SENATE—*Friday, June 23, 1995*

(Legislative day of Monday, June 19, 1995)

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

PRAYER

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

Gracious Lord, You have placed within each of us a conscience as the voice of our deep inner self. Over the years our consciences have been impacted by what we have been taught is true and right. We thank You for a conscience rooted in the Ten Commandments and guided by Your Spirit. You are the potter, our conscience the clay; mold our values after Your way. We ask this not just for our own personal relationships, but also for the responsibilities of leadership You have entrusted to us.

You want to develop the future of this Nation through the leadership of the women and men of this Senate and all of us who labor with them. So refine our consciences; purify any dross until You can see Your own nature reflected in the refined gold of Your priorities of righteousness, justice, mercy. Give us Your heart for the poor and those who suffer. Keep us faithful to Your vision for this Nation so clearly revealed to our Founding Fathers and Mothers. Set us ablaze with patriotism and loyalty. Then continue to speak to us through our consciences. May we work out in specifics what You have worked into the fiber of our character. We commit ourselves anew to seek Your guidance and follow it this day. In Your holy name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. INHOFE. Mr. President, this morning the leader time has been reserved.

There will be a period for morning business until the hour of 9:30 a.m., with Senators to speak for up to 5 minutes each.

At 9:30, the Senate will resume consideration of S. 240, the securities litigation bill. At 9:30, Senator SHELBY will be recognized to offer an amendment regarding proportionate liability, with a rollcall vote occurring on or in relation to the amendment at 10:55 a.m. this morning. Further rollcall votes are expected throughout the session today.

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, not to extend beyond the hour of 9:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

OFFICE OF SURGEON GENERAL TERMINATION ACT

Mr. BURNS. Mr. President, yesterday I introduced a bill to eliminate the Office of the Surgeon General in the Public Health Service. In light of what we have just been through with Dr. Foster's nomination, what Dr. Elders went through, and even Dr. Koop, I think it has never been more clear that this position is a lightning rod. Let me say at the outset, this has nothing to do with Dr. Henry Foster, and everything to do with politics.

For years, this office has been used by both parties as a political football. Instead of fulfilling the duties as spokesperson for public health, the Surgeon General has found himself or herself as a puppet for the administration, pushing forward rhetoric on whatever pet topic peaks their interest.

I guess as a political appointee, you would expect this. However, when it comes to the public's health, politics should not come into play.

But what makes this bill timely is the effort being made by both the administration and Congress to shrink the size of Government. Being a voice for good health habits is not a job that only a Surgeon General can do.

There have been times in our recent history when we had no Surgeon General. Was the public's health in danger during that time? No. The duties were picked up by the Assistant Secretary for Health. In fact, through most of the 1970's there was no Surgeon General. During the Carter administration, the Assistant Secretary for Health doubled as Surgeon General. And it worked. It wasn't until Dr. Koop was named to the position, that the offices were again split.

Do not get me wrong—those who have filled this position have done some remarkable things. But the position is redundant. And if we are serious about wanting to reduce the size of Government and save the taxpayers money, then we have to take a close look at why this position is still there.

The Office of the Surgeon General has six employees and costs the taxpayer close to $1 million each year. In the scheme of things, that may not sound like a lot, but to folks in Montana, folks in Arizona, in fact, folks anywhere outside the beltway, a million dollars is a lot of money.

Am I saying the public doesn't need the information they get from the Surgeon General? No. They will still get the information that is important to preventing disease promoting wellness and learning how to live healthy lives. But that information will come from the Assistant Secretary for Health, who by the way should be no less credible. This position is consistently filled by a medical doctor. And again, it's been done before.

Mr. President, I think it is time we stop playing games with the public's dollar. This is one level of bureaucracy that we don't need. It has been proven in the past and we can make it work again. Eliminating the Office of the Surgeon General would not only save money—without hurting the public, I might add—it will also remove the football that has been used by both Republicans and Democrats to control a pulpit that the public has come to count on.

We do not need a separate Office of the Surgeon General, Mr. President. I have been joined by Senators KYL, THOMAS, HELMS, SANTORUM, NICKLES, THOMPSON, and BROWN in introducing this bill and I urge my colleagues to join with me in this effort to restore common sense to the Government.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 957

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Office of Surgeon General Termination Act".

SEC. 2. TERMINATION OF OFFICE OF SURGEON GENERAL OF PUBLIC HEALTH SERVICE.

With respect to the Office of Surgeon General of the Public Health Service—

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

(1) all authorities and personnel of the Office are transferred to the Assistant Secretary for Health of the Department of Health and Human Services;

(2) all unobligated portions of budget authority allocated for the Office are rescinded; and

(3) the Office, and the position of such Surgeon General, are terminated.

CHANGE OF VOTE

Mr. BIDEN. Mr. President, on rollcall vote No. 274, I voted "nay." It was my intention to vote "aye." Therefore, I ask unanimous consent that I be permitted to change my vote. This will not change the outcome of the vote. I have checked with both leaders.

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

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT

Mr. BYRD. Mr. President, on June 21, 1995, I proposed an amendment, No. 1446, to S. 440, the National Highway System Designation Act. When the amendment was printed in the RECORD, the name of Senator MCCONNELL was inadvertently omitted as a cosponsor, even though he was so recorded in the official papers. I wanted to take this opportunity to note that Senator MCCONNELL was, in fact, a cosponsor of my amendment.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, as of the close of business yesterday, Thursday, June 22, the Federal debt stood at $4,885,968,241,521.21. On a per capita basis, every man, woman, and child in America owes $18,547.22 as his or her share of that debt.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

PRIVATE SECURITIES LITIGATION REFORM ACT

The PRESIDING OFFICER. Under the previous order, the hour of 9:30 a.m. having arrived, the Senate will now proceed to consider S. 240, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 240) to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the act.

The Senate resumed consideration of the bill.

Mr. D'AMATO. Mr. President, Senator SHELBY has an amendment dealing with proportionate liability. It is an amendment really that goes to the heart of the legislation. He is going to offer it and take it up at this time. I believe we have agreed that at 10:55 we will have a vote on it. At this time, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I would like to commend Chairman D'AMATO, Senators DOMENICI, DODD, and GRAMM for their hard work in trying to forge a consensus behind reforming our securities litigation system to weed out abuses and eliminate frivolous suits.

I am concerned and disappointed, however, that the bill before the Senate will do more to impair the rights of the small investor than it will to place checks on abusive conduct and frivolous litigation. For this reason, I continue to oppose S. 240.

Earlier this spring, Senator BRYAN and I introduced a bill aimed at striking a balance between preserving the rights of the small investor and eliminating incentives for frivolous and abusive litigation.

Senate bill 667 incorporated many of the widely supported provisions incorporated in the bill before us like prohibiting referral fees, and the payment of attorney fees from the SEC disgorgement fund, increasing fraud detection and enforcement, and ensuring adequate disclosure of settlement terms.

In addition, our bill addressed many of the concerns that Chairman Levitt and the SEC have raised against S. 240 regarding pleading requirements, liability standards, and statute of limitations issues.

While the bill before us responds to some of these concerns—it still fails to ensure adequate protection of the rights of the innocent victim of securities fraud and effectively leaves the little guy who seeks redress for professional wrongdoing out in the cold.

On several key issues, S. 240 fails to preserve the important role that legitimate private securities litigation plays in checking abusive conduct and, in fact, makes it more difficult for the small investor to gain access to the courts and obtain full recovery for securities fraud.

I believe that individual investors, particularly small shareholders, must be assured a full recovery against professional wrongdoers if we are to maintain integrity in our securities markets.

Like Chairman Levitt and many other colleagues, I believe the bill can still be improved.

I, therefore, intend to offer a couple of amendments that I believe will help assure that meritorious claims are not inhibited in our effort to prevent frivolous and abusive ones.

Mr. President, S. 240 makes important reforms, many of which I support. Sadly, however, the bill would come at too great a cost to the small individual shareholder.

I urge my colleagues to oppose S. 240 as currently drafted and support amendments to reinstate important investor protections against securities fraud.

AMENDMENT NO. 1468

(Purpose: To amend the proportionate liability provisions of the bill)

Mr. SHELBY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alabama [Mr. SHELBY], for himself and Mr. BRYAN, proposes an amendment numbered 1468.

On page 134, strike lines 5 through 24, and insert "uncollectible share in proportion to the percentage of responsibility of that defendant, as determined under subsection (c).".

Mr. SHELBY. Mr. President, the amendment that I am offering I am offering on behalf of myself and the Senator from Nevada, Senator BRYAN.

S. 240, which is the bill before us, provides for proportionate liability for defendants found guilty of reckless conduct by limiting joint and several liability to defendants found guilty of knowing securities fraud.

As an equitable matter, I generally support proportionate liability as between wrongdoers. Less culpable defendants should not, I believe, necessarily be liable to the same extent as more culpable defendants. I think that is just common sense.

However, proportionate liability should not act to deprive the innocent victim of a full recovery—in other words, defraud people of their basic rights. Much more important than ensuring equity among defendants, I believe is ensuring that as between the wrongdoer and the innocent victim, it is the wrongdoer that bears the burden—yes, Mr. President, bears the burden—of any uncollectible judgment caused by an insolvent defendant, not the victim.

S. 240 turns the principle on its head. S. 240 before us today would make the innocent victim bear the loss of an insolvent defendant by capping the liability of proportionate defendants to only an additional 50 percent of their share. Beyond that, the victim bears the loss.

Additionally, S. 240 would only allow the victim to recover his full damages against the remaining defendants if his or her net worth is less than $200,000 and the victim's damages are greater than 10 percent of their net worth.

Mr. President, why we would want to place restrictions on a victim's full recovery, to limit a defendant's liability is beyond me in the first place. But the provision also fails in its purpose. Many retirees own their own homes and have significant equity in their property. Many have saved and invested for years and years for retirement. This is not a bad thing. We usually encourage such behavior. Yet, many older retirees would be precluded from a full recovery here because their net worth is over $200,000 and their damages are less than 10 percent or $20,000. Why we would want to intentionally punish an individual who is productive, who saves and invests for the future, is not completely clear to me.

Further, Mr. President, I must seriously question, as others have, a bill like this that makes a judgment that these productive members of our society should somehow be less entitled to recovery because they have more net worth than the next guy.

Mr. President, as I have stated, this amendment that I offer on behalf of myself and Senator BRYAN is simple. It would strike the net worth and damage requirements and make proportionate defendants responsible for the uncollectible share of an insolvent codefendant in proportion to their percentage of responsibility or culpability. It puts the victim before the defendant, as I believe it should in this society, as it rightly should. I urge my colleagues to support it.

This bill has some good things in it, but this is not one of them. I think it is time we think up here today—and I hope we will—about the victim and not the perpetrator of fraud and abuse in securities.

I urge my colleagues to support this amendment.

Mr. D'AMATO. Mr. President, I feel this amendment addresses one of the areas that is in the most significant need of reform.

Imagine yourself being named as a defendant in a class action suit where the damage claims are $100 million. Further imagine that a jury finds you reckless or negligent, because you are an insurance company, or because you are a securities firm, or because you are a bank, or because you are a large accounting firm associated with the people who committed the fraud. Your liability could be 2 percent, because you failed to see the violation and take action against it; you, therefore, were negligent and should be held accountable.

