform. So they have all kinds of requirements about portability, about preexisting conditions. They have everything, but no Federal law.

They have had the initiatives over on the House side with respect to the fiscal responsibility and the investments. The Senator from Ohio had that bill. There have been nibblings all around the edges. Every time a nibble, they come running to the chairman of Commerce, Science, and Transportation, and they say, "Look, we don't want a Federal insurance thing." We will have to do something about this fiscal responsibility when all of them are going broke. "We don't want to do this. We don't want to do that."

In fact, the Senator from West Virginia—and I have got a little amendment I take it he will accept, with respect to making the records available. We never could find out. They would give you a bunch of papers. You could not make heads or tails about it. We did not want to get into any expenses or anything else. It is the famous Rockefeller amendment, where they ask the insurance companies to please come and report their data so we can know the effect of this particular bill.

But I can tell you here and now from hard experience that it is the defendant's lawyers, they are the ones who are responsible for the high transaction costs.

Permit me to read from a May 25, 1990 letter from the General Accounting Office:

Specific factors that make these cases time-consuming are the steps required in the legal process. In the vast majority of cases we reviewed, we noted that defendants often used the maximum amount of time legally required. Delays caused by defendants were also common. In most cases manufacturers have little incentive to settle cases, as we said in response to the first question, although some may be concerned about adverse publicity regarding their products. In the typical case in our review, the defense was first granted 30 days to respond to a petition. The defense typically argued at the end of the 30-day period that the plaintiff did not use the product or that negligence was the cause, at least in part, of the harm. Thus began the legal process known as discovery in which the burden was on the plaintiff to build a record by collecting data on product design, specifications, and other often pro-

prietary information from defendants. The preparation of interrogatories, testimonial evidence from eyewitnesses, expert witnesses, and others was another lengthy process needed for the record. We also found frequent motions to extend and delay late court dates.

So here they come and they talk about the lawyers' heaven. It is the defendant's lawyers' heaven. He has got his office, he has got his rent paid for, he has his light and water bill paid for. He has all his investigators paid, he has his oriental rug and his mahogany desk and his clubs paid for. He does not ever see any injured parties, any investigators or anything. It is always done for him.

The poor rascal that gets run into and injured, or take one of these defective product cases, the poor female victims in the case of Dalkon Shield, Copper 7, breast implants, and so on. But the poor person who gets injured due to a defective product, they do not have a lawyer. They sit there hurt and injured. And then when it comes down to the case itself, they have got to find a lawyer. They do not have the money for a lawyer or the office or the investigators or anything else. And they are finally so bad off they get to a plaintiff's lawyer long after the case has been investigated by the corporate defendant with all of their adjustors and interrogatories and everything, and they finally get to that lawyer.

Let me cite a GAO report which concluded that over half of drugs approved by FDA still contained various defects. I quote:

In studying the frequency and seriousness of risks identified after approval, GAO found that of the 198 drugs approved by the FDA between 1976 and 1985 for which data were available, 102 had serious postapproval risks, as evidenced by labeling changes or withdrawal from the market.

Now of the 198 approved by the FDA, 102, that is over 50 percent, had serious postapproval risk.

So we know and understand that they are not approved. But here we go again with that defendant's attorney who is trying to delay.

Now if you are injured and do not have a lawyer and are trying to get money; if you are self-employed, for example, you are out of an income or any source to keep the family going, you are lucky to get a lawyer who will take the risk.

And, incidentally, they have a provision realed to in here about fees. As someone recently suggested, perhaps we ought to adopt the British system that would assess the cost against the party that did not win the case.

Of course, that is the case now, as a plaintiff's lawyer. I hope the lawyers and Members around understand law practice. As a plaintiff's lawyer on a contingent fee basis, you accept the case on the contingency of winning. That means that the client puts up nothing. You are taking care of all the

costs of investigation, the costs of discovery, the costs of interrogatories, the court costs, all the costs of the trial, the printing of briefs—and, of course, the cost of your time. It's not like these Washington lawyers paid by the hour. How many dollars an hour? Every time we look around we have the President, he is paying one law firm \$450 a hour and another lawyer \$500 an hour, whatever it is.

No hourly fee. I practiced 20 years and never got any hourly fee. I had to win the case. Or if I did not, I had to eat the expenses and the costs and go back home and say, "I am sorry, kids, we just lost that one. We have to try to work harder next time."

But that is the case today. And that is the crowd, the plaintiffs' lawyers, who want to hurry it up, get to trial, get a settlement. They are the ones who pay for delay, where witnesses disappear, persons get sick, others die and what have you. The defense lawyers are the ones who have to delay here. That is the lawyers' heaven that they talk about.

They say here, "It is about time. The Carter administration first suggested standards in 1978." Well, that is true. And 43 States have followed. He says, "Nothing happened since." Well, no Federal law has been passed since. We do not have a Federal cause of action here. That is the whole point that the gentleman does not understand.

He then talks about the power of the 60,000 trial lawyers. In the previous paragraph he said 40,000 suits. We know a lot of those are Dalkon shield, breast implant, particularly asbestos. Those are the ones that have been going up. So there are not 40,000; at best there are 30,000. But if you have 60,000 lawyers, we have half the trial lawyers on welfare. They are not trying any of these product liability cases. I do not know what they are doing because they have 60,000 lawyers and according to his figures only 40,000 cases. So I guess these trial lawyers are sure not making it on product liability. That is pretty good proof to me.

He says, "What has been preserved is a system whose main beneficiaries are the lawyers who live off of it." Amen—the defendants' lawyers. Not the plaintiffs' lawyers. Of course, the thrust here is that it is the plaintiffs' lawyers, but the lawyers who live off of this are the defendants' lawyers.

The defendants' lawyers establish every kind of hurdle you can possibly think of. For one thing, if you read this bill, you find the settlement provision. The first thing under settlements is they require a settlement offer. That is not required under the present law today.

If you come to me and you have been injured by a defective article, I hope to get a settlement. In fact, I am duty bound as an officer of the court and as your attorney, if they have made an

offer—if I want you to refuse it, I can tell you—but if I do not tell you about the offer, I can be sued for malpractice. That is coming about already. Lawyers are suing lawyers. In fact, in California, lawyers are suing ministers. The ministers tell them to go home and pray, and they are suing the ministers for malpractice. No, instead they should have told them to see a psychiatrist. So those are the lawyers.

And, incidentally, those are mostly company lawyers. I will get to the company lawyers in a minute. I want to stick to the idea of what has been so cleared up. The first thing they do is bring the employer against the employee if he is employed. If you are employed, then I can tell you the employer has to be notified when you bring the claim of how much and whatever else it is. Then he has to be in lockstep with the injured party. Of course, you know the employer, with workmen's comp that is, is paying insurance premiums. His thrust is not to help the employee, but to keep his workmen's comp costs down. So he buddies up with the others, the injured company's insurance carrier. Those two get together and bring the pressure on the employee. That is the first step in the wrong direction, as a hurdle.

Then, if the offer is made and the verdict is less, \$1 less, even though the plaintiff won the case—if it is \$1 less, the winner loses all collateral benefits. If you have health insurance—if you have disability insurance, my suggestion to the Senator from Montana, if this bill passes, is scrap it, scratch it. Because if you do and you get hurt, you are going to have to pay for it all or you are going to lose everything by getting it, so there is no use to pay the premium because all the collateral benefits are gone. So that is the two companies working together.

Then, of course, the attorneys' fees, that is another one where they have capped it off for the defendants' attorneys but they do not do that on the plaintiff's side.

With respect to punitive damages, as I cited before, you have to have proof of conscious, flagrant indifference and you have to prove it by clear, convincing evidence. They shortened the statute in my State from 3 years to 2 years, and they put the burden on plaintiff to prove separate culpability of each defendant, in the provision with respect to joint and several liability. So you have to prove it on each one of them.

I am sitting in my office and the injured party from a defective product comes in and I shake my head. I say, "I have to see a case where they must have made some substantial offer to you. I have to see a good case. I just cannot afford it. I hope you can go down to Legal Services."

We never used to do that. We used to take them all. We did not have any Legal Services. But I will say I guess

you will have to do it because I just have so much time.

That is the way all these lawyers talk now. "I have only so much time and time is money in the bank to me. And I cannot take a year and a half, as they say, or 2 years carrying you." I have to have a bank account to keep going. If I have 5 or 10 product liability cases, I have to have \$200,000 or \$300,000 in the bank just as carrying, hoping to win later on. I can tell you right now, this is not an easy thing whatsoever.

But let us go to where the violation and the abuse really is. The abuse is with respect to contract cases. You go to the contract cases and you go to punitive damages. Just in the year 1993, the largest verdicts, Melridge, Inc., securities litigation in Oregon, a jury award of \$88 million. American Carriers Inc. versus Westinghouse Credit Corp, a jury award of \$70 million.

That is not runaway awards on behalf of a poor little injured party. That is just the corporate crowd suing each other.

Exxon Chemical Patents Co. versus the Lubrizol Corp., \$66 million. They do not have any bill in here that says you cannot get any punitive damages on these corporations. It is only for the injured parties, because they have runaway juries with injured parties, supposedly, but not runaway juries with corporate America.

Data General versus Grumman Systems Support Corp., a jury award for \$52 million.

Sullivan versus the National Football League, \$51 million. Litton Systems versus Honeywell, a \$1.2 billion verdict. Rubicon Petroleum versus Amoco, a jury award of \$500 million with \$250 million in punitive damages.

They have no bill in here for the last 17 years to cut back on this, not corporate America. Weller versus Deloitte & Touche, jury awarded \$77 million in punitive damages and \$112 million in compensatory damages—\$77 million in punitive damages, malpractice.

Amoco Chemical Co. versus Certain Underwriters at Lloyds of London, jury award of \$425 million with \$341 million in punitive damages.

Avia Development Group DFW Inc. versus American General Realty Investment, \$309 million; only \$47 million in actual compensatory damages with \$262 million in punitive damages.

Arntz Contracting Co. versus Saint Paul Fire and Marine Insurance Co., \$127 million; only \$16 million in compensatory but \$100 million in punitive.

Mr. President, where is the national problem, if there is one, on punitive damages? There is the record. That is just last year. And this is the crowd now that they want to put you in the hands of with respect to corporate America.

I read their actions. I have never seen cases of \$200 million and \$300 million and \$42 million. I was just looking,

over the weekend, at the record with regard to defense companies.

This is just in the last 18 months, and this is entitled "Examples of Major Indictments, Convictions, or Recoveries Obtained by the Department of Defense Criminal Investigative Organizations." I will read that again. I want everybody to listen to this. This is the crowd that you are going to turn over everything to and put up all the hurdles for the poor little independent fellow that does not even have a lawyer. Here is how they act: "Examples of Major Indictments, Convictions, or Recoveries Obtained by the Department of Defense Criminal Investigative Organizations":

Maryland Assemblies, Inc., rack-teetering;

Sooner Defense of Florida, false claims;

Surety Bond Services, surety bond fraud;

Teledyne Electronics, \$5 million civil settlement, \$5 million in repairs for false testing;

Natel Engineering, \$1.1 million criminal fine, \$1.2 million in civil settlement, false certifications;

McDonnell Douglas Helicopter, defective pricing, \$1.4 million civil settlement;

Robinson Laboratories, \$250,000 in civil and criminal penalties for false testing;

Atlas Grinding and Machine, \$150,000 criminal fine for false testing;

Donco Industries, company fined \$10,000, environmental crimes;

The purchasing agent for GE and Martin Marietta. The agent got 39 months imprisonment, \$329,500 criminal fine; Martin Marietta and GE paid \$179,000 in reimbursements.

Health One Transportation Services, health care fraud, \$2.9 million civil settlement;

Bicoastal Corp., former Singer Co., \$1 million fine; false certification.

AEL Defense Corp., \$2.2 million civil settlement for defective pricing;

Phillips Components, \$9.6 million restitution for product substitution;

SPS Technologies, \$2.5 million civil settlement for product substitution;

Lucas Aerospace Power Equipment, \$850,000 settlement for cost mischarging;

Martin Marietta, labor mischarging, \$1.12 million civil settlement;

National Airmotive Corp., false claims, \$1.25 million criminal fine, \$1.75 million civil penalty;

National Technology Associates for labor mischarging, \$250,000 settlement;

Clark Surgical for bribery and false claims, \$3 million civil settlement.

Buffalo Pumps, a \$750,000 settlement for product substitution;

Teledyne Industries, false claims, \$1.5 million criminal fine.

Creutz Plating, environmental crime, convicted and ordered to pay \$165,000;

Preston Dairy, antitrust, \$200,000 criminal fine;

Mountain Oil, criminal antitrust, \$100,000 criminal fine;

Medley Tool and Model Co., defective pricing;

Hughes Aircraft Co., \$3.5 million criminal fine;

Teledyne Relays, Inc., product substitution;

Battenfield Grease and Oil Co., product substitution;

Systems Engineering, 46-count indictment, not disposed of;

Milspec Fasteners Corp., product substitution, company fined \$250,000;

Goodyear Tire and Rubber, defective pricing, \$9.1 million, civil settlement;

Westinghouse Electric Corp., manager, kickbacks and money laundering, 56-count indictment, awaiting trial;

Tura Machine Co., kickbacks in gratuities, company fined \$800,000;

Former purchasing agent for United Technologies, kickbacks, purchasing agent for GE, pled guilty to 39-count indictment, environmental crimes

Plas-Chem Coatings, indicted for environmental crimes;

Delta Pride Catfish, price fixing, \$1 million criminal fine;

Chemical Waste Management, environmental crimes, \$11 million criminal fines, penalties, restitution, and civil settlement;

Bartley Construction, environmental crimes, fined;

Teledyne—here we go again—false claims testing, \$2.2 million civil settlement;

National Health Laboratories, false claims, company fined a million bucks.

Owner of the Brussel Steel American Company, Buy American Act violation;

Blue Cross/Blue Shield of Mississippi, \$690,000 civil settlement;

Ultrasonic Research and Testing Laboratory, falsified test reports, \$300,000 fine;

LTV Aerospace and Defense, reduced contract prices by \$100,000;

Score Construction, false claims, false statements, convicted;

United Technical Electronics, product substitution, company pleaded guilty to conspiracy and mail fraud;

Monroe Wire and Cable, product substitution, \$532,000 civil settlement;

Computer Tape Source, \$146,000 civil settlement;

Raytheon Co., defective pricing, \$3.7 million civil settlement;

Raymond Engineering Co., defective pricing, \$265,000 civil settlement;

Exxon Chemical, false claims, \$3 million fine;

Hyde, Inc., false claims, \$1 million in fines;

Laurel Optical Systems, \$595,000 administrative settlement;

DOT Systems, false statements, company debarred for 3 years and on.

Aikin Advance Systems, Inc., false statements.

Environmental crimes by Martin Electronics, 3 years probation, \$175,000 fine;

Martin Marietta, cost mischarging, \$6.7 million civil settlements;

AGF Food, cost mischarging, \$776,000 administrative settlement;

Lieberscope, \$1.5 million in damages and civil penalty;

Lockheed, \$1.5 million civil settlement for cost mischarging—on and on and on.

John P. O'Brien, CEO of Grumman Corp., Operation Upwind, pleaded guilty. Grumman agreed to pay \$20 million settlement;

Litton Systems, operation Ill Will, \$1.5 million criminal fine. I better go over and get that ill wind.

When this Congress talks about the Pentagon and Pentagon appropriations in defense, you can see it is a veritable "open sesame" of corporate America on our defense institution in this country. That struck me just reading the papers.

I have been in law work, like I said. I represented defendants and insurance companies. I represented injured parties. But I have never seen a heyday of legal work around here—fines and penalties and violations such as those coming for defense work for our best of the best, our Armed Forces. That is cases covering just 18 months; I just pulled them. I said: Just go over and pull the file that is official. I do not want to spread any rumors.

These are the companies; this is corporate America that they are talking about that is so belabored that now, oh, they want to cut out the multiplicity and the time consuming litigation and so on. That is exactly what they want. They have Workmen's Comp matters in here; they have the adjudication of cases, settlement controversy in here; they have different burdens of proof; they have that all interpreted by 50 States and the U.S. Supreme Court, and you can go on and on and on.

There is no question, in my mind, that what we are doing is falling into a trap that is easily discerned by those in the profession. Ask the American Bar Association. I can tell you, trial lawyers usually go to ATLA. They do not go out to the American Bar.

I used to do both. I can tell you the railroad companies would give you a pass. I had one friend who later ended up Chief Justice of our Supreme Court—we used to ride to the legislature, but his retainer was the railroad car card, and he and his wife could get on the railroad train any time in the world and ride free, get up in that Pullman and eat all of those good meals. He was the happiest fellow in Charleston, SC. And, of course, when they had the American Bar he would get the train and go West all the way out to San Francisco. When they had it in Reno, or Las Vegas, they would take the train and go on out that way.

The corporate utility lawyers with their club dues, yacht clubs, and country clubs and everything else like that,

now they are coming. They are the ones who go to the American Bar, I can tell you. I was a friend of the head of the division there of bonds and securities, none other than the former Attorney General of the United States. That is where I met him, when he was the chairman of the bond division, John Mitchell, of Caldwell, Trimble and Mitchell. But they are the lawyers—he was head of the Chase Club down there, where you go way up to the roof to get your martini and talk about settling cases. That is what they do.

And they want to get on a poor little plaintiff's lawyer who has all these burdens, and he has to get all 12 jurors. All you have to do as a defendant's lawyer is convince one juror and you are home free. You have to get all 12 on that jury, Mr. President, and it is not easy, and you have to be clear and convincing. You have to have a mighty strong case.

And then you can find that the juries now, they know all about insurance, as is now reported just last week in the New York Times on the front page, "U.S. Juries Grow Tougher on Plaintiffs in Lawsuits."

Well, they have done that long ago. The New York Times, I am glad they are catching up maybe in New York because they are caught up in the State of South Carolina. We have tough juries.

The lottery, I never heard of such nonsense in my life as to get into the product liability lottery. I just never heard it until we got here this morning, about getting into a lottery. The research shows awards have leveled off. And even then they say of all the defective products less than 10 percent actually bring a case and only 1 percent of those go to court. And if you take that figure, it is still less again that actually receive a recovery.

So, Mr. President, this is not a national problem whatever.

Proponents of the bill claim that product liability laws are the reason we don't yet have an AIDS vaccine. Absolutely false. This is a letter from Project Inform. Founding Director, Project Inform, Mark Delaney.

To whom it may concern:

Some groups have suggested that product liability laws are the principal reason we don't yet have a vaccine for AIDS. In response, they suggest that greatly relaxing such laws would result in quick or immediate marketing approval of such a vaccine. This is simply not the case. The principal reason that we don't yet have an approved AIDS vaccine is that no such vaccine has demonstrated the ability to protect humans against the normal routes of infection by HIV, the virus which causes AIDS, and no vaccine has yet been proven to be completely safe. No vaccine has yet reached the stage of testing where product liability issues are even a significant concern.

Instead, the committee voted against approval of wide scale testing primarily because the vaccines hadn't shown sufficient evidence of efficacy in initial trials, and sec-

ondarily because some safety questions remain, principally the question of whether such a vaccine might accelerate the course of the disease in someone who became infected despite vaccination.

Product liability concerns are not presently an obstacle to such testing.

That is June 22, 1994. I ask unanimous consent the letter in its entirety be printed in the RECORD.

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

PROJECT INFORM,
San Francisco, CA

TO WHOM IT MAY CONCERN: Some groups have suggested that product liability laws are the principal reason we don't yet have a vaccine for AIDS. In response, they suggest that greatly relaxing such laws would result in quick or immediate marketing approval of such a vaccine. This is simply not the case. The principal reason that we don't yet have an approved AIDS vaccine is that no such vaccine has demonstrated the ability to protect humans against the normal routes of infection by HIV, the virus which causes AIDS, and no vaccine has yet been proven to be completely safe. No vaccine has yet reached the stage of testing where product liability issues are even a significant concern.

Last week, as a member of the NIAID AIDS Research Advisory Committee, I voted against initiating widescale human testing of two proposed vaccines for AIDS, products of Genentech and Biocene, a division of Chiron Corporation. Liability issues never once entered the discussion. Instead, the committee voted against approval of wide scale testing primarily because the vaccines hadn't shown sufficient evidence of efficacy in initial trials, and secondarily because some safety questions remain, principally the question of whether such a vaccine might accelerate the course of disease in someone who became infected despite vaccination. Because these concerns remain unanswered, and because of the financial and human resources costs of the proposed trials, it was felt that the public interest would be best served by waiting for the availability of additional promising vaccine candidates which might be tested comparatively. These two vaccines, despite their weaknesses, are the products in the most advanced stage of testing and development for AIDS. Questions of safety and efficacy are thus larger still for any other vaccine candidates, which have not yet had even the level of human testing of these two.

There are many possible ways to build a vaccine for AIDS and I am in no position to argue that one approach is inherently better than another. Only a graduated, step-by-step testing process can determine which is the safest and most effective approach. Product liability concerns are not presently an obstacle to such testing, which must precede any marketing approval of a vaccine. Regardless of product liability concerns, the availability of a vaccine for AIDS is many years away.

MARK DELANEY,
Founding Director.

Mr. HOLLINGS. I yield the floor.
Mr. SHELBY addressed the Chair.
The PRESIDING OFFICER (Mr. MATHEWS). The Senator from Alabama.
Mr. SHELBY. Mr. President, first of all, I want to commend the distinguished Senator from South Carolina [Mr. HOLLINGS], for his defense of what

I say is people's access to court in America. He has worked on the Senate floor for many years before I even came to the Senate, and I commend him for his steadfast service.

Mr. President, I rise today in strong opposition to S. 687, the so-called product liability fairness bill. Listen to the label—product liability fairness bill. This bill not only has nothing to do with fairness, Mr. President, but represents what I view as Washington's standard surgical prescription for the common cold that we hear every day. Indeed, S. 687 is the product of a growing and I believe a dangerous trend in Washington to force Federal solutions to every purported problem no matter how big or how small, how real or how tenuous.

Mr. President, this bill carefully selects out and subjects certain product liability suits historically governed by State law for 200 years under our constitutional scheme to a uniform Federal law—something that is unprecedented in America.

One of the justifications given for this drastic encroachment on States rights is that product liability is responsible for hampering U.S. innovation and competitiveness.

Now, Mr. President, aside from a wealth of studies and evidence refuting any such causal link, it remains beyond me and many other Senators how the Federal Government believes that by cutting off individual rights in America it is somehow going to resolve these problems. It is deceiving to characterize the creation of uniform product liability laws as beneficial and fair to consumers, workers, and citizens in America. It is deceiving because it not only misconceives the tradeoffs being made but it presumes the need for such a tradeoff in the first place.

Are State and individual rights valued so little in this Senate? Why should the first response always be to federalize the system, particularly when there is so little evidence to suggest that federalizing State product liability laws will have any beneficial impact on either competitiveness or innovation, much less solve the so-called insurance crisis that we hear about. In fact, according to the American Insurance Association, commenting on a similar bill to federalize product liability law, "The bill is likely to have little or no beneficial impact on the frequency or severity of product liability claims. It is not likely to reduce insurance claims or improve the insurance market."

Mr. President, in 1990, the Office of Technology Assessment found that four factors—four factors—were most responsible for influencing U.S. competitiveness. They are capital cost, the quality of human resources, technology transfer, and technology diffusion. No mention was made of litigation costs, much less product liability litigation.

The fact is that these costs are only a small percentage of the overall costs that businesses bear in this country.

If we are concerned with U.S. innovation and competitiveness—which we are—why not, Mr. President, start first by relieving the economy and the American businesses of Federal regulatory burden and compliance costs, or lowering the costs of capital by cutting capital gains taxes rather than stripping individuals of their day in court?

Mr. President, these are all factors that the Federal Government can positively effect without taking the unfounded, unprecedented steps of depriving American citizens of their indispensable civil right to seek full and fair redress in court?

Mr. President, this bill promises so little for taking so much away from our citizens and our democratic system. It sets a bad precedent, and leaves everyone more vulnerable and less protected under the law. All litigation imposes some costs on society. So why stop at product liability law if you are going to do this? Why not federalize all personal injury suits, or would this be the first step? Mr. President, tort law could not be more firmly grounded in our State law and prerogative thereto, and yet with so little fanfare we could convert it to Federal purposes.

Whenever the Federal Government steps in and strips the States of their role in the Federal system by preempting State law, the Federal Government has diminished the civil liberties of every citizen in a real and a substantial way.

Mr. President, before we undertake to overturn 200 years of carefully crafted State tort law, let us be sure the cure is not more deadly than the disease. More and more, Mr. President, the States are being deprived of their ability to protect their citizens. More and more the role of State legislatures and State courts are trivialized by Federal preemption, and more and more, Mr. President, citizens are being told that Washington knows best. I wish we could be so sure.

I oppose Senate bill 687, and I urge my colleagues to do likewise.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, we heard today the opening arguments on S. 687. As one who does not have a law degree, I would take a look at this and hear both of these arguments. Both of them are very compelling. I support this legislation. It is my hope that after 14 years of consideration this important reform measure can be enacted into law.

I first want to thank Senator ROCKEFELLER of West Virginia for his leadership on this issue. No one has been more diligent than he has in seeking this reform. There is a reason for it. Firsthand, he knows about the forma-

tion of new products and new technologies. He is my chairman on the Science, Technology, and Space Subcommittee of the Commerce Committee. We had testimony on the development of new technologies with particular interest in new materials, new composites, new ways of doing business, and new technologies that would further this country and put us in a better competitive position.

We see firsthand, and we hear firsthand, testimony about how product liability is a deterrent, not only in the decision to make the investment in new technologies but also can we get it into the marketplace without the fear of litigation.

So I support this fairness act because it does not bar anybody from the courts. It does not infringe on any rights. With the patchwork of laws across the States, I believe that Congress needs to act now to remove some of the barriers that are infringing upon the economic growth in this country. The economy has rebounded some on its own. But the need for Congress to take action has not diminished.

The first time I walked into these Halls of the Senate in 1989, this was being discussed—almost 6 years ago, and still no action. The fact is the need for reform of our product liability system becomes more urgent every day as new products are being developed. The current system drives up costs in nearly every sector of our economy, and does very little to improve the quality or to increase safety.

This is a competitiveness issue. And when you talk about competition, both in the domestic market and on the international market, it most definitely is a jobs issue. Currently, the typical American manufacturer faces product liability costs that are 20 to 50 times higher than its foreign competitors. These just are not figures that are pulled out of the air. The additional cost makes American companies less competitive, and they lose market share to foreign competition. So they raise prices, lay off workers, which in aggregate—as they say, a cumulative effect—spells recession for the American economy. In effect, small business is just as vulnerable to this as so-called big businesses. In my State of Montana, we are all small business. We try to attract small manufacturers, and have small manufacturers in my State. They are affected too. So it is just not confined to the big corporations or America's big business. It affects all of them.

There was an 1,100 percent rise in the number of Federal product liability cases in the 1970's and the 1980's, which has driven up the cost of liability insurance. The burden of this increased cost is proportionately much greater for small businesses than it is for big corporations. It can be a make-or-break issue for the small manufac-

turer. The development of the high-technology communities in Montana to deal with biochemistry and the new technology is just now starting to grow. They do it on a shoestring with very, very limited access to investment capital. So it is a make or break for my State of Montana.

The issues have been presented here today, this is a consumer issue. They say if you are for product liability reform then you cannot be for the consumer. Well, that is not the way I interpret this law. Nobody is denied if they are harmed. Consumers do not benefit when the business community has to protect itself from runaway lawsuits. They are for it. That is our money. The additional costs are passed on to the consumer. The people who benefit most from this current system, and you guessed it, are the lawyers.

The General Accounting Office recently noted that more than half of the jury awards in the product liability trials go to attorneys. Other studies say that 50 to 70 cents of each dollar of jury awards to an injured person goes to—you guessed it—the attorneys. So it hardly seems like a system that benefits the consumer.

I would also echo and associate myself with the words of my colleague from Alabama. My chairman of the Commerce Committee has been the champion of the entree of every citizen into the courts of the United States of America. But there is a time when the system itself has to be more regarding of all facets of it. We must protect people from the careless manufacturers and defective products. This bill does not compromise that objective. It just ensures that we do it in a fashion that still allows American business to compete and grow in a global economy.

I hope that now when Congress once again is given the opportunity to reform this product liability system, we will do it. There are those who would say that we do not want to be in a global economy, we do not want to compete with other countries around the world. But those are folks who are living in a dream world, because there have been three inventions that cast us into that arena, whether we wanted to be a part of it or not. And if we have to do certain things to keep us competitive in that market, then we should do so.

So, for 14 years, maybe Congress, given this opportunity, will now pass this legislation, which I think—and this is a blue-collar thought—is not a draconian change from the system we are now using in product liability.

I thank the Chair and yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada [Mr. REID], is recognized.

Mr. REID. Mr. President, I rise in opposition to this so-called Product Liability Fairness Act, and I will vote

against cloture. We have seen this legislation before. It is really just the latest version of a piece of special-interest legislation. A group of chemical companies, drug firms, and other manufacturers in the drug industry have been trying to push it through this body for many, many years.

It is often the case that one can best understand the impact of proposed legislation by looking at who supports the legislation and who opposes the legislation. Well, the greatest supporters of this legislation are a handful of very large anticonsumer corporate entities. What has been distorted in all of the memoranda circulating in this legislation is the opposition. I listened to the chairman of the Commerce Committee lay out in some detail this afternoon the myth regarding the litigation and who it is that benefits from the litigation.

Who really is opposed to this legislation? In the State of Nevada, Mr. President, it is the consumer groups. It is groups of people who feel they will not be treated right in the future if this legislation passes—especially women's groups and consumer groups. Also opposed, Mr. President, is the National Conference of State Legislatures and over 70 law professors from around the country. As I indicated, almost all the women's rights groups—and, in fact, every major consumer rights organization—are opposed to this legislation. It is a diverse but formidable opposition that seeks to protect the rights of people injured by defective products. What the opponents of this legislation do not have is the ability to control advertising and public relations by paying high-paid media people to put out propaganda about how bad the product liability problem is in this country. This is a myth. It is also those who oppose this legislation that are dedicated to ensuring that the products we use are safe and practicable.

Mr. President, prior to coming here, I was an attorney. I tried lawsuits, over 100 jury trials. I represented insurance companies for the first decade, and, thereafter, I represented plaintiffs. So I have seen both sides of this type of litigation. I can say that there are very few product liability cases filed, for the reasons outlined by the chairman of the Commerce Committee. They are extremely difficult and very expensive. The plaintiffs' attorneys normally cannot handle the costs associated with them. I can remember one case where I sued a major oil company when I was a new attorney out of law school and thought I knew the law, which I did fairly well. But what I did not know is how it worked practically. I could not handle all the depositions, all the discovery that they did just to bill the hours. I was being paid on a contingent figure, and I could not handle that. Even though I had a case of merit, the case did not wind up that way. I had to

settle the case for almost nothing because I could not handle the costs. My client had no money to advance the costs.

It is a big myth that product liability litigation is clogging the courts. There are a lot of things we need to do to streamline what goes on in courts. One thing we could do is get rid of all the prisoner litigation in our Federal court system. In Nevada, about 40 percent of all the cases that our Federal judges initially deal with are cases filed by prisoners. We could really do something to streamline that. I ask all the people who have said they are supporting product liability legislation as a remedy for unclogging the courts to join with me on legislation I am going to soon introduce to speed up the process of prisoner litigation by setting up an administrative tribunal to handle those.

Mr. President, this institution—the Senate—rightly or wrongly, is often accused of favoring corporate and other special interests at the expense and concerns of ordinary Americans. Thus, the true opponents of this bill are our constituents, the hard-working Americans and families who make up the consuming public. Everyone should understand that those people in this body who are opposing this legislation are not supporting corporate interests or special interests, that we are supporting the small guy who cannot afford to handle litigation against these massive corporations.

The legislation pending before the Senate today is anticonsumer. Product liability law is the cornerstone of consumer protection in America. Since the industrial revolution, our laws have moved steadily forward to protect the rights of victims in our industrial and retail economy. The common law of the 50 States was developed to reflect the customs and values of our society. That is the true value of the common law.

What is the common law? The common law is a body of law that was developed originally in England, primarily from judicial decisions, based on custom and precedent. They were unwritten, as far as statutes. And judges would go back and say, well, this court decided this way, and that is the law of the land here, and we might change it a little bit, but we are going to base our decisions on those made by previous courts. When we formed as a country, we had all of the foundations of the English judicial system, and we brought that over here. We have our own common law, the foundation of which came from England and has been developed here for over 200 years. Product liability has also developed within the common law. We have based a lot of what we do in the courts on precedent set by other courts. That is the true value of following common law.

In Nevada, in the State and local courts, just like in every other State,

the common law has developed over time, reflecting the sentiments and values of the communities of the State of Nevada as they have evolved over time. We have a set of laws in the State of Nevada that has taken into consideration product liability that has developed in Nevada. We believe that we in Nevada have followed the right system. We have product liability that is not like in the State of South Carolina, that is not like in the States of Tennessee or West Virginia. Our system has developed since 1864, since we have been a State, and we want to keep it that way. We do not think the Federal Government should step in and say, "You should handle your product liability litigation the way we think you should do it in the District of Columbia."

So we like the way we have done things in the State of Nevada. But despite the way we like it in the State of Nevada, the proposed law, the bill in this instance, says to the State of Nevada and every other Senator's State, that we in the Senate know better than they do. It preempts long-established laws that reflect the beliefs and sentiments of our States and local communities.

It undermines the legal values that have developed in our States over time. In short, it subverts State rights to such an extent that I must oppose it.

As I indicated, I practiced law before I came here. I appreciate the value of Nevada's product liability precedents, the laws, and I honestly believe if there is a need to reform this body of law, it should be done in the Nevada State Legislature, not by the Congress of the United States.

Aside from the Federal preemption issue, this bill severely weakens the product liability law and threatens to expose consumers to a more dangerous marketplace and an unfair legal system.

There are a number of anticonsumer provisions that I find particularly disturbing in this legislation. It restricts compensation for pain and suffering. The bill eliminates joint and several liability for pain and suffering awards. The arguments in favor of eliminating these awards seem to assume, or suggest, that noneconomic losses are some sort of fuzzy or unreal damages not worthy of strict legal protection.

A lot of things have changed in this country since we became a country 200 years ago, but one thing that has not changed is the basic makeup of our jury system. As I indicated, I tried lots of cases. Juries did not always arrive at the right decision, but the vast majority of the time they did. As I say, they almost always arrived at the right decision, not always for the right reason, but juries have the sense of right and wrong, and that is why our justice system allows noneconomic losses, and rightfully so, because it protects the small person.

One of the more pernicious provisions of this bill is section 206. It is offensive because it denies the reality of, and is completely without sympathy for, the pain and suffering that can accompany a product-related injury.