Well, you could settle and pay that 2 or 3 or 5 percent, or you might want to fight and say that given your tangential relation to the fraud, the duty was not yours to uncover it, but if you are found liable you could be held accountable for the full $100 million. For example, an accounting firm who cannot go beyond the numbers that were put forth in the audits that they conducted, who has had almost nothing to do with the alleged grievance, could be named as a defendant because they have a large asset base—we call these firms deep pockets.

I, myself, would never have to worry about being named as one of those defendants because I do not have deep pockets. Deep pockets are generally firms of economic substance who are generally well insured. They find themselves dragged into these suits, and their lawyers tell them it will cost $700,000, $800,000, maybe $1 million to defend themselves, even if the company has had literally little, if anything, to do with the alleged fraud that was perpetrated on stockholders. Let me say again, that these firms are brought in only because they represent an economic interest of some substance. As I said last night, in these lawsuits, they sue everybody and anything that moves and some things that do not move. Your involvement in the fraud could as little as you walked into the building on the days the fraud was committed, but if you have deep pockets you will be sued. They will sue an outsider on the board of directors, who had no knowledge of the schemes, but he will face a $100 million suit, notwithstanding the fact that he had little or nothing to do with the fraud. Even the standard of proof does not help the director; the plaintiffs will claim he should have known, or could have found out about this, or with more diligence could have stopped the fraud, the distinction legally between reckless conduct and negligent conduct is rather unclear. Let me say that again. It is very blurry.

So now the director, or the accounting firm, has a corporate decision to make. Whether they will settle the case for what is nothing more than a legal payoff to get rid of the suit, or whether they try to defend themselves, because they think they can win. By staying in the suit the firm could risk a $100 million when they could settle it for $2, $3, or $4 million, and avoid the legal costs. Ordinarily, I expect, firms would fight it out, but under joint and several liability, it does not matter what damage the firm caused, because they have the deep pockets; they can be held liable for the full amount of the settlement.

Now, we hear that we should not put the burden on the victims, nor do I think we should. What we have said here is that if somebody committed a tortious act, he will be held responsible for his portion of the damage. If it is 2 percent, he will pay 2 percent of the damages. We even went beyond that. If the fraudulent defendant is bankrupt and cannot pay, we would double the liability of the other defendants. So if a defendant was found 5 percent negligent, but the main defendant was not able to pay, the 5 percent negligent defendant would be held responsible for 10 percent of the damages.

If we really want to be fair, and we all want fairness, we should protect the small investor who is legitimately aggrieved but, also protect people who are unfairly dragged into a suit that is nothing less than legal blackmail. These firms are forced to settle because their business cannot be subjected to years of this litigation, or the possibility of having to pick up the entire cost —notwithstanding that their contribution to this scheme was not fraudulent. If a person has contributed 2 percent to the fraud, they should pay the 2 percent of the damages.

Why does the plaintiff's bar not want this? Because more firms would be willing to stand up and say, "Okay, we will battle it out," and because more of the charges that the cases are frivolous would be proven. These lawyers are suing the people because they are given an opportunity to hold them up.

Now the victim is fighting back. The victim in this is not just the shareholder. The victims in many of these cases are the people with deep pockets who may just associated with the fraudulent company, and because of their connection with a company, they are dragged in.

That is not what the law should be about. If you do the act, then you should pay. I absolutely agree. But do not bring in some guy who just happens to be in close proximity or has some connection with the company, has not really participated in this.

But let me tell you, if you commit fraudulent conduct, or intentional wrongdoing, there is no escape from paying the full settlement.

In our attempt to be fair, we have said quite clearly, that if you are knowingly participating—knowingly—in a fraudulent act then even if you committed only 2 percent of the fraud, you can be held liable for all of it. If you intentionally participate—intentionally—then even though you may have been only 1, 2, or 3 percent liable, who can be held responsible for the entire amount.

We do not, as some have claimed, make it possible for people to lie, to cheat, and escape their liability. That is an oversimplification. It demonstrates the lack of knowledge of this legislation on the part of some of the editorial writers. I wish their newspapers had to be held to the same standard that they would ask the business community to be held to. That would be nice. That would be incredible.

Imagine, they would have to be accurate, and truthful. It would be quite something. Quite something.

We want to be fair, and I think we have tailored this legislation in such a way that we make it clear—if you intentionally mislead, even if that act causes only 1 to 2 percent in damages, you will be held for the whole. We have not changed that.

I hope the Senate will not however, make it possible for people to become further exposed to these plots of extortion. That is wrong. Our Founding Fathers did not want it that way. This has developed over the years, and it has come about as a result of the lawyers practicing law, who act not on behalf of the poor stockholders, but on behalf of their own economic aggrandizement. That is not what the practice of law should be about.

Mr. DODD. Will my colleague yield?

Mr. D'AMATO. I am happy to yield to the Senator.

Mr. DODD. I think something deserves to be repeated here, and that is, of course what we are talking about here is the process of intimidation, quite frankly, to achieve settlement.

What needs to be pointed out, rarely do these cases ever go to court. We have seen that 98 percent, I think, is the number, ends up being settled. The reason is because, as our colleague from New York has pointed out, is because of that protracted lengthy process, where a person who is marginally involved can end up being held accountable for the entire cost.

Of course, who pays for all of that? It is also investors who pay for this. At the end of the day, this is not a cost that is just absorbed by one group of business people or another. This ends up being passed on.

The very investors that we talk about that can be damaged, and where there is intentional fraud, obviously, they collected from anyone who is involved, but in the cases where it was not fraudulent intent, then the investors on the other side of this end up paying, because those costs get shifted.

So my colleagues make the point here, it is not just the individual companies that end up being damaged as a result of this, where they literally today write into their budgets in preparation for these kinds of lawsuits being filed, which ends up costing consumers, costing business, costing jobs, as a result of a present scheme which allows for people who literally happen to be hanging around, as the distinguished chairman has pointed out, on the margins of this, being drawn into this. That is patently unfair by anyone's standard.

In fact, Jane Bryant Quinn, whose column has been referred to on numerous occasions here in the last 24 hours, makes the point in a column. She has criticisms about some aspects of the bill and supports others. She makes a point that the issue of the proportional liability, to quote her column, she says "Some sort of proportional payment is fair," as the proposal suggests here, and what we have tried to do is fashion a scheme that would make those who are even marginally involved, fully culpable, where you have fraudulent intent; where that is not the case, at all, then proportional liability would trigger in.

What the amendment from the distinguished Senator from Alabama would do is eliminate virtually that entirely.

Again, whatever differences people may have with this bill on safe harbor and securities, statute of limitations and so forth, there is, I think, some general consensus that some notion of proportional liability and protection against the small investor, particularly the investor who does not have the kind of resources which this bill also protects, ought to be a part of this legislation.

We have tried to do that here in a way that is fair and balanced, and takes into consideration the legitimate concerns of bona fide plaintiffs that have been intentionally defrauded, those who are even intentionally defrauded, but fall into the smaller category, so there is a way to protect their particular interest.

We also must try and keep in mind the legitimate interests of those who are not fully culpable. Those businesses out there that are then being drawn in and asked to pay the entire freight on a matter where they are not at fault to that extent. That is fair, as well.

This amendment would gut that, destroy that entirely. We would go back to the status quo, and once again we get into this hijacking process here where those individuals and those companies have to be held accountable.

In fact, the Supreme Court observed in the Central Bank of Denver,

> Newer and small companies may find it difficult to obtain advice from professionals because professionals may fear that a newer or smaller company may not survive, that business failure would generate securities litigation against the professional. In addition, the increased costs incurred by professionals because of the litigation and settlement costs may be passed on to their client companies and in turn incurred by the company's investors, and intended beneficiaries of the statute.

The point being they are the investors that pay the price as result of destroying the proportional liabilities provisions of this legislation.

I hope this amendment would be defeated.

Mr. D'AMATO. I yield the floor.

Mr. SHELBY addressed the Chair.

The PRESIDING OFFICER (Mr. JEFFORDS). The Senator from Alabama.

Mr. SHELBY. Mr. President, I think what we need to do here this morning is focus on what we are really doing here; focus between a wrongdoer, perpetrator of wrong, and the victim of the action.

It is not the process of intimidation—I would reject that—but the process of wrongdoing that we should be concerned with.

We should not, Mr. President, we should not protect the perpetrator of wrongdoing over the victim. That turns American jurisprudence upside down. I believe here in the Senate today that we should be thinking about the innocent victim and not the perpetrator, not the people who put these things in motion and then they want a statute to protect them to some extent. That is what that is about here. I think, if the Members of the Senate would really focus on the content of this bill and what it will do to the innocent victim, they would feel a lot better about the amendment.

The phrase "hijacking" was used. That is right, "hijacking." Who is going to be hijacked if this bill passes? I will tell you who it is going to be, it is going to be the innocent victims, it is going to be the innocent people who are going to be hard pressed to press their claims or to collect anything for the wrongdoing in the future.

I am real concerned and really disappointed that this bill before the Senate will do more to impair the rights of the small investors in America—and there are millions of them—than it will do to place checks on abusive conduct and frivolous litigation. None of us are interested in frivolous litigation. There is no room for that in our courts. You know, that is one of the reasons, I suppose—one of the reasons, not the only reason—this bill was brought.

But there are bonafide cases in America and there will be in the future where, if this bill passes, the innocent victims will not be able to redress their injuries.

Mr. President, I ask unanimous consent that an article that appeared in Newsweek by Jane Bryant Quinn, "Losing Your Right To Sue? Congress may make it hard for you to pursue a case of securities fraud," be printed in the RECORD.

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

(See exhibit 1.)

Mr. SHELBY. Mr. President, something I thought was ironic here, if you look at S. 240 it starts out and says:

> A bill to amend the Securities Exchange Act of 1934, to establish a filing deadline and [listen to this] to provide certain safeguards to ensure that the interests of investors are well protected.

Is that what this bill is really about? I submit that it is not. I hope the Members of the Senate will focus on this amendment because it has a lot of merit to it. It will strengthen this bill. It will strengthen the rights of victims in America, victims of securities fraud. I do commend my colleague from Nevada, Senator BRYAN, for his cosponsoring this, and his leadership in this direction.

[From Newsweek, June 26, 1995]

EXHIBIT 1

LOSING YOUR RIGHT TO SUE?

CONGRESS MAY MAKE IT HARD FOR YOU TO PURSUE A CASE OF SECURITIES FRAUD

(By Jane Bryant Quinn)

Talk about a twist of fate. Rep. Christopher Cox, a California Republican, wrote a tough, aggressive bill on securities-law reform, which passed the House of Representatives in March. If it becomes law, investors who think they've been defrauded will find it incredibly hard to bring a class-action lawsuit to recoup their loss.

Just two months after this bill passed, Cox found himself tagged by just such a suit, brought by some victims of the noxious First Pension fraud. In a second suit last week, First Pension's court-appointed receiver charged Cox, among others, with contributing to the hoax. "Defamatory and wildly false," Cox fumes.

First Pension handled the paperwork for tax-deferred retirement accounts. It also sold clients fraudulent real-estate investments and secretly tapped their accounts for cash. The company is in receivership, its principals in jail and its customers out $136 million. To recover some money, investors are going after the supporting players. That includes Cox and his former law firm, Latham & Watkins. Cox's job was to set up a company that could have absorbed the purported mortgage investments. The lawsuits allege that he knew, or recklessly failed to find out, that the mortgages weren't sound. Says Cox, "I did not know. First Pension concealed the fraud."