I agree that pain and discomfort are not easily quantified.

But just as certain as pain and suffering is hard to quantify, pain and suffering is a real problem, and it is very real to an injured victim.

The case must be made for noneconomic losses. I think one of the more eloquent statements made on behalf of noneconomic losses came in a legal opinion from the California Supreme Court in the case of Fein versus Permanente, which I think was an insurance company. There the court said:

For a child who has been paralyzed from the neck down, the only compensation for a lifetime without play comes from noneconomic losses. Similarly, a person who has been hideously disfigured receives only noneconomic damages to ameliorate the resulting humiliation and embarrassment. Pain and suffering are afflictions shared by all human beings, regardless of economic status. For poor plaintiffs, non-economic damages can provide the principle source of compensation for reduced life-span or loss of physical capacity * * *. Often these plaintiffs may be unable to prove substantial loss of future earnings or other economic damages.

That says just about all of it.

So, by making joint and several liability unavailable for noneconomic damages, it is those victims with the worst injuries that would end up being undercompensated. In order to receive full compensation, such victims would be forced to pursue each party who had been responsible for their injury. It is clear that this provision would have a disproportionate impact on the poorest victims, as indicated in the example I gave to the chairman of the Commerce Committee involving one of my early lawsuits as a young attorney in Las Vegas. Really, what this provision attempts to do is shift costs from the strongest and wealthiest corporations to the poorest and weakest of our society.

Another provision of this bill which unfairly shortchanges the consumer is the virtual elimination of punitive damages. Here again, the consumer is the one who loses. There is no doubt that this bill makes it more difficult to recover punitive damages from manufacturers who recklessly and knowingly market unsafe products.

Mr. President, punitive damages are necessary to punish and deter manufacturers who consciously or recklessly market a dangerous product.

Mr. President, I remember the first verdict I got for punitive damages. I can still remember the woman's name. I can still remember the name of the case. It was against Safeway Stores. This woman was working as a cocktail waitress in one of the hotels in Las Vegas. The police came, arrested her

off the floor in her little costume that she was wearing, and took her to jail, charging her with writing bad checks.

I was able to show that Safeway was willfully negligent. They had recklessly arrested this woman. How do you stop Safeway Stores from doing this? To stop Safeway from doing this, the jury assessed Safeway punitive damages. In those days, it was a lot of money—hundreds of thousands of dollars. Safeway Stores stopped doing their bad check processing the way they did. The effect of this case, the name of which was Marganus versus Safeway Stores, is they stopped processing their bad check cases this way. They, in effect, did it differently. They would not pick some innocent person off their job. But for these punitive damages in this Safeway account they would be arresting other people just the way they arrested her. It is no more because of punitive damages. Punitive damages have the ability to set a social standard. That is what they are there to do.

They are necessary to punish and deter those who consciously or recklessly, in this instance, this litigation marketed a dangerous product and in the instance of Safeway Stores stop doing business the way they did. The logic and importance of punitive damages are quite simple. Without the threat of punitive damages, and the uncertain financial costs associated with them, manufacturers would be able to factor in as a cost of doing business the compensation to be paid for death and injury caused by their products.

This was the disturbing lesson that this country should have learned in the case of Ford Motor Co.'s marketing of the Pinto automobile. This bill, however, shows that we did not learn that lesson or we did not learn it well enough. In the Pinto case, Ford's own engineers determined that a lethal defect in the Pinto's gas tank would cause the car to ignite in a low impact rear end collision. However, Ford officials, doing a cold cost/benefit analysis, decided not to invest the \$11 per car that it would have taken to make the Pinto safe. Instead, Ford executives calculated that the cost of compensating injured and killed Pinto victims would be less than the price of fixing the defect. The Pintos were recalled only after a jury awarded stiff punitive damages to one victim's family. What is clear from this awful tragedy is that punitive damages literally save lives by preventing future injury and death.

Now, in the case I indicated about Safeway Stores, there was no death involved, but there was injury that needed to be compensated. And it is the same principle as the Pinto case.

Section 203 of the bill, which will result in a near prohibition of punitive damages, is really only a surreptitious way of shifting costs to consumer and worker victims.

Section 203(c) and (d) of the bill are no different. This section provides blanket immunity even for knowing and willful marketing of dangerous products so long as the products in question comply with relevant government standards. Unless overt fraud is involved, manufacturers of Government approved drugs, medical devices, and aircraft are given an absolute shield against punitive damages.

This overly broad protection is simply unfair to consumers. Government approval of a product should not give a manufacturer the license to recklessly market a product which it knows is unsafe or defective.

Why? At best, Government standards can become outdated, can become under-protective, and often do not reflect the state of knowledge of experts concerning safety.

One of my responsibilities in the Senate is chairman of a subcommittee on environment and public works. We have worked now for a couple of years. We are having some more hearings this month and next month. We have been working with TOSCA. TOSCA, as we know around here, is a shortened name about a law that was passed here to deal with chemicals that go into the marketplace.

Well, if we went by Government standards in approving those chemicals, it would give comfort where it should not be given. The Government's standards in TOSCA are not very good standards. So at best, Government standards can become outdated, can become underprotective, as with TOSCA, and often do not reflect the state of knowledge of experts concerning safety. Government agencies often lack the resources, as with this TOSCA legislation, or the capability to respond in a timely manner to report the safety defects.

And, at worst, government agencies are overly susceptible to the pressures of corporate lobbyists who will now have even greater incentive to achieve agency blessings for their clients products. The government approval standard is simply too blunt an instrument. For instance, there are many examples of FDA approved products causing injury. A recent GAO report found that approximately one-half of the drugs approved by the FDA had "serious postal-approval risks."

I do not mean to suggest that the FDA is not doing its job. It is doing the best it can. Rather, that we are faced with a system that is not meant to accomplish what this bill asks it to do. The process of approving drugs is difficult and time consuming. The Government is often under enormous pressure to put drugs on the market and is not always the first to know when problems begin to appear with a particular product.

The Government standards defense will encourage manufacturers to take

an approach to safety which focuses only on Government approval. There will be too little incentive to pursue safety measures beyond that level.

Punitive damages as I have tried to illustrate, Mr. President, serve important societal interests. These interests achieve the dual goals of punishment of specific faulty parties and creation of industry wide deterrents against future misconduct. In short, they create incentives to upgrade the quality of goods and services.

Even corporations themselves have recognized the important role of punitive damages. In 1987, the Conference Board surveyed risk managers of 232 major U.S. manufacturing, trade, and service corporations about the affect of product liability on their companies. In report No. 893, the corporate risk managers admitted that as a result of the impact of punitive damages and the tort system, "products have become safer, manufacturing procedures have been improved, and labels and use instructions have become more explicit." That is pretty good.

Mr. President, the proponents of this bill argue that without reform we will never be able to curtail the alleged products liability "litigation explosion." Here is where I want to talk a little more about what the chairman of the Commerce Committee said. While our courts are saddled with many lawsuits, I question the existence of a products liability litigation explosion. And, notwithstanding the facts proving otherwise, even if you are in favor of reducing litigation, you have to ask yourself whether trading away the rights of consumer and worker victims is the best solution.

As I said, however, I believe that the facts evidence that we are not experiencing an explosion of product liability cases. In fact, the number of nonasbestos related product liability cases in this country is actually declining. Prof. Mark Galanter of the University of Wisconsin School of Law recently conducted a comprehensive review of statistics for the Federal courts. He found that if asbestos cases are excluded, the number of product liability cases in the Federal courts has declined in the last 5 years from 8,268 cases in 1985 to 4,992 cases in 1991, a 40-percent decrease.

Similarly, the National Center for State Courts recently published statistics showing that in the State court system there have not been dramatic increases in tort cases. The statistics show that tort filings make up less than 1 percent of all cases filed in State courts and less than 10 percent of most States civil case load. Of course, product liability cases, which are only a subset of all tort cases, would make up an even smaller percentage of this total.

If any kind of litigation explosion does exist, perhaps it is the fault of in-

ternecine corporate battles. Professor Galanter's—the man from the University of Wisconsin who I previously quoted—found that the real increase in litigation in recent years has been business suing business, the corporate free-for-alls. And is it not interesting, as the chairman of the Commerce Committee pointed out, this legislation covers everybody but them. They want to still be able to have their corporate free-for-alls. The chairman of the Commerce Committee ran out of breath trying to relate all the numbers of dollars that corporations have been paying each other.

Disputes involving contract filings in the Federal courts increased by 232 percent between 1960 and 1988. And in 1988, that was the largest category of all civil cases in the Federal courts. Perhaps the corporate proponents of this bill need to shift costs to consumers in order to pay their lawyers while they sue each other.

Advocates of the bill say the current system unfairly benefits plaintiffs in product liability cases. A recent study by Cornell Law School Professors James Henderson and Theodore Eisenberg proves otherwise.

Mr. President, what we are talking about here are empirical studies. One done by the University of Wisconsin and this one I am going to talk about from professors at Cornell. After examining all product liability cases, this study found that product liability lawsuits clearly favor the defendants, favors the corporations.

They found that from 1976 through 1983, defendants benefited in roughly 51 percent of product liability cases. By 1988, the figure had increased to almost 65 percent. It keeps getting better for the corporate defendants, Mr. President.

The other argument made by the proponents of this legislation is that we ought to sacrifice the rights of consumer and worker victims in order to eliminate what are purported to be erratic and excessive awards. However, studies have shown that the total awards for compensatory damages bear a strong relationship to the severity of the injury and the underlying economic loss. That does not sound too bad to me—the worse the damages, the more the award. That sounds fair.

In other words, our jury system works as it should: The greatest damages are awarded to the victims with the greatest losses.

That is the common law system that I have talked about here today, carried across the ocean when the colonists came here—mostly from England—and then developed in the last 200 years that we have been a country.

A 1989 General Accounting Office report on product liability confirmed this. The General Accounting Office found that the size of compensatory awards varied by type and severity of

injury in a manner consistent with the underlying economic loss. GAO concluded that compensatory awards were neither erratic nor excessive. Even in the case of punitive damages, the GAO study found that the amount of punitive damages awarded was correlated very highly with the size of compensatory damages.

Mr. President, it is important that further light be shed on some of the buzzwords being thrown around by the proponents of this bill. These corporations advocate the passage of this legislation because it will increase "competitiveness" and "innovation." These corporations have developed these buzzwords in the backrooms and in their public relations shops. The fact of the matter is, their theory is, "The best defense is a good offense," and they can pretty well get by with this because they have the corporate bucks to spread this propaganda around. People, who have benefited from the imposition of significant damages, like the woman at Safeway, they are not able to get their message out like the corporate moguls of this country.

Passage of this bill will do nothing to make American business more competitive. In 1990, the Office of Technology Assessment issued a report on the competitiveness of the U.S. manufacturing sector. The Office of Technology Assessment was developed in the Congress by bipartisan support—principally, Senators HATCH, KENNEDY, and STEVENS—to give Congress the ability to have an independent watchdog to handle the advance of technology that is taking place in this country. OTA was called upon to talk about competitiveness. They found that the four major factors influencing U.S. manufacturing competitiveness were, first, capital costs; second, the quality of human resources; third, technology transfer; and fourth, technology diffusion.

Beyond these four factors, OTA listed a host of other contributing factors. Conspicuously absent from their list and their report was any finding that the U.S. product liability system played any role in harming U.S. competitiveness—any role. It seems simply incredible to me to assert that a system that condemns products produced in a grossly negligent, fraudulent, or dangerous manner could be called destructive to the competitive posture of our great country.

The allegation that product liability law stifled innovation is equally groundless and self-serving. Proponents of this bill cite the pharmaceutical industry as an industry in which product liability lawsuits have hindered the development of new products. However, argument in this regard is undermined by the Pharmaceutical Manufacturing Association itself and their claims. The Pharmaceutical Manufacturing Association has recently run a national advertising campaign, touting its world

leadership in research and development. Their ad boasts the " * * pharmaceutical industry leads America's R&D efforts."

They cannot have it both ways. But, however, they have it, they certainly do not say that they cannot produce and do medical research.

I believe current liability laws promote innovation and competitiveness and benefit the consuming public. It spurs innovations in safe products by deterring the production of harmful products. How can it be to the interests of competitiveness to discourage innovations and safety?

If that is their idea of competitiveness, then that is not the kind of competitiveness that America needs. I ask my colleagues to join me not only in opposing this clearly anticonsumer piece of legislation, but to join me in not invoking cloture.

The PRESIDING OFFICER (Mr. HOLLINGS). The Senator from Wisconsin.

AMENDMENT NO. 1930

(Purpose: To amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes)

Mr. KOHL. Mr. President, on behalf of myself, Senator COHEN, and Senator MURRAY, I rise to offer an amendment to S. 687. This is an amendment that will help protect public health and safety; the amendment gives balance to the product liability bill, which I support and intend to vote for. As I begin, I would like to commend Senators ROCKEFELLER, DANFORTH, and LIEBERMAN for their diligent and positive efforts to reform our Nation's tort system.

The amendment I know turn to addresses the troubling use of court secrecy. Far too often, the court system allows vital information that is discovered in litigation—and which directly bears on public health and safety—to be covered-up: to be shielded from mothers, fathers, and children whose lives are potentially at stake, and also from the public officials we have appointed to protect our health and safety. That is not only wrong, Mr. President, I believe it is unacceptable.

This happens because of the use of so-called protective orders which are really gag orders issued by courts designed to keep information discovered in the course of litigation secret and undisclosed. Typically, injured victims agree to a defendant's request to keep lawsuit information secret. They are because defendants threaten that without secrecy, they will refuse to pay a settlement. And victims understandingly cannot afford to take such chances. While courts in these situations actually have the legal authority to deny requests for secrecy, typically they do not—because both sides have agreed, and judges have other matters they feel they must attend to.

To respond to this problem, we drafted anti-secrecy legislation last year. I note, however, that today's amendment differs from that original bill. Working closely with all sides on this issue—including the business community—we have modified the original legislation so that it is more responsive to the needs of defendants in court cases.

The amendment we offer is simple, effective, and straightforward. In cases that do not affect public health and safety, existing practice would continue, and courts could still issue protective orders as they do today. But in cases affecting public health and safety, courts would apply a balancing test: they could permit secrecy only if the need for privacy outweighs the public's need to know about potential health or safety hazards. Moreover, courts could not under this amendment, issue protective orders that would prevent disclosures to regulatory agencies.

In this way, our amendment will bring crucial information out of the darkness and into the light.

The need for change is clear. As we speak, the details of a \$4 billion breast implant litigation settlement are being ironed out. Most Americans do not know that studies indicating the hazards of breast implants were uncovered as early as 1984 in litigation; but the sad truth is that because of a protective order that was issued when that case was settled, this critical knowledge remained buried, hidden from public view, and from the FDA.

Ultimately, it was not until 1992—more than 7 years and literally tens of thousands of victims later—that the real story about silicon implants came out. How can anyone tell the countless thousands of breast implant victims that court secrecy isn't a real problem that demands our attention?

And the breast implant case is not the only one in which protective orders have operated to the detriment of public health and safety.

For over a decade, Miracle Recreation, a U.S. playground equipment company, marketed a merry-go-round that cause serious injuries to scores of small children—including severed fingers and feet. Lawsuits brought against the manufacturer were confidentially settled, preventing the public and the Consumer Products Safety Commission from learning about the hazard. It took more than a decade for regulators to discover the hazard and for the company to recall the merry-go-round.

There are yet more cases like these. In 1973, General Motors began marketing vehicles with dangerously placed fuel tanks that tended to rupture, burn, and explode on impact more frequently than regular tanks. Soon after these vehicles hit the American road, tragic accidents began occurring, and lawsuits were filed. More than 150 law-

suits were settled confidentially by GM.

For years, this secrecy prevented the public from learning of the dangers of these vehicles. It was not until a trial in 1993 that the public began learning of the alleged dangers of GM sidesaddle gas tanks and the GM crash test data which demonstrated these dangers.

Another case involves Fred Barbee, a Wisconsin resident whose wife, Carol, died because of a defective heart valve.

We learned in a Judiciary Committee hearing from Mr. Barbee that months and years before his wife died, the valve manufacturer had quietly, without public knowledge, settled dozens of lawsuits in which the valve's defects were demonstrated. When Mrs. Barbee's valve malfunctioned, she rushed to a health clinic in Spooner, WI, thinking, as did her doctors, that she was suffering from a heart attack. As a result of this misdiagnosis, Mrs. Barbee was treated incorrectly and died. To this day, Mr. Barbee believes that but for the secret settlement of heart valve lawsuits, he and his wife would have been aware of the valve defect, and his wife would be alive today.

We could go on to list more examples. But perhaps the more troubling question is, what other secrets are currently held under lock and key which could be saving lives if they were made public? Having said all this, we must in fairness recognize that there is another side to this problem. Privacy is a cherished possession, and business information is an important commodity. For this reason, the courts must, in some cases, keep trade secrets and other business information confidential.

However, in my opinion, today's balance of these interests is entirely inadequate. This amendment will ensure that courts do not carelessly and automatically sanction secrecy when the health and safety of the American public is at stake. At the same time, it will still allow defendants to obtain secrecy orders when the need for privacy is significant and substantial.

To attack the problem of excessive court secrecy is not to attack the business community. Most of the time, businesses seek and get protective orders for legitimate reasons.

And although a few opponents of product liability reform may dispute that businesses care about public health and safety, as a former businessman, let me tell you that they do care. Business people want to know about dangerous and defective products, and they want regulatory agencies to have the information necessary to protect the public. So this amendment is in no way anti-business.

Before closing, Mr. President, let me briefly address a claim that may be made regarding our amendment. Some may say that this amendment somehow kills S. 687. With all due respect such an allegation is not true. The

amendment does not, in any way, modify or restrict S. 687, and it does not conflict with the broader aims of tort reform, which I strongly support.

It simply says that we must protect not only the rights and interests of product liability defendants, but the interests of all Americans who are subject to health and safety hazards.

Indeed, it is perfectly reasonable and consistent to recognize both that the tort system needs fixing, and that the public and regulators need to be better informed about health and safety hazards. In fact, this amendment belongs on the product liability bill. S. 687 is about product safety and striking the right balance between consumers and manufacturers. And that is exactly what our court secrecy amendment is intended to do.

In closing, Mr. President, let me say that we in this country take pride in our judicial system for many good reasons. Our courts are among the finest, and the fairest in the world. But the time has come for us to ask: fair to whom?

Of course, the courts must be fair to defendants, and S. 687 helps move us in this direction. But because the courts are public institutions, and because justice is a public good, our court system must also do its part to help protect the public when necessary, and not just individual plaintiffs and defendants.

My amendment takes a step toward achieving this important goal—it helps ensure that the public and regulators will learn about hazardous and defective products.

So the bottom line is this: a vote against this amendment is a vote in favor of darkness and secrecy, and ignoring health and safety hazards, while a vote for this amendment is a vote for public safety and the public's right to know. And so I urge my colleagues to support this proposal on behalf of myself, Senator COHEN, and Senator MURRAY.

At this point, Mr. President, I send this amendment to the desk.

The PRESIDING OFFICER (Mr. MATHEWS). The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Wisconsin [Mr. KOHL], for himself, Mr. COHEN, and Mrs. MURRAY, proposes an amendment numbered 1930.

Mr. KOHL. 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:

At the appropriate place add the following new title:

TITLE —PROTECTIVE ORDERS AND SEALING OR CASES AND SETTLEMENT RELATING TO PUBLIC HEALTH OR SAFETY

SEC. . PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.

(a) **SHORT TITLE.**—This title may be cited as the "Sunshine in Litigation Act of 1994".

(b) **PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.**—Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new section:

§ 1659. Protective orders and sealing of cases and settlements relating to public health or safety

"(a)(1) A court shall enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making particularized findings of fact that—

"(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

"(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

"(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

"(2) No order entered in accordance with the provisions of paragraph (1) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

"(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

"(c)(1) No agreement between or among parties in a civil action filed in a court of the United States may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

"(2) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law."

(c) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1658 the following:

"1659. Protective orders and sealing of cases and settlements relating to public health or safety."

(d) **EFFECTIVE DATE.**—The amendments made by this title shall take effect 30 days after the date of the enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

Mr. KOHL. I yield the floor. I thank the Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, the Senator from Iowa, Senator GRASSLEY, is currently on his way to the floor to engage in discussion of the amendment of the Senator from Wisconsin. Until he arrives, 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. DANFORTH. 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. DANFORTH. Mr. President, in working out litigation, protective orders are an important part of the entire picture because they are necessary in order to provide that litigants are protected from, for example, making proprietary information public or making very personal matters public where it is not necessary to resolving the matter in litigation.

The issue of protective orders is dealt with in rule 26 of the Federal Rules of Civil Procedure, and this amendment is an effort to amend the Federal Rules of Civil Procedure on the floor of the Senate.

There is a process for taking up questions of whether or not the Federal Rules of Civil Procedure are to be amended. The process is that the Committee on Rules of Practice and Procedure of the Judicial Conference analyzes the proposed change or the need for changes to rules, then makes recommendations to the U.S. Supreme Court. If the Supreme Court approves the change, then the proposal is sent to Congress and the Congress has 7 months to modify or reject the proposal.

So there is this established process of addressing the question of whether or not to change the Federal Rules of Civil Procedure.

In fact, the precise subject that is brought up in this proposed amendment is a matter that at this very minute is being analyzed by the Judicial Conference.

For that reason, even if a Senator were convinced that this is a meritorious amendment—that would be debatable, but even if a Senator were convinced of that fact—still it would be a circumvention of the established process which has the judicial conference and the U.S. Supreme Court being part of the picture of when and whether and how to change the Federal Rules of Civil Procedure.

This issue has been raised in connection with legislation that has been introduced in the Senate, S. 1404, and the administration has taken a position in opposition to the legislation. I would like to read from a letter dated April 18, 1994, from Sheila F. Anthony, assistant attorney general, to Senator HEFLIN.

DEAR MR. CHAIRMAN: In anticipation of the hearing the subcommittee has scheduled for April 20 regarding S. 1404, the "Sunshine in Litigation Act of 1993," this letter proffers the views of the Department of Justice on the bill.

This bill would restrict the ability of Federal courts to craft appropriate protective orders in the course of litigation pending before them. Because the Department is currently considering protective orders in the context of a comprehensive civil justice reform study, we request that the subcommittee consider deferring further action on S. 1404 pending completion of our work during the summer of this year. However, we would be pleased to work with the Congress on this

proposal and similar proposals in the interest of forging an equitable approach to the use of protective orders.

In addition, we note that the Civil Rules Advisory Committee currently is considering changes in the Federal rule of civil procedure regarding protective orders. The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has circulated for comment a proposed change to Rule 26(c) and will hold public hearings in late April on that and other proposed rule changes. The Department of Justice has supported the use of the judicial rulemaking process to address such issues, rather than the introduction of legislation.

So, Mr. President, I think the real issue that is raised at least for the moment before the Senate is the issue of process, the correct way of addressing proposed rules changes to the Federal Rules of Civil Procedure, and for that reason it is my hope that this amendment will be defeated.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. In response to Senator DANFORTH, who suggested we should leave the problem to the Judicial Conference, while that conference has been studying this issue since at least way back in 1990, which is when we first convened a hearing on this subject, it has failed so far to propose any changes that seriously tackle the problem.

So the question I think is legitimately asked: How many more years must we wait for the Judicial Conference to wake up to this problem before it becomes appropriate for Congress to act? The rules enabling act does not stop Congress from making needed changes in the law. We have not given that power away, nor should we.

With respect to the judges conference, some people say that it is even slower getting things done than the Clinton administration is in making its appointments. I believe the bottom line is that this issue is fundamentally about the health and safety of the American people, and health and safety issues are for the Congress to decide, not for a small group of unelected judges and academics who concern themselves with technical procedural changes to the law. And even judges have made this comment. Judge Abner Mikva, for example, has testified that "this problem is too important to leave simply to rule changes."

With respect to my colleague's second point, I am surprised that the Justice Department has sent a letter asking us to go slow. In fact, Attorney General Reno has told me privately that she supports our effort, and so I am not sure why the letter asks us to go slow when it comes to protecting public health and safety and facilitating our Government's regulatory responsibilities. Maybe the Justice Department is simply trying to get its ducks in order. It seems as if the Department of Justice is forgetting that its ultimate responsibility is to protect the public.

So I think it is time that we act. We have waited for the judges conference to act now for 4 years. They have not. I am afraid that when they do act, it will be too little too late, and it will not take into consideration what we are charged to do here in the Senate, which is to protect the public health and the public safety. That is what this amendment is intended to do, and so I feel very strongly that we in the Senate should support this amendment.

Mr. SIMON. Mr. President, I am pleased to rise in support of this amendment offered by my colleague from Wisconsin. This amendment is a good illustration of why HERB KOHL is such a valuable Member of this body. He is speaking up for the public interest. The public interest is very clear on this.

Let me give you an illustration. There is a company called Miracle Recreation that built a playground piece of equipment—the pages would have a good word for it—called Bounce Around the World. One little girl lost three fingers. Several people had their legs cut and their bones crushed. Seventy-five people at the ages of 4 and 5 suffered serious injury. The Consumer Product Safety Commission heard about only one case and tried to check it out, but they did not know about the other cases because of court secrecy.

We were not protecting the public as we should have been protecting the public. Whom were we protecting? Well, we were protecting a company that is manufacturing something, and as long as that product is manufactured, if it is safe for the public, fine. But the public is entitled to know when something is not safe.

Just as a general rule, Mr. President—and you have been in Government, forgive me, quite a few years, as have I—when there is a marginal question about whether something should be kept secret or not, inform the public and the public will be well served. I believe that, whether it is foreign policy, military, or whether we are talking about the kind of thing from which Senator KOHL is trying to protect the public.

The public is entitled to know what is going on unless there is a major reason for not knowing. That major reason should be more than just protecting the hide of some company that has a product which is injurious to the public.

Senator KOHL is doing this body and this Nation a favor through this amendment. I hope it will pass and pass resoundingly, Mr. President.

I yield the floor.

Mr. GRASSLEY. Mr. President, I would like to speak in opposition to the amendment by the Senator from Wisconsin. He is dealing with a very technical area of the law. I wish to congratulate him for tackling it. However, I must oppose him. It is just as tech-

nical for me as it is for him, and probably this is something that two lawyers ought to be arguing about instead of having a businessman on his side and a farmer on this side speaking about these technical issues of the law.

But, regardless, he has proposed to take on this very technical area, and as a member of the Judiciary Committee, I am well aware of the process that is in place to take care of it.

It has already been mentioned by two previous speakers. I think it is important that process be preserved.

I would like to urge the Senator from Wisconsin to think of some way on the floor of this body that we could help him make the points that he wants to make without short-circuiting the process that has been in place for 60 years.

I know that Senator KOHL is very sincere about making important information about health and safety hazards available. But there is another process in place which will address this issue.

Sixty years ago Congress enacted the Rules Enabling Act. That is a law that governs the process for making changes to the various Federal Rules of Procedure which operate in the Federal courts.

As Judge Patrick Higginbotham explained when he was speaking before a hearing that we had on this bill, I would like to quote the judge:

The act establishes a partnership between the courts and the Congress designed to handle the daily business of the courts which matters are concerned to all the branches of government.

Congress delegated to the judiciary the drafting of proposed changes to these Federal Rules of Procedure. The Judicial Conference publishes the proposed changes and it solicits comments from the public.

After the public hearings—and there can even be some revisions after the public hearings—then the proposed rules are transmitted to the Supreme Court for the Supreme Court's review. And then Congress has 6 months in which to disapprove any proposed rule changes. It is only under those circumstances that changes become effective.

Senator KOHL's amendment has the effect—I am sure he knows this—of short-circuiting that process. He would have Congress legislate this matter right now, and avoid the process of careful consideration by the judges. He would have us go around the careful process of public hearings that are involved and consideration by the Supreme Court and then Congress. I think this would have the effect of undermining the Rules Enabling Act.

If Congress wants the responsibility for monitoring the effectiveness of the Federal rules, then I think we should abolish the Rules Enabling Act. Otherwise, we should not be engaged in reviewing the rules on a piecemeal, case-by-case basis.

In fact, the Judicial Conference is reviewing the issue of protective orders under the Federal rules. I think Senator DANFORTH mentioned this. It is very likely that later this year the Judicial Conference will issue a proposed change to the Federal rule. It would then be transmitted to Congress, and at that time, Senator KOHL will have an opportunity to offer changes if he does not like the way the Judicial Conference handles this issue.

I want to at the end of my remarks put a May 12, 1994, letter from Judge Patrick Higginbotham to Senator KOHL explaining the Judicial Conference process and have that printed at the end of my remarks.

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

(See exhibit 1.)

Mr. GRASSLEY. Mr. President, it is also important to know that the Justice Department opposes Senator KOHL's bill now before the Judiciary Committee. I heard Senator KOHL speak about Attorney General Reno's voicing support to him about his legislation. But the official communications we have had is the opposite; that his amendment is contrary to the official position. Most of their position is based upon the proposition that they believe in the rule enabling process.

In April, just before our hearing on Senator KOHL's bill, the same hearing that Judge Higginbotham spoke and addressed, Assistant Attorney General Sheila Anthony sent out to our subcommittee a letter opposing Senator KOHL's bill for two reasons.

First, in this letter, Ms. Anthony stated that the Department of Justice is working on a major civil justice reform initiative that will address the issue of protective orders.

And, second, Ms. Anthony wrote in support of the process underway within the Judicial Conference to address the issues raised in the Kohl bill. In other words, it sounds to me like she is backing up the position I just took that we should not short-circuit that process through the Judicial Conference.

Just 2 weeks ago, Ms. Anthony wrote to Congressman HUGHES explaining the administration's opposition to his bill, meaning Congressman HUGHES' bill, but which bill is similar to Senator KOHL's bill before us now. The Hughes bill, as I understand it, addresses disclosure in settlements and would prohibit sealed or confidential settlement agreements where the health and safety is at issue. Ms. Anthony wrote:

We oppose H.R. 3138 because the bill is an unwarranted restriction of the power of the Federal courts to enter non-disclosure orders when the balance of interests, including the public interest, support entry of such an order.

In her letter she also noted that court involvement in the settlements "could well result in significant burden on the Federal courts."

Everybody knows that we should not be doing anything that is going to burden our courts to any greater extent.

I would also like to place in the RECORD following my remarks the letters that I just referred to from Ms. Anthony.

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

(See exhibit 2.)

Mr. GRASSLEY. Mr. President, I hope it is clear, now that there are two branches of Government, the executive branch and the judicial branch, that are asking Senator KOHL to wait on this matter. They are not making any judgment on the worthiness of his suggestions, but, rather, respect for the process, and that process would preclude our acting at this particular time.

I have four issues that I would like to discuss in regard to Senator KOHL's amendment so I can state on a substantive basis my opposition to it as opposed to the procedural basis that I just stated which is also a basis for my opposition.

First, there is no crisis in court secrecy.

Second, this amendment will lead to more unnecessary litigation.

Third, it will impede settlements.

Fourth, we should learn from State experimentation.

In regard to the fact that there is no crisis in secrecy, Senator KOHL says that we cannot wait for the rules change to work its way through the cumbersome system. He argues that there is too much secrecy in the Federal court system. I respectfully disagree. I was a member of the Federal Court Study Committee appointed by Justice Rehnquist. Senator HEFLIN also served on that committee. That was set up for the years 1989 and 1990, to study the court system—the first time there was any study of it in the entire 200-year history of the judiciary.

Among the issues that the Federal Court Study Committee looked at—there were only four members of Congress on there, and there were 16 judges, lawyers, et cetera on there in addition to us. But among the issues that we looked at was that of protective orders.

Quite frankly, to my colleagues on the floor here, we did not find a crisis in secrecy. We cautioned in that report against legislative proposals called sunshine laws, finding they "would distort the discovery process and disregard the legitimate, privacy interests of the parties." We are talking about sunshine laws as they apply to the courts, not sunshine laws as they apply to the executive branch and the congressional branch. Those are two different issues entirely.

The leading scholarly work in this area has been done by Harvard Prof. Arthur Miller in regard to whether or not there is too much secrecy in our courts.

He testified at the court subcommittee hearing in 1990, and he has written very extensively on the issues. In a 1991 ABA Journal article, Professor Miller warned:

Allowing public access or public interest in litigation to assume an importance greater than the interests of the private litigants skews the traditional balance, transforming the courts into something other than dispute-resolution agencies.

The fact is the overwhelming majority of the public health and safety litigation is already out in the public domain. First, all pleadings—that is the complaints, answers, motions and briefs—are on the public record. Second, the news media follow these issues very closely, and information about defective products is accessible to the public, of course, through the newspaper articles and through investigative television programs.

Second is the issue of whether or not we need more unnecessary litigation. Senator KOHL has tried to tailor his amendment in a very narrow fashion. I share the concern about public health and safety hazards, but allow me to explain the complications his amendment will cause for Federal judges and the burden it will add to the already backlogged Federal courts. Under current Federal Rules of Civil Procedure, 26(c), a Federal judge can enter a protective order "which justice requires to protect a party * * * from annoyance, embarrassment, oppression, or undue burden or expense * * *"

Protective orders in discovery, then, are fundamental to our judicial system. In the discovery phase of a case, parties are required to exchange information relevant to the lawsuit. But that information, Mr. President, is not always admissible in the trial under the Rules of Evidence. Protective orders help move a case along while respecting the privacy rights of the parties. As Professor Arthur Miller has noted; parties do not lose their rights to privacy when they are subjected to the jurisdiction of a Federal court.

Senator KOHL would require that before a judge enter a protective order, he or she have a separate hearing and decide that the protective order "would not restrict the disclosure of information which is relevant to the protection of public health and safety."

Alternatively, Senator KOHL would allow a Federal judge to balance the potential health and safety hazards with the need for confidentiality. This is a very broad standard, Mr. President. It has a potential to generate volumes of additional litigation. I wish we had a chance to have the benefit of a judicial impact statement from the Administrative Office of the U.S. Courts so Congress could be fully informed as to the new litigation that we would be creating for our Federal judiciary.

The examples Senator KOHL has raised and the witnesses who have appeared at our hearings, of course, are

very moving and very compelling. But this language would apply to much more than these forceful personal stories. Every patent or every trademark case which involved trade secrets or confidential commercial information would have a separate hearing on the issue of health or safety. In addition, confidential, personal records in a case of sex or race discrimination or harassment could wind up as public information under this language. And contract dispute cases in the construction of a power plant would fall within Senator KOHL's amendment.

Finally, defendants who are brought into a lawsuit and who might willingly comply with discovery requests if it is done under a protective order, may be more likely to fight every discovery request with all of the resources that are available to them.