So is Cox the innocent victim of scorched-earth lawyering? Or is he an enabler who deserves to be called to account? The courts will decide this specific case. But the issue encapsules the conflicts that swirl around securities-law reform.

The objective of reform is to staunch what companies claim is a flood of frivolous lawsuits. Greedy lawyers, they say, sue on flimsy grounds. The companies pay as the cheapest way out. But the Cox bill and another bill before the Senate would stifle honest lawsuits, too. Among other things, they:

Preserve a Supreme Court decision that sharply limits the time for bringing a securities suit. Formerly, you had three years to sue in federal court, starting from when the fraud was discovered. In 1991, the court cut that back to just one year but in no event more than three years after the date you bought. So if a crook can deceive you long enough, you lose the protection of these laws. Most of First Pension's investors have been caught in that trap, says San Diego attorney Michael Aguirre. The scam began more than a decade ago but investors just recently found it out. So they can't sue for securities fraud, either in federal or state court. Aguirre is suing for common-law fraud, but says that it's not an easy fit.

Preserve another Supreme Court decision that lets some of the people who helped with a fraud escape liability for the loss. It's the lawyers/accountants/consultants self-protection clause (although those who are central to the fraud remain on the hook). This rule would have limited the sums recovered by those who bought bad bonds from the notorious Charles Keating, chief of the Lincoln S & L. Keating's company went broke and he went to jail. His duped investors got most of their money back, says San Diego lawyer Bill Lerach, but only because they successfully sued the minions who helped him operate. (I do think, however, that marginal players shouldn't have to foot the entire bill. Some sort of proportional payment is fair, as the proposals suggest.)

Make it harder to sue a company that grievously misleads investors. Under current law, it's OK for execs to make good-faith business predictions, even if their guess is wrong. They're liable only for deliberate fibs. But because they worry about lawsuits, they may suppress even reasonable forecasts that might help investors make a decision about the stock. Hence, this proposal, which makes it safer for managers to talk. But like so much else in these slipshod bills, it goes too far. A shady promoter could safely say almost anything. You'd call it a lie; he'd say it was innocent optimism. To win a lawsuit you'd have to prove that the speaker intended to deceive—which is pretty tough to do. Cox's bill (but not the bill in the Senate) could protect even a deliberate lie.

Put investors and their lawyers at risk of owing the defendants' legal fees if they lose their case. Cox scoffs at the thought that judges would actually order individuals to pay. "The lawyer would pay" and adds the cost to your fee, he says. But the mere threat of owing a corporation's costs will scare people off—and scare all but the best-funded lawyers, too. Sen. Richard Bryan has a better idea. He proposes a screening process that would test the merits of a suit. If the screener thought it was frivolous—and you brought it and lost—then you'd risk paying all the costs. Ditto on the other side, if the company refused to settle what looked like a meritorious claim.

Some reasonable, Bryan-like compromises need to be reached because Congress (especially the House) is throwing a bomb at a problem that just needs a switchblade. There's not even a litigation explosion, says James Newman, publisher of Securities Class Action Alert in Cresskill, N.J. The number of lawsuits is up, but that's because more are filed in each dispute. The number of companies sued remains in a constant range. There were only 140 in 1993, he says.

Another myth is the oft-heard claim that "vulture lawyers" automatically sue if a company's stock falls by 10 percent in a single day. Baruch Lev, a professor at the University of California, Berkeley, tested a version of this idea for the three years ending in 1990. Of 589 companies whose stock price dropped by more than 20 percent in the five days around the time of a disappointing earnings report, only 20 were hauled into court. And rarely on the strength of the price drop alone, says Jonathan Cuneo, general counsel of the National Association of Securities and Commercial Law Attorneys. In many of these cases, he says, "executives are telling the public that everything is going to be great while they're bailing out and selling their own stock."

There's some good stuff in these bills, especially in the Senate version. They stop lawyers from paying a bounty to people who find them clients, block stockholders who sue for a living and try to discourage frivolous suits. But they overreach. In a nation of laws, you're disenfranchised if you lose your day in court.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. I see my good friend, Senator BRYAN, would like to speak and although I do not want to dominate this debate I think it is important to note that as a result of the give and take in shaping a bill that is balanced, we have put into this bill a provision, on page 138 of the bill, called the Audited Disclosure Of Corporate Fraud. That provision was suggested by our colleague from Massachusetts, Senator KERRY.

By the way, I do not think including this provision is going to change his final vote on the bill, nor was it an attempt to do that. It was an attempt to make this bill better at the suggestion of our colleague. Senator KERRY pointed out that after our accountants come across situations which are fraudulent, they have a duty to report that to the board but they should not be allowed to sit back and relax and say, "I reported it to the board." When we say we are trying to protect the little guy, we are. This provision means that if the board does not do anything the accountants have to follow up on their report. They must then go to the Securities and Exchange Commission and report this wrongdoing.

Why do I mention this? Because when the bill has been characterized in some of the media, there is no mention of the protections we have built in. I continue to hear that this bill allows people to commit fraud. Let me say, as it relates to proportional liability, if you knowingly are involved in a fraud you do not escape being liable for the entire suit. And that is the way it should be. In other words, if you participate in a fraudulent scheme then you should be and would be accountable for the entire loss.

Let us understand what this legislation does is not let the fraudulent conduct, or the people who participate in that, off the hook.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. BRYAN. Mr. President, I acknowledge this is an extraordinarily complicated area of the law. But it has profound implications for millions of Americans who have lost money as a result of investment fraud. So, as I commented last night, this is not just an argument among lawyers, accountants, bankers, and securities underwriters. Everybody who has one nickel in a retirement fund, who invests in the stock market, everybody who owns a single share of stock, can be potentially affected by this.

Historically, under the law, since "the memory of man runneth not to the contrary," defendants were jointly and severally liable, irrespective of their degree of culpability. That is to say, in a case in which several defendants are joined and are found liable, an individual who is 5 percent liable was jointly and severally liable just as the individual who may have been 50, 60, or 70 percent liable.

The theory is one of equity, balancing the scales of justice that are such an important symbol of the American judicial system. And that is, basically, who ought to bear the burden?

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The innocent plaintiff—in this case the investor? Or an individual whose conduct was responsible for the loss? I think it is important to understand that under the Securities Act of 1934, if a defendant is guilty of ordinary negligence—no recovery at all; no recovery at all. An individual defendant who is guilty of gross negligence—no recovery at all.

In order for liability to attach to any defendant under the Securities Act, the conduct must be either intentional or knowing or reckless conduct. So when we are talking about balancing the burden we are not talking about somebody who just made a little mistake. We all make mistakes. We are not talking about somebody who did something accidental. We are talking about somebody whose conduct was intentional or knowing, or somebody whose conduct was reckless. In my judgment that is not an unreasonable standard to hold somebody liable for.

What S. 240 does is to change centuries of American jurisprudence by dividing categories of defendants, some jointly and several, and some proportionate liability. Let me say, I agree in part with what our colleagues who drafted S. 240 have attempted to do. The amendment, which my distinguished colleague from Alabama offers, recognizes that distinction.

What we say, and what S. 240 in its current form says, is that if the conduct is intentional or knowing, then all such defendants whose conduct rises to that level of misconduct are jointly and severally liable, which means that a plaintiff can recover against any one of those the full 100 percent of his or her or its loss.

A new category is established under S. 240, and also under the amendment offered by my distinguished colleague from Alabama, that says with respect to those who are reckless—not intentional, not knowing misconduct, but reckless misconduct, they will be guilty in a proportionate liability sense. That is their legal responsibility.

I am willing to recognize that in terms of trying to seek that equilibrium on the scales of justice that is not an unreasonable proposition. But here is the fundamental distinction between S. 240 in this, and the amendment of my distinguished colleague that I am happy to support. Remember the basic premise: Who ought to bear the burden, the totally innocent investor or those whose conduct rises to the level of intentional and knowing fraud or reckless misconduct? That is not a difficult proposition for me. I think, between those two categories, those who are totally innocent of any misconduct ought to have the right to recover for their economic loss.

I might just say, over my years as a Member of this institution, we have debated product liability endlessly.

That was one of the titanic battles of the last Congress, the Congress before that, and this Congress. And, as the distinguished occupant of the chair and my colleagues on the floor know, we passed product liability. Some of us were against it; some of us for it. But it is interesting to note that with respect to product liability and economic loss as opposed to pain and suffering, there was never a suggestion that we ought to, in effect, make some of those defendants proportionately liable and not jointly and severally liable.

So for those who followed that debate closely, it was never suggested that someone who was only 5 or 10 or 15 percent liable for the economic loss in a product liability lawsuit would only be responsible for 10 or 15 percent. Each and every defendant is jointly and severally liable under the new product liability bill that passed this Congress.

So whether the misconduct is 5 or 95 percent, the plaintiff has the right to recover 100 percent of his or her or its economic loss. The only thing we did—many of us disagreed with that—is we put a cap on pain and suffering but not economic damage.

What we are talking about in this legislation is not pain and suffering. We are talking about economic loss for investors who have purchased securities and, as a result of securities fraud, they have lost money.

So I just share with my colleague the irony that all of this great ordeal that we have gone through over the past—this will be the fourth Congress that I have been privileged to serve in—it was never suggested in product liability that we ought to, in effect, create these categories of proportionate or joint and several liability. The plaintiff was entitled to 100 percent of his or her or its recovery.

This is in the abstract. My distinguished colleague from California, my distinguished colleague from Maryland, and I yesterday mentioned the Keating case. The reason why we mentioned the Keating case is, if you look at the malefactors' greed in that great decade of the eighties and you look at the icons, you see the Milkens, the Boeskys and the Charles Keatings. Those are household names in terms of frauds perpetrated upon the American people costing innocent people hundreds of millions of dollars.

Somehow it has been suggested that this action 240 has nothing to do with the Keating case. Let me remind my colleagues that I will be offering in the RECORD that the actions brought on behalf of a class of defrauded investors against Mr. Keating were brought under the Securities Act, the very act that we are amending. We are talking about the Securities Act of 1934, the RICO provisions, and the Securities Act of 1933.

Mr. D'AMATO. Mr. President, will my colleague yield?

Mr. BRYAN. Yes. I am happy to yield.

Mr. D'AMATO. I am not certain, but I believe—and I know that we all watch legal proceedings today—that the securities actions that were brought against Charles Keating were brought by the Government. Is not that true?

Mr. BRYAN. That is not true. In responding to my good friend and distinguished chairman, they were brought as part of a private cause of action on behalf of a class. Mr. Keating was a defendant together with a whole host of others. I will not belabor the chairman's time. But it was a whole category.

The point I want to make in responding to my good friend's question is that the heart and soul and essence of the recovery, $262 million, was brought under the Securities Act. That was the underpinning, the foundation, the premise, the essence of the cause of action.

Mr. D'AMATO. Is it not true, though, that there was knowing fraud being committed?

Mr. BRYAN. The answer to that would be, in some instances, yes. But there were other defendants which, under S. 240, would fit under the proportionate liability classification. And in the Keating case, as the distinguished chairman knows, Mr. Keating was bankrupt. There is no question he was a primary offender; no question he would be jointly and severally liable under the bill as drafted by the chairman.

But what makes the Keating case so significant is that the amount of recovery by the plaintiffs would have been reduced dramatically because there were others who were not in the category of potential and knowing fraud whose conduct was knowingly reckless.