The result, then, will be more rancor. There will be more hostility to this process. And for a needy plaintiff, it might be extra years of litigation with no compensation for injury. Elizabeth Du Fresne of the Miami law firm of Steel, Hector, Davis, testified to these possible scenarios at our April hearing. She stated in her answers to the written questions:

Among the biggest losers, if protective orders are limited, will be those members of the public in the long line awaiting entree to the chambers of justice. Already overburdened judges will have to divert more judicial resources to hearings on discovery motions and will have less time available to consider the growing backlog of cases.

I think it will also impede settlements. Senator KOHL's amendment also prohibits settlements from being kept confidential. This will directly impede and will directly interfere with settlements at a time when Federal judges, with the blessing of Congress—and that was through Senator BIDEN's 1990 Civil Justice Reform Act—are trying to encourage settlements. What will be the incentive for a company to terminate litigation and settle a case if the company has to make the settlement agreement public?

As Professor Miller wrote in his 1991 ABA Journal piece:

The settlement process would be impaired if the parties could not rely on the assurance of confidentiality reached voluntarily in the settlement agreement. In fact, the greater incentive to litigate, simply to postpone or avoid public access to confidential information, would work to the disadvantage of poorer litigants.

Thus, Senator KOHL's amendment is likely to hurt precisely the people he seeks to help. Corporations have the resources to fight a case through the legal system. Often a plaintiff does not and could put the money achieved in a settlement to good use.

Let me give an example. In April, the Roman Catholic archdiocese in Cincinnati settled a case of alleged sexual abuse. The terms of the settlement are confidential, although the fact of the

settlement was reported in the April 19, 1994, Washington Post. I believe that sexual abuse is a public health and safety hazard. But is there really a public need to know about the terms of that settlement agreement? I do not believe so.

Senator KOHL's amendment, although well-intentioned, really would change the nature of our legal system. Judges would be more involved than ever in two aspects that were designed to operate without judicial supervision: discovery and settlement. This will breed enormous amounts of satellite litigation and unfairly burden our Federal judges at a time when the number of cases and backlogs are mounting anyway.

Lastly, I would like to point out that this type of provision that we are talking about here is in three States: Texas, Washington, and Florida. It has been rejected in many others, including California, Louisiana, and Rhode Island. At our April hearing, Ms. Du Fresne testified to the difficulties of the Florida provision. Texas State Judge J. Michael Bradford has written about all of the unanswered questions the Texas sunshine provision has raised and the extra litigation that will take place to clarify the Texas rule.

In fact, the Texas Civil Justice League, in 1992, wrote to the State of Washington Bar Association cautioning against adopting a similar rule.

This is quoting from that letter to the Washington Bar Association.

In light of the confusion, expense and delay that rule 76a has caused litigants and courts here in Texas, and the significant risks that such a rule poses to those involved in litigation, we feel compelled to advise you of our experience under the law and to caution you against the adoption of CR 26.

This, I might add, is from a State that has awarded some of the highest damage amounts to plaintiffs and is not shy about the activism of its courts.

In sum, Mr. President, Congress should not stick its nose where it does not belong. I am not saying we do not have a right to consider this, but we have another process. We ought to let that process work. We have an opportunity at that point if we do not like that process to amend those rules that come to us from the Supreme Court.

So, this kind of rule change is better left then to the Federal judges in the first instance, and then to our modification and our alteration or any suggestions that we have at that particular time when it comes to us. It is premature for the Senate to act today.

EXHIBIT 1

COMMITTEE ON RULES OF PRACTICE
AND PROCEDURE OF THE JUDICIAL
CONFERENCE OF THE UNITED
STATES,

Washington, DC, May 12, 1994.

Senator HERB KOHL,
Juvenile Justice Subcommittee, Senate Hart Of-
fice Building, Washington, DC.

Attn: Jack Chorowsky.

DEAR SENATOR KOHL: As I explained in my letter of April 27, 1994, I deferred until after the Advisory Committee meeting full response to your letter of April 25, 1994, regarding the proposed amendments to Civil Rule 26(c) on protective orders. I now respond and also answer the additional questions submitted after the hearing before your committee.

At its meeting in Washington, D.C. on April 28-29, 1994, the Advisory Committee discussed at length the public comments submitted on the proposed amendments to Rule 26(c), including the comments in your letter. Every public comment had been sent to each committee member prior to the meeting for careful consideration. At the meeting, the committee also heard the testimony of a witness in favor of the proposed amendments. A member of your staff, Jack Chorowsky, also attended the meeting and ably responded to the concerns expressed in your letter.

The Advisory Committee decided to defer taking action on the proposed amendments to Rule 26(c) until its next meeting on October 20-22, 1994. The committee wanted to study further: (1) recommendations that a court consider additional factors in modifying or dissolving a protective order, (2) other suggestions for clarifying the rule or present practice, and (3) suggestions that more empirical data be sought on the use of protective orders.

The committee shares your concerns about the risks of sealing information, recognizing the considerable public interest both in privacy and disclosure. We must respond appropriately to any mischief worked by discovery protective orders. As we see it, the issue is one of adjustment, balance, and proportion. Relatedly, we recognize important distinctions between Rule 26(c), which involves the disclosure of discovery material, and sealing orders that control the disclosure of information submitted to the court on motion or at trial. Much of the anecdotal evidence of abuse appears to involve sealing orders and not discovery protective orders.

The Advisory Committee tentatively believes that this matter should be addressed not by changing the standards in Rule 26(c) for granting protective orders, but by adding explicit language regarding the alteration or dissolution of such orders. The committee was persuaded that, although the basic concept underlying the proposed amendment remains valid, more empirical data should be obtained on the actual use and possible abuse of protective orders, as suggested in your letter. And it found very useful the preliminary data supplied by the Federal Judicial Center in its overview of the use of protective orders in the District of Columbia.

At the committee's request, the Federal Judicial Center has now agreed to enlarge its preliminary study. It will survey the dockets of several federal district courts to examine the number and resolution of motions for protective orders. The study should be completed in time for the committee to consider it at its October meeting. The committee also welcomed the offer of Jack Chorowsky to assist with documented examples of discovery orders concealing information affecting public health and safety.

The goal of the rulemaking process, as prescribed under the Rules Enabling Act, is to evaluate the need for a rule change and then to produce the very best rule possible. The process is neither easy nor swift. But all persons affected by a proposed rule, and other interested persons and organizations, are ensured ample opportunity to express their views for the consideration of the rules committees, the Judicial Conference, the Supreme Court, and Congress.

The proposed amendments to Rule 26(c) affect substantial competing interests among claims of privacy, public interest, and efficiency. Continuing the dialogue between Congress and the judiciary on this important matter can only lead to a fuller understanding of all the issues. I appreciate your spirit of shared concern, and I look forward to working with you and other members of Congress on this matter.

Sincerely,

PATRICK E. HIGGINBOTHAM.

EXHIBIT 2

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 15, 1994.

HON. WILLIAM J. HUGHES,
Chairman, Subcommittee on Intellectual Property and Judicial Administration, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN, this provides the views of the Department of Justice on H.R. 3138, the Federal Court Settlements Sunshine Act of 1993. For the reasons set forth below, the Department of Justice recommends against enactment of this legislation.

Subsection 2(a) of H.R. 3138 would bar any settlement made in a civil action to which the United States or its agencies are a party from being sealed and require that each settlement shall be available for public inspection, unless the court determines that there is clear and convincing evidence of a compelling "public interest" in limiting such availability. Thus, the provisions of a settlement that name a child that has been molested, a person who has tested HIV positive or who has contracted AIDS, or a settlement of great concern to private parties to litigation to which the United States or its agencies may also be a party, could not be withheld from public disclosure unless there was clear and compelling evidence of a "compelling public interest in limiting such availability." There is no apparent justification for restricting federal courts' authority in this extreme manner. Indeed, the proposed legislation articulates such a high standard for sealing a settlement agreement, it is difficult to imagine how a court could ever make the requisite finding to seal records.

We are not aware that a significant problem has been presented by the courts' exercise of their discretion to restrict access to settlements when a showing has been made warranting the entry of an order limiting access to a settlement in litigation in which the United States is a party. The United States clearly has an interest in protecting the confidentiality of sensitive personnel matters, law enforcement undercover operations and other substantial national security and related interests; private persons likewise often have important interests implicated in litigation to which the United States is a party. However, any outline of interests cannot serve as a complete catalog of the many different kinds of litigation to which the United States has been, or might be, a party. H.R. 3138 does not take into ac-

count the broad spectrum of litigation involving the United States. This militates against enactment because section 2(a) would apply across-the-board to all litigation, so long as the government is a party.

To be sure, the United States does not generally seek to seal settlements to which it is a party. In some instances, such as settlements pursuant to 15 U.S.C. §16(b)-(h), involving the Antitrust Division of the Department of Justice, and proposed consent judgments regarding discharge of pollutants into the environment (28 C.F.R. §50.7), the government actively ensures that there is wide dissemination of the terms of the proposed settlements or consent judgments. Thus, we do not oppose H.R. 3138 because we dispute the notion that most settlements and judgments to which the United States is a party should be public. We oppose H.R. 3138 because the bill is an unwarranted restriction of the power of federal courts to enter non-disclosure orders when the balance of interests, including the public interest, supports entry of an order.

Subsection 2(b) would bar dismissal without a court order of cases to which the United States or any agency is a party. This provision would prevent the application of Rule 41(a) of the Federal Rules of Civil Procedure to cause dismissal of cases by agreement of the parties without a court order as to cases (and only those cases) to which the government is a party. We do not believe that the courts should be encumbered with additional ministerial work. If the provision is intended to encompass more substantive review by the courts, we question whether the additional workload imposed upon the judiciary is warranted by any perceived benefit attendant to this extraordinary limitation on voluntary termination of litigation. Since voluntary dismissal of civil actions is a very common means of resolving cases, the change in procedure could well result in significant burdens on federal courts.

In addition, the mandate that a court order approve any dismissal necessarily would delay termination of litigation. In cases dismissed pursuant to settlement agreements, one affect of the delay would be to lengthen the time from the date of the settlement agreement to the receipt of check or other benefits of the settlement. Such a delay does not seem to be a fair result, especially since private litigation would not be subject to a comparable delay, regardless of whether the government is the plaintiff or the defendant in a particular case.

For the foregoing reasons, we oppose enactment of H.R. 3138. The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SHEILA F. ANTHONY,
Assistant Attorney General.

EXHIBIT 3

OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, April 18, 1994.

HON. HOWELL HEFLIN,
Chairman, Subcommittee on Courts, and Administrative Practice, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN, In anticipation of the hearing the Subcommittee has scheduled for April 20 regarding S. 1404, the "Sunshine in Litigation Act of 1993," this letter proffers the views of the Department of Justice on the bill.

This bill would restrict the ability of federal courts to craft appropriate protective

orders in the course of litigation pending before them. Because the Department is currently considering protective orders in the context of a comprehensive civil justice reform study, we request that the Subcommittee consider deferring further action on S. 1404 pending completion of our work during the summer of this year. However, we would be pleased to work with Congress on this proposal and similar proposals in the interest of forging an equitable approach to the use of protective orders.

In addition, we noted that the Civil Rules Advisory Committee currently is considering changes to the Federal Rule of Civil Procedures regarding protective orders. The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has circulated for comment a proposed change to Rule 26(c) and will hold public hearings in late April on that and other proposed Rule changes. The Department of Justice has supported the use of the judicial rulemaking process to address such issues, rather than the introduction of legislation.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SHEILA F. ANTHONY,
Assistant Attorney General.

Mr. GRASSLEY, I yield the floor.
The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I wish to respond briefly to my colleague from Iowa.

I want to point out again that the judicial conference has been considering this matter now for 4 years and it has failed to act, failed to recommend any change. We are told now that they are about to consider making a recommendation. Why have they waited for 4 years? When it comes to public health and safety not anybody, not the Senator from Iowa, or the Senator from Missouri, has suggested that the Congress does not have the perfect right to act to enhance and preserve public health and safety, as suggesting we ought to let the conference act, but nobody is suggesting that the Congress does not have the right to act.

What this amendment of mine and Senator COHEN and Senator MURRAY is saying that when it comes to a secrecy, a court secrecy proceeding, before the judge can allow that to occur, he simply has to balance the competing interests of the defendant who has a trade secret or information that is important to that company to balance that off against the public interest and the public's right to know. If in fact we are dealing with a defective product that could have wide ramification across the broad spectrum of the American public and the judge would make a decision. He would be required to consider the competing interests and then to make an appropriate decision.

The Senator from Iowa says that it would cause all kinds of problems, backlogs. Who knows how long this would take to add more judges?

I do not know the answers to those questions, but what is a court except a

public institution that must serve among competing interests, must serve the public interests or it is not a public court.

In closing, I would just like to read a comment from Federal Chief Judge Abner Mikva. He said recently:

I side with Senator Kohl in believing there is excess of court secrecy in civil litigation, and that it presents a serious problem for the health and safety of our population * * *.

I think that many scholars, and lawyers, and even judges forget that the courts are public institutions. They talk about privacy interests as if the only two parties in interest in the court system are the parties to the lawsuit. I have never been able to understand how we can justify the heavy expenditure of public funds and resources on the courts if the only interest to be served is that of the litigants * * *.

Courts are public institutions and any effort to close up the matters that occur in these institutions ought to be reviewed with a hefty jaundice. I hope that Congress can act.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the distinguished Senator from Iowa referred to the diocese of Cincinnati and the settlement of a sexual harassment case and said that secrecy was appropriate. I do not know anything about the sexual harassment cases in the Cincinnati diocese. I liken it to the time when the cardinal himself, Cardinal Joseph Bernadine of Chicago was charged and he took the exact opposite tack. He said, "I want an immediate trial. I want public disclosure of the facts."

And it was upon that that the plaintiff's so-called repressed memory was found to be no memory at all and the charges were withdrawn.

The cardinal, as a preacher and a pastor for his flock, prayed for the person who charged him.

But I disagree very strongly with the distinguished Senator from Iowa in that regard.

Incidentally, the Senator from Iowa says there is no crisis in secrecy. If you have secrecy in the first place how do you manufacture a crisis in it?

Well, I will make a stab at it, and it goes right to the issue of those who cannot bring their cases. We need to remove secrecy to help people bring their cases.

I never heard so much distorted logic on the floor of the U.S. Senate as we have this afternoon.

Let me give an example:

Two police officers were killed in Florida when their small traffic-control airplane crashed. Both of their widows sued the aircraft manufacturer. The manufacturer settled one of the lawsuits, then used the confidential settlement agreement to deny essential information about the crash to the second widow, who needed it to prove her case.

Both widows alleged that the design of the airplane's fuel system allowed water contamination of the fuel, and so caused the crash. The first widow's case was settled under a confidential agreement which sealed

all documents in her case, including reports of destructive testing of airplane wreckage, which had permanently changed the evidence of product failure. These reports were the only existing evidence of any defect in the airplane.

The second widow requested copies of the test reports. The manufacturer claimed that it could not produce the reports because of the secret settlement agreement! The second widow was forced to litigate her case for six years, going to an appellate court in one instance. During that time the plane manufacturer worked to get her case dismissed on grounds that she had not been able to show that there was any defect in the airplane—this despite the fact that the manufacturer held the only existing evidence of the cause of her husband's death!

When the courts finally agreed that the second widow had a right to the reports, the airplane manufacturer admitted that it was liable in the case and offered a settlement, thus making the reports irrelevant to her case and continuing to protect them from public disclosure.

The reports, and what they show about alleged susceptibility to fuel contamination of this aircraft type, are still secret. The aircraft type is still flying.

There you are, Mr. President, with respect to that one.

That one swallow does not make a spring; let us go on.

Here is a second example:

Michael McClenon, 8, McDill Air Force Base, Florida, became a paraplegic when the family car in which he was riding was involved in a collision in Liberty, Florida on June 13, 1987. His sister, Shenique, 12, died in the crash. The Nissan automobile was not equipped with rear shoulder harness seat belts. The manufacturer has repeatedly employed court secrecy practices to make it difficult or impossible for attorneys litigating Nissan restraint system cases to share information about their cases.

In the course of investigating the case and conducting discovery, their attorney learned of similar cases which had been settled in Texas and Hawaii. However, when he contacted the attorneys involved in those cases to see what they had learned about the alleged Nissan seat belt problem, he was told that they could not share their information with him because of protective orders entered in their cases. After the McClenon case began, a protective order was also entered in it and, because of it, the McClenons' attorney is prohibited from sharing his information with other attorneys handling identical cases.

The cars in question have not been recalled for retrofitting of shoulder harness restraints. Legal secrecy is impeding justice and public safety.

Another case:

Rhonda Bustamonte, a 21-year-old single mother, was horribly burned when her Chevette's fuel tank exploded as a result of a collision in her home State of Virginia in 1989. She survived the fire, but suffered massive scarring. Hundreds of thousands of Chevetttes are still on the road. And many are equipped with the same fuel system used in Rhonda's car. But widespread scrutiny of the safety problem continues to be limited by court secrecy practices.

Rhonda's car was a 1980 Chevrolet Chevette, first produced in 1975 with a

design similar to that of the Ford Pinto. Since the late 1970's, a series of suits against General Motors have alleged that the fuel system used in GM cars designed and built before the early 1980's was dangerous because of the location of the fuel tank, the type of fuel filler neck used, and the tendency of the doors to jam in rear-end collisions. In 1985, the Alabama Supreme Court upheld a jury's finding that a 1980 Chevette with that design, the same model as Rhonda's, was defective.

In defending Chevette fuel tank fire suits, GM systematically obtained protective orders that kept internal documents on the fuel system from public scrutiny. An attorney who has handled several Chevette cases states that all of his cases have involved protective orders which require secrecy about the settlements and return of all documents, and which bar sharing information with any other attorneys. Most other attorneys representing Chevette fire victims have had to conduct discovery from scratch as he did initially, and typically GM insists on, and gets, similar protective orders in those cases.

The Chevette is no longer produced. But its fuel-fed fires continue to occur and court-sanctioned secrecy continues to conceal the hazard.

Still another case:

Fred Barbee of Minong, WI, believes that his wife Carol would be alive today were it not for secrecy practices allowed by the courts. He believes that the process of court secrecy kept thousands of artificial heart valve patients, their doctors, and the news media from learning about a deadly defect in the valves.

The defective valves were manufactured by Shiley, Inc., a subsidiary of Pfizer, Inc. Barbee says that, in 1988, well after Pfizer began settling cases involving the valves and requiring promises of confidentiality in return, his wife's heart valve failed and she died as a result. He states that they had no notice of the problem with the heart valves and that, had they known there was a problem, they would have sought medical advice as to whether to have the valve replaced or what to do should it fail.

According to Pfizer's own statements, nearly 250 deaths have been caused by defective heart valves manufactured by Shiley. Pfizer has paid millions of dollars to settle numerous lawsuits in return for secrecy agreements. The company's heart valves are still implanted in some 50,000 people, though they were withdrawn from further use in 1986. A 1985 report on the defective heart valve has been withheld from the medical community and the public because of protective orders.

The Pfizer heart valve tragedy is still news. Another Pfizer heart valve case is presently pending in Houston, TX, with a major contest over disclosure of

documents. The case is *Lauterbach versus Pfizer*. ATLA appeared as *amicus curiae* in the case in March 1990, urging the court to make heart valve documents public so that heart valve patients, medical personnel, and scientists will have access to critical information.

Litigation was filed in Federal court in Florida against Pfizer, Inc., the manufacturer of a widely-prescribed anti-inflammatory drug, *Feldene*, alleging that the drug caused internal bleeding and that Pfizer failed to warn of that side effect. One of the plaintiff's principal allegations was that Pfizer withheld information about side effects from the FDA. But Judge William Zloch entered a protective order which prohibited the plaintiff's attorney from disclosing any information obtained from Pfizer to any governmental agency, including the FDA!

The case was later settled. But the FDA cannot have access to knowledge acquired by the plaintiff's attorney.

One further case:

Devra Davis, Ph.D., of Washington, DC., suffered a near-fatal allergic reaction to the painkiller *Zomax* in 1983. Davis required emergency room treatment for her anaphylactic reaction—a side effect not disclosed in the drug's package insert or in the then-current Physician's Desk Reference. *Zomax* was removed from the market about 2 months after Dr. Davis' reaction.

Davis is a toxicologist and epidemiologist who is presently Scholar in Residence at the National Academy of Sciences. She says that, following her own allergic reaction, she learned that the drug's producer, *McNeil Pharmaceutical*, had known for some time that fatal allergic reactions to the drug had occurred. But, she says, the company has used judicially sanctioned secrecy to keep this information from the public.

Davis states that secrecy orders and confidential settlements of litigation resulting from *Zomax* reactions have, in effect, severely hindered scientific research about *Zomax's* dangers. Scientists have no access to the buried information. Yet *Zomax* differs by just one molecule from *Tolectin-DS*, currently one of the most widely prescribed pain medications in the United States.

We could go on, Mr. President, but my frustration is that we have presented good sources and professional support for the defeat of this bill, from the American Bar Association, from all the legal councils, the retired persons organizations, the State Association of Attorneys General, the State Association of National Legislative Conference, and even the Conference on Chief Justices of the State Supreme Courts.

Yet, now, proponents of S. 687 come and plead on the floor, "Wait a minute, wait a minute, now. You have the Fed-

eral judicial conference that we want you to give sanctified regard, and we cannot even discuss it here and we should not even have this antisecrecy amendment up. It should be defeated on account of that conference."

But then, when the very same Conference of Chief Justices of the State Supreme Courts oppose Federal product liability, and they say we are handling product liability just fine at the State level and please do not start taking away the rights of injured parties with this discombobulated S. 687, then they don't want to follow the advice of the Conference of Chief Justices and say, "Oh, no, that is all right. What we have got is a crisis."

They cannot have it both ways. They cannot ask us to regard in any sense the position of the Conference of Chief Justices with respect to this amendment, but not with respect to the bill itself!

Yes, Mr. President, there is a crisis, but it is in secrecy, if there could be such a thing, not a crisis with respect to product liability.

I think the distinguished Senator from Wisconsin has done a great service for the U.S. Senate and injured parties in America in bringing this amendment to the floor.

I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, what we are talking about here are the settlement provisions under section 101 of S. 687.

I have read this bill carefully and it has language in it about an expedited process for settlement; but this bill really is a deterrent for settlements.

This bill has language, for example, that you cannot settle a case without having the consent of your employer; that means his insurance company. There are certain, proven statistics which show that a claimant wins slightly over 50 percent of those cases that go to court and are tried before a jury.

So, therefore, there is a question as to whether a claimant should seek to settle. So a claimant negotiates a settlement but finds out that he cannot settle because of the language on page 26, line 22.

The employee shall not make any settlement with or accept any payment from the manufacturer or product seller without the written consent of the employer and no release to or agreement with the plaintiff or product seller shall be valid or enforceable for any purpose without such consent. 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.

So a claimant is forced to settle on the basis of 50 cents on the dollar. But the employer—or, rather, his insurance company—under this law is entitled to

be made whole, 100 percent, for all benefits. Fairness? A deterrent towards settlement?

Then let us look at the language of the bill and how it has been written. The proponents call it fairness. In the expedited settlement provision they say that either party can make an offer of settlement and it is filed in court. If the other party does not accept it, the case goes to trial. In the event that the plaintiff gets less than the offer of settlement, there is a penalty. What is that penalty? That penalty calls for the defendant to pay a reasonable attorney's fee, not to exceed \$50,000. Then it says, a final judgment, and this is done by the court, not the jury, " * * * a final judgment is entered in an amount less than the specific dollar amount of such offer of judgment, the court shall reduce the amount of the final judgment in such action by that portion of the judgment that is allocated to economic loss for which the claimant has received or is entitled to receive collateral benefits."

That is nice, good language. But what is the definition of collateral benefits in this so-called fairness bill? One of the provisions of a collateral benefit is a person's life insurance. The injured person has been paying on his life insurance for 30 years. Then what happens? Under this bill, the amount of the life insurance that he has paid for during all his life—in the event that he is killed as a result of this accident—can be deducted from the amount of the judgment.

What about health insurance? An injured party will have doctor bills and hospital bills. Suppose, before he dies from his injuries, and is in a hospital for a month and incurs \$100,000 worth of bills. So we will say, therefore, if he had a \$200,000 life insurance policy and paid the premiums on them; however he cannot collect them; they go to the benefit of the defendant, the manufacturer. Talking about fairness, this is a misnomer if there ever was one.

Fairness? Let us read a little bit in this language of the bill and let us see if what is good for the goose is good for the gander:

A civil action brought against a manufacturer or product seller for loss or damage to a product it sells or for commercial loss is not subject to this act and shall be governed by applicable commercial or contract law.

A defective piece of machinery, sold to a factory, causes an explosion. Under this law the plaintiff, the owner of the factory, is entitled to receive all that commercial law allows under existing and applicable commercial and contract law, and this bill would not apply to him. But if an individual is injured or killed, he would be subject to this bill. If that factory blows up, under this bill's exclusion, the company would be entitled to a replacement of the factory, including damages to replace the equipment, and all loss of profits.

The business people do not want to come under this bill. The manufacturers do not want to come under this bill. They want to sue under existing law. And what do we see? That they are allowed to do so by excluding themselves from the provisions of this bill.

What is good for the goose is good for the gander. What is good for the gander is good for the goose. If it is so desperately needed, where have all of the tremendous judgments occurred? They have not occurred in the personal injury law. They have occurred in commercial law. The \$11 billion judgment that Penzoil got against Texaco did not involve one bit of personal injury or any death. It was a commercial case involving punitive damages and that has attracted attention.

I think of further aspects of fairness that I want to refer to, as we go along, but I just wanted to mention this in the beginning. I think we ought to carefully read this bill and see all of these exclusions, all of these advantages, all of this fine print that is made for somebody's advantage. And it is certainly not the injured party's advantage. The advantage is to the insurance company, to the manufacturer, and other defendants who might have a suit brought against them in regard to personal injury.

I will be speaking about this later. I ask unanimous consent as many times as I might talk, that it be considered one speech.

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

Mr. HEFLIN. I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. GORTON. 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. 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, today the Senate will begin consideration of S. 687, the Product Liability Fairness Act. We must reform the product liability system because it fails to provide injured persons adequate compensation in a timely fashion. In addition, the inordinate costs of the product liability system are a major burden on the competitiveness of American industry, and the unpredictable patchwork of inconsistent laws deters the development of innovative products.

I will deal with each of these three separate rationales for the passage of this bill later.

Since 1981, the Commerce Committee has reported six product liability reform bills. S. 687 takes a moderate, sensible approach to product liability re-

form, and it has strong bipartisan support with a total of 45 sponsors.

Product liability reform is essential because the current product liability system is inefficient and unfair. The tort system should award fair compensation in a timely fashion, but it does not do so. Cases can drag on for years. More than 20 percent of seriously injured persons receive no compensation for 5 years. A 1989 GAO study indicates that the average case takes nearly 3 years to resolve, longer if there is an appeal. When compensation is awarded, too much money goes to pay transaction costs, such as attorneys' fees, rather than to the injured persons. Former Commerce Secretary Robert Mosbacher testified that as much as 75 percent of the costs of the system go to transaction costs. This bill would provide both plaintiffs and defendants with meaningful incentives to settle product liability suits.

Not only does the present product liability system generate excessive costs and delays, it does not compensate injured persons in proportion to their losses. An injured person can expect to receive a windfall of nearly nine times his losses if his injuries are minor. Yet, if his injuries are severe, however, he can ordinarily expect to receive only 15 percent of those losses. A severely injured person cannot afford to gamble on the outcome of lengthy litigation. As a result, many are forced to settle for amounts far less than their injuries merit.

Product liability litigation arising out of workplace injuries demonstrates how costly litigation is and how little actually goes to injured persons. According to a 1994 survey by the Association of Manufacturing Technology, the average 100 claims filed against its members result in outlays of \$4.45 million in defense costs and \$3 million in subrogation paid to employers or their insurers. Claimants receive only \$3.35 million, which after the standard contingent fee of one-third, is reduced to only \$2.2 million. Thus, injured persons in these cases receive \$2.2 million, while total transaction costs exceed \$8.6 million, almost four times as much.

Injured persons are not the only ones who are treated unfairly by the tort system. It imposes inordinate costs on U.S. businesses and the entire American economy. Consider the case of just one company that wrote me last month. Lamb-Grays Harbor Co. of Hoquiam, WA, manufacturers materials handling equipment that is used in the pulp and paper industry. It employs 260 people in a very depressed county that has been devastated by the crisis in the timber and fishing industries. But the Lamb Co. carries a larger financial burden for product liability insurance than it does for taxes. As David Lamb said, "at least taxes require profits." The Lamb-Grays Harbor

Co. has never been found to have designed or built defective equipment yet it is forced to settle rather than risk corporate death at trial. Fully 85 percent of the claims against the company for product liability involve equipment installed more than 30 years ago. As Mr. Lamb stated,

The system is broken. The effect is that honest manufacturers bear a crushing financial burden that diverts funds from investment in development. Unscrupulous companies fold and reappear to avoid the expense. Injured individuals pay huge legal expenses on awards or get nothing. Everyone benefits from rational reform.

Mr. Lamb, I could not agree with you more. Mr. Lamb's experiences are not unique; his story is one that we hear over and over again and is one of the principal reasons that we must pass the bill.

The total cost of the American tort system is exorbitant. According to a 1989 study by the Tillinghast insurance consulting firm, total tort costs in 1987 were \$117 billion. This represents 2.5 percent of GNP. According to Prof. Robert Tollison of George Mason University, this figure is nearly double the level of U.S. net national savings and one-fourth the amount of gross private investment. A study by John Sophocleus and David Labano of Clemson University found that each new lawyer today in the United States reduces GNP by \$2.6 million. They reason that the work of such lawyers causes businesses to divert to transaction costs resources from undertakings that generate wealth and create jobs.

The excessive costs of the tort system put U.S. companies at a competitive disadvantage in world markets. According to a study conducted for the Department of Commerce, domestic manufacturers may face product liability costs up to 20 to 50 times higher than those paid by foreign competitors. Harold Mathers, president of Mathers Controls, Inc., of Burlington, WA, informed me that product liability insurance costs for his firm, which manufactures pilothouse controls for boats, are 10 times higher for products sold in the United States than they are for those sold overseas.

Important sectors of our domestic economy are losing substantial market shares to foreign competitors because the excessive costs of the product liability system put American enterprises at a competitive disadvantage in world markets. For example, the Association of Manufacturing Technology estimates that it has lost nearly 25 percent of its market share to foreign competitors in recent years. Much of this loss is attributed to the excessive costs of the current product liability system, which takes resources from and inhibits the development and marketing of innovative products. The U.S. machine tool industry spends seven times more on product liability costs

than on research and development. Seven times more, Mr. President, on product liability costs than on research and development.

Higher prices are just one aspect of our competitiveness problem. The current product liability system often leads manufacturer to decide not to market new products at all. The problem is particularly pronounced in the area of medical products and technology. The American Medical Association stated in 1988: "Innovative new products are not being developed or are being withheld from the market because of liability concerns or inability to obtain adequate insurance." More recently, James Vincent, chief executive officer of Biogen, Inc., testified before the Commerce Committee that he canceled development of an AIDS vaccine because of liability concerns. The conference board found in a survey of chief executive officers that nearly half of the firms in the survey have discontinued products as a result of the product liability system. In addition, 39 percent had decided not to introduce new product lines, and 25 percent had discontinued product research as a result of the system. Prof. Michael Porter of the Harvard Business School, author of a recently published book entitled "The Competitive Advantage of Nations," told the Commerce Committee: "American liability law as it is now structured causes companies to slow the rate of innovation." With a patchwork of 50 State laws, manufacturers often do not know what legal standards will be applied by a court in an economy where more than 70 percent of manufactured products move in interstate commerce.

The uncertainty of the current system extends beyond product manufacturing and into the scientific community. It stifles the scientific research that is essential for the development of innovative products. Dr. Malcolm Skolnick, a professor of biophysics at the University of Texas Health Science Center, who is also a lawyer, told the Commerce Committee at a April 5, 1990 hearing on product liability:

Scientific inquiry is stifled. Ideas in areas where litigation has occurred will not receive support for exploration and development. Producers fearful of possible suit will discourage additional investigation which can be used against them in future claims.

Former Secretary Mosbacher told the Commerce Committee that the unpredictability of the current system discourages research universities from licensing patents to business firms for fear of being sued as a "deep pocket."

This bill will restore fairness to the product liability system. It encourages the settlement of lawsuits without litigation based on rule 68 of the Federal Rules of Civil Procedure and through the use of Alternative Dispute Resolution procedures already on the books under current State law. Such proce-

dures will help injured persons receive compensation for their losses quickly without incurring substantial legal fees. These provisions do not in any way restrict an individual's right to a jury trial.

The bill also modifies the rule of joint and several liability with respect to noneconomic damages. This provision limits a defendant's liability to his percentage of fault for damages such as pain and suffering and emotional distress.

The bill changes the standard of proof for awarding punitive damages based on the recommendation of the American College of Trial Lawyers and the American Bar Association. The bill also provides for a separate proceeding on punitive damages, reflecting the fact that they are a quasicriminal type of penalty.

Mr. President, I have long supported efforts to reform the product liability system. I have opposed, however, earlier bills which I considered to be anticonsumer and too extreme. S. 687 is a modest proposal. It bears minimal resemblance to the pro-defendant product liability bills initially supported by business groups in the early 1980s. Very significant changes have been made over the years. Prof. James Henderson of Cornell Law School, a leading product liability scholar testified that S. 640, the predecessor legislation was a balanced, pro-consumer proposal.

Let me briefly mention the principal changes which have been made in this bill over the years that lead me to claim that this is a moderate bill.

It does not restore negligence as the basis of liability for manufacturers. In fact, it no longer preempts State law standards of liability for manufacturers. Those standards are left to the State and are developed in accordance with State statutes and the common law.

This bill does not create a "state-of-the-art" defense for manufacturers.

It does not create a defense for manufacturers of products that are inherently dangerous or unavoidably unsafe.

It does not modify or eliminate the doctrine of offensive collateral estoppel, a doctrine that permits a new plaintiff to utilize a result against a defendant from a prior case the defendant lost.

It does not require the claimant to identify the manufacturer of the product that injured him or her.

It does not contain any caps on damage awards.

It does not create a defense against liability for compensatory damages for products that comply with government standards.

It does not preclude courts from allowing evidence about product improvements to be admitted in cases.

It does not limit the amount of punitive damages awards, does not limit multiple punitive damage awards from

being imposed on a manufacturer for the same product, and it does not take away the jury's right to decide punitive damage awards.

It does not contain a broad statute of repose for consumer products.

It is important for me to intercede here, Mr. President, in saying that while a number of those provisions in earlier bills were ones with which I disagreed as being too anticonsumer, there are a number of these provisions which I would have included in the bill had it been up to me and up to me alone.