Mr. D'AMATO. In fairness, my friend did answer that. I would like to make the point that those people whose conduct under this bill was knowingly fraudulent, even if they were only partially responsible, will still be liable for the entire amount if the others have gone bankrupt. In other words, and in layman's terms, if you committed fraud intentionally, and others have gone bankrupt, you can be held liable for the entire amount. I think we need to keep that fact in sight. That was my the point.

Mr. BRYAN. Before responding to a question from my colleague from California, the chairman is correct that those who are intentional in their fraud, and knowingly, are jointly and severally liable. In the Keating case, there was a whole list of people, however, who would be aiders and abettors. Under the provisions of S. 240, aiders and abettors are home scot-free; no recovery at all.

There was another category of individuals. Some of them were firms and some of them were securities underwriters who would fit under the new

classification of reckless conduct. And they would come under only the proportionate liability. Much of the recovery, much of the $260 million the innocent plaintiffs in the Keating case recovered, was from the reckless category.

I say in all due respect to the chairman, whom I greatly respect, that recovery would be greatly and dramatically reduced because under S. 240 there is only proportionate liability.

Mr. SARBANES. Will the Senator yield?

Mr. BRYAN. Yes.

Mr. SARBANES. Mr. President, I just want to point out that the recklessness standard has long been a part of the common law for purposes of fraud. It is a very high standard. The chairman of the committee earlier said, Well, you know, someone could come in and be negligent, and they are going to be held jointly and severally liable. That has never been the law. It is not the law. It will not be the law under the amendment of the distinguished Senator from Alabama.

The definition of reckless conduct—let me read the definition that is generally used by the courts: "A highly unreasonable omission involving not merely simple or even gross negligence"—so it is higher than simple negligence, it is higher than gross negligence—"involving not merely simple or even gross negligence but an extreme departure from the standards of ordinary care, and which present a danger of misleading buyers or sellers that is either known to the defendant, or is so obvious that the actor must have been aware of it."

The way the bill is written now, the phrase "ignorance is bliss" is going to take on a meaning that just staggers the imagination.

The problem that is being talked about, about the strike suits, is dealt with up front in the bill. You try to make it harder to bring those suits. We support a lot of those provisions. This is, simply put, a question whether fraud participants are going to be put ahead of innocent victims and individual investors. I mean, why in the world, if a fraud has been committed, should the burden fall on the innocent victim of the fraud and not on the people who have been participants in the fraud?

I defy anyone to explain to me the logic or the rationale for protecting the participant of the fraud ahead of the innocent victim of the fraud.

I thank the Senator for yielding.

Mr. BRYAN. Mr. President, I yield to the Senator from California. I just assure my friend from North Carolina that I intend to be very brief because I know he wishes to speak. It is not my purpose to preempt the time of those who share a different point of view.

I am delighted to respond to my friend.

Mrs. BOXER. I thank my friend from Nevada and my friend from Alabama for this amendment because if we are not here to protect innocent victims, then what are we here for? That is the bottom line. Yes, we want to correct problems and we want to do it right, but we have to look at the bottom line. That is why I am so grateful to my friend for bringing up the Keating case, because when this Senator brought up the Keating case late in the night she was told—in some very agitated tones, frankly—that the Keating case had nothing to do with this section of the law we are amending.

Well, I have the documents in front of me, and it is very clear they are class action lawsuits based on violations of the Securities Act of 1934 and the Securities Act of 1933. And at some point I am going to put these in the RECORD, as I promised my chairman last night that I would do, for all to see.

I am so grateful to my friend from Nevada for bringing this up. This bill is about the Charles Keatings of the future and whether they are going to commit the kind of financial atrocities they committed in the past.

Now, that is not the goal of the authors of this, but it is an unintended consequence of this if we are not careful, if we do not listen to Arthur Levitt of the SEC, if we do not listen to the consumers, if we do not listen to the securities people in each and every State including my own State, including those in Connecticut, including those in New York, and all over this country who are against this bill, and a New York Times editorial today, which really takes on this bill.

So the question I have for my friend is this. The Senator from Alabama and the Senator from Nevada are putting before us what they consider to be a correction. It is technical; it is difficult for people to understand, but I wish to ask my friend a direct question because I know he is a student of the Keating case and I know he has stated that the Keating case is involved here.

If S. 240 had been in effect and the joint and several liability had been changed, would it have adversely affected those people who eventually collected because they were able to go to these other actors in the suit?

Mr. BRYAN. To answer my distinguished colleague from California, it would have adversely affected the plaintiffs. It would have reduced their amount of recovery by tens of millions of dollars. The overall amount of the recovery was $262 million as a result of the class action filed under the securities laws. It would have reduced that amount by tens of millions of dollars, and I will try—I do not have the number right before me—to develop that number to give more particularity.

Mrs. BOXER. I am finished with my questions. But what I really appreciate about his presentation is it is not some academic debate. You are telling this Senate, and I hope they are listening, that if we change the laws too much, if we go too far—and, yes, we should correct it—the people who collected in the Keating case would not have collected tens of millions of dollars, and it includes this amendment that is standing before us.

I thank my friend.

Mr. BRYAN. I thank the Senator from California. I am going to be very brief, as I assured my colleague——

Mr. DODD. Will my colleague yield on that point?

Mr. BRYAN. I would be happy to yield. I recognize that others want to speak on this issue, and I do not want to dominate, and I do need to make a couple other points. But I would be happy to yield.

Mr. DODD. I just ask my colleague here: If the provisions of this legislation, in fact, had been in place at the time, my colleague from Nevada is not suggesting, I hope, by his comments that the Keating case would have, as it was finally concluded as we know, changed necessarily the awards to the plaintiffs in that case because of the proportionate liability provisions of this legislation, because we are not dealing with that?

Mr. BRYAN. I would respond with all due respect—the Senator knows how greatly I respect his insight into this process—dramatically, categorically and emphatically. If S. 240 had been in effect at the time of the Keating action, the recoveries would have been tens of millions of dollars, maybe even more than $100 million, less.

Mr. DODD. I say to my colleague, I totally disagree with that conclusion. In fact, I think we might have enhanced, had the provisions of this bill been in place, the collection rather than deny, because of the requirement of accountants to actually report the kind of problems that they were not required to under existing law at the time of the Keating proceedings.

Mr. BRYAN. I thank the Senator. I am just going to make one point. The fundamental difference between the Bryan-Shelby amendment and S. 240 is that it recognizes, as does the chairman and the distinguished Senator from Connecticut, that we create two classes of liability. One is joint and several, and the other is proportionate. But the fundamental distinction is that in the Shelby-Bryan amendment, if those who are jointly and severally liable are judgment proof, that is, they are insolvent, they are in prison, they have taken flight, they are unable to respond to the full amount of damages, our legislation in the amendment would require you to look first to the joint and several liability. But if the innocent investor was unable to recover the full amount of his or her losses, then you could look to the proportionate liability, those people

whose conduct was reckless, and the plaintiff can fully recover.

Under the print before us, that would not be possible; there is a limitation, and you can only recover against the proportionate liability the amount that is determined to be the proportionate liability plus another 50 percent.

So let us say, for example, that the loss was $1 million, that there was a 10-percent responsibility on the part of a reckless defendant. With proportionate liability, the full amount that you could recover would be $100,000. Under the bill that is currently before us, the full amount that you could recover would be $150,000, even though the loss might be $1 million.

Mr. SARBANES. Would the Senator yield for a question?

Mr. BRYAN. I would be happy to.

Mr. SARBANES. Who would bear the burden of the other $850,000 in that case?

Mr. BRYAN. The innocent plaintiff.

Mr. SARBANES. The plaintiff.

Mr. BRYAN. The investor, who was not at fault at all.

Mr. SARBANES. Why should that investor, who was the victim of a fraud, have to swallow $850,000 of the loss when there are parties who were participants in the fraud who ought to be held accountable?

Mr. BRYAN. I would agree with the observation made by the Senator from Maryland. I cannot comprehend the public policy of saying, look, those who are active and are involved in reckless misconduct in this case, they should have their liability limited so that the innocent plaintiff, innocent investor, should bear the loss. I do not think that is responsible public policy, I would say in response to the Senator.

Mr. SARBANES. If the Senator would yield further, because I wish to be fair to my friend from Connecticut and the distinguished chairman of the committee, they say, well, there are these strike suits and we have to try to preclude them because these deep pocket people are being held up, as it were.

The way you handle that problem, as is done in this bill, is you make it more difficult to bring the strike suit so you clear out the so-called frivolous suits that have been asserted. And we agree that that is a desirable objective. But by definition, the cases we are talking about are cases where there is liability and there has been fraud, and in that instance there is no rationale that I can think of that warrants putting the participant in the fraud ahead of the innocent victim of the fraud.

Mr. BRYAN. I simply respond to my friend's question by saying I share that view.

I know others desire to speak. I must say the view shared by the Senator from Maryland and the distinguished Senator from Alabama and I is a view that is endorsed by the Securities and Exchange Commission and the North American Association of Securities Administrators. So we are not alone in making that determination.

Mr. SHELBY. I wonder if the distinguished Senator from Nevada would yield for one question.

Mr. BRYAN. I am happy to yield.

Mr. SHELBY. Does the Senator from Nevada know anywhere in American jurisprudence where the victim is left out in the cold like they would be if this bill passes?

Mr. BRYAN. In responding to the question, I would not presume to know all jurisprudence, but I can think of no instance in which, as a matter of public policy, a determination is made where the wrongdoer should benefit and that the innocent victim should suffer the consequence of the wrongdoer's conduct.

Mr. SHELBY. I thank the Chair.

Mr. BRYAN. I yield the floor.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. FAIRCLOTH. Mr. President, I heard the questions and the arguments back and forth on the Shelby-Bryan amendment, and certainly both are distinguished Senators and very good friends, so I somewhat with hesitation oppose the Shelby-Bryan amendment. But as I mentioned yesterday, one of the key provisions of this bill is the reform of the proportionate liability rules. This is unethical lawyers going after deep pockets.

It says very simply that you or a company pay your fair share of the losses that you or your company might have caused. If 10 percent was your share of the loss, then you pay 10 percent. I think it is a reasonable provision that you pay for the damages that you cause, but not others.

Moreover, Mr. President, the bill already goes several steps in the direction that Mr. SHELBY and Mr. BRYAN would like.

First, for those persons or companies that engage in knowing fraud, they become jointly and severally liable. So they do not come under the proportionate rules. They will have to pay more than their share and if any of the fellow defendants—anybody else in the suit—are insolvent, then they are committed to paying that portion. If knowing fraud was committed, they are not covered, and they simply have to pay it all if they are the only ones with any money.

Second, investors with a financial net worth under $200,000 will be made whole even if there are insolvent defendants. This is not a small pool of people. This is about 99 percent of America. This was supposed to be the so-called widows and orphans provision that I assume was one of the things being talked about this morning.

This was a provision whereby we protect the small investor. I think the current bill goes further, so the bill is already protecting widows, orphans and a lot more.

The Shelby-Bryan amendment would go even further. His amendment proposes to protect the little fellow, which we have already covered, but also it would protect the sophisticated investor without distinction.

I have to oppose the amendment. Too often the lawyers that deal in these type of securities suits go after one thing: The deep pockets, knowing that the deep pockets will have to pick up the whole tab of the litigation. That is why they get sued in the first place. The fact that they can go after the deep pockets is probably one of the principal reasons the suit was filed to begin with.