What that shows is that the distinguished acting President, this Senator and other proponents of the bill have listened very carefully to those who have objected to certain provisions in original proposals and have a truly modest and moderate proposal which may well not go as far as many of the proponents of legislation of this sort would like to do in an ideal world.

The proposal before the Senate today contains an extremely important provision that was included at the request of consumer groups. A discovery rule statute of limitations was added that will preserve a claimant's right to sue until he knows, or through reasonable diligence should know, both that he has been harmed and the cause of the harm. The provision would apply in both personal injury and wrongful death cases. In wrongful death cases, many states today automatically cut off a survivor's right to sue 1 or 2 years after the death occurred. The bill will preserve the survivor's right to sue until 2 years after the cause of death is discovered.

Mr. President, this bill allocates responsibility for injuries equitably. The current system does not do so. The current system is a lottery. A severely injured plaintiff is required to take a chance on the lottery in order to be compensated. Too often it is the victim who loses when this unpredictable system produces an unfair result. The system should encourage quick settlements that allocate responsibility equitably. This legislation accomplishes that. Moreover, by reducing transaction costs, this legislation should improve our manufacturers' competitive position in world markets. It is these excessive costs that pose an undue burden on manufacturers and discourage the development of innovative products.

I urge my colleagues to support this legislation.

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

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

Mr. ROCKEFELLER. Mr. President, there is no person in this body for whom I have greater personal affection and, I guess more importantly, respect than Senator HERB KOHL from Wisconsin. He and I agree on most issues. There is this kind of an automatic understanding between the two of us as we pass in the hall, almost kind of like talking without having to talk.

He has an amendment this afternoon on protective orders. I am not a lawyer. I am not an expert on that subject. But I do know this: There will come a time tomorrow morning when I will have to very reluctantly move to table his amendment to which the distinguished Presiding Officer also spoke. I want to just very briefly explain why because I do not wish to have to do that. I will not enjoy it. I will not like it. And it will not please me in any way.

But I will have to do it for a couple of reasons. One is because, if it were to pass—and I want my colleagues, those who might be here at this late hour or more probably their very able associates, to hear this very clearly—if it were to pass, if the Kohl amendment were to pass, it would in fact, for a variety of reasons, have an extremely bad effect on the prospects of the overall legislation, S. 687, passing.

It is just sort of a fact under the current law that the basis of settlements between litigants is often kept private. Often litigants want that to be the case because they do not want to open themselves to other potential suits, and they will feel very strongly about it. I mean a settlement is a rather personal matter. I suppose if it were taking place between giant corporations, one could feel differently. But many of these are very personal, and people have those feelings about it. It is also interesting that judges—I am not in a position to speak on the wisdom of judges, but judges are judges—very much want to be able to keep discretion as to this matter of protective orders, discretion of sealed appeals.

Having said that, that is not really the reason that I would move to table the amendment—which I will have to do at an unpleasant moment tomorrow—of my very good friend, Senator KOHL, from the State of Wisconsin. The primary reason is that his amendment simply is not related at all to the substance and the problems that a very careful coalition of Democrats and Republicans have worked for a very long time to put together, which is S. 687. It is a fragile balance that we have tried to strike.

I spoke earlier about the anger inside of me, even going back to my first inaugural address when I was Governor back in 1977, when people who are due money because they are injured—in this case State workers' compensation—do not get that money. They do not get it for a long period of time. So

that their injury, their pain and suffering, and their economic loss or their lack of being able to go to a job, their lack of being able to take care of their family, is simply unspoken to in terms of financial reward that they are deserving of because of the system. I spoke about that.

I am equally dismayed that, depending upon whom you talk to—and it is interesting that figures can vary in all of this—that litigants, victims, who sue under our current product liability laws will wait maybe 2½, 3, 4, 5 years or longer, but they will wait a very long time before they have any judgment that returns to them money. What is money to them? Money is healing. It is almost ludicrous to make this argument, but if somebody mangles his or her hand in a machine and 4 years later they are rewarded in compensation, of course, it means nothing. They have lost the use of their hand. It is academic, it is cruel, and it is the status quo; it is the system we have. It makes me very, very angry.

Another thing that makes both the distinguished Senator from Washington and myself very angry is the fact—and I would think this would make all Senators angry and upset, and at the very least contemplative, sharply, on the subject—that lawyers on both sides make more money than the victims do. That is a natural consequence of there being so much time taken to settle these cases, or if they ever go on—as 4 percent do—to juries, it takes so long. Lawyers make a lot of money and injured people make much less. That sounds like it might apply to a Third World country and not to the United States of America, but it is true.

So what a number of us have tried to do on both sides of the aisle in this legislation, in a very delicate balance which has been worked out through a period of 7 or 8 years—this being really the first time we have ever had a chance to discuss it on the floor of the Senate over a period of 13 years—is to try and shorten that time. Looking at the Presiding Officer, I can speak freely and easily about coal mines, because the Presiding Officer is very familiar with them. I can remember in my own State of West Virginia, in the 1970's and 1960's, there were constantly things called temporary restraining orders, because there would be a dispute between management and labor about a work rule or something within the mine. There was an automatic mindset that you just went right to the courts to get a temporary restraining order, and strikes would occur and ill feeling would grow even deeper, and nothing would be worked out, and lawyers would set to work and time would pass. It was ridiculous.

A number of us were involved in working out a system which we called settling the problem at the face of the mine—in the mine, where the dispute

would happen. Because both union and management bought into this, during the period of the 1980's, Mr. President, it was quite wonderful, and even the late 1970's, because there were no temporary restraining orders. Problems were settled at the face. What would normally take 2 or 3 years of litigation to settle would be settled in 2 hours or 2 days. That seems like a small thing but, of course, it is an enormous thing.

That is what the Senator from Washington, the Senator from Connecticut, myself, and others, are trying to change. We are dealing with very serious problems. It is a delicate balance we have struck. We must be honest about this. Not all manufacturers and businesses are happy about this bill. Those who oppose us would give the impression that this is a special interest bill. Well, it is not. I know from personal experience that there has been a long period of time when business, so to speak, was not happy with this compromise because it did not go far enough. I was insistent, as was the Senator from the State of Washington; I did not want to see a cap on punitive damages, and I was not going to vote for that—not on any kind of damages. I did not want to see any kind of denial of the jury process.

We have something called alternative dispute resolution. I have read some testimony or discussion of where alternative dispute resolutions were used in States and problems were settled in 2 days—2 days versus 4 years—and the effect on an injured person receiving compensation for a mangled hand. It is extraordinary what can happen if we pass this bill.

But if the amendment of the Senator from Wisconsin, which I as a nonlawyer cannot comment on—and as I listened to the Senator from Wisconsin and indeed the Senator from Illinois discuss it, there were many things that seemed attractive about it. I know very well that it would have a terrible effect on the result of this bill. I say that clearly and loudly, and I hope as many people in their offices hear that as possible. The Clinton administration, for example, which has remained silent on the bill, is very much against this amendment. The judicial conference, which has spent a long time already in discussing this matter—and the Senator from Wisconsin made reference to that, saying already for 4 years they have worked on that. I discussed that with some lawyers, and they said actually 4 years is not that long. Sometimes these things can take 8 or 9 years. I was not happy with that answer. But then I suggested that perhaps we could have a sense-of-the-Senate resolution in which the Senate would go on record encouraging the judicial conference and those attending to sort of hurry it up and give a series of reasons why.

The Senator from Wisconsin, I think, wisely declined to do that, because he

said I would like to have an up-or-down vote on my amendment.

That reminds me that I promised the Senator from Wisconsin—therefore, I will not yield from this promise—that he would have 45 minutes tomorrow morning before the vote to discuss this amendment further. I cannot instruct either the Chair, obviously, or anybody else to make that happen. But I want people listening to this to understand that it is very important to this Senator and the Senator from the State of Washington that this happen, that the Senator from Wisconsin come to the floor at 9 o'clock, or whatever the designated time would be; that he be there promptly at that time; and we will discuss his amendment further for a period of—I suggested 45 minutes, which was comfortable to him. I would like very much to see that happen. We could ask for a unanimous consent agreement, but we might not get it; I cannot guarantee that. But if he comes to the floor, I am sure he will have that time. I want him and his staff, and others listening to this, to understand that.

If judges do feel that they want to have this discretion, and if litigants do feel they do not always want to have what has resulted from this process opened up to the public, then there would appear to be a legitimate argument on the other side. In any event, notwithstanding anything that I have said, it is nevertheless still true that were this amendment to pass, it would have a terrible effect on the passage of the bill. I can only say that, and plead with my colleagues and their associates who are listening as I talk that this is the case.

There are so many things that we need to get done in this bill. I recognize not all support this bill, although I think a majority does, and more than a majority support this bill. Redressing some of the wrongs in our status quo is tremendously important to me. This is an act of deep conscience and sincerity on my part. I am not a lawyer, and I do not practice that craft. I do come from West Virginia, and I have seen justice denied and the effect of what happens when people who deserve do not get. That hurts. It hurts me personally, and it hurts—much more importantly—them.

So I just say at this point that I hope the associates of Senators who are listening will counsel their Senators that when this vote comes tomorrow, when I make the motion to table, that the motion to table be successful, and the judicial conference has a chance to work this out. And that, in any event, the amendment is not relevant to the product liability tort reform bill. That I can say in my knowledge with confidence.

So having made that point, Mr. President, I would like to remind our colleagues—and I am sure I am joined

by my very distinguished friend and Senator from the State of Washington—that we are here and that amendments are due. Amendments were filed this afternoon. There is nothing that of which I know that is particularly illegal or unconstitutional about someone coming to the floor and offering an amendment. That does not appear to be the case.

The Senator from the State of Washington and myself and the distinguished Senator from Illinois in his captive position are the only three Senators on the floor, and we would welcome those who come and offer their amendments.

This is a very, very important bill. A lot of work has gone into it over many, many years, and it has been deeply and profoundly misrepresented in public by consumer groups and it has been, frankly, stunningly misrepresented by speeches that I heard myself from other Senators on this very afternoon. But that is the way one battles on legislation and I understand that.

In any event, if there are Senators who have amendments, I would wish that they would come to the floor and offer them. We are open for business, and with that less than Shakespearean pronouncement, I suggest the absence of a quorum.

Mr. GORTON. No. Hold.

Mr. ROCKEFELLER. I withhold that for a moment.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, my distinguished friend from West Virginia has spoken both to the Kohl amendment, which is before us at the present time, and more generally to some of the considerations in favor of the bill itself.

I should like to take this opportunity to thank him for his absolutely dogged pursuit of this very, very important issue, under difficult circumstances, circumstances which have on a number of occasions separated him from some of his friends and allies in this body. But his feeling for the public interest in this reform and our litigation system is very much to be commended and is equally important to this country.

The Senator from West Virginia spoke about transaction costs. Let us put that simply. When we have a system in the country pursuant to which people are to be compensated for injuries, in which 50 percent, two-thirds, 75 percent of all of the money which funds the system goes to transaction costs, that is to say, mostly to lawyers, to investigators, to people surrounding the system itself, and as little as 25 percent to injured victims, something is broken that needs fixing. We should not have a system of justice in which the great bulk of the money goes into transaction costs rather than to victims.

A number of major provisions in this bill are designed to lessen the amount

of money which goes into the transaction costs and to increase the share that goes to victims themselves.

The second principal reason for this bill is its impact on American competitiveness and on individual businesses. The record is now replete with stories that are much more than merely anecdotal with respect to the costs imposed on our American economic system of our particular form of product liability.

Amounts of money, many times in excess of the amount of money we put into research and development, more money in many cases than comes to the Federal Government in taxes from the business enterprises at issue, tremendous amounts of money successfully defend against such litigation.

We have already, in this body, passed a bill relating rather narrowly to private, primarily piston-driven aircraft in which it has been noted, without refutation, that close to 90 percent of all the employment in that industry has disappeared, closely to 90 percent of all of the production of aircraft in that industry has disappeared by reason of product liability litigation.

I shared with my colleagues at the time of the debate on that bill figures which, as my memory serves me, of an average of \$500,000 on the part of one manufacturer to defend each and every lawsuit brought against it based on a claim of product liability, not one of which was successful, not a single instance in litigation was successful, and yet at a cost to that company which has come very close to driving that company out of business.

Manufacturing efficiency, manufacturing competitiveness is clearly harmed by the present state of product liability law in the United States. This bill is designed in part to rectify that inhibition to our competitiveness. Will it do it all the way? By no means. Is it going to be a drastic 180-degree turn? No, it will not be. But I believe it clear that it will increase American competitiveness.

But perhaps more significant than either of these outlines is what it does to product development and particularly product development in the medical and the health care field.

This Congress and predecessor Congresses are rightly pleased and satisfied with themselves by reason of their encouragement of our investment in the United States in research and development in the broadest sense of that term. It is an appropriate way in which to work our tax laws, for example.

But when at the same time we permit a product liability system which may inhibit research and development more than any tax incentives we can provide will help, if we have our priorities mixed up, and when we have company after company telling us that it has cut back on research and development in certain areas, abandoned it in certain other areas, utilized it to the

point at which a development decision needs to be made and then abandoned development in even other areas because of the fear because of the expense of product liability litigation, we cannot then but be troubled about our future both in technological development and in the development of expanded and better health care systems in the country.

These are the three areas at which this legislation is aimed. It is not a perfect answer in any one of them but it is a step forward in each of them.

Will it encourage more research and development? The answer is yes.

Will it make us more competitive as a country? Yes.

Will it see to it that a larger percentage of the money that does go into the product liability system actually gets to victims? The answer to that question is also yes.

At this point, Mr. President, I join with my colleague from West Virginia in speaking against the amendment by the distinguished senior Senator from Wisconsin, Senator KOHL, in part of course because the amendment is not directly relevant to the legislation with which we are dealing here, in part because I think that its very theory is flawed and that it will be another step in encouraging more litigation rather than less which is the aim of this bill, but primarily because this is neither the time nor the place to deal with that subject of what happens to the records of civil litigation, whether that litigation has been concluded.

This Congress, or a predecessor of this Congress, has given primary responsibility for the rules of civil procedure in Federal courts to the courts themselves and to the Judicial Conference. During a period of 4 years that Judicial Conference has been studying this issue, I think it is about ready to come up with recommendations in connection with it. I do not believe that that is an excessive period of time during which all of the ramifications of this kind of issue ought to be studied. But in any event, the degree of knowledge about the actual way in which this proposal will work is certainly greater among the judges and the lawyers who must deal with it every day that it is here in this body. And that is particularly the case when we are dealing with it as a floor amendment to another bill.

A bill to do exactly this has been in the Committee on the Judiciary of this U.S. Senate for a considerable period of time and has not been acted upon. That in and of itself ought to warn us that perhaps there are considerations which cannot well be covered in a debate of a half a day on the subject.

As a consequence, whatever the merits of this proposal, Mr. President, it ought to be dealt with at least in the normal course of business in the operation of this U.S. Senate, but most ap-

propriately by the way in which the Congress of the United States over a period of years has dealt with changes in the Federal Rules of Civil Procedure.

Mr. President, at this point, I have here a 3-page essay, both on the procedures involved in dealing with this amendment and on its merits, which was prepared in the form of a Senate speech by a Victor Schwartz, an attorney of great erudition and experience in this field who has been a great help to me and to my staff and, for that matter, all of the members of the Commerce Committee of the U.S. Senate.

Rather than read it out and claim it as my own, I will simply state that I agree with everything that is included in it and I ask unanimous consent that that statement be printed in the RECORD at this point, with due credit to Mr. Schwartz.

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

The proposal of the Senator from Wisconsin sounds attractive at first blush, upon reflection, it will have onerous, far-reaching consequences that neither the courts nor the litigants can bear. At a time when the federal court system is in crisis, when litigation costs have escalated uncontrollably, this amendment would add a crushing new burden to federal judges' dockets. Under the current system, the vast majority of protective orders are agreed-to by the parties—the judge merely signs off on the order. This amendment, however, would require the judge to become fully involved in every protective order in every case. It would require that the federal district courts conduct, before entering any protective order, an intensive factual review of all material to be protected to ensure that the material does not affect the public health or safety. Judges will have to review every document (potentially thousands in any one case), that would be subject to a protective order, even where both sides have agreed to confidentiality between themselves.

What this means in practical terms is hundreds and thousands of additional hours of review by federal judges, often of extremely technical or scientific information. An entire new level of the judiciary would need to be created in order to conduct these inquiries. Moreover, far from encouraging the free flow of information among the parties, the amendment will create a major disincentive for litigants to provide sensitive information to each other since there is no guarantee that it can be protected against public disclosure.

These problems with the amendment are not unrecognized. Despite a 5 year campaign by the plaintiffs' lawyers to pass similar protective order legislation in over 35 states, only one has enacted restrictive legislation. Three state Governors have vetoed protective order legislation because of the adverse impact on the courts and their states' business climate.

I'd like to make the stakes clear. The drain on judicial and private resources that this amendment will effect is a certain outcome. In contrast, the benefits to be obtained from the amendment are far from clear. The anecdotal evidence proffered in support of the need for this amendment thus far is just that—anecdotal. Not conclusive,

not methodical, not directly related to specific instances of abuse of protective orders. These are tragic stories, but they do not demonstrate any link between protective orders and the alleged concealment of dangerous products. Further, there is no evidence supporting the proposition that judicial review of uncontested protective orders will create a more informed consuming public—the courts are not information clearing-houses.

My disagreement with the amendment, however, goes beyond its merits, for I am extremely troubled at the prospect of the Senate considering this amendment at the same time at which the Judicial Conference is in the midst of studying the very same issue and proposing amendments to Federal Rule of Civil Procedure 26, which governs the issuance and dissolution of confidentiality agreements. Legislative action on this amendment at this time would directly contravene the rules amendment process established under the Rules Enabling Act. Our action would be particularly inappropriate in light of the express requests of both the Judicial Conference and the Department of Justice that Congress not act on this amendment until these organizations have finished their respective studies of this issue and have formulated recommendations for Congress' review.

Both organizations have independently been studying this issue for some time. The Advisory Committee on Civil Rules, in response to the concerns expressed by supporters of this amendment, is extending its empirical studies of protective order to include five district courts. These studies will augment the Committee's original empirical studies showing that there is no need to change the federal rule relating to the issuance of protective orders. The studies are expected to be complete in time for the October meeting of the Committee. Similarly, the Justice Department is studying the use of protective orders as part of a comprehensive civil justice reform study and has asked that action on the bill be suspended until the Department has had an opportunity to complete its study.

It is folly for the Senate to act now, before these studies are finished and before we have these expert agencies' recommendations, which might be utterly inconsistent with this amendment. I do not feel that we have enough information, with regard to either the existence of a problem or to its possible solutions to feel confident that this amendment is the right thing to do. Especially in light of the severe consequences that would result from adopting this amendment, I believe the Senate should insist on waiting for the results from the ongoing studies before we act.

So, in deference to the Judicial Conference, the Justice Department, and the Rules Enabling Act, I strongly urge that the Senate not act at this time on Senator Kohl's amendment. It is premature and it should be tabled. The consequences of acting now are too grave and the benefits too tenuous to justify anything more. I thank the Chair and yield the floor.

Mr. GORTON. Mr. President, I yield the floor.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, some time ago, I suggested that Senators were free to come forward and

offer amendments. As clear as my vision allows me to see, I do not see that phenomenon happening. I am not sure that there is an enormous amount of point for the three Senators on the floor, and, more importantly, the extremely hard working Senate staff on the floor, to wait here for the rest of the night. I would be happy to, but I am not sure that that will produce amendments.

So, I will, for the moment, suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CLOTURE MOTION

Mr. ROCKEFELLER. Mr. President, I send a cloture motion to the desk and ask that it be stated.

The PRESIDING OFFICER. 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 No. 2

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Calendar No. 409, S. 687, a bill to regulate interstate commerce by providing for a uniform product liability law:

Jay Rockefeller, J. Lieberman, Bob Kerrey, Herb Kohl, John Glenn, Harlan Mathews, Claiborne Pell, J.J. Exon, Slade Gorton, John Danforth, Nancy Landon Kassebaum, Phil Gramm, Paul Coverdell, Dirk Kempthorne, Conrad Burns, Lauch Faircloth, Connie Mack, Orrin G. Hatch.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that Senators be permitted to file first-degree amendments until 12:30 p.m., Tuesday, with regard to the cloture motion just filed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

MORNING BUSINESS

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 3 minutes each.

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

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

An 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 appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURE REFERRED

The Committee on the Judiciary was discharged from further consideration of the following measure which was referred to the Committee on Foreign Relations:

S.J. Res. 204. Joint Resolution recognizing the American Academy in Rome, an American overseas center for independent study and advanced research, on the occasion of the 100th anniversary of its founding.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent and placed on the calendar:

S. 2243. A bill to amend the Fishermen's Protective Act of 1967 to permit reimbursement of fishermen for fees required by a foreign government to be paid in advance in order to navigate in the waters of that foreign country whenever the United States considers that fee to be inconsistent with international law, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-538. A resolution adopted by the Missouri Chapter of the American Fisheries Society relative to the White River Reservoir operations; to the Committee on Environment and Public Works.

POM-539. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Environment and Public Works.

"HOUSE JOINT RESOLUTION 94-1036

"Whereas, a modern, well maintained, efficient, and interconnected transportation system is vital to the economic growth and health and the global competitiveness of our state and the entire nation; and

"Whereas, a highway network is the backbone of a transportation system used for the movement of people, goods, and intermodal connectivity; and it is critical to effectively address highway transportation needs through appropriate transportation plans and program investments; and

"Whereas, the 1991 "Intermodal Surface Transportation Efficiency Act" (ISTEA) established the concept of a 155,000-mile National Highway System (NHS) that includes the Interstate System; and

"Whereas, on December 9, 1993, the United States Department of Transportation transmitted to Congress a 159,000-mile proposed National Highway System that identified 104 port facilities, 143 airports, 191 rail-truck terminals, 321 Amtrak stations, and 319 transit terminals; and

"Whereas, ISTEA requires that the NHS and Interstate Maintenance funds not be released to the states if the NHS is not approved by September 30, 1995; and

"Whereas, the uncertainty associated with the future of the NHS precludes the possibility of Colorado effectively establishing a transportation system necessary for the state through the proper development of planning and programming activities: Now, therefore, be it

"Resolved by the House of Representatives of the Fifty-ninth General Assembly of the State of Colorado, the Senate concurring herein:

"That the General Assembly hereby requests the Congress of the United States to accelerate the process of developing and approving the National Highway System. The General Assembly also requests the Congress of the United States to pass legislation designating and approving the National Highway System no later than September 30, 1994; and be it further

"Resolved, That copies of this Resolution be sent to the President of the United States, the President of the Senate of the United States Congress, the Speaker of the House of Representatives of the United States Congress, and all the members of the Colorado delegation of the United States Congress."

POM-540. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Environment and Public Work.

"SENATE JOINT RESOLUTION 94-4

"Whereas, the current authorization of the Endangered Species Act (ESA, 16 U.S.C. 1531 et seq.) has expired and Congress will be considering legislation to reauthorize the ESA; and

"Whereas, the ESA's current emphasis on enforcement of penalties, and listing of species already on the verge of extinction rather than on measures which prevent species decline, is counterproductive; and

"Whereas, the Colorado Division of Wildlife's Nongame and Endangered Wildlife Program has been successful in its efforts to recover the sandhill crane, the peregrine falcon, the bald eagle, greenback cutthroat trout, the river otter, and the squawfish, demonstrating the need to incorporate greater state primacy into the ESA; and

"Whereas, the ESA should be implemented, like other federal statutes, to minimize adverse social and economic impacts; and

"Whereas, where the implementation of the ESA potentially results in the taking of private property rights, the injured person should receive fair and just compensation; and

"Whereas, the ESA should be implemented in a manner which respects interstate water compacts, equitable apportionment decrees, and the water allocation laws and water rights laws of the affected states; and

"Whereas, it is important that the State of Colorado be proactive in identifying solutions to existing and future endangered species problems which minimize the ESA's potential for interference with land and water use: Now, therefore, be it

"Resolved by the Senate of the Fifty-ninth General Assembly of the State of Colorado, the House of Representatives concurring herein:

"That we, the members of the General Assembly, request that the United States Congress consider that:

"(1) If a species is listed and a state has a recovery plan in place, individual permits for proposed actions and projects may proceed in that state unless the state decides that they

are in direct conflict with the state recovery program;

"(2) Populations of a nonlisted species established under a state recovery program be treated as experimental populations if the species were later listed under the ESA, in order to provide incentives for prevention of the species' decline;

"(3) A State Wildlife Commission not list species as threatened or endangered under a state program unless the listing is accompanied by a viable recovery plan that is fully funded;

"(4) The ESA be amended to require that the United States Fish and Wildlife Service take progress toward recovery of endangered species into account when administering the ESA, and that the definition of species "recovery" be expanded accordingly by a new subdivision specifically dealing with progress toward recovery of species;

"(5) Reauthorization of the ESA should contain a provision for state jurisdiction over "candidate" and "sensitive species" so designated by federal agencies;

"(6) The reauthorization of the ESA contain a provision for delaying a federal listing in states where a funded state recovery plan is in place;

"(7) The ESA be amended to provide for compensation for any diminution in the value of private property which results from the application of the ESA. "Private property" for this purpose should be defined to include all traditional property rights including, but not limited to, rights in land, water, and minerals; and be it further

"Resolved, That the State of Colorado is considering building a fish hatchery dedicated to native fish species primarily for the reproduction and stocking of species which are listed under the ESA; and be it further

"Resolved, That copies of this Resolution be sent to the President of the United States, the Chairman and Ranking Minority Members of the Senate Environment and Public Works Committee, the Administrator of the Environmental Protection Agency, and the Colorado Congressional Delegation."

POM-541. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Environment and Public Works.

"SENATE JOINT RESOLUTION 94-5

"Whereas, Federal environmental statutes frequently place substantial mandates upon state governments; and

"Whereas, under federal statutes, state governments are called upon to develop environmental regulatory programs which substantially adopt the requirements of such federal statutes; and

"Whereas, the burden of proof that the state environmental regulatory programs meet federal statutory requirements has traditionally fallen upon the state governments: Now, therefore, be it

"Resolved by the Senate of the Fifty-ninth General Assembly of the State of Colorado, the House of Representatives concurring herein:

"That the Colorado General Assembly believes that each state government should explicitly be given the responsibility and authority to enact legislation and to adopt regulations and policies which implement federal environmental statutes including the "Clean Water Act", the "Clean Air Act", the "Resource Conservation and Recovery Act of 1976", and the "Safe Drinking Water Act" and which achieve the goals of such federal statutes while conforming to the unique circumstances of the individual state; and be it further

"Resolved, That upon enactment of legislation and adoption of regulations and policies by a state government, it shall be the duty and responsibility of the federal government and each federal department and agency to facilitate the enforcement of any such state law under the applicable federal statute; and be it further

"Resolved, That in the case of a conflict between state law, regulation, or policy and federal law, regulation, or policy, the federal government may disapprove such state law, regulation, or policy, if it consults and negotiates with such state and provides proof based upon clear and convincing evidence and accept scientific information that such state law, regulation, or policy does not meet the requirements of the federal statute; and be it further

"Resolved, That copies of this Resolution be sent to the members of the Colorado congressional delegation, the leadership of the United States House of Representatives and Senate, the National Conference of State Legislatures, the Energy Council, and the Western Legislative Council."

POM-542. A resolution adopted by the House of the Legislature of the State of Michigan; to the Committee on Environment and Public Works.

"HOUSE RESOLUTION No. 718

"Whereas, in 1977, Congress granted authority to the state of California to establish its own more stringent automobile emissions standards to protect human and environmental health. This authority is contingent upon the determination of the California Air Resources Board and the federal Environmental Protection Agency (EPA) that the state standards are at least as protective of public health and welfare as the federal standards and upon the state's need for extreme measures to control air pollution in serious ozone non-attainment areas; and

"Whereas, under the Clean Air Act, this authority is granted only if the EPA finds that the determination of the state is not arbitrary and capricious, that the proposed state standards are required for compelling and extraordinary conditions, and that the accompanying enforcement procedures are consistent with preventing the endangerment of public health and welfare; and

"Whereas, in January 1993, California was granted an EPA waiver of federal preemption, allowing the implementation of the California Air Resources Board-Low Emission Vehicle (CARB-LEV) program. This LEV program includes a mandate for the production and sale of zero emission vehicles. However, the authority for this mandate is not found in the Clean Air Act. The state gained the authority for the mandate through the waiver of federal preemption which permitted the implementation of the CARB-LEV program; and

"Whereas, evidence now suggests that California is using its special standards-setting authority to go beyond the boundaries of protecting environmental and human health that were intended in granting this authority. Some observers feel that the special authority granted California could be used to solicit commitments from carmakers to build electric vehicle assembly plants in California. In return for a substantial investment in manufacturing base and jobs in the state, the evidence indicates that California is prepared to offer an easing of auto emission standards. The authority to establish more stringent emissions standards was only granted California in order that the state

could address its unique smog problems and not for any other purpose. Clearly, the easing of these stringent standards to obtain commitments from automobile manufacturers to invest in assembly plants and jobs which would be located in California is a misuse of the Clean Air Act. It could also result in the loss of jobs in other states. Now, therefore, be it

"Resolved by the House of Representatives, That we hereby memorialize the United States Congress, the President, the Vice President, and the Environmental Protection Agency to oppose any attempt by the state of California to use its special authority granted under the Clean Air Act to create an uneven playing field in exchange for automotive manufacturing plants and jobs; and be it further

"Resolved, That a copy of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, the President of the United States, and the head of the Environmental Protection Agency."

POM-543. A concurrent resolution adopted by the Legislature of the State of Kansas; to the Committee on Environment and Public Works.

"HOUSE CONCURRENT RESOLUTION No. 5024

"Whereas, in recent years the number of federal "riders" or conditions attached to federal funds earmarked for the states has increased dramatically; and

"Whereas, these riders threaten the states with subsequent loss of the federal funds if they do not adopt certain policies or laws; and

"Whereas, according to the National Governors' Association, states currently faced 13 different financial penalties under which they can lose from 5% to 100% of their highway funds for failure to comply with federal requirements; and

"Whereas, the government of the United States has a difficult time conceiving of the proposition that each state is a sovereign general purpose government and the proposition that the government of the United States is a limited purpose government; and

"Whereas, it is imperative that the State of Kansas assist in the education of the government of the United States with regard to the concept of sovereignty of the states; and

"Whereas, under the provisions of Section 333 of the Department of Transportation and Related Agencies Appropriations Act of 1991, the Congress of the United States has mandated that the Secretary of Transportation is required to withhold 5% of a state's portion of the federal aid to highway funds where the state has not enacted a law which complies in every respect with the federal concept of revoking or suspending the driving privileges of convicted drug offenders; and

"Whereas, under the provisions of Section 333 of the Department of Transportation and Related Agencies Appropriations Act of 1991, the Congress of the United States has provided that so as not to lose its federal aid to highway funds a state's legislature may adopt a resolution expressing its opposition to being coerced by the federal government into enacting a law to revoke or suspend the driving privileges of convicted drug offenders; and

"Whereas, in order not to lose federal aid to highway funds, the Governor of the state must also certify to the Secretary of Transportation that the Governor's state is opposed to being forced by the federal government into the enactment and enforcement of

a law revoking or suspending the driving privileges of convicted drug offenders solely for the purposes of avoiding federal sanctions: Now, therefore, be it

Resolved by the House of Representatives of the State of Kansas, the Senate concurring therein, That the Kansas Legislature certifies to the Secretary of Transportation, under the provisions of Section 333 of the Department of Transportation and Related Agencies Appropriations Act of 1991, that it is opposed to the enactment and enforcement of a law relating to the revocation, suspension, issuance and reinstatement of the drivers' licenses of convicted drug offenders set forth in 23 U.S.C. 159; and be it further

Resolved, That the Kansas Legislature, so as not to lose federal aid to highway funds, and in order to help the government of the United States understand its limited mission, urges the Governor of the State of Kansas also to certify to the Secretary of Transportation that this state is opposed to being forced by the federal government to enact and enforce a law revoking or suspending the driving privileges of convicted drug offenders; and be it further

Resolved, That copies of this Concurrent Resolution be transmitted to the Secretary of Transportation, the President of the Senate and the Speaker of the House of Representatives of the United States Congress, the Kansas congressional delegation and the Governor of the State of Kansas."

POM-544. A concurrent resolution adopted by the Legislature of the State of South Carolina; to the Committee on Environment and Public Works.

"A CONCURRENT RESOLUTION

"Whereas, a modern, well maintained, efficient, and interconnected transportation system is vital to the economic growth and health and the global competitiveness of our State and the entire nation; and

"Whereas, the highway network is the backbone of a transportation system for the movement of people, goods, and intermodal connectivity; and

"Whereas, it is critical to effectively address highway transportation needs through appropriate transportation plans and program investments; and

"Whereas, the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) established the concept of a one hundred fifty-five thousand mile National Highway System which includes the Interstate System; and

"Whereas, on December 9, 1993, the United States Department of Transportation transmitted to Congress a one hundred fifty-nine thousand mile proposed National Highway System which identified one hundred four port facilities, one hundred forty-three airports, one hundred ninety-one rail-truck terminals, three hundred twenty-one Amtrack stations, and three hundred nineteen transit terminals; and

"Whereas, ISTEA requires that the National Highway System and interstate maintenance funds not be released to the states if the system is not improved by September 30, 1994; and

"Whereas, the uncertainty associated with the future of the National Highway System precludes the possibility of the State to effectively undertake the necessary and properly developed planning and programming activities: Now, therefore, be it

Resolved by the House of Representatives, the Senate concurring: That the members of the General Assembly memorialize the Congress of the United States to develop and ap-

prove quickly the National Highway System no later than September 30, 1994; and be it further

Resolved, That a copy of this resolution be forwarded to the President of the United States, the Clerk of the United States House of Representatives, the President of the United States Senate, and the South Carolina Congressional Delegation."

POM-545. A resolution adopted by the Board of Supervisors of Fulton County, New York relative to health care reform; to the Committee on Finance.

POM-546. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Finance.