Of course, the lawyers hope it will never go to trial. They hope that the person with the deep pockets will simply settle the case and they will simply never have to take a weak case to court. We know that the lawyers collect the lion's share of the money that is settled before or during court. The investors get pennies, if even that, on the dollar.

Mr. President, as I say, I have a great deal of respect for both Senator BRYAN and Senator SHELBY, but I am adamantly in opposition to this amendment.

I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The majority manager of the bill is recognized.

Mr. D'AMATO. Mr. President, let us take a look at this. My distinguished colleague from Nevada has put forth a very compelling case on the principles underlying joint and several.

Let us turn to the abstract—let us look at reality. Do you want to know what the reality is? About 300 cases being brought a year—and, believe me, they are not being brought on behalf of stockholders, the stockholders are being used; 93 percent of those cases are settled. Do you think they are being settled because the people have done something wrong? The vast majority of those cases are being settled because an innocent person cannot face the exposure and cost of this kind of suit.

Minimal participation, not knowing fraud, but just being around the company, being the auditor, being the lawyers, being the investment adviser can bring you to the case. Let me tell you something, when you are facing a $100 million or a $200 million lawsuit and you can buy your way out for $6 or $7 million, and your lawyer says and the board of directors says settle it, you have no choice but to settle. These cases take people and put them up against a wall. They cannot fight; they have to surrender. It is as if you held

them up. We are providing the ability for legal blackmail. We have to stop that.

This bill does assign greater responsibility. If you know the fraud is taking place, that this business that is going on, this hanky-panky in the company, if you are the auditor, you have to report it.

Some people in the past did report it. They said, "We reported it to the managing directors," and that is the end of our responsibility. We go further and say you have to report it and see that the directors act, and if they do not, you have to go to the SEC. That is how you deal with fraud.

I want to assure you that Senator DOMENICI and Senator DODD do not want to protect fraudulent acts. But just because they are alleged does not mean the companies should be forced to settle without a chance to defend themselves. Is it right to force people who are coerced into settling to pay for the losses of the so-called victims? I say so-called. Some of these cases are totally without merit. I am not talking about the Keating case. Of the 300 cases that are settled, most of them are meritless, but what we have constructed is a system where a person cannot defend him or herself because the cost of that defense, is prohibitive and the effects of the negative exposure, even though the exposure may be minimal, are so great.

A company can be wiped out by these suits, a company can be hit for $300, $400 million, so how can they not settle for $2 or $3 million? Investors are not being made whole. You would believe and think somehow investors are being made whole, but they get pennies for their losses.

What we are talking about is giving people the ability to defend themselves. Most of these defendants have not even reached negligence standards. But the law is not clear on those standards, and a jury decision is never a sure thing. How can a firm put in the hands of the jury the decision of whether they are totally wiped out? Some 600, 700, 800, 900 people who everyday go to work and depend on those jobs, wiped out? They cannot afford to defend themselves. A lawyer can say, "Look, I think you are going to win; you have a 90-percent chance of winning."

"Ninety percent? You mean to tell me that I have a 10-percent chance of losing and getting hit with the entire settlement which could wipe out this firm just because I'm the guy with the deep pockets?"

The answer is "yes." This causes a huge cost to society? When you pay your insurance premiums, you are paying for these settlements. Also, the cost of insurance for the firms has gotten so high, because the insurance firm is worried it will be sued, that many small firms cannot afford it. These costs are passed out to everybody.

We are not protecting somebody who commits fraud. What we want to do is give people a reasonable opportunity to defend themselves; to have that opportunity and not to face this incredibly destructive process in which they really cannot defend themselves; 93 percent of these cases are being settled because the firms cannot afford to defend themselves.

That is not what the American justice system is about: You should send somebody a summons and they have to surrender. That is what is happening. You have the entrepreneurial lawyers who have made this an art form, who basically hire these plaintiffs. They have them on the payroll. They bring them in and race to the courthouse. They are not interested in getting money back for poor defrauded people and, in many cases, there has been no fraud.

I will tell you what is a fraud in this system. When you coerce somebody to pay and they have not done anything wrong, that is a fraud. I have not heard anybody say anything about the fraud of coercing honest, hard-working people because they find they would face financial ruin if they defended themselves or there were some finding against them and they would be responsible for the entire settlement. They cannot even fight it out because the risks are so great, they must surrender.

What about that kind of fraud? Is that what our system is about—that we strip away the ability of a person to stand up for his or her rights because to do so would be totally destructive to them? I do not think that is what our system is about, but that is what they have turned the system into. If you intentionally committed fraud you should pay the piper. That is what we are saying.

Do you know why the lawyers are against this? I will tell you why. It is because this will give to the entrepreneur who built a building, the fellow that is the accountant, the securities people, the investors, the ability to stand up and fight. The strike suit lawyers do not want that. These lawyers be able to hit everyone with that summons—just like holding a gun to them—and then say, OK, how much you are going to pay us. They do not want the guy to have the ability to reach back and take that gun and say, in return, OK, let us fight it out. They do not want cases to be heard on whether or not there was real fraud.

This Senator does not want to protect anybody who commits fraud. That is nonsense that I read in these insipid editorials—insipid. We want to give people their day in court. If you want to protect the holdup artists we should keep joint and several liability.

I hear people say, you are going to be defending the Keatings. No way. If the fraud is intentional, we are going to get you. Charles Keating was selling products for a bank and suggested that the Federal Government was insuring it. Senator DODD and I cosponsored legislation we introduced on May 5, 1995, that financial institutions cannot sell these products and imply they are backed by the Government. That is how you stop the Charles Keating types. We will hold these people responsible, and we are going to stop them from conducting these actions. Let us not talk about defending fraudulent conduct. We do not. But we must give a person an opportunity to fight for himself instead of giving up to the holdup artists.

Mr. DODD. Mr. President, let me try to bring this back to the point at hand here. Let us get some matters off the table. We are not talking about intentional and knowing fraud. "Joint and several" still applies on intentional and knowing fraud. We have tried to deal in this legislation with the issue of recklessness, because it is in that area of recklessness that we feel the issue of proportionate liability ought to have some application—not intentional, not knowing, but in reckless behavior.

Let me share with my colleagues the thoughts of those who spent a great deal of time on this issue. In fact, as pointed out by one authority, the vagueness of the recklessness standard is one of the principal reasons, Mr. President, that the joint and several liability provisions ought to be modified. In practice, the legal standard does not provide protection against unjustified and abusive claims, because juries can—and as a practical matter do—misapply the standard. Juries today, quite frankly, have considerable difficulty in distinguishing innocent mistakes, negligence, and even gross negligence—none of which, by the way, Mr. President, is actionable under rule 10(b)(5) from recklessness.

One commentator observed that the courts have been less than precise in defining what exactly constitutes a reckless misrepresentation. The imprecision of the court, he went on to say, has resulted in ad hoc, if not arbitrary and reckless, determinations. The result is that the actual and potential parties to section 10 and rule 10(b)(5) actions cannot predict with any degree of certainty how a trier of fact would characterize alleged conduct and thus whether it may serve the basis for liability.

There is a whole series of discussions about the problems in determining that particular criteria. So in the recklessness area, we apply the proportional liability provisions. Much of the reason goes to the heart of what the Senator from New York was talking about. Once you are into it, and if it is only joint and several, and if you are a marginal player and you could be held for the whole amount, that is unfair

and lacks balance, just as it would be if you would deprive a legitimate plaintiff of any kind of compensation at all.

Go back and look, if you will, at the statements of all of the preceding members of the Securities and Exchange Commission on this very point.

Carter Beese said:

Allocating liability on the basis of the proportion of each defendant's contribution to a plaintiff's harm would address these problems by changing incentives. Plaintiffs may be less likely to name secondary market participants if the potential recovery from these entities was relatively small. Secondary market participants who are nonetheless sued would be more willing to defend those cases they believed were without merit, rather than entering into a quick settlement in order to avoid broader liability exposure.

Adversely, I point out, affecting these investors as well.

The Senator from New York is correct. Let us make the system work. Let us get to court if that is where you have to go. This involves very little court participation because of this particular standing. "You are an idiot not to pay." That is what their lawyers and accountants tell them, rather than jeopardize the entire operation, in some cases, because of the size of the claims.

Richard Breeden, former SEC Chairman noted:

The current application of joint and several liability results in a system that should perhaps be called inverted disproportionate liability. Under this system, parties who are central to a perpetrating of fraud often pay little if anything. At the same time, those whose involvement might be only peripheral and lack any deliberate or knowing participation in the fraud often pay the most in damages.

That is not right. That is unfair, Mr. President. He concluded by saying:

Paying your fair share but no more than your fair share of liability is hardly a radical proposal.

That is what we are suggesting.

David Ruder, a former Chairman of the SEC, said:

The threat that the secondary defendants can become liable for all of the damage caused by the primary wrongdoers has had a dramatic affect upon the settlement negotiations in large class action suits. These actions frequently have been settled by secondary defendants for significant sums because of the possibility that they will be required to pay the entire amount claimed and thus destroying them.

He concluded:

Reform of joint and several liability is necessary because the fees received by accountants, lawyers, and banks for their commercial services do not justify enormous dollar judgments against them on securities class action cases.

So, Mr. President, what we have tried to do in this bill is to strike that balance that everybody talks about rhetorically but denies we have achieved here. We do not include the intentional knowing specifically. We protect the small investor—$200,000. Only 1 percent of the people in this country have incomes in excess of $100,000. We are talking about a very small number of people who would actually be affected. The overwhelming majority are still protected as a result of the widows or orphans provision we put in.

Also, recent data indicate that the median net worth of American families is $47,200. So we protect those people when we have intentional and knowing fraud. Even if you are marginally involved, you pay all of it. That is what we have tried to do. To wipe all of that out strikes out the balance of this legislation. That is what the years of work have tried to achieve here.

Now, do we know how perfectly it is going to work? No. To my colleagues who cite potential future cases, how do I argue against a potential future case without knowing the facts except to cite some draconian case that conjures up the worst fears in people. I do not know the exact application. I know that presently the system stinks. That much I know. We have made an effort to change this, to avoid the kind of problem that exists where 93 percent of the cases are settled because people make the conclusion you would be an idiot not to do so because you are jeopardizing your entire business.

There is something wrong with the system that results in that kind of conclusion.

Now, we hope this will work. Time will tell whether or not we have done it absolutely perfectly. I suspect we have not done it perfectly.

This much we know: The present system does not work. It says to innocent, relatively innocent, marginal players, "You must assume the entire responsibility for the vague standard of recklessness," I think is unfair.

Intentional knowing—pay the price. Protect the widows and orphans—that you must do. To say we are sorry, those on the periphery here will pay a full tab where a reckless standard is applied, I think is unfair.

We have applied the standard in the law to see if we can get some balance into the system, get people to court. If there is a real fight, fight it out. Do not just achieve these huge awards because people are afraid to go into court, knowing what the price would be if they are ultimately asked to pay the entire tab, when they are only marginally involved.

That is the whole purpose. Citing future cases and what may happen down the road, engaging in the scare tactic approach—the Senator from New York, the Senator from New Mexico, myself, and others who put this bill together—do my colleagues really believe we are trying to do something here that would potentially expose people to future Keatings? By God, how could any Member possibly draw that conclusion?

We are trying to get balance into a system that is out of balance. That is all this is intended to do. My hope is that the Shelby amendment will be resoundingly defeated.

Mr. SHELBY. Mr. President, I ask unanimous consent that Senators BOXER and SARBANES be added as original cosponsors.