"LEGISLATIVE RESOLUTION NO. 31

"Whereas the Omnibus Budget Reconciliation Act of 1993 changed the point of collection of the federal highway tax and, effective January 1, 1994, requires dyeing of diesel fuel that is exempt from the federal diesel fuel tax; and

"Whereas a regulation of the Internal Revenue Service requires dye to be added to nontaxable diesel fuel in the state; and

"Whereas the use of diesel fuel for taxable purposes in Alaska is substantially below that used in the rest of the United States; the State of Alaska has determined that less than five percent of all diesel fuel sold in the state is sold for taxable purposes for use in onroad vehicles and recreational boats, which means that 95 percent of the diesel fuel in Alaska will have to be dyed; and

"Whereas compliance with the requirement imposes a special hardship in rural Alaska in that the ability to meet the requirement in some rural areas is threatened due to the logistical limitations of available tankage and controls; and

"Whereas in a state in which there is a high per capita usage of private aircraft, the dye requirement poses a particular problem for private aircraft users in that dyed diesel is very similar in color to one or more fuels, which could lead to inadvertent mixing or substitution of fuels and increases the probability of improper fuel handling and potential for accidents, serious bodily injury, or death; and

"Whereas the Federal Aviation Administration is very concerned about these serious public health issues and associated safety risks; and

"Whereas the penalties for failure to comply with this legislation can be very high; and

"Whereas there is no indication of any tax fraud in the state related to the improper use of nontaxable fuel for taxable purposes; and be it

Resolved, That the Alaska State Legislature urges the United States Congress to take appropriate action to assure the elimination of the safety threats imposed by the current requirement that nontaxable diesel fuel offered for sale in Alaska be dyed by providing a waiver of the requirement."

POM-547. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Finance.

"HOUSE JOINT RESOLUTION 94-1005

"Whereas, it is imperative that patients and consumers of health care services be brought back into the financial equation if the cost of providing such services is to be brought under control; and

"Whereas, patients and consumers will reduce health care costs if they are allowed to benefit from prudent individual spending de-

terminations and if they use pre-tax dollars to establish individual medical accounts or individual medical savings accounts; and

"Whereas, it is important to preserve the excellent quality of American medicine by giving Americans the freedom to choose their own health care provider and not limiting their choice to employer- or government-designed health benefit packages: Now, therefore, be it

Resolved by the House of Representatives of the Fifty-ninth General Assembly of the State of Colorado, the Senate concurring herein:

"That we, the members of the Colorado General Assembly, hereby urge the members of the United States Congress to consider programs to encourage and facilitate the use of individual medical savings accounts, which will enable Americans to plan for their future health needs; and be it further

Resolved, That copies of this Resolution be sent to the President of the United States, the Speaker of the House of Representatives of the United States Congress, the President of the Senate of the United States Congress, and each Member of Congress from the State of Colorado."

POM-548. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance.

"A CONCURRENT RESOLUTION

"Whereas, the Gulf of Mexico is the most promising oil and gas province in the continental United States; and

"Whereas, the development of oil and natural gas resources is vital to the state of Louisiana and the United States; and

"Whereas, the search for new oil and gas reserves requires exploration further away from shore and at deeper depths; and

"Whereas, the increased distances, increased depths and other factors tremendously increases the cost of deepwater oil and gas exploration and production; and

"Whereas, without the development of the deepwater reserves in the Gulf of Mexico the United States will grow more dependent on foreign oil and natural gas to supply our daily energy needs; and

"Whereas, it would be most beneficial to the state of Louisiana and to all states in the nation to encourage and promote the development of these deepwater offshore resources; and

"Whereas, the oil and gas industry has encountered a difficult period of low prices, increased employee layoffs and a general reduction in size: And therefore, be it

Resolved That the Legislature of Louisiana memorializes the Congress of the United States promote the expedient development of these deepwater reserves by enacting tax credits, royalty relief and other similar steps that will encourage the immediate development of these vital resources found in the Gulf of Mexico: And be it further

Resolved That the Legislature of Louisiana memorializes the Congress of the United States to prevent unnecessary and burdensome regulatory requirements that would halt, hinder or impair the development of these offshore deepwater resources: And be it further

Resolved That a copy of this Resolution shall be transmitted to the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana congressional delegation."

POM-549. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance.

"A CONCURRENT RESOLUTION

"Whereas, the Tax Fairness for Main Street Business Act of 1994, also known as Senate Bill 1825, authored by Senator Bumpers, will remove some of the unfair advantages mail order companies now enjoy and allow "main street" firms to compete on a more equal footing; and

"Whereas, this proposed federal legislation is designed to promote equal competition between businesses located both within the state and around the country without placing an undue burden on any business; and

"Whereas, the National Governor's Association, the National Conference of State Legislatures, the National League of Cities, the U.S. Conference of Mayors and many other state and local government associations do endorse and support this legislation: Therefore, be it

"Resolved, That the Legislature of Louisiana hereby memorializes the Congress of the United States to enact Senator Bumpers' Tax Fairness For Main Street Business Act of 1994: And be it further

"Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana congressional delegation."

POM-550. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance.

"A CONCURRENT RESOLUTION

"Whereas, approximately six-hundred million dollars in local sales taxes and two billion, four-hundred million dollars in state sales taxes go uncollected each year as a result of the United States Supreme Court decision in *Bellas Hess vs. Department of Revenue*; and

"Whereas, the recent United States Supreme Court's decision in *North Dakota vs. Quill Corporation* held that the Congress of the United States has the authority to authorize state and local governments to collect sales taxes from interstate sales transactions; and

"Whereas, United States Senator Dale Bumpers has introduced legislation which would require mail marketers with annual United States revenues of three million dollars or more to collect state and local sales, or use taxes on all transactions; and

"Whereas, if this federal legislation is enacted, the estimated tax revenues for the state of Louisiana are thirty million, seven-hundred thousand dollars for the state and twenty-four million, nine-hundred million for local governments within the state; and

"Whereas, Louisiana retailers are at a distinct competitive disadvantage regarding the out-of-state retailers' exemption from the payment of state and local taxes: And therefore, be it

"Resolved, That the Legislature of Louisiana hereby memorializes the Congress of the United States to enact legislation authorizing states and local governments to collect sales taxes on interstate sales transactions: And be it further

"Resolved, That a copy of this Resolution be transmitted to the secretary of the United States Senate and clerk of the United States House of Representatives and to each member of the Louisiana congressional delegation."

POM-551. A resolution adopted by the House of the Legislature of the State of Oklahoma; to the Committee on Finance.

"RESOLUTION No. 1042

"Whereas, the U.S. annual trade deficit was over \$115 billion for 1993; and

"Whereas, the trade imbalance in the United States has increased 37 percent over the past two years; and

"Whereas, the value of imported goods into the U.S. has grown at a rate twice that of exported goods to other nations; and

"Whereas, the annual trade deficit with Japan grew in 1993 to nearly \$60 billion, an increase of 23.7 percent over the previous year, which represents more than one-half of the United States' annual deficit with the world; and

"Whereas, numerous imported goods from Japan are sold openly throughout the United States; and

"Whereas, trade policies in Japan currently prevent the sale of many American products; and

"Whereas, Japan has failed to negotiate objective criteria concerning open trade practices with the U.S.; and

"Whereas, recent circumstances have caused federal officials to consider imposing trade sanctions: Now, therefore, be it

Resolved by the House of Representatives of the 2nd session of the 44th Oklahoma legislature: That the Oklahoma House of Representatives urges Congress to support President Clinton's policy on imposing trade sanctions on Japan for not opening its markets to U.S. products.

"That the Oklahoma House of Representatives encourages Congress to support international economic and trade policies which provide U.S. businesses access to foreign markets, measurable objectives, and which create a level playing field for the sale of U.S. goods abroad.

"That copies of this resolution be distributed to the President of the United States, the Secretary of the United States Senate, the Clerk of the United States House of Representatives, and the State of Oklahoma Congressional Delegation."

POM-552. A concurrent resolution adopted by the Legislature of the State of South Carolina; to the Committee on Finance.

"A CONCURRENT RESOLUTION

"Whereas, thirty-seven million Americans are without health insurance and many more are under-insured because of the effects of rising health care costs. The costs of health care are escalating by as much as seventeen percent each year. This has forced employers to trim the level and availability of health care benefits to their employees; and

"Whereas, polling of citizens shows that a substantial majority feel that affordable health care is the number one economic issue facing them; and

"Whereas, over-utilization of medical services for relatively small claims is one of the most significant causes of health care cost increases. More than two-thirds of all insurance claims for medical spending are less than three thousand dollars each year for families in this country; and

"Whereas, the concept of medical savings accounts has developed in response to the runaway cost increases of health care in this country. This initiative is designed to bring market forces to bear on health care and its financing. It is predicated on providing incentives to eliminate unnecessary medical treatment and encourage competition in seeking health care; and

"Whereas, through employer-funded medical care savings and reduced cost catastrophic insurance policies, millions of Americans could insure themselves for both routine and major medical services. Under the concept of medical care savings accounts, an employer making annual pre-

mium payments of four thousand five hundred dollars per employee each year, the national average, would invest three thousand into a medical care bank account for each employee. From this amount, the employee would pay the first three thousand dollars of medical expenses. The remaining one thousand five hundred dollars of the employer's contribution would go toward the purchase of a group policy to cover catastrophic medical costs up to a specified limit. Any of the three thousand dollars not used to pay incurred medical bills belongs to the employee. This could be a strong incentive for people not to abuse health expenditures, and this concept also makes it more feasible for low income workers to seek preventive care and early intervention which they might otherwise be forced to forego due to high deductibles in traditional policies; and

"Whereas, by making medical care decisions the employee's prerogative, individuals have a strong stake in reducing costs. This simple financial mechanism also will expand health insurance options to others who presently have no insurance. Most importantly, this move to decrease health care cost burdens in this country would require no new federal bureaucracy and would be revenue neutral to employers: Now, therefore, be it

Resolved by the House of Representatives, the Senate concurring: That the members of the General Assembly of South Carolina hereby memorialize the Congress of the United States to promptly enact legislation to enable Americans to establish medical care savings accounts: Be it further

Resolved, That copies of this resolution be forwarded to the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the South Carolina Congressional Delegation."

POM-553. A resolution adopted by the House of Legislature of the Commonwealth of Puerto Rico; to the Committee on Finance.

"STATEMENT OF MOTIVES

"In 1930, the Congress of the United States, through section 319 of the Tariff Act of Coffee authorized the Legislature of Puerto Rico to establish a tariff duty for imported coffee.

"Said section has been amended several times and at present the tariff duty for imported coffee is \$250.00 per quintal of unprocessed coffee and \$300.00 dollars per quintal of processed coffee.

"Recently, in the Free Trade Agreement between the United States, Canada and Mexico, known as "NAFTA", it was agreed that this tariff duty would be eliminated within a ten (10)-year period. Subsequently, the fact that this measure would not be implemented and that the Legislature of Puerto Rico would continue with this responsibility was discussed.

"Aware of the importance this tariff duty has for the coffee industry of Puerto Rico, it is recommended that after a study is conducted, the Congress of the United States be notified of the official position of Puerto Rico regarding the power of the Legislature to continue fixing the tariff duties on this product; And be it

Resolved by the House of Representatives of Puerto Rico:

"Section 1. To direct the Committee on Agriculture of the House of Representatives to analyze the impact of the Free Trade Agreement, known as "NAFTA", on the coffee industry of Puerto Rico, without excluding section 319 of the Tariff Act of Coffee of the United States Congress.

"Section 2. The Committee shall render a report of the analysis directed with its findings, conclusions and recommendations, within one hundred and twenty (120) days following the approval of this Resolution.

"Section 3. This Resolution shall take effect immediately after its approval."

ADDITIONAL COSPONSORS

S. 277

At the request of Mr. SIMON, the names of the Senator from Virginia [Mr. WARNER] and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 277, a bill to authorize the establishment of the National African American Museum within the Smithsonian Institution.

S. 359

At the request of Mr. DECONCINI, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 359, a bill to require the Secretary of Treasury to mint coins in commemoration of the National Law Enforcement Officers Memorial, and for other purposes.

S. 1063

At the request of Mr. HATCH, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 1063, a bill to amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of a qualified football coaches plan.

S. 1404

At the request of Mr. KOHL, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 1404, a bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing cases, disclosures of discovery information in civil actions, and for other purposes.

S. 1669

At the request of Mrs. HUTCHISON, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 1669, a bill to amend the Internal Revenue Code of 1986 to allow homemakers to get a full IRA deduction.

S. 1676

At the request of Mr. MACK, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 1676, a bill to provide a fair, non-political process that will achieve \$65,000,000,000 in budget outlay reductions each fiscal year until a balanced budget is reached.

S. 2091

At the request of Mr. SARBANES, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 2091, a bill to amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, and for other purposes.

S. 2120

At the request of Mr. INOUE, the names of the Senator from Vermont

[Mr. LEAHY] and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 2120, a bill to amend and extend the authorization of appropriations for public broadcasting, and for other purposes.

S. 2178

At the request of Mr. DASCHLE, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 2178, a bill to provide a program of compensation and health research for illnesses arising from service in the Armed Forces during the Persian Gulf war.

S. 2192

At the request of Mr. BENNETT, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Florida [Mr. MACK], and the Senator from Nevada [Mr. BRYAN] were added as cosponsors of S. 2192, a bill to amend the Securities Exchange Act of 1934 with respect to the extension of unlisted trading privileges for corporate securities, and for other purposes.

SENATE CONCURRENT RESOLUTION 66

At the request of Ms. MIKULSKI, the names of the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of Senate Concurrent Resolution 66, a concurrent resolution to recognize and encourage the convening of a National Silver Haired Congress.

AMENDMENTS SUBMITTED

PRODUCT LIABILITY FAIRNESS ACT

HEFLIN AMENDMENTS NOS. 1860 THROUGH 1875

(Ordered to lie on the table.)

Mr. HEFLIN submitted 16 amendments intended to be proposed by him to the bill (S. 687) to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; as follows:

AMENDMENT No. 1860

On page 31, line 1, strike out all through line 13.

AMENDMENT No. 1861

At the appropriate place strike the section relating to several liability for noneconomic loss.

AMENDMENT No. 1862

On page 8, line 22, strike out all after the period through line 2 on page 9.

AMENDMENT No. 1863

At the appropriate place strike out the following: "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."

AMENDMENT No. 1864

On page 5, line 11, beginning with the semicolon, strike out all through line 12, and insert in lieu thereof "or any commercial loss or harm or loss or damage to a product itself";

AMENDMENT No. 1865

At the appropriate place strike out the following:

SEC. . Notwithstanding any other provision of this Act, the definition of the term "harm" shall include any commercial loss or harm or loss or damage to a product itself.

AMENDMENT No. 1866

On page 5, line 20, insert before the semicolon "and who employs fewer than 20 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year".

AMENDMENT No. 1867

On page 6, line 4, insert before the semicolon "and who employs fewer than 20 employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year".

AMENDMENT No. 1868

On page 31, insert between lines 13 and 14 the following new subsection:

(c) LIMITATION.—This section shall apply only to defendants found to be less than 25 percent responsible for the claimant's harm.

AMENDMENT No. 1869

On page 18, line 25, beginning with "conscious" strike out all through the period on line 2 of page 19 and insert in lieu thereof "willful, wanton, or reckless conduct or conduct representing conscious indifference to safety."

AMENDMENT No. 1870

At the appropriate place in the section relating to uniform standards for award of punitive damages, strike out "conscious, flagrant indifference to the safety of those persons who might be harmed by the product" and insert in lieu thereof "willful, wanton, or reckless conduct or conduct representing conscious indifference to safety."

AMENDMENT No. 1871

On page 11, beginning with line 23, strike out all through line 18 on page 14.

AMENDMENT No. 1872

At the appropriate place, strike the section relating to expedited product liability judgments.

AMENDMENT No. 1873

On page 13, line 16, strike out all after the period through line 18.

AMENDMENT No. 1874

At the appropriate place in the section relating to expedited product liability judgments, strike out the following: "Such fees shall be offset against any fees owed by the claimant to the claimant's attorney by reason of the final judgment."

AMENDMENT No. 1875

On page 19, insert between lines 6 and 7 the following:

(b) LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.—In any civil action in which the alleged harm to the claimant is death

and 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 regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

On page 19, line 7, strike out "(b)" and insert in lieu thereof "(c)".

On page 20, line 17, strike out "(c)" and insert in lieu thereof "(d)".

On page 22, line 7, strike out "(d)" and insert in lieu thereof "(e)".

On page 22, line 17, strike out "(e)" and insert in lieu thereof "(f)".

MOSELEY-BRAUN AMENDMENTS NOS. 1876 THROUGH 1878

(Ordered to lie on the table.)

Ms. MOSELEY-BRAUN submitted three amendments intended to be proposed by her to the bill, S. 687, supra; as follows:

AMENDMENT No. 1876

On page 18, strike out line 23 and all that follows through page 20, line 7.

On page 21, line 23, strike out "(d) SEPARATE PROCEEDING.—" and insert in lieu thereof "(c) SEPARATE PROCEEDING.—".

On page 22, beginning on line 8, strike out "(e) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—" and insert in lieu thereof "(d) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—".

AMENDMENT No. 1877

On page 20, strike out line 8 and all that follows through page 21, line 22.

On page 21, line 23, strike out "(d) SEPARATE PROCEEDING.—" and insert in lieu thereof "(c) SEPARATE PROCEEDING.—".

On page 22, beginning on line 8, strike out "(e) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—" and insert in lieu thereof "(d) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—".

AMENDMENT No. 1878

On page 18, strike out line 23 and all that follows through page 21, line 22.

On page 21, line 23, strike out "(d) SEPARATE PROCEEDING.—" and insert in lieu thereof "(b) SEPARATE PROCEEDING.—".

On page 22, beginning on line 8, strike out "(e) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—" and insert in lieu thereof "(c) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—".

HOLLINGS AMENDMENT NO. 1879

(Ordered to lie on the table.)

Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill, S. 687, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . PRODUCT LIABILITY INSURANCE REPORTING.

(a) REPORT TO CONGRESS.—The Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall provide to the Congress before June 30 of each year after the date of enactment of this Act a report analyzing the impact of this Act on insurers which issue product liability insurance either separately or in conjunction with other insurance; and on self-insurers, captive insurers, and risk retention groups.

(b) COLLECTION OF DATA.—To carry out the purposes of this section, the Secretary shall collect from each insurer all data considered necessary by the Secretary to present and analyze fully the impact of this Act on such insurers.

(c) REGULATIONS.—Within 120 days after the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to implement the purposes, and carry out the provisions, of this section. Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Such regulations shall—

(1) require the reporting of information sufficiently comprehensive to make possible a full evaluation of the impact of this Act on such insurers;

(2) specify the information to be provided by such insurers and the format of such information, taking into account methods to minimize the paperwork and cost burdens on such insurers and the Federal Government; and

(3) provide, to the maximum extent practicable, that such information is obtained from existing sources, including, but not limited to, State insurance commissioners, recognized insurance statistical agencies, the Administrative Office of the United States Courts, and the National Center for State Courts.

(d) SUBPOENA.—The Secretary may subpoena witnesses and records related to the report required under this section from any place in the United States. If a witness disobeys such subpoena, the Secretary may petition any district court of the United States to enforce such subpoena. The court may punish a refusal to obey an order of the court to comply with such a subpoena as a contempt of court.

FEINGOLD AMENDMENTS NOS. 1880 THROUGH 1882

(Ordered to lie on the table.)

Mr. FEINGOLD submitted three amendments intended to be proposed by him to the bill, S. 687, supra; as follows:

AMENDMENT No. 1880

On page 6, line 15, insert before the semicolon "or injury, illness, disease, or death of an individual who is less than 18 years of age".

AMENDMENT No. 1881

On page 7, line 15, insert before the semicolon ", or any product designed or marketed primarily for the use of children".

AMENDMENT No. 1882

On page 7, line 15, insert before the semicolon ", or any product marketed primarily for the use of children".

ROCKEFELLER (AND GORTON) AMENDMENTS NOS. 1883 THROUGH 1885

(Ordered to lie on the table.)

Mr. ROCKEFELLER (for himself and Mr. GORTON) submitted three amendments intended to be proposed by them to the bill, S. 687, supra; as follows:

AMENDMENT No. 1883

On page 8, line 20, after the period insert the following: "A civil action for negligent entrustment is not subject to this Act and shall be governed by applicable State law. For purposes of the preceding sentence, the term 'negligent entrustment' means causes of action under applicable State law that subject product sellers to liability for their failure to meet the applicable standard of care under State law in selling a product to

a person who, because of his youth, inexperience, or otherwise, is likely to handle the product in a manner to cause harm to himself or others."

AMENDMENT No. 1884

At the appropriate place insert the following new section:

SEC. . SUBSEQUENT REMEDIAL MEASURES.

(a) EVIDENCE GENERALLY INADMISSIBLE.—In any civil action subject to this Act, evidence of any measure taken after an event, which, if taken before the event would have made the event less likely to occur, is not admissible.

(b) LIMITED ADMISSIBILITY FOR IMPEACHMENT.—Such evidence may be admitted, however, in a civil action subject to this Act in which it is alleged that a product was unreasonably dangerous in design or formulation, but solely for the purpose of impeaching the credibility of a witness for the manufacturer or product seller whose testimony has expressly denied the feasibility of such a measure.

AMENDMENT No. 1885

On page 21, line 17, strike "or" and insert "and".

ROCKEFELLER (AND KERREY) AMENDMENT NO. 1886

(Ordered to lie on the table.)

Mr. ROCKEFELLER (for himself and Mr. KERREY) submitted an amendment intended to be proposed by them to the bill, S. 687, supra; as follows:

On page 13, line 20, after the period insert the following: "The amount of any such reduction may not exceed \$50,000."

BOXER AMENDMENTS NOS. 1887 THROUGH 1888

(Ordered to lie on the table.)

Mrs. BOXER submitted two amendments intended to be proposed by her to the bill, S. 687, supra; as follows:

AMENDMENT No. 1887

On page 6, line 15, insert before the semicolon "or any harm, injury, illness or disease caused to reproductive organs or capacity".

AMENDMENT No. 1888

At the appropriate place insert the following:

SEC. . Notwithstanding any other provision of this Act, the definition of the term "noneconomic loss" shall not include any harm, injury, illness or disease caused to reproductive organs or capacity."

LAUTENBERG AMENDMENT NO. 1889

(Ordered to lie on the table.)

Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill, S. 687, supra; as follows:

At the end of section 202, add the following:

(d) NONAPPLICABILITY.—This section shall not apply to a civil action for harm caused by a firearm that was transferred unlawfully or negligently by a product seller.

LAUTENBERG (AND HARKIN) AMENDMENT NO. 1890

(Ordered to lie on the table.)

Mr. LAUTENBERG (for himself and Mr. HARKIN) submitted an amendment intended to be proposed by them to the bill, S. 687, supra; as follows:

At the appropriate place, insert the following new title:

**TITLE III—MEDICARE AND MEDICAID
THIRD PARTY LIABILITY**

SEC. 301. SHORT TITLE.

This title may be cited as the "Medicare and Medicaid Third Party Liability Act".

SEC. 302. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) illnesses and diseases that result from the use of tobacco products cost Federal Government health care programs billions of dollars, including at least \$16,000,000,000 in the medicare program and \$3,000,000,000 in the medicaid program for inpatient hospital services in fiscal year 1994;

(2) over the next 20 years, such illnesses and diseases will cost the medicare trust funds at least \$800,000,000,000;

(3) in April 1994, the trustees of the medicare trust funds concluded that such funds may be insolvent in 7 years, with \$128,000,000,000 of expenditures due to such illnesses and diseases;

(4) recent discoveries, including documents, patents and patent applications, and testimony, have shown that—

(A) the tobacco industry has known for years that the nicotine in cigarettes is addictive,

(B) the industry has attempted both to conceal this information from the public and the Government and to manipulate the amount of nicotine in cigarettes, and

(C) it is possible to manufacture cigarettes which are far less dangerous to consumers;

(5) more than 36 percent of medicare recipients are former smokers and 20 percent are current smokers;

(6) approximately 43 percent of medicaid recipients smoke, compared to 26 percent of the general public; and

(7) the medicare population is much more at risk of contacting illnesses and diseases that result from the use of tobacco products than younger smokers, because such population has smoked longer;

(8) legal scholars and courts are increasingly agreeing that it is appropriate to use statistical evidence to prove causation; and

(9) in view of the large number of Americans killed, disabled, or otherwise injured each year as a result of smoking cigarettes, the addictiveness of the nicotine in cigarettes, and the absence of any significant benefits to society from smoking cigarettes are an unreasonably dangerous product and cigarette manufacturers are engaged in abnormally dangerous activities.

(b) PURPOSE.—The purpose of this title is to allow the American taxpayers to recoup billions of dollars in Federal Government health care funds spent on tobacco related illnesses and diseases.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties) that manufacture tobacco products. The Attorney General

(after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 28, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of a tobacco product, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount received as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

**LAUTENBERG (AND SIMON)
AMENDMENT NO. 1891**

(Ordered to lie on the table.)

Mr. LAUTENBERG (for himself and Mr. SIMON) submitted an amendment intended to be proposed by them to the bill, S. 687, supra; as follows:

At the end of the bill, add the following:

TITLE III—FIREARMS

SEC. 301. VICTIM COMPENSATION FROM PERSONS WHO UNLAWFULLY PROVIDE FIREARMS TO JUVENILES, FELONS, AND OTHER DISQUALIFIED INDIVIDUALS.

(a) VICTIM COMPENSATION.—Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(j) VICTIM COMPENSATION.—

"(1) IN GENERAL.—Any person who sells, delivers, or otherwise transfers—

"(A) a firearm in violation of section 922(d) or section 922(b)(1); or

"(B) a handgun to a person who the transferor knows or has reasonable cause to believe is a juvenile, except as provided in paragraph (6),

shall be liable for damages caused by a discharge of the transferred firearm by the transferee.

"(2) CIVIL ACTION.—An action to recover damages under paragraph (1) may be brought in a United States district court by, or on behalf of, any person, or the estate of any person, who suffers damages resulting from bodily injury to or the death of any person caused by a discharge of the transferred firearm by the transferee.

"(3) DISENTITLEMENT TO RECOVERY.—There shall be no liability under this subsection if it is established by a preponderance of the evidence that—

"(A) the damages were suffered by a person who was engaged in a criminal act against the person or property of another at the time of the injury; or

"(B) the injury was self-inflicted, unless the plaintiff establishes that, at the time of the transfer, the transferor knew or had reasonable cause to believe that the transferee had not attained the age of 18 years or had been adjudicated as a mental defective or committed to a mental institution.

"(4) PERIOD OF LIABILITY.—No action under this subsection may be brought for damages that are caused more than 5 years after the date of the transfer of a firearm upon which an action could otherwise be based.

"(5) ATTORNEY'S FEES AND PUNITIVE DAMAGES.—A prevailing plaintiff in an action under this subsection—

"(A) shall be awarded reasonable attorney's fees and costs, and

"(B) may be awarded punitive damages.

"(6) JUVENILES.—Paragraph (1)(B) does not apply to—

"(A) a temporary transfer of a handgun to a juvenile if the handgun is used by the juvenile—

"(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

"(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

"(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

"(II) with respect to ranching or farming activities as described in clause (i), with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State, or local law from possessing a firearm;

"(iii) if the juvenile keeps the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

"(iv) in accordance with State and local law;

"(B) issuance of a handgun to a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with the handgun in the line of duty;

"(C) a transfer by inheritance of title (but not possession) of a handgun to a juvenile;

"(D) a delivery of a handgun by a juvenile to be used in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest; or

"(E) a transfer of a handgun for consideration if the transfer is made in accordance with State and local law and with the prior consent of the juvenile's parent or legal guardian who is not prohibited by Federal, State, or local law from possessing a firearm.

"(7) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or have any other effect on any other cause of action available to any person."

(b) DEFINITION.—Section 921(a) of title 18, United States Code, is amended by adding at the end of the following new paragraph:

"(30) The term 'juvenile' means a person who is less than 18 years of age."

(c) APPLICATION OF AMENDMENT.—The amendment made by subsection (a) shall apply to damages resulting from a firearm that was transferred as described in section 924(j)(1) of title 18, on or after the date of enactment of this Act.

HARKIN AMENDMENTS NOS. 1892 THROUGH 1894

(Ordered to lie on the table.)

Mr. HARKIN submitted three amendments intended to be proposed by him to the bill, S. 687, supra; as follows:

AMENDMENT NO. 1892

On page 6, line 15, insert before the semicolon "or loss resulting in maiming, severe physical disfigurement, or permanent disability".

AMENDMENT NO. 1893

On page 7, line 15, insert before the semicolon "or any tobacco product".

AMENDMENT NO. 1894

On page 5, line 13, insert "(other than a manufacturer of tobacco products)" after "means".

DORGAN (AND MOSELEY-BRAUN) AMENDMENTS NOS. 1895 THROUGH 1898

(Ordered to lie on the table.)

Mr. DORGAN (for himself and Ms. MOSELEY-BRAUN) submitted four

amendments intended to be proposed by them to the bill, S. 687, supra; as follows:

AMENDMENT NO. 1895

On page 19, beginning with line 7, strike out all through line 6 on page 22.

AMENDMENT NO. 1896

At the appropriate place insert the following:

SEC. . Notwithstanding any other provision of this Act, no limitation for the award of punitive damages concerning certain drugs and medical devices or certain aircraft and components, under this Act shall take effect.

AMENDMENT NO. 1897

On page 19, beginning with line 7, strike out all through line 16 on page 20.

AMENDMENT NO. 1898

On page 20, beginning with line 19, strike out all through line 6 on page 22.

MCCAIN (AND OTHERS)

AMENDMENT NO. 1899

(Ordered to lie on the table.)

Mr. MCCAIN (for himself, Mr. LIEBERMAN, and Mr. DURENBERGER) submitted an amendment intended to be proposed by them to the bill, S. 687, supra; as follows:

At the appropriate place in the bill, insert the following:

"SEC. . SENSE OF THE SENATE.—

Whereas every year millions of Americans depend on the availability of life-saving or life enhancing permanently implantable medical devices;

Whereas a continued supply of raw materials and component parts is necessary to the invention, development, improvement and maintenance of the supply of such devices;

Whereas most of these devices are made with raw materials and component parts that are not designed or manufactured specifically for use in implantable devices, but which have uses in a variety of non-medical products as well;

Whereas small quantities of these raw materials and component parts are used, so that sales of raw materials and component parts for medical devices are an extremely small portion of the overall market for such raw materials;

Whereas manufacturers of medical devices are required under the Federal Food, Drug and Cosmetics Act to demonstrate that their products are safe and effective, including being properly designed and having adequate warnings or instructions, and existing tort law requires manufacturers of medical devices to ensure they are properly designed and have adequate warnings;

Whereas, notwithstanding the fact that raw materials and component parts suppliers do not design, produce or test the final implant, they have been sued in cases alleging inadequate design and testing of, or warnings related to use of, permanently implanted medical devices;

Whereas even though raw materials and component parts suppliers have almost never been held liable in such suits, because the cost of litigating such suits to a favorable judgment exceeds the total potential sales of such raw materials and component parts to the medical device industry, raw materials and component parts suppliers have begun to

cease supplying such raw materials and component parts for use in permanently implanted medical devices;

Whereas the unavailability of raw materials and component parts will, unless alternative sources of supply can be found, lead to unavailability of life-saving and life enhancing medical devices;

Whereas the prospects for development of new sources of supply for the full range of threatened raw materials and component parts are remote, as other suppliers around the world are refusing to sell raw materials or component parts for use in manufacturing permanently implantable medical devices in the United States, and it is unlikely that such a small market could support the large investment needed to develop new suppliers and attempts to do so will raise the cost of medical devices;

Whereas courts that have considered the issue have generally found that raw materials and component part suppliers do not have a duty to evaluate the safety and efficacy of the use of a raw material or component part in a medical device, and also do not have a duty to warn concerning the safety and effectiveness of a medical device;

Whereas attempts to impose such duties will cause more harm than good by driving raw materials and component part suppliers to cease supplying manufacturers of permanently implantable medical devices;

Whereas immediate action is necessary to ensure the availability of raw materials and component parts for medical devices so that Americans have access to the devices they need;

Whereas the products liability concerns that are causing the unavailability of raw materials and component parts for medical implants is part of a larger products liability crisis in this country;

It is the sense of the Senate that prior to the conclusion of the 103rd Congress the Senate should take action to ensure the availability of raw materials and component parts for medical devices by appropriately limiting the liability of suppliers of such materials and parts and providing expeditious procedures to dispose of unwarranted suits against those suppliers."

FORD (AND MCCONNELL)

AMENDMENT NO. 1900

(Ordered to lie on the table.)

Mr. FORD (for himself and Mr. MCCONNELL) submitted an amendment intended to be proposed by them to the bill, S. 687, supra; as follows:

At the appropriate place, insert the following:

SEC. . UNIFORM STANDARDS FOR INTERSTATE WASTE.

(a) This section may be cited as the "Interstate Transportation of Municipal Waste Act of 1994."

(b) INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE.—

Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

"INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE

"SEC. 4011. (a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL WASTE.—(1)(A) Except as provided in subsection (b), if requested in writing by both an affected local government and an affected local solid waste planning unit, if the local solid waste planning unit exists under State law, a Governor may prohibit the disposal of out-of-State

municipal waste in any landfill or incinerator that is subject to the jurisdiction of the Governor or the affected located government.

"(B) Prior to submitting a request under this section, the affected local government and solid waste planning unit shall—

"(i) provide notice and opportunity for public comment concerning any proposed request; and

"(ii) following notice and comment, take formal action on any proposed request at a public meeting.

"(2) Beginning with calendar year 1993, a Governor of a State may, with respect to landfills covered by the exceptions provided in subsection (b)—

"(A) notwithstanding the absence of a request in writing by the affected local government and the affected local solid waste planning unit, if any,—

"(i) limit the quantity of out-of-State municipal waste received for disposal at each landfill in the State to an annual quantity equal to the quantity of out-of-State municipal waste received for disposal at the landfill during the calendar year 1991 or 1992, whichever is less; and

"(ii) limit the disposal of out-of-State municipal waste at landfills that received, during calendar year 1991, documented shipments of more than 50,000 tons of out-of-State municipal waste representing more than 30 percent of all municipal waste received at the landfill during the calendar year, by prohibiting at each such landfill the disposal, in any year, of a quantity of out-of-State municipal waste that is greater than 30 percent of all municipal waste received at the landfill during calendar year 1991; and

"(B) if requested in writing by the affected local government and the affected local solid waste planning unit, if any, prohibit the disposal of out-of-State municipal waste in landfill cells that do not meet the design and location standards and leachate collection and ground water monitoring requirements of State law and regulations in effect on January 1, 1993, for new landfills.

"(3) In addition to the authorities provided in paragraph (1)(A), beginning with calendar year 1997, a Governor of any State, if requested in writing by the affected local government and the affected local solid waste planning unit, if any, may further limit the disposal of out-of-State municipal waste as provided in paragraph (2)(A)(ii) by reducing the 30 percent annual quantity limitation to 20 percent in each of calendar years 1998 and 1999, and to 10 percent in each succeeding calendar year.

"(4)(A) Any limitation imposed by the Governor under paragraph (2)(A)—

"(i) shall be applicable throughout the State;

"(ii) shall not discriminate against any particular landfill within the State; and

"(iii) shall not discriminate against any shipments of out-of-State municipal waste on the basis of State of origin.

"(B) In responding to requests by affected local governments under paragraphs (1)(A) and (2)(B), the Governor shall respond in a manner that does not discriminate against any particular landfill within the State and does not discriminate against any shipments of out-of-State municipal waste on the basis of State of origin.

"(5)(A) Any Governor who intends to exercise the authority provided in this paragraph shall, within 120 days after the date of enactment of this section, submit to the Administrator information documenting the quantity of out-of-State municipal waste received

for disposal of the State of the Governor during calendar years 1991 and 1992.

"(B) On receipt of the information submitted pursuant to subparagraph (A), the Administrator shall notify the Governor of each State and the public and shall provide a comment period of not less than 30 days.

"(C) Not later than 60 days after receipt of information from a Governor under subparagraph (A), the Administrator shall determine the quantity of out-of-State municipal waste that was received in each landfill covered by the exceptions provided in subsection (b) for disposal in the State of the Governor during calendar years 1991 and 1992, and provide notice of the determination to the Governor of each State. A determination by the Administrator under this subparagraph shall be final and not subject to judicial review.

"(D) Not later than 180 days after the date of enactment of this section, the Administrator shall publish a list of the quantity of out-of-State municipal waste that was received during calendar years 1991 and 1992 at each landfill covered by the exceptions provided in subsection (b) for disposal in each State in which the Governor intends to exercise the authority provided in this paragraph, as determined in accordance with subparagraph (C).

"(b) EXCEPTIONS TO AUTHORITY TO PROHIBIT OUT-OF-STATE MUNICIPAL WASTE.—The authority to prohibit the disposal of out-of-State municipal waste provided under subsection (a)(1) shall not apply to—

"(1) landfills in operation on the date of enactment of this section that—

"(A) received during calendar year 1991 documented shipments of out-of-State municipal waste; and

"(B) in compliance with all applicable State laws (including any State rule or regulation) relating to design and location standards, leachate collection, ground water monitoring, and financial assurance for closure and post-closure and corrective action;

"(2) proposed landfills that, prior to January 1, 1993, received—

"(A) an approval from the affected local government to receive municipal waste generated outside the country or the State in which the landfill is located; and

"(B) a notice of decision from the State to grant a construction permit; or

"(3) incinerators in operation on the date of enactment of this section that—

"(A) received, during calendar year 1991, documented shipments of out-of-State waste;

"(B) are in compliance with the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429); and

"(C) are in compliance with all applicable State laws (including any State rule or regulation) relating to facility design and operations.

"(d) DEFINITIONS.—As used in this section:

"(1)(A) The term 'affected local government', with respect to a landfill or incinerator, means the elected officials of the city, town, borough, county, or parish in which the facility is located.

"(B) Within 90 days after the date of the enactment of this section, the Governor shall designate which entity listed in subparagraph (A) shall serve as the affected local government for actions taken under this section. If the Governor fails to make a designation, the affected local government shall be the city, town, borough, county, parish, or other public body created pursuant to State law with primary jurisdiction over the land or the use of land on which the facility is located.

"(2) The term 'affected local solid waste planning unit' means a political subdivision

of a State with authority relating to solid waste management planning in accordance with State law.

"(3) With respect to a State, the term 'out-of-State municipal waste' means municipal waste generated outside of the State. To the extent that it is consistent with the United States-Canada Free Trade Agreement and the General Agreement on Tariffs and Trade, the term shall include municipal waste generated outside of the United States.

"(4) The term 'municipal waste' means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, institutional, or industrial source (or my combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or non-combustible materials such as metal or glass (or any combination thereof). The term 'municipal waste' does not include—

"(A) any solid waste identified or listed as a hazardous waste under section 3001;

"(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

"(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal waste and has been transported into the State for the purpose of recycling or reclamation;

"(D) any solid waste that is—

"(i) generated by an industrial facility; and

"(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator or a company with which the generator is affiliated;

"(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

"(F) any industrial waste that is not identical to municipal waste with respect to the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

"(G) any medical waste that is segregated from or not mixed with municipal waste; or

"(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse."

(c) TABLE OF CONTENTS AMENDMENT.—

The table of contents of the Solid Waste Disposal Act is amended by adding at the end of the items relating to subtitle D the following new item:

"Sec. 4011. Interstate transportation of municipal waste."

FEINSTEIN (AND LIEBERMAN) AMENDMENT NO. 1901

(Ordered to lie on the table.)

Mrs. FEINSTEIN (for herself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by them to the bill, S. 687, supra; as follows:

On page 18, beginning with line 23, strike out through line 7 on page 20 and insert the following:

"(b) LIMITATION CONCERNING CERTAIN DRUGS AND MEDICAL DEVICES.—

"(1) A manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(g)(1)) or medical device (as defined in section 201(h) of the Federal Food, Drug,

and Cosmetic Act; 21 U.S.C. 321(h) which caused the claimant's harm has not engaged in conduct manifesting conscious, flagrant indifference to the safety of those persons who might be harmed by the product, and shall not be subject to an award of punitive damages pursuant to this section, where—

"(A) such drug or device was subject to pre-market approval by the Food and Drug Administration pursuant to section 505 (as amended by the New Drug Amendments of 1962, P.L. 87-781), 506, 507, 512, or 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 356, 357, 360b, or 360e) or section 351 of the Public Health Service Act (42 U.S.C. 262) with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging of labeling of such drug or device, and such drug or device was actually approved by the Food and Drug Administration; or

"(B) the drug or device is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

"(2) The provisions of paragraph (1) shall not apply in any case in which the claimant proves by a preponderance of evidence that—

"(A)(i) the defendant, before or after pre-market approval of a drug or device, failed to submit or misrepresented to the Food and Drug Administration or any other agency or official of the Federal government required information, including required information regarding any death or other adverse experience associated with use of the drug or device, and (ii) the information that defendant failed to submit or misrepresented is material and relevant to the performance of such drug or device and is causally related to the harm which the claimant allegedly suffered; or

"(B) the defendant made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval of such drug or device; or

"(C) the Food and Drug Administration has determined in a formal administrative proceeding (by a final order not subject to further review) or a court has determined in an action brought by the United States (by a final judgment not subject to further review) that the drug or device failed to conform to conditions of the Food and Drug Administration for approval (except for changes permitted without prior approval under applicable law, including Food and Drug Administration regulations), and such failure is causally related to the harm which the claimant allegedly suffered.

"(3) The provisions of paragraph (1) shall not apply with respect to a claim for punitive damages based on a defect in manufacturing which causes the drug or device to depart from its intended design."

LIEBERMAN AMENDMENT NO. 1902

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill, S. 687, supra; as follows:

On page 18, beginning with line 23, strike out through line 7 on page 20 and insert the following:

"(b) LIMITATION CONCERNING CERTAIN DRUGS AND MEDICAL DEVICES.—

"(1) A manufacturer or product seller of a drug (as defined in section 201 (g) (1) of the Federal Food, Drug, and Cosmetic Act; 21

U.S.C. 321 (g) (1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(h)) which caused the claimant's harm has not engaged in conduct manifesting conscious, flagrant indifference to the safety of those persons who might be harmed by the product, and shall not be subject to an award of punitive damages pursuant to this section, where—

"(A) such drug or device was subject to pre-market approval by the Food and Drug Administration pursuant to section 505 (as amended by the New Drug Amendments of 1962, P.L. 87-781), 506, 507, 512, or 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 356, 357, 360b, or 360e) or section 351 of the Public Health Service Act (42 U.S.C. 262) with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging of labeling of such drug or device, and such drug or device was actually approved by the Food and Drug Administration; or

"(B) the drug or device is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

"(2) The provisions of paragraph (1) shall not apply in any case in which the claimant proves by a preponderance of evidence that—

"(A)(i) the defendant, before or after pre-market approval of a drug or device, failed to submit or misrepresented to the Food and Drug Administration or any other agency or official of the Federal government required information, including required information regarding any death or other adverse experience associated with use of the drug or device, and (ii) the information that defendant failed to submit or misrepresented is material and relevant to the performance of such drug or device and is causally related to the harm which the claimant allegedly suffered; or

"(B) the defendant made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval of such drug or device; or

"(C) the Food and Drug Administration has determined in a formal administrative proceeding (by a final order not subject to further review) or a court has determined in an action brought by the United States (by a final judgment not subject to further review) that the drug or device failed to conform to conditions of the Food and Drug Administration for approval (except for changes permitted without prior approval under applicable law, including Food and Drug Administration regulations), and such failure is causally related to the harm which the claimant allegedly suffered.

"(3) The provisions of paragraph (1) shall not apply with respect to a claim for punitive damages based on a defect in manufacturing which causes the drug or device to depart from its intended design."

MCCONNELL AMENDMENTS NOS. 1903 THROUGH 1904

(Ordered to lie on the table.)

Mr. MCCONNELL submitted two amendments intended to be proposed by him to the bill, S. 687, supra; as follows:

AMENDMENT NO. 1903

At the end of the bill, add the following new section:

SEC. . LITIGATION IMPACT STATEMENT.

Paragraph 11 of rule XXVI of the Standing Rules of the Senate is amended by—

(1) in subparagraph (c), by striking "paragraphs (a) and (b)" and inserting "paragraphs (a), (b), and (c)";

(2) by redesignating subparagraph (c) as subparagraph (d); and

(3) by adding after subparagraph (b) the following:

"(c) Each such report (except those by the Committee on Appropriations) shall also contain a litigation impact evaluation made by such committee which shall include—

"(1) an estimate of any increase in litigation which would result from the enactment of the bill or joint resolution;

"(2) an estimate of any increase in private liability which would result from the enactment of the bill or joint resolution; and

"(3) an estimate of any increase in liability insurance costs which would result from the enactment of the bill or joint resolution."

AMENDMENT NO. 1904

At the appropriate place, insert the following:

SEC. . INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

"INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE

"SEC. 4011. (a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL WASTE.—If requested in writing by an affected local government, and by an affected local solid waste planning unit if the local solid waste planning unit exists under State law, a Governor may prohibit the disposal of out-of-State municipal waste in any landfill or incinerator that is subject to the jurisdiction of the Governor or the affected local government.

"(b) DEFINITIONS.—As used in this section: "(1)(A) The term 'affected local government', used with respect to a landfill or incinerator, means the elected officials of the city, town, borough, county, or parish in which the facility is located.

"(B) Within 90 days after the date of enactment of this section, the Governor shall designate which entity listed in subparagraph (A) shall serve as the affected local government for actions taken under this section. If the Governor fails to make a designation, the affected local government shall be the city, town, borough, county, parish, or other public body created pursuant to State law, with primary jurisdiction over the land or the use of land on which the facility is located.

"(2) The term 'affected local solid waste planning unit' means a political subdivision of a State with authority relating to solid waste management planning in accordance with State law.

"(3) The term 'municipal waste' means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, institutional, or industrial source (or any combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or non-combustible materials such as metal or glass (or any combination thereof). The term 'municipal waste' does not include—

"(A) any solid waste identified or listed as a hazardous waste under section 3001;

"(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of

1980 (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

"(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal waste (as otherwise defined in this paragraph) and has been transported into a State for the purpose of recycling or reclamation;

"(D) any solid waste that is—

"(i) generated by an industrial facility; and

"(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator or a company with which the generator is affiliated;

"(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

"(F) any industrial waste that is not identical to municipal waste (as otherwise defined in this paragraph) with respect to the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

"(G) any medical waste that is segregated from or not mixed with municipal waste (as otherwise defined in this paragraph); or

"(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

"(4) The term 'out-of-State municipal waste', used with respect to a State, means municipal waste generated outside of the State. To the extent that it is consistent with the United States-Canada Free-Trade Agreement and the General Agreement on Tariffs and Trade to so define the term, the term shall include municipal waste generated outside of the United States."

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

"Sec. 4011. Interstate transportation of municipal waste."

KERREY AMENDMENT NOS. 1905 THROUGH 1906

(Ordered to lie on the table)

Mr. KERREY submitted two amendments intended to be proposed by him to the bill, S. 687, supra; as follows:

AMENDMENT No. 1905

On page 18, line 20, beginning with the comma strike out all through the comma on line 21.

AMENDMENT No. 1906

On page 24, insert between lines 16 and 17 the following paragraph:

(3) No State statute of repose shall apply to any civil action subject to this Act.

KOHL AMENDMENTS NOS. 1907 THROUGH 1908

(Ordered to lie on the table.)

Mr. KOHL submitted two amendments intended to be proposed by him to the bill, S. 687, supra; as follows:

AMENDMENT No. 1907

Section 4(a) is amended as follows: Strike the period concluding the first sentence and add at the end of the sentence, "but only those civil actions in which the provisions of paragraphs (1) and (2) have been satisfied."

Then add the following:

(1)(A) In any civil action brought pursuant to this Act, a court shall enter an order under applicable State or Federal rules of civil procedure restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making particularized findings of facts that—

(i) such order would not restrict disclosure of information which is relevant to the protection of public health or safety; or

(ii) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and the requested protective order is no broader than necessary to protect the privacy interest asserted.

(B) No order entered in accordance with the provisions of paragraph (1) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the terms of paragraph (1)(A)(i) or (ii) have been met.

(C) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

(2)(A) No agreement between or among parties in a civil action pursuant to this Act filed in a State court or court of the United States may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

(B) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law.

AMENDMENT No. 1908

Section 4(a) is amended as follows:

Strike the period concluding the first sentence and add at the end of the sentence, "but only those civil actions in which the provisions of paragraph (1) have been satisfied."

Then add the following:

(1)(A) No agreement between or among parties in a civil action pursuant to this Act filed in a State court or court of the United States may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

(B) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law.

HEFLIN AMENDMENT NO. 1909

(Ordered to lie on the table.)

Mr. HEFLIN submitted an amendment intended to be proposed by him to the bill, S. 687, supra; 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 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 regardless of whether a claim

is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

METZENBAUM AMENDMENTS NOS. 1910 THROUGH 1922

(Ordered to lie on the table.)

Mr. METZENBAUM submitted 13 amendments intended to be proposed by him to the bill, S. 687, supra; as follows:

AMENDMENT No. 1910

At the appropriate place add the following new title:

TITLE —REGULATION OF TOBACCO PRODUCTS

SEC. . REGULATION OF TOBACCO PRODUCTS.

(a) AUTHORITY.—The Secretary of Health and Human Services shall issue regulations for products containing tobacco to protect children and teenagers from the harmful consequences of tobacco use and to protect the public health.

(b) CONTENT.—Regulations under subsection (a) may regulate the manufacture, introduction or delivery for introduction into interstate commerce, distribution, sale, labeling, advertising, promotion, and content of products containing tobacco, except that no such regulation may ban all sales of cigarettes or other products containing tobacco. Any person subject to such regulations shall at all reasonable times permit an officer or employee duly designated by the Secretary access to their places of business (including research facilities and facilities of persons under contract) and provide an opportunity to inspect their facilities, inventories, and records and to copy any records and take any samples necessary to enforce such regulations.

(c) ENFORCEMENT.—The manufacture (including actions respecting the content of products containing tobacco), introduction or delivery for introduction into interstate commerce, distribution sale, labeling, advertising, or promotion of products containing tobacco in violation of regulations issued under subsection (a) or the failure to make any report required under such regulations shall be considered to be a violation of a prohibited act under section 301 of the Federal Food, Drug, and Cosmetic Act. In any action brought to enforce such regulations, the connection with interstate commerce required for jurisdiction in such action shall be presumed to exist.

(d) CONSTRUCTION.—This section shall not be construed as limiting the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act over products containing tobacco which the Secretary has without the enactment of this section.

AMENDMENT No. 1911

At the appropriate place add the following:

TITLE —FIREARMS

SEC. . CIVIL LIABILITY FOR VIOLATION OF FIREARM LAW.

Section 924 of title 18, United States Code, is amended by adding at the end of the following new subsection:

"(1)(1) A licensed manufacturer, licensed importer, or licensed dealer who sells, delivers, or otherwise transfers or who imports any firearms or ammunition in violation of Federal law shall be liable for all damages proximately caused by such sale, delivery, or other transfer or importation.

"(2) An action to recover damages under paragraph (1) may be brought in a United

States district court by, or on behalf of, any person, or the estate of any person, who suffers bodily injury or death as a result of the discharge of a firearm or ammunition sold, delivered, or transferred in violation of Federal law. A prevailing plaintiff in such an action shall be awarded costs and a reasonable attorney's fees. Punitive damages shall be recoverable by the plaintiff if the defendant is found to have intentionally or recklessly violated the law.

"(3) No action under paragraph (2) may be brought by or on behalf of a person who was engaged in a criminal act against the person or property of another person at the time of the injury.

"(4) Nothing in this subsection shall be construed to preempt or otherwise limit any other cause of action available to any person."

AMENDMENT NO. 1912

On page 9, at the end of line 2 insert: "A civil action brought against a manufacturer or product seller is not subject to this Act if—

"(1) there is an agreement between or among parties that contains a provision that prohibits or otherwise restricts a party from disclosing any information relevant to the civil action to any Federal or State agency with authority to enforce laws regulating an activity; or

"(2) a court enters an order restricting the disclosure of information obtained through discovery or an order restricting access to court records, without making particularized findings of fact that—

"(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

"(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

"(ii) there exists no less restrictive means than the requested protective order of adequately and effectively protecting the specific interest asserted."

AMENDMENT NO. 1913

At the appropriate place insert the following:

SEC. . Notwithstanding any other provision of this Act, a civil action brought against a manufacturer or product seller is not subject to this Act if—

(1) there is an agreement between or among parties that contains a provision that prohibits or otherwise restricts a party from disclosing any information relevant to the civil action to any Federal or State agency with authority to enforce laws regulating an activity; or

(2) a court enters an order restricting the disclosure of information obtained through discovery or an order restricting access to court records, without making particularized findings of fact that—

(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

(ii) there exists no less restrictive means than the requested protective order of adequately and effectively protecting the specific interest asserted.

AMENDMENT NO. 1914

At the appropriate place add the following:

TITLE —FIREARMS

SEC. . FIREARMS AND CHILD SAFETY.

(a) UNLAWFUL ACT.—Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(1)(1) A person that manufactures, sells, delivers, or otherwise transfers a firearm that does not have as an integral part a device or devices specified in paragraph (5) shall be liable for all damages proximately caused by the firearm.

"(2) An action to recover damages under paragraph (1) may be brought in United States district court by, or on behalf of, any person, or the estate of any person, who suffers bodily injury or death as a result of the discharge of a firearm manufactured, sold, delivered, or transferred in violation of paragraph (1). Prevailing plaintiffs in such actions shall be awarded costs and reasonable attorneys' fees. Punitive damages shall be recoverable by the plaintiff if the defendant is found to have intentionally or recklessly violated the law.

"(3) No action under paragraph (2) may be brought by, or on behalf of, a person who was engaged in a criminal act against the person or property of another person at the time of the injury.

"(4) Nothing in this subsection shall be construed to preempt, or otherwise limit, any other cause of action available to any person.

"(5) For purposes of this section, the term 'childproof safety devices' shall mean a device or devices that—

"(A) prevent a child of less than 7 years of age from discharging the firearm by reason of the amount of strength, dexterity, cognitive skill, or other ability required to cause a discharge;

"(B) prevent a firearm that has a removable magazine from discharging when the magazine has been removed; and

"(C) in the case of a handgun other than a revolver, clearly indicate whether the magazine or chamber contains a round of ammunition."

(b) EFFECTIVE DATE.—This section shall take effect 6 months after the date of the enactment of this Act.

AMENDMENT NO. 1915

On page 23, insert between lines 17 and 18 the following new subsection:

(f) NONAPPLICABILITY TO CERTAIN CIVIL ACTIONS.—This section shall not apply to a civil action if—

(1) there is an agreement between or among parties that contains a provision that prohibits or otherwise restricts a party from disclosing any information relevant to the civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information; or

(2) a court enters an order restricting the disclosure of information obtained through discovery or an order restricting access to court records, without making particularized findings of fact that—

(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

(ii) there exists no less restrictive means than the requested protective order of adequately and effectively protecting the specific interest asserted.

AMENDMENT NO. 1916

At the appropriate place insert the following:

SEC. . Notwithstanding any other provision of this Act, no provision of this Act relating to uniform standards for the award of punitive damages shall apply to a civil action if—

(1) there is an agreement between or among parties that contains a provision that prohibits or otherwise restricts a party from disclosing any information relevant to the civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information; or

(2) a court enters an order restricting the disclosure of information obtained through discovery or an order restricting access to court records, without making particularized findings of fact that—

(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

(ii) there exists no less restrictive means than the requested protective order of adequately and effectively protecting the specific interest asserted.

AMENDMENT NO. 1917

On page 31, at the end of line 9, insert "This subsection shall not apply—

"(1) with respect to any defendant who enters into an agreement between or among parties that contains a provision that prohibits or otherwise restricts a party from disclosing any information relevant to the civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information; or

"(2) if a court enters an order restricting the disclosure of information obtained through discovery or an order restricting access to court records, without making particularized findings of fact that—

"(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

"(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

"(ii) there exists no less restrictive means than the requested protective order of adequately and effectively protecting the specific interest asserted."

AMENDMENT NO. 1918

At the appropriate place insert the following:

SEC. . Notwithstanding any provision of this Act, no provision of this Act relating to several liability for noneconomic loss allocated to a defendant in direct proportion to such defendant's percentage of responsibility shall apply—

(1) with respect to any defendant who enters into an agreement between or among parties that contains a provision that prohibits or otherwise restricts a party from disclosing any information relevant to the civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information; or

(2) if a court enters an order restricting the disclosure of information obtained through discovery or an order restricting access to court records, without making particularized findings of fact that—

(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

(ii) there exists no less restrictive means than the requested protective order of adequately and effectively protecting the specific interest asserted.

AMENDMENT NO. 1919

On page 9, at the end of line 2 insert "In any civil action brought against a manufacturer or product seller, on any theory, for harm caused by a product—

"(1) there shall be no agreement between or among parties that contains a provision that prohibits or otherwise restricts a party from disclosing any information relevant to the civil action to any Federal or State agency with authority to enforce laws regulating an activity; and

"(2) a court, if otherwise authorized to issue an order restricting the disclosure of information obtained through discovery or an order restricting access to court records, shall enter such an order only after making particularized findings of fact that—

"(A) such order would not restrict the disclosure of information that is relevant to the protection of the health or safety of the public; or

"(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

"(ii) there exists no less restrictive means than the requested protective order of adequately and effectively protecting the specific interest asserted."

AMENDMENT NO. 1920

At the appropriate place insert the following:

SEC. . Notwithstanding any other provision of this Act, in any civil action brought against a manufacturer or product seller, on any theory, for harm caused by a product—

"(1) there shall be no agreement between or among parties that contains a provision that prohibits or otherwise restricts a party from disclosing any information relevant to the civil action to any Federal or State agency with authority to enforce laws regulating an activity; and

"(2) a court, if otherwise authorized to issue an order restricting the disclosure of information obtained through discovery or an order restricting access to court records, shall enter such an order only after making particularized findings of fact that—

"(A) such an order would not restrict the disclosure of information that is relevant to the protection of the health or safety of the public; or

"(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

"(ii) there exists no less restrictive means than the requested protective order of adequately and effectively protecting the specific interest asserted."

AMENDMENT NO. 1921

At the appropriate place, add the following:

SEC. . UNIFORM STANDARDS FOR PROTECTIVE ORDERS AND SEALING OF COURT RECORDS.

In any civil action brought against a manufacturer or product seller, on any theory, for harm caused by a product—

(1) there shall be no agreement between or among parties that contains a provision that prohibits or otherwise restricts a party from disclosing any information relevant to the civil action to any Federal or State agency with authority to enforce laws regulating an activity; and

(2) a court, if otherwise authorized to issue an order restricting the disclosure of information obtained through discovery or an order restricting access to court records, shall enter such an order only after making particularized findings of fact that—

(A) such an order would not restrict the disclosure of information that is relevant to the protection of the health or safety of the public; or

(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

(ii) there exists no less restrictive means than the requested protective order of adequately and effectively protecting the specific interest asserted.

AMENDMENT NO. 1922

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR TOBACCO-CAUSED ILLNESS, INJURY, OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR TOBACCO-CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer of cigarettes shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by cigarette smoking, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

SPECTER AMENDMENTS NOS. 1923 THROUGH 1926

(Ordered to lie on the table.)

Mr. SPECTER submitted four amendments intended to be proposed by him to the bill, S. 687, supra; as follows:

AMENDMENT NO. 1923

On page 23, beginning on line 23, strike out "unless the complaint" and all that follows through the period and insert in lieu thereof "unless the harm occurs within the longer of (A) the 25-year period beginning on the date of the delivery of the product, or (B) the period of the useful life of the product as expressly defined by the manufacturer, whichever is longer."

AMENDMENT NO. 1924

On page 31, between lines 4 and 5, insert the following:

(c) EXEMPTIONS.—Notwithstanding subsection (a), liability for noneconomic loss shall be joint and several in any action subject to this Act in which the plaintiff has suffered blindness, deafness, brain injury paralysis, disfigurement, or loss of a limb.

AMENDMENT NO. 1925

On page 23, between lines 8 and 9, insert the following:

(f) DISCOVERY FROM APPROVING OR CERTIFYING AGENCY.—(1) Subject to paragraph (2), the claimant or the defendant in any action in which the defendant asserts a limitation on the award of punitive damages under subsection (b) or (c) may obtain discovery from the Food and Drug Administration or the Federal Aviation Administration, as the case may be, of any evidence under the jurisdiction of the agency relating to such assertion.

(2) A court may make an order with respect to discovery authorized under paragraph (1) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

AMENDMENT NO. 1926

On page 32, below line 12, add the following:

(e) APPLICABILITY OF DEFENSES TO CERTAIN DEFECTS AND CRASHWORTHINESS CLAIMS.—(1) The defense set forth in subsection (a) shall not be available to a defendant referred to in that subsection if the claimant proves by clear and convincing evidence that the claimant harm's in the accident or event was greater than it would otherwise have been by reason of a defect in the product concerned.

FEINSTEIN AMENDMENT NO. 1927

(Ordered to lie on the table.)

Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill, S. 687, supra; as follows:

(a) Any corporation, or person who is a manager with respect to a product, facility, equipment, process, place of employment, or business practice, is guilty of a criminal offense punishable by imprisonment for a term not exceeding three years, or by a fine not exceeding twenty-five thousand dollars (\$25,000), or by both that fine and imprisonment; but if the defendant is a corporation

the fine shall not exceed one million dollars (\$1,000,000), if that corporation or person does all of the following:

(1) Has actual knowledge of a serious concealed danger that is subject to the regulatory authority of a state or federal agency and is associated with that product or a component of that product or business practice.

(2) Knowingly fails during the period ending 15 days after the actual knowledge is acquired, or if there is imminent risk of great bodily harm or death, immediately, to do both of the following:

(A) Inform the appropriate government agency in writing, unless the corporation or manager has actual knowledge that the division has been so informed.

Where the concealed danger reported pursuant to this paragraph is subject to the regulatory authority of an agency other than the agency to which it was reported, it shall be the responsibility of the agency which has received the information, within 24 hours of receipt of the information, to telephonically notify the appropriate government agency of the hazard, and promptly forward any written notification received.

(B) Warn its affected employees in writing, unless the corporation or manager has actual knowledge that the employees have been so warned.

The requirement for disclosure is not applicable if the hazard is abated within the time prescribed for reporting, unless the appropriate regulatory agency nonetheless requires disclosure by regulation.

Where the appropriate government agency was not notified, but the corporation or manager reasonably and in good faith believed that they were complying with the notification requirements of this section by notifying another government agency, as listed in paragraph (B), no penalties shall apply.

(b) As used in this section:

(1) "Manager" means a person having both of the following:

(A) Management authority in or as a business entity.

(B) Significant responsibility for any aspect of a business which includes actual authority for the safety of a product or business practice or for the conduct of research or testing in connection with a product or business practice.

(2) "Product" means an article of trade or commerce or other item of merchandise which is a tangible or an intangible good, and includes services.

(3) "Actual knowledge," used with respect to a seriously concealed danger, means has information that would convince a reasonable person in the circumstances in which the manager is situated that the serious concealed danger exists.

(4) "Serious concealed danger," used with respect to a product or business practice, means that the normal or reasonably foreseeable use of, or the exposure of an individual to, the product or business practice creates a substantial probability of death, great bodily harm, or serious exposure to an individual, and the danger is not readily apparent to an individual who is likely to be exposed.

(5) "Great bodily harm" means a significant or substantial physical injury.

(6) "Serious exposure" means any exposure to a hazardous substance, when the exposure occurs as a result of an incident or exposure over time and to a degree or in an amount sufficient to create a substantial probability that death or great bodily harm in the future would result from the exposure.

(7) "Warn its affected employees" means give sufficient description of the serious con-

cealed danger to all individuals working for or in the business entity who are likely to be subject to the serious concealed danger in the course of that work to make those individuals aware of that danger.

(8) "Appropriate government agency" means any state or federal agency, including but not limited to those on the following list, that has regulatory authority with respect to the product or business practice and serious concealed dangers of the sort discovered:

(A) The Federal Occupational Safety and Health Administration.

(B) The U.S. Department of Health and Human Services.

(C) The U.S. Department of Agriculture.

(D) The U.S. Consumer Product Safety Commission.

(E) The United States Food and Drug Administration.

(F) The United States Environmental Protection Agency.

(G) The National Highway Traffic Safety Administration.

(H) The Federal Trade Commission.

(I) The Nuclear Regulatory Commission.

(J) The Federal Aviation Administration.

(K) The Federal Mine Safety and Health Review Commission.

(c) Notification received pursuant to and in compliance with this section shall not be used against any manager in any criminal case, except in a prosecution for perjury or for giving a false statement.

PRESSLER AMENDMENT NO. 1928

(Ordered to lie on the table.)

Mr. PRESSLER submitted an amendment intended to be proposed by him to the bill, S. 687, supra; as follows:

At the appropriate place insert the following:

SEC. . DISTRIBUTION OF PUNITIVE DAMAGE AWARDS.

Notwithstanding any other provision of this Act, if punitive damages are awarded in any civil action subject to this Act, 50 percent of the amount of punitive damages (before any attorney's fees are paid) shall be deposited—

(1) in miscellaneous receipts of the General Treasury of the United States, if such action is filed in Federal court; or

(2) in any fund as provided by State law of the applicable State, if such action is filed in State court.

DOMENICI AMENDMENT NO. 1929

(Ordered to lie on the table.)

Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill, S. 687, supra; as follows:

On page 32, after line 12, insert the following new title:

TITLE III PRIVATE SECURITIES LITIGATION AND FINANCIAL DISCLOSURE

SEC. 301. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Private Securities Litigation Reform Act of 1994".

(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:

Sec. 301. Short title; table of contents.

SUBTITLE A—PRIVATE SECURITIES LITIGATION

Sec. 311. Elimination of certain abusive practices.

Sec. 312. Alternative dispute resolution procedure; time limitation on private rights of action.

Sec. 313. Plaintiff steering committees.

Sec. 314. Requirements for securities fraud actions.

Sec. 315. Amendment to Racketeer Influenced and Corrupt Organizations Act.

SUBTITLE B—FINANCIAL DISCLOSURE

Sec. 351. Safe harbor for forward-looking statements.

Sec. 352. Fraud detection and disclosure.

Sec. 353. Proportionate liability and joint and several liability.

Sec. 354. Public Auditing Self-Disciplinary Board.

Subtitle A—Private Securities Litigation

SEC. 311. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.

(a) RECEIPT FOR REFERRAL FEES.—Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)) is amended by adding at the end the following new paragraph:

"(7) RECEIPT OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept remuneration for assisting an attorney in obtaining the representation of any customer in any implied private action arising under this title."

(b) PROHIBITION ON ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

"(4) PROHIBITION ON ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court, funds disgorged as the result of an action brought by the Commission in Federal court, or of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds."

(c) ADDITIONAL PROVISIONS APPLICABLE TO CLASS ACTIONS.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsections:

"(i) RECOVERY BY NAMED PLAINTIFFS IN CLASS ACTIONS.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the share of any final judgment or of any settlement that is awarded to class plaintiffs serving as the representative parties shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this subsection shall be construed to limit the award to any representative parties of reasonable compensation, costs, and expenses (including lost wages) relating to the representation of the class.

"(j) CONFLICTS OF INTEREST.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, if a party is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.

"(k) RESTRICTIONS ON SETTLEMENTS UNDER SEAL.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the terms and provisions of any settlement agreement between any of the parties shall not be filed under seal, except that on motion of any of the parties to the settlement, the court may order filing under

seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. Good cause shall only exist if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any person.

“(1) RESTRICTIONS ON PAYMENT OF ATTORNEYS’ FEES FROM SETTLEMENT FUNDS.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, attorneys’ fees awarded by the court to counsel for the class shall be determined as a percentage of the amount of damages and prejudgment interest actually paid to the class as a result of the attorneys’ efforts. In no event shall the amount awarded to counsel for the class exceed a reasonable percentage of the amount recovered by the class plus reasonable expenses.

“(m) DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, a proposed settlement agreement that is published or otherwise disseminated to the class shall include the following statements, which shall not be admissible for purposes of any Federal or State judicial or administrative proceeding:

“(1) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

“(A) AGREEMENT ON AMOUNT OF DAMAGES AND LIKELIHOOD OF PREVAILING.—If the settling parties agree on the amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title and the likelihood that the plaintiff would prevail—

“(i) a statement concerning the amount of such potential damages; and

“(ii) a statement concerning the probability that the plaintiff would prevail on the claims alleged under this title and a brief explanation of the reasons for that conclusion.

“(B) DISAGREEMENT ON AMOUNT OF DAMAGES OR LIKELIHOOD OF PREVAILING.—If the parties do not agree on the amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title or on the likelihood that the plaintiff would prevail on those claims, or both, a statement from each settling party concerning the issue or issues on which the parties disagree.

“(C) INADMISSIBILITY FOR CERTAIN PURPOSES.—Statements made in accordance with subparagraphs (A) and (B) shall not be admissible for purposes of any Federal or State judicial or administrative proceeding.

“(2) STATEMENT OF ATTORNEYS’ FEES OR COSTS SOUGHT.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys’ fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought, and a brief explanation of the basis for the application.

“(3) IDENTIFICATION OF REPRESENTATIVES.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to class members.

“(4) OTHER INFORMATION.—Such other information as may be required by the court, or by any guardian ad litem or plaintiff steering committee appointed by the court pursuant to section 38.

“(n) SPECIAL VERDICTS.—In an implied private action arising under this title in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant’s state of mind at the time the alleged violation occurred.

“(o) NAMED PLAINTIFF THRESHOLD.—In an implied private action arising under this title, in order for a plaintiff or plaintiffs to obtain certification as representatives of a class of investors pursuant to the Federal Rules of Civil Procedure, the plaintiff or plaintiffs must show that they owned, in the aggregate, during the time period in which violations of this title are alleged to have occurred, not less than the lesser of—

“(1) 1 percent of the securities which are the subject of the litigation; or

“(2) \$10,000 (in market value) of such securities.”