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

Mr. SHELBY. Mr. President, I ask that a statement by the Chairman of the Securities and Exchange Commission regarding proportionate liability be printed in the RECORD.

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

SEC Chairman Levitt has been forceful about the need to protect fraud victims in the insolvency situation, even when it forces parties who are only partially responsible for the harm to bear more than their proportionate share of the damages. In 1994 House testimony, Levitt explained:

"Since securities fraud cases often involve insolvent issuers or individuals, however, some defendants in such cases may not be able to pay their fair share of the damages they have jointly caused. Advocates of proportionate liability argue that joint and several liability produces an inequitable result in such circumstances because it forces parties who are only partially responsible for the harm to bear more than their proportionate share of the damages. . . ."

"The response to this argument is that, although the traditional doctrine of joint and several liability may cause accountants and others to bear more than their proportional share of liability in particular cases, this is because the current system is based on equitable principles that operate to protect innocent investors. In essence, as between defrauded investors and the professional advisers who assist a fraud by knowingly or recklessly failing to meet professional standards, the risk of loss should fall on the latter. Defrauded investors should not be denied an opportunity to recover all of their losses simply because some defendants are more culpable than others."

Mr. SHELBY. Mr. President, I believe the bottom line here is balance. The balance is, who should bear the cost of fraud? That is the question before the Senate today. Who should bear the cost of fraud?

Should it be the perpetrators, or should it be the victims? It should be the perpetrators, and never the victims. I think that is a bottom line of American jurisprudence.

This bill, if it were to pass, would change that, unless we adopted the amendment that I have offered on behalf of myself, Senators BRYAN, BOXER, and SARBANES.

This amendment makes sense. Why do we think the Chairman of the Securities and Exchange Commission supports it? We do not need any more Keatings in America. We did not need anything close to that in America. We do not need to pass a bill up here without protection of the innocent people that invest. We should never, never, Mr. President, try to protect the perpetrators of wrong in America.

I believe this amendment makes a lot of sense. I urge my colleagues at the proper time to vote for it.

Mr. D'AMATO. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. D'AMATO. Mr. President, under the agreement, we indicated we would vote at 10:55. Let me suggest at 10:55 we vote.

I yield the floor to Senator DOMENICI.

Mr. DOMENICI. Mr. President, first, I want to commend both Senator D'AMATO and Senator DODD for their splendid arguments today.

While I normally find the distinguished Senator, Senator SHELBY, to be rational and reasonable, let me suggest in this case I would summarize this, this way: What we have had heretofore in the United States, before this new approach, is a cookie-cutter complaint.

What they do is draft up a complaint, and it contains the right words, regardless of the facts.

Now, we can count on it, I say to my good friend from Mississippi, make this joint and several, dependent upon recklessness—which nobody understands—and every complaint will accuse the whole crowd of being reckless.

It will not be just a case of "under certain circumstances." The issue will be, those reckless people will have to be subject to joint and several total liability for a little tiny bit of negligence. It will be all of them in the same suit, under the word "reckless," and we are right back where we started, and we will not have accomplished the reforms that we seek, to balance a very unfair system.

I yield the floor.

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

• Mr. MCCAIN. Mr. President, because of a longstanding commitment to address the Veterans of Foreign Wars, I will be necessarily absent on Friday. If I were to be present, I would vote for the Shelby-Bryan amendment on joint and several liability.

This amendment would continue to allow victims of securities fraud to recover their losses by holding all those who participated in the fraud joint and severally liable for the damages.

In many instances, the primary culprit in a securities fraud declares bankruptcy. The only resource for an innocent victim is to recover their full losses from others who contributed to the fraudulent activity.

While the pending bill would hold those who "knowingly" contribute to a fraud severally liable, it would limit the liability of those who "recklessly" contribute. This provision means that innocent victims will pay for the fraud inflicted on them, rather than those who recklessly contributed to their victimization. That is simply not right.

Mr. President, there is serious abuse of our litigation system. Too often, frivolous suits are brought in order to wrest money from defendants who find it far easier and less expensive to settle the case out of court than to pay the exorbitant cost of defending themselves. While we must take steps to address such abuse, we must take great care that in that effort we do not unfairly diminish the ability of truly innocent victims of fraud to fully recover their losses from those who participated.•

The PRESIDING OFFICER. Under the previous order, the hour of 10:55 a.m. having arrived, the Senate will now proceed to vote on or in relation to the Shelby amendment.

The question is on agreeing to the amendment. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Colorado [Mr. CAMPBELL], the Senator from Texas [Mr. GRAMM], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Arizona [Mr. KYL], the Senator from Arizona [Mr. MCCAIN], the Senator from Wyoming [Mr. SIMPSON], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Wyoming [Mr. THOMAS] are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote "nay."

Mr. FORD. I announce that the Senator from Arkansas [Mr. BUMPERS], the Senator from Iowa [Mr. HARKIN], the Senator from New York [Mr. MOYNIHAN], the Senator from Arkansas [Mr. PRYOR], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

The result was announced—yeas 30, nays 56, as follows:

[Rollcall Vote No. 282 Leg.]

YEAS—30

Akaka	Feingold	Kohl
Biden	Feinstein	Lautenberg
Boxer	Graham	Leahy
Bradley	Heflin	Levin
Breaux	Hollings	Rockefeller
Bryan	Inouye	Sarbanes
Cohen	Jeffords	Shelby
Daschle	Kennedy	Snowe
Dorgan	Kerrey	Thompson
Exon	Kerry	Wellstone

NAYS—56

Abraham	Dole	Lieberman
Ashcroft	Domenici	Lott
Baucus	Faircloth	Lugar
Bennett	Ford	Mack
Bingaman	Frist	McConnell
Brown	Glenn	Mikulski
Burns	Gorton	Moseley-Braun
Byrd	Grams	Murkowski
Chafee	Grassley	Murray
Coats	Gregg	Nickles
Cochran	Hatch	Nunn
Conrad	Hatfield	Packwood
Coverdell	Helms	Pell
Craig	Hutchison	Pressler
D'Amato	Inhofe	Reid
DeWine	Johnston	Robb
Dodd	Kassebaum	
Roth	Smith	Thurmond
Santorum	Stevens	Warner

ANSWERED "PRESENT"—1

Bond

NOT VOTING—13

Bumpers	Kyl	Simpson
Campbell	McCain	Specter
Gramm	Moynihan	Thomas
Harkin	Pryor	
Kempthorne	Simon	

So the amendment (No. 1468) was rejected.

The PRESIDING OFFICER (Mr. ABRAHAM). The majority leader is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, a number of my colleagues are inquiring about the schedule for the remainder of the day, and I want to congratulate the managers for their good work until late last evening after somewhere around 10:30. This is a major bill.

What I would like to do is propound a unanimous-consent request. I have been told it has been worked out with the managers for action on Monday, and if we can do this on Monday, then there will be no more votes today.

So I would ask consent that when the Senate resumes S. 240 at 12 noon on Monday—there is going to be additional debate this afternoon. This refers only to Monday. We go on the bill at 12 noon—Senator SARBANES be recognized to offer an amendment relative to proportional liability, and there be a time limitation of 2 hours to be equally divided in the usual form, with no second-degree amendments in order.

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

Mr. DOLE. I further ask that at 2 p.m. the Sarbanes amendment be laid aside, and that Senator BOXER be recognized to offer a relevant amendment, on which there be 90 minutes equally divided, with no second-degree amendment in order prior to a failed motion to table.

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

Mr. SARBANES. Could I just make an inquiry, reserving the right to object.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I have no objection. In other words, we are leaving the Boxer amendment open to a second-degree amendment, is that right?

Mr. DOLE. Right. We were not certain what the subject matter is.

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

Mr. DOLE. And I further ask that at 3:30 p.m. the Senate resume the Bryan statute of limitations amendment, and there be 90 minutes of debate to be divided in the usual form.

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

Mr. DOLE. The Senator indicated he needed additional time.

I further ask that at 5 o'clock on Monday, the Senate proceed to vote on

or in relation to the Bryan amendment, to be followed by a vote on or in relation to the Sarbanes amendment, to be followed by a vote on or in relation to the Boxer amendment; that there be 2 minutes for explanation between the second and third stacked votes to be in the usual form. In other words, Members get a brief explanation. Senator BYRD suggested, I think, a good idea. So that when they vote, they will have the latest information on that particular amendment.

Mr. SARBANES. There will be 2 minutes to a side?

Mr. DOLE. One.

Mr. SARBANES. One minute to each side.

Mr. DASCHLE. Reserving the right to object, I would ask the majority leader—I am told we have one Member who is returning at 5 o'clock—if we could move that to 5:15 to accommodate his schedule I think it would probably work a little bit better.

Mr. DOLE. As long as it does not cause any problem. The time of 5:15 is fine with me.

Mr. SARBANES. Senator BURNS actually spoke to me earlier, and we slipped it from 4:30 to 5 to accommodate him, or as I understood it was slipped from 4:30 to 5 to accommodate Senator BURNS, and if we could slip it another 15 minutes——

Mr. DOLE. At 5:15.

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

Mr. DOLE. The first vote will be at 5:15, and the rest will follow.

Mr. BYRD. Mr. President, before the distinguished majority leader proceeds—reserving the right to object, and I will not object—I thank the distinguished majority leader for providing time for explanation before the vote on each of the stacked amendments. My question is, Will there only be three stacked votes for Monday?

Mr. DOLE. Yes.

Mr. BYRD. I thank the majority leader.

Mr. DODD. There may be votes after 5:15.

Mr. BYRD. That was not my question.

Mr. DODD. Stacked votes.

Mr. BYRD. Only three stacked votes. I thank all leaders.

I have no objection.

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

Mr. DOLE. For the information of all Senators, a lot of amendments will be debated during the day on Monday and the first vote will occur at 5:15. We will notify all offices, certainly the Democratic side and the Republican side, and I again wish to thank the managers for the progress. It is a very important bill. I listened to the debate last night and learned a little bit after I got home. You were still debating. It is an important bill, very important bill. In view of the progress made and the fact there is going to be an amendment debated this afternoon, I think it is safe to announce—and I have checked with the Democratic leader—no more votes today.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, as we return to the bill, Senator BRYAN has an amendment to offer.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I ask unanimous consent to speak in morning business.

Mr. D'AMATO. May I say to the Senator, because others have asked to proceed in morning business, we are ready to take the amendment which our colleague wants to put up, and if it is going to be protracted, I do not want to open the door.

Mr. FEINGOLD. I only asked to speak in morning business for 10 minutes.

Mr. D'AMATO. Might I ask my colleague—because he has a time problem, we have provided that we would go to this—that Senator BRYAN be at least permitted to proceed and then I would have no objection to moving forward.

Mr. BRYAN. If I might, I can assure my colleague that I am simply going to lay an amendment down, speak for approximately 5 minutes, so that I do not in any way—we did make a commitment to lay this down, and I have a time commitment in terms of a flight to get so I will accommodate the Senator.

Mr. FEINGOLD. Mr. President, in light of that comment, I will defer for a few moments. And I thank the Senator from New York and the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 1469

(Purpose: To amend the Securities Exchange Act of 1934 to provide for a limitations period for implied private rights of action)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. BRYAN] proposes an amendment numbered 1469.

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

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

The amendment is as follows:

On page 129, between lines 16 and 17, insert the following:

SEC. 111. STATUTE OF LIMITATIONS.

Title I of 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. STATUTE OF LIMITATIONS.