SEC. 312. ALTERNATIVE DISPUTE RESOLUTION PROCEDURE; TIME LIMITATION ON PRIVATE RIGHTS OF ACTION.

(a) RECOVERY OF COSTS AND ATTORNEYS’ FEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

“SEC. 36. ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.

“(a) IN GENERAL.—

“(1) OFFER TO PROCEED.—Except as provided in paragraph (2), in an implied private action arising under this title, any party may, before the expiration of the period permitted for answering the complaint, deliver to all other parties an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the rules of the court in which the action is maintained.

“(2) PLAINTIFF CLASS ACTIONS.—In an implied private action under this title which is brought as a plaintiff class action, an offer under paragraph (1) shall be made not later than 30 days after a guardian ad litem or plaintiff steering committee is appointed by the court in accordance with section 38.

“(3) RESPONSE.—The recipient of an offer under paragraph (1) or (2) shall file a written notice of acceptance or rejection of the offer with the court not later than 10 days after receipt of the offer. The court may, upon motion by any party made prior to the expiration of such period, extend the period for not more than 90 additional days, during which time discovery may be permitted by the court.

“(4) SELECTION OF TYPE OF ALTERNATIVE DISPUTE RESOLUTION.—For purposes of paragraphs (1) and (2), if the rules of the court establish or recognize more than 1 type of alternative dispute resolution, the parties may stipulate as to the type of alternative dispute resolution to be applied. If the parties are unable to so stipulate, the court shall issue an order not later than 20 days after the date on which the parties agree to the use of alternative dispute resolution, specifying the type of alternative dispute resolution to be applied.

“(5) SANCTIONS FOR DILATORY OR OBSTRUCTIVE CONDUCT.—If the court finds that a party has engaged in dilatory or obstructive conduct in taking or opposing any discovery allowed during the response period described in paragraph (3), the court may—

“(A) extend the period to permit further discovery from that party for a suitable period; and

“(B) deny that party the opportunity to conduct further discovery prior to the expiration of the period.

“(b) PENALTY FOR UNREASONABLE LITIGATION POSITION.—

“(1) AWARD OF COSTS.—In an implied private action arising under this title, upon motion of the prevailing party made prior to final judgment, the court shall award costs, including reasonable attorneys’ fees, against a party or parties or their attorneys, if—

“(A) the party unreasonably refuses to proceed pursuant to an alternative dispute resolution procedure, or refuses to accept the result of an alternative dispute resolution procedure;

“(B) final judgment is entered against the party; and

“(C) the party asserted a claim or defense in the action which was not substantially justified.

“(2) DETERMINATION OF JUSTIFICATION.—For purposes of paragraph (1)(C), whether a position is ‘substantially justified’ shall be determined in the same manner as under section 2412(d)(1)(B) of title 28, United States Code.

“(3) LIMITED USE.—Fees and costs awarded under this paragraph shall not be applied to any named plaintiff in any action certified as a class action under the Federal Rules of Civil Procedure if such plaintiff has never owned more than \$1,000,000 of the securities which are the subject of the litigation.”

(b) LIMITATIONS PERIOD FOR IMPLIED PRIVATE RIGHTS OF ACTION.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

“SEC. 37. LIMITATIONS PERIOD FOR IMPLIED PRIVATE RIGHTS OF ACTION.

“(a) IN GENERAL.—Except as otherwise provided in this title, an implied private right of action arising under this title shall be brought not later than the earlier of—

“(1) 5 years after the date on which the alleged violation occurred; or

“(2) 2 years after the date on which the alleged violation was discovered or should have been discovered through the exercise of reasonable diligence.

“(b) EFFECTIVE DATE.—The limitations period provided by this section shall apply to all proceedings pending on or commenced after the date of enactment of this section.”

SEC. 313. PLAINTIFF STEERING COMMITTEES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

“SEC. 38. GUARDIAN AD LITEM AND CLASS ACTION STEERING COMMITTEES.

“(a) GUARDIAN AD LITEM.—Except as provided in subsection (b), not later than 10 days after certifying a plaintiff class in an implied private action brought under this title, the court shall appoint a guardian ad litem for the plaintiff class from a list or lists provided by the parties or their counsel. The guardian ad litem shall direct counsel for the class and perform such other functions as the court may specify. The court shall apportion the reasonable fees and expenses of the guardian ad litem among the parties. Court appointment of a guardian ad litem shall not be subject to interlocutory review.

“(b) CLASS ACTION STEERING COMMITTEE.—Subsection (a) shall not apply if, not later than 10 days after certifying a plaintiff class, on its own motion or on motion of a member of the class, the court appoints a committee of class members to direct counsel for the class (hereafter in this section referred to as the ‘plaintiff steering committee’) and to perform such other functions as the court may specify. Court appointment of a plaintiff steering committee shall not be subject to interlocutory review.

“(c) MEMBERSHIP OF PLAINTIFF STEERING COMMITTEE.—

“(1) QUALIFICATIONS.—

“(A) NUMBER.—A plaintiff steering committee shall consist of not less than 5 class members, willing to serve, who the court believes will fairly represent the class.

“(B) OWNERSHIP INTERESTS.—Members of the plaintiff steering committee shall have cumulatively held during the class period not less than—

“(i) the lesser of 5 percent of the securities which are the subject matter of the litigation or securities which are the subject matter of the litigation with a market value of \$10,000,000; or

“(ii) such smaller percentage or dollar amount as the court finds appropriate under the circumstances.

“(2) NAMED PLAINTIFFS.—Class members who are named plaintiffs in the litigation may serve on the plaintiff steering committee, but shall not comprise a majority of the committee.

“(3) NONCOMPENSATION OF MEMBERS.—Members of the plaintiff steering committee shall serve without compensation, except that any member may apply to the court for reimbursement of reasonable out-of-pocket expenses from any common fund established for the class.

“(4) MEETINGS.—The plaintiff steering committee shall conduct its business at one or more previously scheduled meetings of the committee at which a majority of its members are present in person or by electronic communication. The plaintiff steering committee shall decide all matters within its authority by a majority vote of all members, except that the committee may determine that decisions other than to accept or reject a settlement offer or to employ or dismiss counsel for the class may be delegated to one or more members of the committee, or may be voted upon by committee members *seriatim*, without a meeting.

“(5) RIGHT OF NONMEMBERS TO BE HEARD.—A class member who is not a member of the plaintiff steering committee may appear and be heard by the court on any issue in the action, to the same extent as any other party.

“(d) FUNCTIONS OF GUARDIAN AD LITEM AND PLAINTIFF STEERING COMMITTEE.—

“(1) DIRECT COUNSEL.—The authority of the guardian ad litem or the plaintiff steering committee to direct counsel for the class shall include all powers normally permitted to an attorney's client in litigation, including the authority to retain or dismiss counsel and to reject offers of settlement, and the preliminary authority to accept an offer of settlement, subject to the restrictions specified in paragraph (2). Dismissal of counsel other than for cause shall not limit the ability of counsel to enforce any contractual fee agreement or to apply to the court for a fee award from any common fund established for the class.

“(2) SETTLEMENT OFFERS.—If a guardian ad litem or a plaintiff steering committee gives preliminary approval to an offer of settlement, the guardian ad litem or the plaintiff steering committee may seek approval of the offer by a majority of class members if the committee determines that the benefit of seeking such approval outweighs the cost of soliciting the approval of class members.

“(e) IMMUNITY FROM LIABILITY; REMOVAL.—Any person serving as a guardian ad litem or as a member of a plaintiff steering committee shall be immune from any liability arising from such service. The court may remove a guardian ad litem or a member of a plaintiff steering committee for good cause shown.

“(f) EFFECT ON OTHER LAW.—This section does not affect any other provision of law concerning class actions or the authority of the court to give final approval to any offer of settlement.”.

SEC. 314. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

“SEC. 39. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

“(a) INTENT.—In an implied private action arising under this title in which the plaintiff may recover money damages from a defendant only on proof that the defendant acted with some level of intent, the plaintiff's complaint shall allege specific facts demonstrating the state of mind of each defendant at the time the alleged violation occurred.

“(b) MISLEADING STATEMENTS AND OMISSIONS.—In an implied action arising under this title in which the plaintiff alleges that the defendant—

“(1) made an untrue statement of a material fact; or

“(2) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the plaintiff shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the plaintiff shall set forth all information on which that belief is formed.

“(c) BURDEN OF PROOF.—In an implied private action arising under this title based on a material misstatement or omission concerning a security, and in which the plaintiff claims to have bought or sold the security based on a reasonable belief that the market value of the security reflected all publicly available information, the plaintiff shall have the burden of proving that the misstatement or omission caused any loss incurred by the plaintiff.

“(d) DAMAGES.—In an implied private action arising under this title based on a material misstatement or omission concerning a security, and in which the plaintiff claims to have bought or sold the security based on a reasonable belief that the market value of the security reflected all publicly available information, the plaintiff's damages shall not exceed the lesser of—

“(1) the difference between the price paid by the plaintiff for the security and the market value of the security immediately after dissemination to the market of information which corrects the misstatement or omission; and

“(2) the difference between the price paid by the plaintiff for the security and the price at which the plaintiff sold the security after dissemination of information correcting the misstatement or omission.”.

SEC. 315. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting “, except that no person may bring an action under this provision if the racketeering activity, as defined in section 1961(1)(D), involves fraud in the sale of securities” before the period.

Subtitle B—Financial Disclosure

SEC. 351. SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

(a) CONSIDERATION OF REGULATORY OR LEGISLATIVE CHANGES.—In consultation with in-

vestors and issuers of securities, the Securities and Exchange Commission shall consider adopting or amending its rules and regulations, or making legislative recommendations, concerning—

(1) criteria that the Commission finds appropriate for the protection of investors by which forward-looking statements concerning the future economic performance of an issuer of securities registered under section 12 of the Securities Exchange Act of 1934 will be deemed not to be in violation of section 10(b) of that Act; and

(2) procedures by which courts shall timely dismiss claims against such issuers of securities based on such forward-looking statements if such statements are in accordance with any criteria under paragraph (1).

(b) COMMISSION CONSIDERATIONS.—In developing rules or legislative recommendations in accordance with subsection (a), the Commission shall consider—

(1) appropriate limits to liability for forward-looking statements;

(2) procedures for making a summary determination of the applicability of any Commission rule for forward-looking statements early in a judicial proceeding to limit protracted litigation and expansive discovery;

(3) incorporating and reflecting the scienter requirements applicable to implied private actions under section 10(b); and

(4) providing clear guidance to issuers of securities and the judiciary.

(c) SECURITIES ACT AMENDMENT.—The Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

“SEC. 40. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

“(a) IN GENERAL.—In any implied private action arising under this title that alleges that a forward-looking statement concerning the future economic performance of an issuer registered under section 12 was materially false or misleading, if a party making a motion in accordance with subsection (b) requests a stay of discovery concerning the claims or defenses of that party, the court shall grant such a stay until it has ruled on any such motion.

“(b) SUMMARY JUDGMENT MOTIONS.—Subsection (a) shall apply to any motion for summary judgment made by a defendant asserting that the forward-looking statement was within the coverage of any rule which the Commission may have adopted concerning such predictive statements, if such motion is made not less than 60 days after the plaintiff commences discovery in the action.

“(c) DILATORY CONDUCT; DUPLICATIVE DISCOVERY.—Notwithstanding subsection (a) or (b), the time permitted for a plaintiff to conduct discovery under subsection (b) may be extended, or a stay of the proceedings may be denied, if the court finds that—

“(1) the defendant making a motion described in subsection (b) engaged in dilatory or obstructive conduct in taking or opposing any discovery; or

“(2) a stay of discovery pending a ruling on a motion under subsection (b) would be substantially unfair to the plaintiff or other parties to the action.”.

SEC. 352. FRAUD DETECTION AND DISCLOSURE.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting immediately after section 10 the following new section:

“SEC. 10A. AUDIT REQUIREMENTS.

“(a) IN GENERAL.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall include, in accordance with

generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

"(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

"(2) procedures designed to identify related party transactions which are material to the financial statements or otherwise require disclosure therein; and

"(3) an evaluation of whether there is substantial doubt about the issuer's ability to continue as a going concern during the ensuing fiscal year.

"(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

"(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting an audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the issuer's financial statements) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

"(A)(i) determine whether it is likely that an illegal act has occurred; and

"(ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

"(B) as soon as practicable, inform the appropriate level of the issuer's management and assure that the issuer's audit committee, or the issuer's board of directors in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

"(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, having first assured itself that the audit committee of the board of directors of the issuer or the board (in the absence of an audit committee) is adequately informed with respect to illegal acts that have been detected or have otherwise come to the accountant's attention in the course of such accountant's audit, the independent public accountant concludes that—

"(A) the illegal act has a material effect on the financial statements of the issuer;

"(B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and

"(C) the failure to take remedial action is reasonably expected to warrant departure from a standard auditor's report, when made, or warrant resignation from the audit engagement;

the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

"(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of directors receives a report under paragraph (2) shall inform the Commission by notice not later than 1 business day after the receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished to the Commission. If the independent public accountant fails to receive a copy of the notice before the expiration of the required 1-

business-day period, the independent public accountant shall—

"(A) resign from the engagement; or

"(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) not later than 1 business day following such failure to receive notice.

"(4) REPORT AFTER RESIGNATION.—If an independent public accountant resigns from an engagement under paragraph (3)(A), the accountant shall, not later than 1 business day following the failure by the issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

"(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rules promulgated pursuant thereto.

"(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b), the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination to impose a civil penalty and the amount of the penalty shall be governed by the standards set forth in section 21B.

"(e) PRESERVATION OF EXISTING AUTHORITY.—Except as provided in subsection (d), nothing in this section shall be held to limit or otherwise affect the authority of the Commission under this title.

"(f) DEFINITION.—As used in this section, the term 'illegal act' means an act or omission that violates any law, or any rule or regulation having the force of law."

(b) EFFECTIVE DATES.—With respect to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S-K of the Securities and Exchange Commission (17 CFR 229.302(a)), the amendments made by subsection (a) shall apply to any annual report for any period beginning on or after January 1, 1994. With respect to any other registrant, the amendment shall apply for any period beginning on or after January 1, 1995.

SEC. 353. PROPORTIONATE LIABILITY AND JOINT AND SEVERAL LIABILITY.

(a) SECURITIES ACT AMENDMENT.—The Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 41. PROPORTIONATE LIABILITY AND JOINT AND SEVERAL LIABILITY IN IMPLIED ACTIONS.

"(a) APPLICABILITY.—This section shall apply only to the allocation of damages among persons who are, or who may become, liable for damages in an implied private action arising under this title. Nothing in this section shall affect the standards for liability associated with an implied private action arising under this title.

"(b) APPLICATION OF JOINT AND SEVERAL LIABILITY.—

"(1) IN GENERAL.—A person against whom a judgment is entered in an implied private action arising under this title shall be liable jointly and severally for any recoverable damages on such judgment if the person is found to have—

"(A) been a primary wrongdoer;

"(B) committed knowing securities fraud; or

"(C) controlled any primary wrongdoer or person who committed knowing securities fraud.

"(2) PRIMARY WRONGDOER.—As used in this subsection—

"(A) the term 'primary wrongdoer' means—

"(i) any—

"(I) issuer, registrant, purchaser, seller, or underwriter of securities;

"(II) marketmaker or specialist in securities; or

"(III) clearing agency, securities information processor, or government securities dealer;

if such person breached a direct statutory or regulatory obligation or if such person otherwise had a principal role in the conduct that is the basis for the implied right of action; or

"(ii) any person who intentionally rendered substantial assistance to the fraudulent conduct of any person described in clause (i), with actual knowledge of such person's fraudulent conduct or fraudulent purpose, and with knowledge that such conduct was wrongful; and

"(B) a defendant engages in 'knowing securities fraud' if such defendant—

"(i) makes a material representation with actual knowledge that the representation is false, or omits to make a statement with actual knowledge that, as a result of the omission, one of the defendant's material representations is false and knows that other persons are likely to rely on that misrepresentation or omission, except that reckless conduct by the defendant shall not be construed to constitute 'knowing securities fraud'; or

"(ii) intentionally rendered substantial assistance to the fraudulent conduct of any person described in clause (i), with actual knowledge of such person's fraudulent conduct or fraudulent purpose, and with knowledge that such conduct was wrongful.

"(c) DETERMINATION OF RESPONSIBILITY.—In an implied private action in which more than 1 person contributed to a violation of this title, the court shall instruct the jury to answer special interrogatories, or if there is no jury, shall make findings, concerning the degree of responsibility of each person alleged to have caused or contributed to the violation of this title, including persons who have entered into settlements with the plaintiff. The interrogatories or findings shall specify the amount of damages the plaintiff is entitled to recover and the degree of responsibility, measured as a percentage of the total fault of all persons involved in the violation, of each person found to have caused or contributed to the damages incurred by the plaintiff or plaintiffs. In determining the degree of responsibility, the trier of fact shall consider—

"(1) the nature of the conduct of each person; and

"(2) the nature and extent of the causal relationship between that conduct and the damage claimed by the plaintiff.

"(d) APPLICATION OF PROPORTIONATE LIABILITY.—Except as provided in subsection (b), the amount of liability of a person who is, or may through right of contribution become, liable for damages based on an implied private action arising under this title shall be determined as follows:

"(1) DEGREE OF RESPONSIBILITY.—Except as provided in paragraph (2), each liable party shall only be liable for the portion of the judgment that corresponds to that party's

degree of responsibility, as determined under subsection (c).

“(2) UNCOLLECTIBLE SHARES.—If, upon motion made not later than 6 months after a final judgment is entered, the court determines that all or part of a defendant's share of the obligation is uncollectible—

“(A) the remaining defendants shall be jointly and severally liable for the uncollectible share if the plaintiff establishes that—

“(i) the plaintiff is an individual whose recoverable damages under a final judgment are equal to more than 10 percent of the plaintiff's net financial worth; and

“(ii) the plaintiff's net financial worth is less than \$200,000; and

“(B) the amount paid by each of the remaining defendants to all other plaintiffs shall be, in total, not more than the greater of—

“(i) that remaining defendant's percentage of fault for the uncollectible share; or

“(ii) 5 times—

“(I) the amount which the defendant gained from the conduct that gave rise to its liability; or

“(II) if a defendant did not obtain a direct financial gain from the conduct that gave rise to the liability and the conduct consisted of the provision of deficient services to an entity involved in the violation, the defendant's gross revenues received for the provision of all services to the other entity involved in the violation during the calendar years in which deficient services were provided.

“(3) OVERALL LIMIT.—In no event shall the total payments required pursuant to paragraph (2) exceed the amount of the uncollectible share.

“(4) DEFENDANTS SUBJECT TO CONTRIBUTION.—A defendant whose liability is reallocated pursuant to paragraph (2) shall be subject to contribution and to any continuing liability to the plaintiff on the judgment.

“(5) RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment pursuant to paragraph (2), that defendant may recover contribution—

“(A) from the defendant originally liable to make the payment;

“(B) from any defendant liable jointly and severally pursuant to subsection (b)(1);

“(C) from any defendant held proportionately liable pursuant to this subsection who is liable to make the same payment and has paid less than his or her proportionate share of that payment; or

“(D) from any other person responsible for the conduct giving rise to the payment who would have been liable to make the same payment.

“(e) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsections (b)(1) and (c) and the procedure for reallocation of uncollectible shares under subsection (d)(2) shall not be disclosed to members of the jury.

“(f) SETTLEMENT DISCHARGE.—

“(1) IN GENERAL.—A defendant who settles an implied private action brought under this title at any time before verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution or indemnity arising out of the action—

“(A) by nonsettling persons against the settling defendant; and

“(B) by the settling defendant against any nonsettling defendants.

“(2) REDUCTION.—If a person enters into a settlement with the plaintiff prior to verdict or judgment, the verdict or judgment shall be reduced by the greater of—

“(A) an amount that corresponds to the degree of responsibility of that person; or

“(B) the amount paid to the plaintiff by that person.

“(g) CONTRIBUTION.—A person who becomes liable for damages in an implied private action arising under this title may recover contribution from any other person who, if joined in the original suit, would have been liable for the same damages. A claim for contribution shall be determined based on the degree of responsibility of the claimant and of each person against whom a claim for contribution is made.

“(h) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—Once judgment has been entered in an implied private action arising under this title determining liability, an action for contribution must be brought not later than 6 months after the entry of a final, non-appealable judgment in the action, except that an action for contribution brought by a defendant who was required to make an additional payment pursuant to subsection (d)(2) may be brought not later than 6 months after the date on which such payment was made.”.

(b) EFFECTIVE DATE.—Section 41 of the Securities Exchange Act of 1934, as added by subsection (a), shall only apply to implied private actions commenced after the date of enactment of this Act.

SEC. 354. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting immediately after section 13 the following new section:

“SEC. 13A. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.

“(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) PUBLIC ACCOUNTING FIRM.—The term ‘public accounting firm’ means a sole proprietorship, unincorporated association, partnership, corporation, or other legal entity that is engaged in the practice of public accounting.

“(2) BOARD.—The term ‘Board’ means the Public Auditing Self-Disciplinary Board designated by the Commission pursuant to subsection (b).

“(3) ACCOUNTANT'S REPORT.—The term ‘accountant's report’ means a document in which a public accounting firm identifies a financial statement, report, or other document and sets forth the firm's opinion regarding such financial statement, report, or other document, or an assertion that an opinion cannot be expressed.

“(4) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—The term ‘person associated with a public accounting firm’ means a natural person who—

“(A) is a partner, shareholder, employee, or individual proprietor of a public accounting firm, or who shares in the profits of a public accounting firm; and

“(B) engages in any conduct or practice in connection with the preparation of an accountant's report on any financial statement, report, or other document required to be filed with the Commission under any securities law.

“(5) PROFESSIONAL STANDARDS.—The term ‘professional standards’ means generally accepted auditing standards, generally accepted accounting principles, generally accepted

standards for attestation engagements, and any other standards related to the preparation of financial statements or accountant's reports promulgated by the Commission or a standard-setting body recognized by the Board.

“(b) ESTABLISHMENT OF BOARD.—

“(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Commission shall establish a Public Auditing Self-Disciplinary Board to perform the duties set forth in this section. The Commission shall designate an entity to serve as the Board if the Commission finds that—

“(A) such entity is sponsored by an existing national organization of certified public accountants that—

“(i) is most representative of certified public accountants covered by this title; and

“(ii) has demonstrated its commitment to improving the quality of practice before the Commission; and

“(B) control over such entity is vested in the members of the Board selected pursuant to subsection (c).

“(2) ALTERNATIVE ELECTION OF MEMBERS.—If the Commission designates an entity to serve as the Board pursuant to paragraph (1), the entity shall conduct the election of initial Board members in accordance with subsection (c)(1)(B)(i).

“(c) MEMBERSHIP OF BOARD.—

“(1) IN GENERAL.—The Board shall be composed of 3 appointed members and 4 elected members, as follows:

“(A) APPOINTED MEMBERS.—Three members of the Board shall be appointed in accordance with the following:

“(i) INITIAL APPOINTMENTS.—The Chairman of the Commission shall make the initial appointments, in consultation with the other members of the Commission, not later than 90 days after the date of enactment of this section.

“(ii) SUBSEQUENT APPOINTMENTS.—After the initial appointments under clause (i), members of the Board appointed to fill vacancies of appointed members of the Board shall be appointed in accordance with the rules adopted pursuant to paragraph (5). Such rules shall provide that such members shall be appointed by the Board, subject to the approval of the Commission.

“(B) ELECTED MEMBERS.—Four members, including the member who shall serve as the chairperson of the Board, shall be elected in accordance with the following:

“(i) INITIAL ELECTION.—Not later than 120 days after the date on which the Chairman of the Commission makes appointments under subparagraph (A)(i), an entity designated by the Commission pursuant to subsection (b) shall conduct an election of 4 initial elected members pursuant to interim election rules proposed by the entity and approved by the 3 interim members of the Board and the Commission. If the Commission is unable to designate an entity meeting the criteria set forth in subsection (b)(1), the members of the Board appointed under subparagraph (A)(i) shall adopt interim rules, subject to approval by the Commission, providing for the election of the 4 initial elected members. Such rules shall provide that such members of the Board shall be elected—

“(I) not later than 120 days after the date on which members are initially appointed under subparagraph (A)(i);

“(II) by persons who are associated with public accounting firms and who are certified public accountants under the laws of any State; and

“(III) subject to the approval of the Commission.

“(ii) **SUBSEQUENT ELECTIONS.**—After the initial elections under clause (i), members of the Board elected to fill vacancies of elected members of the Board shall be elected in accordance with the rules adopted pursuant to paragraph (5). Such rules shall provide that such members of the Board shall be elected—

“(I) by persons who are associated with public accounting firms and who are certified public accountants under the laws of any State; and

“(II) subject to the approval of the Commission.

“(2) **QUALIFICATION.**—Four members of the Board, including the chairperson of the Board, shall be persons who have not been associated with a public accounting firm during the 10-year period preceding appointment or election to the Board under paragraph (1). Three members of the Board who are elected shall be persons associated with a public accounting firm registered with the Board.

“(3) **FULL-TIME BASIS.**—The chairperson of the Board shall serve on a full-time basis, severing all business ties with his or her former firms or employers prior to beginning service on the Board.

“(4) **TERMS.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), each member of the Board shall hold office for a term of 4 years or until a successor is appointed, whichever is later, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.

“(B) **INITIAL BOARD MEMBERS.**—Beginning on the date on which all members of the Board have been selected in accordance with this subsection, the terms of office of the initial Board members shall expire, as determined by the Board, by lottery—

“(i) for 1 member, 1 year after such date;

“(ii) for 2 members, 2 years after such date;

“(iii) for 2 members, 3 years after such date; and

“(iv) for 2 members, 4 years after such date.

“(5) **RULES.**—Following selection of the 7 initial members of the Board in accordance with subparagraphs (A)(i) and (B)(i) of paragraph (1), the Board shall propose and adopt rules, which shall provide for—

“(A) the operation and administration of the Board, including—

“(i) the appointment of members in accordance with paragraph (1)(A)(ii);

“(ii) the election of members in accordance with paragraph (1)(B)(ii); and

“(iii) the compensation of the members of the Board;

“(B) the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this title;

“(C) the registration of public accounting firms with the Board pursuant to subsections (d) and (e); and

“(D) the matters described in subsections (f) and (g).

“(d) **REGISTRATION AND ANNUAL FEES.**—After the date on which all initial members of the Board have been selected in accordance with subsection (c), the Board shall assess and collect a registration fee and annual dues from each public accounting firm registered with the Board. Such fees and dues shall be assessed at a level sufficient to recover the costs and expenses of the Board and to permit the Board to operate on a self-financing basis. The amount of fees and dues for each public accounting firm shall be based upon—

“(1) the annual revenues of such firm from accounting and auditing services;

“(2) the number of persons associated with the public accounting firm;

“(3) the number of clients for which such firm furnishes accountant's reports on financial statements, reports, or other documents filed with the Commission; and

“(4) such other criteria as the Board may establish.

“(e) **REGISTRATION WITH BOARD.**—

“(1) **REGISTRATION REQUIRED.**—Beginning 1 year after the date on which all initial members of the Board have been selected in accordance with subsection (c), it shall be unlawful for a public accounting firm to furnish an accountant's report on any financial statement, report, or other document required to be filed with the Commission under any Federal securities law, unless such firm is registered with the Board.

“(2) **APPLICATION FOR REGISTRATION.**—A public accounting firm may be registered under this subsection by filing with the Board an application for registration in such form and containing such information as the Board, by rule, may prescribe. Each application shall include—

“(A) the names of all clients of the public accounting firm for which the firm furnishes accountant's reports on financial statements, reports, or other documents filed with the Commission;

“(B) financial information of the public accounting firm for its most recent fiscal year, including its annual revenues from accounting and auditing services, its assets and its liabilities;

“(C) a statement of the public accounting firm's policies and procedures with respect to quality control of its accounting and auditing practice;

“(D) information relating to criminal, civil, or administrative actions or formal disciplinary proceedings pending against such firm, or any person associated with such firm, in connection with an accountant's report furnished by such firm;

“(E) a list of persons associated with the public accounting firm who are certified public accountants, including any State professional license or certification number for each such person; and

“(F) such other information that is reasonably related to the Board's responsibilities as the Board considers necessary or appropriate.

“(3) **PERIODIC REPORTS.**—Once in each year, or more frequently as the Board, by rule, may prescribe, each public accounting firm registered with the Board shall submit reports to the Board updating the information contained in its application for registration and containing such additional information that is reasonably related to the Board's responsibilities as the Board, by rule, may prescribe.

“(4) **EXEMPTIONS.**—The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any public accounting firm or any accountant's report, or any class of public accounting firms or any class of accountant's reports, from any provisions of this section or the rules or regulations issued hereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

“(5) **CONFIDENTIALITY.**—The Board may, by rule, designate portions of the filings required pursuant to paragraphs (2) and (3) as privileged and confidential.

“(f) **DUTIES OF BOARD.**—After the date on which all initial members of the Board have

been selected in accordance with subsection (c), the Board shall have the following duties and powers:

“(1) **INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.**—The Board shall establish fair procedures for investigating and disciplining public accounting firms registered with the Board, and persons associated with such firms, for violations of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards in connection with the preparation of an accountant's report on a financial statement, report, or other document filed with the Commission.

“(2) **INVESTIGATION PROCEDURES.**—

“(A) **IN GENERAL.**—The Board may conduct an investigation of any act, practice, or omission by a public accounting firm registered with the Board, or by any person associated with such firm, in connection with the preparation of an accountant's report on a financial statement, report, or other document filed with the Commission that may violate any applicable provision of the Federal securities laws, the rules and regulations issued thereunder, the rules adopted by the Board, or professional standards, whether such act, practice, or omission is the subject of a criminal, civil, or administrative action, or a disciplinary proceeding, or otherwise is brought to the attention of the Board.

“(B) **POWERS OF BOARD.**—For purposes of an investigation under this paragraph, the Board may, in addition to such other actions as the Board determines to be necessary or appropriate—

“(i) require the testimony of any person associated with a public accounting firm registered with the Board, with respect to any matter which the Board considers relevant or material to the investigation;

“(ii) require the production of audit workpapers and any other document or information in the possession of a public accounting firm registered with the Board, or any person associated with such firm, wherever domiciled, that the Board considers relevant or material to the investigation, and may examine the books and records of such firm to verify the accuracy of any documents or information so supplied; and

“(iii) request the testimony of any person and the production of any document in the possession of any person, including a client of a public accounting firm registered with the Board, that the Board considers relevant or material to the investigation.

“(C) **SUSPENSION OR REVOCATION OF REGISTRATION FOR NONCOMPLIANCE.**—The refusal of any person associated with a public accounting firm registered with the Board to testify, or the refusal of any such person to produce documents or otherwise cooperate with the Board, in connection with an investigation under this section, shall be cause for suspending or barring such person from associating with a public accounting firm registered with the Board, or such other appropriate sanction as the Board shall determine. The refusal of any public accounting firm registered with the Board to produce documents or otherwise cooperate with the Board, in connection with an investigation under this section, shall be cause for the suspension or revocation of the registration of such firm, or such other appropriate sanction as the Board shall determine.

“(D) **REFERRAL TO COMMISSION.**—

“(i) **IN GENERAL.**—If the Board is unable to conduct or complete an investigation under this section because of the refusal of any client of a public accounting firm registered

with the Board, or any other person, to testify, produce documents, or otherwise cooperate with the Board in connection with such investigation, the Board shall report such refusal to the Commission.

"(ii) INVESTIGATION.—The Commission may designate the Board or one or more officers of the Board who shall be empowered, in accordance with such procedures as the Commission may adopt, to subpoena witnesses, compel their attendance, and require the production of any books, papers, correspondence, memoranda, or other records relevant to any investigation by the Board. Attendance of witnesses and the production of any records may be required from any place in the United States or any State at any designated place of hearing. Enforcement of a subpoena issued by the Board, or an officer of the Board, pursuant to this subparagraph shall occur in the manner provided for in section 21(c). Examination of witnesses subpoenaed pursuant to this subparagraph shall be conducted before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

"(iii) REFERRALS TO COMMISSION.—The Board may refer any investigation to the Commission, as the Board deems appropriate.

"(E) IMMUNITY FROM CIVIL LIABILITY.—An employee of the Board engaged in carrying out an investigation or disciplinary proceeding under this section shall be immune from any civil liability arising out of such investigation or disciplinary proceeding in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

"(3) DISCIPLINARY PROCEDURES.—

"(A) DECISION TO DISCIPLINE.—In a proceeding by the Board to determine whether a public accounting firm, or a person associated with such firm, should be disciplined, the Board shall bring specific charges, notify such firm or person of the charges, give such firm or person an opportunity to defend against such charges, and keep a record of such actions.

"(B) SANCTIONS.—If the Board finds that a public accounting firm, or a person associated with such firm, has engaged in any act, practice, or omission in violation of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards, the Board may impose such disciplinary sanctions as it deems appropriate, including—

"(i) revocation or suspension of registration under this section;

"(ii) limitation of activities, functions, and operations;

"(iii) fine;

"(iv) censure;

"(v) in the case of a person associated with a public accounting firm, suspension or bar from being associated with a public accounting firm registered with the Board; and

"(vi) any other disciplinary sanction that the Board determines to be appropriate.

"(C) STATEMENT REQUIRED.—A determination by the Board to impose a disciplinary sanction shall be supported by a written statement by the Board setting forth—

"(i) any act or practice in which the public accounting firm or person associated with such firm has been found to have engaged, or which such firm or person has been found to have omitted;

"(ii) the specific provision of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards which any

such act, practice, or omission is deemed to violate; and

"(iii) the sanction imposed and the reasons therefor.

"(D) PROHIBITION ON ASSOCIATION.—It shall be unlawful—

"(i) for any person as to whom a suspension or bar is in effect willfully to be or to become associated with a public accounting firm registered with the Board, in connection with the preparation of an accountant's report on any financial statement, report, or other document filed with the Commission, without the consent of the Board or the Commission; and

"(ii) for any public accounting firm registered with the Board to permit such a person to become, or remain, associated with such firm without the consent of the Board or the Commission, if such firm knew or, in the exercise of reasonable care should have known, of such suspension or bar.

"(4) REPORTING OF SANCTIONS.—If the Board imposes a disciplinary sanction against a public accounting firm, or a person associated with such firm, the Board shall report such sanction to the Commission, to the appropriate State or foreign licensing board or boards with which such firm or such person is licensed or certified to practice public accounting, and to the public. The information reported shall include—

"(A) the name of the public accounting firm, or person associated with such firm, against whom the sanction is imposed;

"(B) a description of the acts, practices, or omissions upon which the sanction is based;

"(C) the nature of the sanction; and

"(D) such other information respecting the circumstances of the disciplinary action (including the name of any client of such firm affected by such acts, practices, or omissions) as the Board deems appropriate.

"(5) DISCOVERY AND ADMISSIBILITY OF BOARD MATERIAL.—

"(A) DISCOVERABILITY.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the Board, and the deliberations and other proceedings of the Board and its employees and agents in connection with an investigation or disciplinary proceeding under this section shall not be subject to any form of civil discovery, including demands for production of documents and for testimony of individuals, in connection with any proceeding in any State or Federal court, or before any State or Federal administrative agency. This subparagraph shall not apply to any information provided to the Board that would have been subject to discovery from the person or entity that provided it to the Board, but is no longer available from that person or entity.

"(ii) EXEMPTION.—Submissions to the Board by or on behalf of a public accounting firm or person associated with such a firm or on behalf of any other participant in a Board proceeding, including documents generated by the Board itself, shall be exempt from discovery to the same extent as the material described in clause (i), whether in the possession of the Board or any other person, if such submission—

"(I) is prepared specifically for the purpose of the Board proceeding; and

"(II) addresses the merits of the issues under investigation by the Board.

"(iii) CONSTRUCTION.—Nothing in this subparagraph shall limit the authority of the Board to provide appropriate public access to disciplinary hearings of the Board, or to reports or memoranda received by the Board in connection with such proceedings.

"(B) ADMISSIBILITY.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the Board, the deliberations and other proceedings of the Board and its employees and agents in connection with an investigation or disciplinary proceeding under this section, the fact that an investigation or disciplinary proceeding has been commenced, and the Board's determination with respect to any investigation or disciplinary proceeding shall be inadmissible in any proceeding in any State or Federal court or before any State or Federal administrative agency.

"(ii) TREATMENT OF CERTAIN DOCUMENTS.—Submissions to the Board by or on behalf of a public accounting firm or person associated with such a firm or on behalf of any other participant in a Board proceeding, including documents generated by the Board itself, shall be inadmissible to the same extent as the material described in clause (i), if such submission—

"(I) is prepared specifically for the purpose of the Board proceedings; and

"(II) addresses the merits of the issues under investigation by the Board.

"(C) AVAILABILITY AND ADMISSIBILITY OF INFORMATION.—

"(i) IN GENERAL.—All information referred to in subparagraphs (A) and (B) shall be—

"(I) available to the Commission and to any other Federal department or agency in connection with the exercise of its regulatory authority to the extent that such information would be available to such agency from the Commission as a result of a Commission enforcement investigation;

"(II) available to Federal and State authorities in connection with any criminal investigation or proceeding;

"(III) admissible in any action brought by the Commission or any other Federal department or agency pursuant to its regulatory authority, to the extent that such information would be available to such agency from the Commission as a result of a Commission enforcement investigation and in any criminal action; and

"(IV) available to State licensing boards to the extent authorized in paragraph (6).

"(ii) OTHER LIMITATIONS.—Any documents or other information provided to the Commission or other authorities pursuant to clause (i) shall be subject to the limitations on discovery and admissibility set forth in subparagraphs (A) and (B).

"(D) TITLE 5 TREATMENT.—This subsection shall be considered to be a statute described in section 552(b)(3)(B) of title 5, United States Code, for purposes of that section 552.

"(6) PARTICIPATION BY STATE LICENSING BOARDS.—

"(A) NOTICE.—When the Board institutes an investigation pursuant to paragraph (2)(A), it shall notify the State licensing boards in the States in which the public accounting firm or person associated with such firm engaged in the act or failure to act alleged to have violated professional standards, of the pendency of the investigation, and shall invite the State licensing boards to participate in the investigation.

"(B) ACCEPTANCE BY STATE BOARD.—

"(i) PARTICIPATION.—If a State licensing board elects to join in the investigation, its representatives shall participate, pursuant to rules established by the Board, in investigating the matter and in presenting the evidence justifying the charges in any hearing pursuant to paragraph (3)(A).

"(ii) REVIEW.—In the event that the State licensing board disagrees with the Board's

determination with respect to the matter under investigation, it may seek review of that determination by the Commission pursuant to procedures that the Commission shall specify by regulation.

"(C) PROHIBITION ON CONCURRENT INVESTIGATIONS.—A State licensing board shall not institute its own proceeding with respect to a matter referred to in subparagraph (A) until after the Board's determination has become final, including completion of all review by the Commission and the courts.

"(D) STATE SANCTIONS PERMITTED.—If the Board or the Commission imposes a sanction upon a public accounting firm or person associated with such a firm, and that determination either is not subjected to judicial review or is upheld on judicial review, a State licensing board may impose a sanction on the basis of the Board's report pursuant to paragraph (4). Any sanction imposed by the State licensing board under this clause shall be inadmissible in any proceeding in any State or Federal court or before any State or Federal administrative agency, except to the extent provided in paragraph (5)(D).

"(E) SANCTIONS NOT PERMITTED.—If a sanction is not imposed on a public accounting firm or person associated with such a firm, and—

"(i) a State licensing board elected to participate in an investigation referred to in subparagraph (A), the State licensing board may not impose a sanction with respect to the matter; and

"(ii) a State licensing board elected not to participate in an investigation referred to in subparagraph (A), subparagraphs (A) and (B) of paragraph (5) shall apply with respect to any investigation or proceeding subsequently instituted by the State licensing board and, in particular, the State licensing board shall not have access to the record of the proceeding before the Board and that record shall be inadmissible in any proceeding before the State licensing board.

"(g) ADDITIONAL DUTIES REGARDING QUALITY CONTROL.—After the date on which all initial members of the Board have been selected in accordance with subsection (c), the Board shall have the following duties and powers in addition to those set forth in subsection (f):

"(1) IN GENERAL.—The Board shall seek to promote a high level of professional conduct among public accounting firms registered with the Board, to improve the quality of audit services provided by such firms, and, in general, to protect investors and promote the public interest.

"(2) PROFESSIONAL PEER REVIEW ORGANIZATIONS.—

"(A) MEMBERSHIP REQUIREMENT.—The Board shall require each public accounting firm subject to the disciplinary authority of the Board to be a member of a professional peer review organization certified by the Board pursuant to subparagraph (B).

"(B) CRITERIA FOR CERTIFICATION.—The Board shall, by rule, establish general criteria for the certification of peer review organizations and shall certify organizations that satisfy those criteria, or such amended criteria as the Board may adopt. To be certified, a peer review organization shall, at a minimum—

"(i) require a member public accounting firm to undergo peer review not less than once every 3 years and publish the results of the peer review; and

"(ii) adopt standards that are acceptable to the Board relating to audit service quality control.

"(C) PENALTIES.—Violation by a public accounting firm or a person associated with such a firm of a rule of the peer review organization to which the firm belongs shall constitute grounds for—

"(i) the imposition of disciplinary sanctions by the Board pursuant to subsection (f); and

"(ii) denial to the public accounting firm or person associated with such firm of the privilege of appearing or practicing before the Commission.

"(3) CONFIDENTIALITY.—Except as otherwise provided by this section, all reports, memoranda, and other information provided to the Board solely for purposes of paragraph (2), or to a peer review organization certified by the Board, shall be confidential and privileged, unless such confidentiality and privilege are expressly waived by the person or entity that created or provided the information.

"(h) COMMISSION OVERSIGHT OF THE BOARD.—

"(1) PROPOSED RULE CHANGES.—

"(A) IN GENERAL.—The Board shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of the Board (hereafter in this subsection collectively referred to as a 'proposed rule change') accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning the proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with this subsection.

"(B) APPROVAL OR DISAPPROVAL.—

"(i) IN GENERAL.—Not later than 35 days after the date on which notice of the filing of a proposed rule change is published in accordance with subparagraph (A), or such longer period as the Commission may designate (not to exceed 90 days after such date, if it finds such longer period to be appropriate and publishes its reasons for such finding or as to which the Board consents) the Commission shall—

"(I) by order approve such proposed rule change; or

"(II) institute proceedings to determine whether the proposed rule change should be disapproved.

"(ii) DISAPPROVAL PROCEEDINGS.—Proceedings for disapproval shall include notice of the grounds for disapproval under consideration and opportunity for hearing and shall be concluded not later than 180 days after the date of publication of notice of the filing of the proposed rule change. At the conclusion of the proceedings for disapproval, the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for—

"(I) not more than 60 days, if the Commission finds good cause for such extension and publishes its reasons for such finding; or

"(II) such longer period to which the Board consents.

"(iii) APPROVAL.—The Commission shall approve a proposed rule change if it finds that such proposed rule change is consistent with the requirements of the Federal securi-

ties laws, and the rules and regulations issued thereunder, applicable to the Board. The Commission shall disapprove a proposed rule change if it does not make such finding. The Commission shall not approve any proposed rule change prior to the expiration of the 30-day period beginning on the date on which notice of the filing of a proposed rule change is published in accordance with this subparagraph, unless the Commission finds good cause to do so and publishes its reasons for such finding.

"(C) EFFECT OF PROPOSED RULE CHANGE.—

"(i) EFFECTIVE DATE.—Notwithstanding subparagraph (B), a proposed rule change may take effect upon filing with the Commission if designated by the Board as—

"(I) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board;

"(II) establishing or changing a due, fee, or other charge imposed by the Board; or

"(III) concerned solely with the administration of the Board or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify.

"(ii) SUMMARY EFFECT.—Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors. Any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with this paragraph.

"(iii) ENFORCEMENT.—Any proposed rule change which has taken effect pursuant to clause (i) or (ii) may be enforced by the Board to the extent that it is not inconsistent with the Federal securities laws, the rules and regulations issued thereunder, and applicable Federal and State law. During the 60-day period beginning on the date on which notice of the filing of a proposed rule change is filed in accordance with this paragraph, the Commission may summarily abrogate the change in the rules of the Board made thereby and require that the proposed rule change be refiled in accordance with subparagraph (A) and reviewed in accordance with subparagraph (B), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Federal securities laws. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 25 of this Act nor deemed to be 'final agency action' for purposes of section 704 of title 5, United States Code.

"(2) AMENDMENT BY COMMISSION OF RULES OF THE BOARD.—The Commission, by rule, may abrogate, add to, and delete from (hereafter in this subsection collectively referred to as 'amend') the rules of the Board as the Commission deems necessary or appropriate to ensure the fair administration of the Board, to conform its rules to requirements of the Federal securities laws, and the rules and regulations issued thereunder applicable to the Board, or otherwise in furtherance of the purposes of the Federal securities laws, in the following manner:

"(A) PUBLICATION OF NOTICE.—The Commission shall notify the Board and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules

of the Board and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

"(B) COMMENTS.—The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

"(C) INCORPORATION.—A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the Board and a statement of the Commission's basis for and purpose in so amending such rules. Such statement shall include an identification of any facts on which the Commission considers its determination to so amend the rules of the Board to be based, including the reasons for the Commission's conclusions as to any of the facts that were disputed in the rulemaking.

"(D) REGULATIONS.—

"(1) TITLE 5 APPLICABILITY.—Except as otherwise provided in this paragraph, rulemaking under this paragraph shall be in accordance with the procedures specified in section 553 of title 5, United States Code, for rulemaking not on the record.

"(ii) CONSTRUCTION.—Nothing in this subsection shall be construed to impair or limit the Commission's power to make, modify, or alter the procedures the Commission may follow in making rules and regulations pursuant to any other authority under the Federal securities laws.

"(iii) INCORPORATION OF AMENDMENTS.—Any amendment to the rules of the Board made by the Commission pursuant to this subsection shall be considered for purposes of the Federal securities laws to be part of the rules of the Board and shall not be considered to be a rule of the Commission.

"(3) NOTICE OF DISCIPLINARY ACTION TAKEN BY THE BOARD; REVIEW OF ACTION BY THE COMMISSION.—

"(A) NOTICE REQUIRED.—If the Board imposes a final disciplinary sanction on a public accounting firm registered with the Board or on any person associated with such a firm, the Board shall promptly file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of the Federal securities laws.

"(B) REVIEW.—An action with respect to which the Board is required by subparagraph (A) to file notice shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby, filed not later than 30 days after the date on which such notice is filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

"(4) DISPOSITION OF REVIEW; CANCELLATION, REDUCTION, OR REMISSION OF SANCTION.—

"(A) IN GENERAL.—In any proceeding to review a final disciplinary sanction imposed by the Board on a public accounting firm registered with the Board or a person associated

with such a firm, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the Board and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

"(i) if the Commission finds that—

"(I) such firm or person associated with such a firm has engaged in such acts or practices, or has omitted such acts, as the Board has found them to have engaged in or omitted;

"(II) such acts, practices, or omissions, are in violation of such provisions of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards as have been specified in the determination of the Board; and

"(III) such provisions were applied in a manner consistent with the purposes of the Federal securities laws;

the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the Board, modify the sanction in accordance with paragraph (2), or remand to the Board for further proceedings; or

"(ii) if the Commission does not make the findings under clause (i), it shall, by order, set aside the sanction imposed by the Board and, if appropriate, remand to the Board for further proceedings.

"(B) CANCELLATION, REDUCTION, OR REMISSION OF SANCTION.—If the Commission, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with subparagraph (A) that a sanction imposed by the Board upon a firm or person associated with a firm imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Federal securities laws or is excessive or oppressive, the Commission may cancel, reduce, or require the remission of such sanction.

"(5) COMPLIANCE WITH RULES AND REGULATIONS.—

"(A) DUTIES OF BOARD.—The Board shall—

"(i) comply with the Federal securities laws, the rules and regulations issued thereunder, and its own rules; and

"(ii) subject to subparagraph (B) and the rules thereunder, absent reasonable justification or excuse, enforce compliance with such provisions and with professional standards by public accounting firms registered with the Board and persons associated with such firms.

"(B) RELIEF BY COMMISSION.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of the Federal securities laws, may relieve the Board of any responsibility under this section to enforce compliance with any specified provision of the Federal securities laws, the rules or regulations issued thereunder, or professional standards by any public accounting firm registered with the Board or person associated with such a firm, or any class of such firms or persons associated with such a firm.

"(6) CENSURE; OTHER SANCTIONS.—

"(A) IN GENERAL.—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Federal securities laws, to censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record after notice and opportunity for hearing, that the Board has—

"(i) violated or is unable to comply with any provision of the Federal securities laws, the rules or regulations issued thereunder, or its own rules; or

"(ii) without reasonable justification or excuse, has failed to enforce compliance with any such provision or any professional standard by a public accounting firm registered with the Board or a person associated with such a firm.

"(B) REMOVAL FROM OFFICE.—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate, in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Federal securities laws, to remove from office or censure any member of the Board, if the Commission finds, on the record after notice and opportunity for hearing, that such member has—

"(i) willfully violated any provision of the Federal securities laws, the rules or regulations issued thereunder, or the rules of the Board;

"(ii) willfully abused such member's authority; or

"(iii) without reasonable justification or excuse, failed to enforce compliance with any such provision or any professional standard by any public accounting firm registered with the Board or any person associated with such a firm.

"(i) FOREIGN ACCOUNTING FIRMS.—A foreign public accounting firm that furnishes accountant's reports on any financial statement, report, or other document required to be filed with the Commission under any Federal securities law shall, with respect to those reports, be subject to the provisions of this section in the same manner and to the same extent as a domestic public accounting firm. The Commission may, by rule, regulation, or order and as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions, exempt from one or more provisions of this section any foreign public accounting firm. Registration pursuant to this subsection shall not, by itself, provide a basis for subjecting foreign accounting firms to the jurisdiction of the Federal or State courts.

"(j) RELATIONSHIP WITH ANTITRUST LAWS.—

"(1) TREATMENT UNDER ANTITRUST LAWS.—In no case shall the Board, any member thereof, any public accounting firm registered with the Board, or any person associated with such a firm be subject to liability under any antitrust law for any act of the Board or any failure to act by the Board.

"(2) DEFINITION.—For purposes of this subsection, the term 'antitrust law' means the Federal Trade Commission Act and each statute defined by section 4 thereof as 'Antitrust Acts' and all amendments to such Act and such statutes and any other Federal Acts or State laws in pari materia.

"(k) APPLICABILITY OF AUDITING PRINCIPLES.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall be conducted in accordance with generally accepted auditing standards, as may be modified or supplemented from time-to-time by the Commission. The Commission may defer to professional standards promulgated by private organizations that are generally accepted by the accounting or auditing profession.

"(l) COMMISSION AUTHORITY NOT IMPAIRED.—Nothing in this section shall be construed to impair or limit the Commission's authority—

"(1) over the accounting profession, accounting firms, or any persons associated with such firms;

"(2) to set standards for accounting practices, derived from other provisions of the Federal securities laws or the rules or regulations issued thereunder; or

"(3) to take, on its own initiative, legal, administrative, or disciplinary action against any public accounting firm registered with the Board or any person associated with such a firm."

KOHL (AND OTHERS) AMENDMENT NO. 1930

Mr. KOHL (for himself, Mr. COHEN, and Mrs. MURRAY) proposed an amendment to the bill, S. 687, supra; as follows:

At the appropriate place add the following new title:

TITLE —PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY

SEC. . PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.

(a) **SHORT TITLE.**—This title may be cited as the "Sunshine in Litigation Act of 1994".

(b) **PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.**—Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1659. Protective orders and sealing of cases and settlements relating to public health or safety

"(a)(1) A court shall enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery or an order restricting access to court records in a civil case only after making particularized findings of fact that—

"(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

"(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

"(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

"(2) No order entered in accordance with the provisions of paragraph (1) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

"(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

"(c)(1) No agreement between or among parties in a civil action filed in a court of the United States may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

"(2) Any disclosure of information to a Federal or State agency as described under paragraph (1) shall be confidential to the extent provided by law."

(c) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 111 of title 28, United States Code, is amended by

adding after the item relating to section 1658 the following:

"1659. Protective orders and sealing of cases and settlements relating to public health or safety."

(d) **EFFECTIVE DATE.**—The amendments made by this title shall take effect 30 days after the date of the enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

1995 DEFENSE AUTHORIZATION ACT

WARNER (AND OTHERS) AMENDMENT NO. 1931

(Ordered to lie on the table.)

Mr. WARNER (for himself, Mr. SARBANES, Mr. HARKIN, Mr. COCHRAN, Mr. GORTON, Mr. D'AMATO, Mr. BINGAMAN, and Mr. SMITH) submitted an amendment intended to be proposed by them to the bill (S. 2182) to authorize appropriations for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

At the appropriate place in the bill, insert the following section:

SEC. . ELIMINATION OF DISPARITY BETWEEN EFFECTIVE DATES FOR MILITARY AND CIVILIAN RETIREE COST-OF-LIVING ADJUSTMENTS FOR FISCAL YEAR 1995.

(a) **IN GENERAL.**—The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

(b) **DEFINITIONS.**—For the purposes of subsection (a):

(1) The term "fiscal year 1995 increase in military retired pay" means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

(2) The term "retired pay" includes retrain pay.

(c) **LIMITATION.**—Subsection (a) shall be effective only if there is appropriated to the Department of Defense Military Retirement Fund (in an Act making appropriations for the Department of Defense for fiscal year 1995 that is enacted before March 1, 1995) such amount as is necessary to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated for fiscal year 1995 to the Department of Defense Military Retirement Fund the sum of \$376,000,000 to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Committee on Armed Services be author-

ized to meet on Monday, June 27, 1994, at 2:30 p.m. in executive session, to receive testimony on and to consider the nomination of Lt. Gen. Buster C. Glosson, USAF to retire in grade.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Monday, June 27, at 4 p.m. to receive a closed briefing on United States policy toward China, Taiwan, and Vietnam.

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

ADDITIONAL STATEMENTS

KAHUKU HIGH SCHOOL FINALISTS IN "WE THE PEOPLE * * * THE CITIZEN AND THE CONSTITUTION"

● Mr. AKAKA. Mr. President, I rise today to recognize the outstanding accomplishments of the students from Kahuku High School. Ms. Sandra Cashman, along with her students, Ursula Aiu, Dana Barnhill, Beth Frederick, Amber Grigsby, Kalli Kamaouha, Maria Kritikos, Larie Langi, Nadya Leinau, Kimberly Miller, Marci Ostrowski, Christian Palmer, Jesse Palmer, Ian Parnell, Taliana Pasi, Mariaha Peters, Emily Shumway, Maren Smith, Leah Taala, Israel Temple, Carrie Tilley, and Kanani Yang, represented the State of Hawaii at this year's "We the People * * * the Citizen and the Constitution" national finals.

"We the People * * * the Citizen and the Constitution," administered by the Center for Civil Education, is the most comprehensive program ever developed to assist students in understanding the history and principles of the U.S. Constitution and the Bill of Rights. Students who participate in this program learn the important responsibilities Americans must uphold to ensure the future of our democracy. It is only through the understanding of our Constitution and the Bill of Rights that we will be able to perpetuate the democratic foundation upon which this great Nation was built.

The national competition, held in Washington, DC, from April 30 through May 2, 1994, brought together the best and brightest students from 47 classes throughout the Nation. These dedicated young people demonstrated a remarkable understanding of the fundamental ideals and values of America's constitutional government. For the second straight year, Kahuku High School has won the State competition and the honor of representing Hawaii at the national competition. I would like to commend the students and faculty of Kahuku High School for their outstanding achievements.●

THE CONTRACTING OF AMERICAN FOREIGN POLICY

• Mr. D'AMATO. Mr. President, I rise today to question what this administration is doing with regard to Korea. Has this administration sunk so low as to use others to conduct our foreign policy because it is unable to do so itself? Are we contracting out our Nation's foreign policy?

It is outrageous that not only did former President Carter go to North Korea to concede American foreign policy to the world's last Stalinist dictator, but that the administration allowed him to do so.

The President wonders if Mr. Carter pulled off a miraculous diplomatic move. I fail to see the miracle in Kim Il-Sung's concession to Carter's highly publicized and grandstanding mission to North Korea. Kim could surely afford to agree to wait, while his nuclear fuel rods cool and his technicians plan their next move to build his nuclear arsenal for sale or threat against his neighbors.

It all comes down to this. What we all again witnessed was an administration that is out of its element in foreign affairs, constantly outwitted and outmatched on every front by our opponents, North Korea being only the latest failure of American foreign policy under this administration.

In the beginning of this administration, the policy was to simply ignore foreign affairs. After facing criticism, the policy changed to active engagement. Despite the attendant problems, I suggest that the administration go back to the old policy. Our foreign policy was better then—doing nothing got us in less trouble.

Mr. President, I ask that the text of the article "Jimmy Clinton," by William Safire, that appeared in the New York Times, be included in the RECORD, following the conclusion of my remarks.

The article follows:

JIMMY CLINTON
(By William Safire)

WASHINGTON.—"It was kind of like a miracle," breathed Jimmy Carter, about his conversion of North Korea's dictator from lion to lamb.

No wonder Kim Il Sung denied entry to special envoys chosen by President Clinton last month. Senators Sam Nunn and Richard Lugar would have presented a strong American position on his nuclear bomb production.

North Korea much preferred the eager courtship of Jimmy Carter, who as President wanted to remove U.S. troops from the South. Carter went not as a representative of the U.S., but as one who opposed the imposition of pressure on the North that would have made it costly for Kim to break the nuclear treaty.

Amazingly, as Carter proudly brought a CNN crew into his meeting with the North Korean strongman, the world could see and hear the American blatantly misrepresent the U.S. position: Clinton would not continue to press for sanctions, Carter declared, in direct contravention of instructions.

Even more amazing was the reaction of what is laughingly called the Clinton national security team to this usurpation of Presidential authority. At the urging of Vice President Gore, Mr. Clinton grasped for some reason to believe that Carter's appeasement had worked, and that North Korea was using the Carter brokerage as a face-saving device to make a concession on its plutonium production.

Enter what Kennedyites liked to call "the Trollope ploy." In the 19th-century romantic novels of Anthony Trollope, heroines deliberately misinterpret a squeeze of the hand as a proposal of marriage. Last week, Clinton chose to view Kim's promise of a temporary suspension of his plutonium-making—a pause required anyway to let rods cool—as the long-sought verifiable "freeze."

In response to this televised manipulation, Clinton then embraced his loose cannon as his savior. We caved in to Kim's demands to resume high-level talks that had been denied North Korea after its repeated double-crossing of negotiators. Crisis declared over.

Here, on the vital interest of the United States in stopping rogue states from becoming nuclear powers, we have an amalgam of the worst of two Presidents.

Jimmy Carter, truster of Leonid Brezhnev until Afghanistan, truster and promoter of the B.C.C.I. banker until thousands of depositors were bilked of their savings, makes his pilgrimage to the last Stalinist—and again bets on the contagion of his own indisputable goodness.

Bill Clinton, passive in Bosnia, paper tiger in China, other-directed about Haiti—is again hoping for a break to distract the world's attention and to kick the can ahead for decision by his nuclear-threatened successor.

Result: the creation of President Jimmy Clinton, with the return of the malaise of leaderlessness.

Reaction of doves to this latest visit to Trollope is: What's wrong with talking? If Kim wants meetings, give him summits. Since we can't get China and Japan to help lean on him, why not test his promise to "suspend" his nuclear buildup, in return for recognition, trade and aid?

The reason for not getting suckered into another year's cat-and-mouse is the ticking of a clock. For safety's sake, we should negotiate from strength; betting on our hopes is irresponsible.

North Korea is in the business of secretly building nuclear bombs. It deceived the world by producing plutonium in the past; the C.I.A. and the U.N. inspectors believe North Korea has at least one device ready. From Moscow we learn that the K.G.B. was convinced of Kim's impending capability four years ago.

Remember how wrong the world nuclear police turned out to be in underestimating the advanced state of Saddam Hussein's buildup? The odds are that the experts are just as wrong about North Korean nukes today; a closed society can keep big secrets.

By pretending to be insulted by the world's nosiness, Kim has already prevented the world from checking on his past production of plutonium. Maybe it's in untested weapons; maybe some has been sold to Iran; maybe more is being made secretly beyond Yongbyon.

We are today giving him the time to make a fresh five-bomb supply. If we do not accede to his demands this fall, Kim will add to the stockpile beyond our reach.

That's the position Jimmy Clinton has placed us in. With no basis for trust, we're

trusting North Korea with precious time. It's kind of like a miracle. •

TRIBUTE TO GEORGETOWN TOYOTA TEAM

• Mr. MCCONNELL. Mr. President, I rise today to pay tribute to a company that has brought automotive excellence and a tremendous economic boost to central Kentucky. For the third time in 5 years and for the second consecutive year, the Georgetown, KY, employees of Toyota Motor Manufacturing, U.S.A., Inc. [TMM] have earned the J.D. Power & Associates Gold Plant Quality Award for the highest quality automobile facility in North America. This outstanding achievement is due to the hard work, pride, and commitment of the 5,200 team members who work in the Georgetown plant producing the renowned Toyota Camry.

Toyota Motor Manufacturing, which utilizes 43 suppliers in the State, is responsible for generating over \$600 million in annual revenue for Kentucky. The result is more than 20,000 jobs for Kentuckians, and a company-citizen partnership that instills civic pride and strengthens the economy of the entire State.

On a national scale, TMM has been directly and indirectly responsible for more than 70,000 jobs. This number will grow as an estimated 22,000 more Americans will obtain jobs directly related to TMM's business by 1996. Working with more than 237 U.S. suppliers in 31 States, TMM has added billions of dollars to our Nation's economy.

The J.D. Power award is a reflection of the extraordinary effort that has led to the completion of an expansion plant at Toyota's Georgetown facility.

The Georgetown Toyota operation underscores the remarkable evolution of the world marketplace where international partnerships bring countries, companies, and communities together. Nearly 7,000 miles separate Toyota's home office from Georgetown, KY. However, the shared goal to make a quality product links them. Toyota's Kentucky team members build some of the world's best automobiles and have given their State another accomplishment of which to be proud. •

MEASURE REFERRED—SENATE JOINT RESOLUTION 204

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that Senate Joint Resolution 204, a joint resolution to recognize the contributions of the American Academy in Rome, be discharged from the Judiciary Committee and referred to the committee of jurisdiction, the Committee on Foreign Relations.

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

ORDER FOR STAR PRINT—S. 2143

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that S. 2143, a bill to impose a value-added tax, be star printed to reflect the change I now send to the desk.

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

amendment No. 1930; and that on Tuesday, the Senate stand in recess from 12:30 p.m. to 2:15 p.m. in order to accommodate the respective party conferences.

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

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. ROCKEFELLER. Mr. President, if there is no further business to come before the Senate today, and I see no other Senators seeking recognition, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 7:08 p.m., recessed until Tuesday, June 28, 1994, at 9 a.m.

AUTHORITY FOR COMMITTEES TO REPORT

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that during the recess or adjournment of the Senate that Senate committees may file committee-reported legislative and Executive Calendar business on Thursday July 7 from 11 a.m. to 3 p.m.

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

PRIVILEGE OF THE FLOOR—H.R. 4506

Mr. ROCKEFELLER. Mr. President, on behalf of Senator JOHNSTON, I ask unanimous consent that Dr. Robert Simon, Science Fellow to the Committee on Energy and Natural Resources, be granted floor privileges for the duration of H.R. 4506, a bill making appropriations for energy and water development for fiscal year ending September 30, 1995, and for other purposes.

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

ORDERS FOR TOMORROW

Mr. ROCKEFELLER. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Tuesday, June 28; that following the prayer, the Journal of proceedings be deemed approved to date and the time for the 2 leaders reserved for their use later in the day; that immediately thereafter, the Senate resume consideration of S. 687, the Product Liability Act; that amendment No. 1930 be limited to 1 hour, equally divided and controlled in the usual form—that is the Kohl amendment; that at 10 a.m., without intervening action, the Senate vote on or in relation to the Kohl amendment No. 1930, with no intervening amendment in order prior to disposition of

NOMINATIONS

Executive nominations received by the Senate June 27, 1994:

DEPARTMENT OF JUSTICE

AILEEN CATHERINE ADAMS, OF CALIFORNIA, TO BE DIRECTOR OF THE OFFICE FOR VICTIMS OF CRIME. (NEW POSITION)

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. ROBERT M. ALEXANDER, xxx-xx-xxxx U.S. AIR FORCE.

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. JAMES A. FAIN, JR., xxx-xx-xxxx U.S. AIR FORCE.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. CARMEN J. CAVEZZA, xxx-xx-xx, U.S. ARMY.

THE FOLLOWING-NAMED ARMY NATIONAL GUARD OF THE U.S. OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, U.S.C., SECTIONS 593(A) AND 3385:

ARMY PROMOTION LIST

To be colonel

- ROBERT F. ANDERSON II, xxx-xx-xx...
EVERETT W. BARNES, xxx-xx-xx...
WILLIE E. BUFFINGTON, xxx-xx-xx...
DONALD L. CLARY, xxx-xx-xx...
RICHARD M. COACHY, xxx-xx-xx...
HOWARD A. DILLON, JR., xxx-xx-xx...
DAVID C. GODWIN, xxx-xx-xx...
RAY J. GRAHAM, xxx-xx-xx...
RICHARD B. GREEN, xxx-xx-xx...
EDWIN E. HALL, xxx-xx-xx...
JAMES L. HOBGOOD, JR., xxx-xx-xx...
BRUCE M. LAWLOR, xxx-xx-xx...

- EDWARD F. MARTIN III, xxx-xx-x...
ROBERT G. MASKIELL, xxx-xx-x...
JAMES F. PERRY, JR., xxx-xx-xxxx...
FOREST L. RAMSEY II, xxx-xx-xx...
RICARDO RUIZ, xxx-xx-x...
JOHN H. SCHAMBERG, xxx-xx-x...
JOHN R. SLONINA, xxx-xx-x...
GERALD C. STEWART, xxx-xx-x...
CALVIN J. WASHISPACK, xxx-xx-x...

THE JUDGE ADVOCATE GENERAL'S OFFICE

To be colonel

- RANDALL T. ENG, xxx-xx-x...
JOHN S. TANNER, xxx-xx-x...
WILLIAM F. WEIR, xxx-xx-x...

MEDICAL SERVICE CORPS

To be colonel

- JAMES D. CLARK, xxx-xx-x...
MICHAEL W. KIMBERLY, xxx-xx-x...
RICHARD L. LAUER, xxx-xx-x...
ROBERT H. SPELL, JR., xxx-xx-xx...

THE FOLLOWING-NAMED ARMY NATIONAL GUARD TO THE U.S. OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, U.S.C. SECTIONS 593(A) AND 3385:

ARMY PROMOTION LIST

To be colonel

- MICHAEL J. BACINO, xxx-xx-x...
DONALD E. BROWN, JR., xxx-xx-xx...
JOSEPH F. DANNENFELSER, xxx-xx-xx...
RICHARD D. DUFFY, xxx-xx-xx...
GARY P. HALE, xxx-xx-x...
ELMO C. HEAD, JR., xxx-xx-x...
JOHN A. LATOURRETTE, xxx-xx-xx...
WALTER A. PAULSON, xxx-xx-xx...
ROGER G. THORSTENSON, xxx-xx-xx...
GORDON D. TONEY, xxx-xx-x...
RUDOLF R. WALTER III, xxx-xx-xx...
WILLIAM D. WORTMAN, xxx-xx-x...

THE JUDGE ADVOCATE GENERAL'S CORPS

To be colonel

- BRUCE D. SCHRIMPF, xxx-xx-x...

MEDICAL CORPS

To be colonel

- TALMAGE L. BOURNE, xxx-xx-x...
DOUGLAS R. COOMBS, xxx-xx-x...

MEDICAL SERVICE CORPS

To be colonel

- ROGER A. HEALY, xxx-xx-x...

ARMY NURSE CORPS

To be colonel

- THOMAS T. FLAHERTY, xxx-xx-x...

ARMY PROMOTION LIST

To be lieutenant colonel

- MICHAEL D. BEDWELL, xxx-xx-x...
ROBERT F. BISCHKE, xxx-xx-x...
ARNULFO ESQUEDA, xxx-xx-x...
RALPH K. HALL, xxx-xx-x...
GEORGE E. IRVIN, xxx-xx-x...
BENSON S. LANE, xxx-xx-x...
JEROME A. MURPHY, xxx-xx-x...
ROBERT M. NICHOLAS, xxx-xx-x...
BARRY D. NIGHTINGALE, xxx-xx-x...
ROBERT E. OLSON, xxx-xx-x...
KENNETH R. WARNER, xxx-xx-x...

MEDICAL CORPS

To be lieutenant colonel

- ROBERT L. JORDAN, JR., xxx-xx-xx...
EARL C. WOOD III, xxx-xx-x...

MEDICAL SERVICE CORPS

To be lieutenant colonel

- GARY P. WATERS, xxx-xx-x...