"(a) IN GENERAL.—Except as otherwise provided in this title, an implied private right of action arising under this title may 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.

"(b) EFFECTIVE DATE.—The limitations period provided by this section shall apply to all proceedings commenced after the date of enactment of this section.".

On page 131, strike line 1, and insert the following:

"SEC. 39. PROPORTIONATE LIABILITY."

Amend the table of contents accordingly.

Mr. BRYAN. I thank the Chair.

Mr. President and my colleagues, this is an amendment dealing with the statute of limitations. Some of my colleagues will recall that in 1991, the Supreme Court of the United States decided by a 5-to-4 vote a case that is referred to as the Lampf decision. The Supreme Court in that decision determined that there would be with respect to securities actions a statute of limitations that would limit an investor from bringing a cause of action to 1 year from the point that the fraud was discovered and in no event longer than 3 years.

The Supreme Court gave that a retrospective interpretation as well as a prospective interpretation. A number of us came to the floor in 1991, because this would have wiped out a number of the cases in which Charles Keating had been named the defendant, and the Congress corrected it. It changed the law—that it would be 2 to 5 years.

Now, this deals prospectively. Under the Lampf case, the 1- to 3-year statute was identified as the appropriate statute of limitation. This amendment would provide rather than a 1- to 3-year statute of limitation, a 2- to 5-year statute of limitation.

I must say that S. 240 in its original form as introduced contained the identical provision.

So, in effect, this amendment, if adopted, would restore S. 240 to its original form.

The importance of the statute of limitations, as the Securities and Exchange Commission and other regulators point out, is that by the very nature of these securities frauds, they are not easily detected. The last thing in the world we would want to do is to give comfort to those who are clever enough to conceal their fraud to effectively preclude a plaintiff from bringing his or her cause of action.

There will be much more debate on this on Monday, but suffice it to say what we are trying to do is to provide 2 years from the date of discovery, in no event longer than 5 years, recommended by the Securities and Exchange Commission, recommended by the North American Association of Securities Administrators, and just one point for my colleagues to contemplate.

In testimony before the Banking Committee, the Chairman of the SEC

advised us that even with the enormous resources available to the SEC, all of the staffing that they have, and the sophistication that they have acquired over the past 60 years, it takes approximately 2.25 years to conduct such an investigation.

Obviously, individual plaintiffs have much less in the way of resources available, and their likelihood of completing an investigation in the timeframe is considerably more limited.

What we seek to do is provide a 2- to 5-year statute of limitations prospectively, and we will point out in the debate with more detail on Monday the overwhelming public policy argument in favor of this.

Suffice it to say this has nothing to do with frivolous lawsuits—nothing to do with frivolous lawsuits. There are provisions in the mark which deal with enhanced enforcement provisions under rule 11 of the Federal Rules of Civil Procedure to deal with the issue of frivolous lawsuits. This simply is a provision that will provide some fairness to investors to be able to present their claim in the first instance.

I thank my colleagues for permitting me to go forward at this time.

Mr. SARBANES. Will the Senator yield?

Mr. BRYAN. I will be pleased to do so.

Mr. SARBANES. Mr. President, I want to underscore the importance of this amendment.

I ask the distinguished Senator from Nevada, did the Banking Committee not report an amendment lengthening the statute of limitations for securities fraud actions to 2 years after the plaintiff knew of the violation and to 5 years after the violation occurred, following that Supreme Court decision?

Mr. BRYAN. Responding to the distinguished ranking member, that was, in fact, what the Banking Committee did, and on the floor of the Senate, the Senate followed the lead of the Banking Committee and ultimately, as the Senator from Maryland will recall, we protected those cases that were pending in the 1991 action we took.

Mr. SARBANES. So the proposal, your amendment, in effect, is seeking to put into the law the very provision that we had previously reported.

Mr. BRYAN. That is essentially correct. This operates prospectively. What we did, as the Senator from Maryland will recall, is to try to protect all of those actions that were pending in 1991 which had been wiped out by the Supreme Court decision and we, in effect, provided at that time that the operable State law would apply, which had been, in effect, the interpretation of the courts over the years.

In essence, we kept those cases active so that they could be decided on their merits, not having been precluded by a decision, which surprised many, that the Court gave and particularly the retroactive portion of that.

Mr. SARBANES. As I understand it, following the Supreme Court decision in the Lampf case, the then-Chairman of the Securities and Exchange Commission, Richard Breeden, a Republican nominee—because I think it is very important to understand, as far as Chairman of the SEC is concerned, they are bipartisan in their view about this matter—testified or stated, and I quote him:

> The timeframe set forth in the Court's decision is unrealistically short and will do undue damage to the ability of private litigants to sue.

Chairman Breeden pointed out that in many cases:

> . . . events only come to light years after the original distribution of securities and the cases could well mean that by the time investors discover they have a case, they are already barred from the courthouse.

As I understand it, the States securities regulators and the FDIC at the time joined the SEC in this position. As I understand it, the States securities regulators today feel very strongly that the amendment which the Senator is offering is an extremely important amendment.

Mr. BRYAN. The Senator from Maryland is correct. This has had bipartisan support with the Commission. Chairman Breeden, as the Senator points out, strongly urged upon the committee a 2- to 5-year statute of limitations. That same position has been taken by Chairman Levitt under the current administration.

The North American Association of Securities Administrators then and now have urged this course of action. I simply point out to my friend and colleague that S. 240, in the last session of the Congress its counterpart, had a 2- to 5-year statute of limitations, and in this Congress, the very bill we are debating in its original form, as introduced by Senators DODD, DOMENICI, and others, had a 2- to 5-year statute of limitations.

So what this amendment would do is simply restore S. 240, with respect to the statute of limitations, to its original form as introduced by a number of colleagues.

Mr. SARBANES. Mr. President, this is an extremely important amendment. The 1- and 3-year time periods are unrealistically short, and the danger that is associated with an unrealistically short time period for the application of the statute of limitations is that people with meritorious causes will be barred from the courthouse door.

We have statute of limitations because we say, "Well, we do not want this thing just hanging out there indefinitely, and people ought to assert their rights," and so forth and so on. But the time periods have to be reasonable.

Under the amendment, there is a 5-year time period regardless, so that the victim may never know of it. If 5 years goes by, he is closed out. The bill would reduce that to 3 years. People have to make their judgment, but why should you come down on the side of concealment instead of on the other side in terms of protecting the investor?

The 1 and the 2 years is very important because you may discover, or think you have discovered, the fraud, but then you have to work it up to determine whether you have a case or not, and 1 year is a very unrealistically short time period. In fact, I think the Senator yesterday quoted a time period that it took the SEC from when they began working on a case before they felt they could bring it. Was I correct in that?

Mr. BRYAN. The Senator is correct. I cited Chairman Breeden, I believe, who indicated it was 2.25 years for the average case to fully investigate. I might just say in response to the distinguished Senator's point about the inherent complexity, Chairman Levitt testified earlier this year on April 6, and I will read a very short quote, in support of the proposition before us:

> Extending the statute of limitations is warranted because many securities frauds are inherently complex and the law should not reward a perpetrator of fraud who successfully conceals its existence for more than 3 years.

I think that is a compelling policy argument, I say to my good friend from Maryland.

Mr. SARBANES. I think that is an extremely important point. This does not affect the basis on which you can bring the suit in any way. All the other provisions are unaffected. This only affects the time period within which the suit must be brought.

Mr. BRYAN. The Senator is correct.

Mr. SARBANES. I say to my colleagues, this is a very rough bill on innocent investors who have been victimized, as it were swindled, and I certainly hope that at a minimum, the Senate would be willing to restore an appropriate statute of limitations back to the time periods that have prevailed, generally speaking, throughout most of our experience with the securities laws. It has been related to the State laws, and most of the State laws are 2 to 5 and some even longer than that, if I am not mistaken.

Mr. BRYAN. The Senator is correct, and I think his observation is particularly insightful. If you look at S. 240 in its original form, there is only one provision that could reasonably, arguably be supported in providing a consumer, investor, a victim of fraud, with an additional benefit, and that is the statute of limitations provision. That was in the original bill, as the distinguished Senator from Maryland knows. During the course of processing that legislation, for reasons which I do not understand, the provision was deleted.

But even those who are the most fervent advocates of the bill—I know our

distinguished colleague, Senator DODD, has spoken eloquently on behalf of the statute of limitations—we may have differences with respect to proportionate liability and some other issues. But I point out, in response to the Senator's question, that the introducers of the bill, Senator DODD, Senator DOMENICI, and many others on both sides of the aisle, felt that it was inherently fair for the reasons which the Senator from Maryland so aptly pointed out, and that the statute of limitations needs to be extended to 2 to 5 years so those who perpetrate fraud do not benefit by the cleverness of their ability to conceal.

I yield the floor.

Mr. BOND. Mr. President, S. 240, the private securities litigation legislation addresses a very important issue of concern to many Americans, securities litigation reform. While this is a subject that I believe needs to be addressed and one I have some personal views and experience in, I will not be participating in the debate or votes on the floor.

I inform the Senate that I am currently engaged in securities litigation of the kind this legislation seeks to reform. As a result, I have decided to recuse myself from the debate. Given the status of my current suit and the issues before the Senate, I have been advised that I should not participate in the proceedings or voting on the floor.

Mr. DOLE. Mr. President, the high cost of litigation imposes an enormous burden on our economy. According to some estimates, legal judgments account for 2.3 percent of our gross national product. Plaintiffs' lawyers earn nearly $20 billion annually in legal fees, often as a result of contingency-fee arrangements guaranteeing a 30 or 40 percent share of any jury award.

These are the big-picture statistics. But, as we all know, the fear of litigation can hit much closer to home:

Playgrounds and little leagues shut down because local communities can't afford the insurance. Boy Scout troops disband because there aren't any adults around who are willing to be troop leaders. Doctors practice defensive medicine, increasing the cost of health care in the process. Volunteers stay home instead of offering their services to the community. Police officers start second-guessing their own actions, wondering whether they're going to be hauled into court for some minor misstep.

Even worse, people start to lose faith in the system. They begin to view the system not with respect, but as an opportunity to make a quick buck. Everyone becomes a potential victim. Every social transaction, no matter how minor or benign, becomes a potential lawsuit leading to a multimillion-dollar jackpot.

That is why comprehensive legal reform is so important—not only to reduce costs for businesses and consumers alike, not only to protect the innocent from frivolous lawsuits, but also to restore a sense of perspective and personal responsibility.

So, earlier this year, the Senate took the historic step of passing landmark product liability reform legislation.

And, today, we continue the reform process in another key area—the area of securities litigation.

Why securities litigation? Because our securities markets provide the fuel that drives our economy. When these markets run efficiently, allocating capital to established companies and to newer, emerging businesses, we all win out with more economic growth, more jobs, a stronger economy.

Of course, those who seek to invest in our securities markets need to be confident that these markets operate efficiently and fairly. And that is why Congress acted more than 60 years ago to promote investor confidence by passing the Landmark Securities Act of 1933 and the Securities Exchange Act of 1934.

Unfortunately, a handful of lawyers today devote their professional lives to gaming the system by filing strike suits alleging violations of the Federal securities laws—all in the hope that the defendant will quickly settle in order to avoid the expense of prolonged litigation. The lawyers who file these suits often rely on professional plaintiffs, shareholders with only small stake in the company being sued, but who are nonetheless willing to stand on the sidelines ready to lend their names to the litigation.

Needless to say, these strike suits are often baseless, triggered not by any evidence of fraud, but by a drop in stock price or the announcement of some bad news by the company. In effect, the lawsuits act as a litigation tax that raises the cost of capital and chills disclosure of important corporate information to shareholders. High-technology, high-growth companies are particularly vulnerable to these baseless strike suits because of the volatility of their stock prices.

S. 240, the Private Securities Litigation Reform Act of 1995, seeks to reduce the number of meritless securities fraud cases, while protecting investors, by proposing several commonsense reforms:

First, it puts an end to the use of professional plaintiffs by requiring that the court appoint as the lead plaintiff the party willing to serve in this capacity who has the greatest financial stake in the outcome of the litigation.

Second, it clamps down on skyrocketing attorney's fees by requiring that fees be awarded as a percentage of the actual recovery based on the efforts of the attorney.

Third, it retains joint and several liability for those who knowingly commit fraud, but establishes a system of proportionate liability for other, less culpable defendants.

Fourth, it adopts the second circuit's pleading standard, which requires specificity when pleading securities fraud cases. As a result, general allegations of fraud will no longer be enough to justify a lawsuit.

And fifth, it creates a statutory safe harbor for those companies whose good-faith estimates about future earnings do not materialize. Statements that are knowingly false, however, are not protected by the safe harbor.

Mr. President, I want to commend my colleagues, the chairman of the Banking Committee, Senator D'AMATO, and the chairman of the Budget Committee, Senator DOMENICI, for their leadership in moving this bill through Senate. I also want to commend my colleague from Connecticut, Senator DODD, whose involvement in this issue is proof that there is nothing partisan about securities litigation reform.

Mr. BURNS. Mr. President, I rise today to add my voice to those who are supportive of this legislation and to also take the opportunity to commend the sponsors of S. 240, Senator DOMENICI and Senator DODD. It is through their hard work and effort that we now have a balanced bill that protects both investors, and defendants of securities litigation.

It almost seems as if the class—action securities fraud suit has become a feature of doing business for just about every size and type of company in the United States. In 1990 and 1991, a record 614 securities class action suits were filed in Federal courts against American businesses. In an article printed in the Wall Street Journal on September 10, 1991, Mr. Vincent O'Brien reported that he collected data on more than 330 Federal class-action securities-fraud cases involving common stock. In every case, the plaintiffs alleged material misrepresentations and omissions by management regarding the true health and potential of the defendant company. Of the 330 case sample, only 3 cases were decided by a jury; an additional 5 were dismissed or withdrawn, and an astonishing 96 percent were settled out of court.

Proponents of securities class actions say that the suits prevent fraud and help maintain the integrity of financial markets. It is certainly true that one aspect of a fair marketplace is that those persons who have been injured by fraud in connection with a securities transaction, have some avenue available to retrieve their losses.

While the current system does provide for a means to address fraud, the evidence is overwhelming that the real victims of securities fraud are not receiving adequate compensation for their losses. In fact, the plaintiffs in a lawsuit, those who were actually damaged, obtain only about 60 percent of the settlement while attorneys' fees

and litigation expenses eat up the rest. Moreover, because plaintiffs' attorneys only pursue cases involving large offerings, the lion's share of the stock at issue tends to be held by institutional investors. Small investors often account for only an insignificant percentage of the shares at issue.

Many of these lawsuits, whether they are with or without merit, generally come to the same end. Settlement amounts depend entirely on the amount of damages claimed or the defendants' insurance coverage. The sad part is, that between 5 and 15 cents on each dollar sought is actually returned to the plaintiffs while the lawyers average $1 million in fees for each case.

Mr. President, it has become far too easy and profitable to file securities suits. Computer tracking of stock prices has led to nearly instantaneous suits filed by class action plaintiffs' attorneys. The incentive to the lawyers for being first is simple: Usually the judge who ultimately presides over the case will name the lawyers who got their cases filed first to be lead counsel. On what basis do they file? If a company's earnings are less than projected, a suit is filed claiming shareholders were not told of the dangers. If earnings shoot through the roof, they can be sued for withholding good information that would have prevented impatient stockholders from selling their stock. Such suits, or threats of suits, have a serious consequence of deterring valuable risk-taking and cause qualified persons to be unwilling to serve as directors because of the risks of liability. American business and the American consumers are the big losers.

Mr. President, once a suit is filed, defendants face enormous incentives to settle. Those who choose to fight the allegations face large legal fees even if they ultimately prevail. For some defendants, the stakes are even higher because the law currently does not distinguish differing degrees of fault and you could very well be liable for losses attributed to other parties. Even though claims might be completely meritless, firms feel coerced to settle rather than assume the open-ended risk.

The legislation we have before us today will go a long way toward curbing abuses in securities litigation. It will provide a filter at the earliest stage of a lawsuit to screen out those that have no factual basis. A complaint should outline the facts supporting the lawsuit and not just a simple assertion that the defendant acted with intent to defraud. If the complaint does not set forth the facts supporting each of the alleged misstatements or omissions, the law suit may be terminated.

In order for the judge to be able to determine whether the case has any merit prior to subjecting the defendants to the time and expense of turning over the company's records, a stay of discovery is included in this bill. A typical tactic of plaintiff lawyers is to request an extensive list of documents and to schedule an ambitious agenda of depositions that take up the time and resources of a company. The discovery costs comprise 80 percent of the expense of defending a securities class action lawsuit. The stay of discovery provision will provide the defendants with the opportunity to have a motion for a dismissal considered prior to entering into the costly discovery process.

Securities laws are intended to help investors by ensuring a flow of accurate information about public companies. However, the present system reduces the amount of information as companies limit their public statements to avoid allegations of fraud. In fact, an American Stock Exchange survey found that 75 percent of corporate CEO's limit the information disclosed to investors out of fear that greater disclosure would lead to an abusive lawsuit. To encourage disclosure of information, the bill will create a statutory safe harbor.

To deter plaintiffs' attorneys from filing meritless securities class actions, judges will have the authority to review the conduct of attorneys and discipline those who file frivolous suits. Suits filed with little or no research into their merits can cost companies thousands of dollars in legal fees and company time. According to a sample of cases provided by the National Association of Securities and Commercial Law Attorneys [NASCAT] 21 percent of the class action cases were filed within 48 hours of a triggering event such as the announcement of a missed earnings projection. Innocent companies pay millions of dollars defending these frivolous cases and are left with large attorney bills even when they win. If a judge finds that an attorney filed a frivolous suit, he can award sanctions as appropriate.

This bill ensures that those primarily responsible for the plaintiff's loss bear the primary burden in making the plaintiff whole. Under current law, codefendants each have liability for 100 percent of the damages irrespective of their role in a fraudulent scheme. In this bill, the courts would determine who has committed knowing securities fraud, and hold them fully responsible for all damages. Any other defendants named in the suit would be held proportionately liable.

As we all know, there are instances when a defendant is insolvent and is unable to pay their share of damages. This bill contains provisions to ensure that investors are compensated in cases where there is an insolvent codefendant. When plaintiffs are unable to collect a portion of their damages from an insolvent codefendant, the proportionally liable codefendants would be required to pay up to 150 percent of their share of damages.

Mr. President, we have heard a lot of talk that this legislation would adversely impact small investors. Nothing could be further from the truth because this bill actually provides special protection for them. All defendants, whether they are jointly and severally liable or proportionately liable, would be held fully responsible for the uncollectible shares of plaintiffs whose damages are more than 10 percent of their net worth, if their net worth is less than $200,000. Providing special protection for small investors is a critical component of this bill and one I support strongly.

Mr. President, there has been an effort by the critics of this bill to misrepresent the facts. Several opponents have claimed that if the bill had been law during the savings and loan crisis, investors defrauded by Charles Keating would have been left without remedy. However, they fail to tell you that most of the losses from the S&L crisis did not result from securities fraud and this bill would not apply. The primary enforcement mechanism in dealing with the S&L crisis was the bank regulatory system, not the Federal securities law.

Finally, oppoinents allege that S. 240 would make it impossible for municpalities to recoup losses from securities fraud involving derivatives. However, the Domenici-Dodd bill preserves investors' rights to sue. Just as under current law, defrauded investors who purchased or sold derivatives would still be able to sue defendants who had actual knowledge of the fraud or who acted recklessly.

In concluding, Mr. President, legislative reform is needed to return rationality to the system so that meritorious claims are compensated and meritless claims are neither rewarded nor encouraged. Business desperately needs relief from both the financial and management burdens attending these abusive suits. I encourage my colleagues to support this legislation and I once again want to commend Senator DOMENICI and Senator DODD for their tremendous work on this bill.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak as in morning business.

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

THE BUDGET RESOLUTION AGREEMENT

Mr. FEINGOLD. Mr. President, I would like to say a few words about what has happened with regard to the concurrent budget resolution. The Republican leadership have unveiled their final conference budget proposal. I just have to say that I am appalled at the fiscal irresponsibility that it represents.

I, for one, disagree with some other Democrats in that I am glad the President came in with a budget that had a

date certain for balancing the budget. I am glad that the Republicans are working on a date certain to balance the budget. I happen to think both of them wait too long. I think it can be done before the year 2000, if you really put everything on the table.

I recognize that the President himself has proposed a tax cut—certainly, a much more modest tax cut than the various Republican proposals. I happen to disagree with any tax cut at this time if we are going to balance the budget as fast as we can, Mr. President. But this agreement last night really takes the cake. It includes a massive, $245 billion tax cut—not the $50 or $60 billion the President was talking about, or $90 billion that some said the process would end up with, but really an unbelievably high figure, at a time when this country has a $5 trillion debt. A $245 billion tax cut over the next 7 years.

Mr. President, such a tax cut at this time is so fiscally irresponsible as to be downright reckless. To me, Mr. President, this is not just a budget compromise, it is a compromising of the economic health of the American people. It could not come at a worse time. It could not be more irresponsible. This is a deal cut in the back room by members of one party, which sacrifices the whole principle of fiscal discipline for very shallow political ends, Mr. President. I am afraid the Senate budget conferees have totally caved in to political gamesmanship, Presidential politics, and the Contract With America.

I was watching TV this morning. On the Today Show, I saw the Speaker's comment when the reporters asked him what this deal was all about. With a wink, the Speaker said, "You are going to have more take-home pay. You will like it." He knows what he is doing. He is trying to tell the American people they can have their cake and eat it, too. They can have a $245 billion tax cut and a balanced budget by 2002.

But the American people know better. They know that cannot be done. In fact, I would almost understand it if this deal was based on a political understanding of what the people in America really want. But I cannot find anywhere in the State of Wisconsin, which I represent, people clamoring for a tax cut. I have been watching this carefully every day since last November. The people of my State, whether Republicans or Democrats, millionaires or working-class people, are not clamoring for tax cuts. They know you cannot have a $245 billion tax cut and balance the budget by 2002 or 2005, or any time in the foreseeable future.

So I find this hard to understand. It does not seem to fit politics. It certainly does not fit policy, and certainly does not fit in with our economic needs and the goal of eliminating the deficit. I remember a few months ago that the chair of the other body's Budget Committee went to a town meeting in his district, and he got confirmation that the American people in his district want a balanced budget. He said, "You folks want a tax cut, too, do you not?" Guess what, the crowd overwhelmingly told the budget chair in the other body they did not want a tax cut because we need to balance the budget now. Well, the chair of that committee completely ignored the wishes of the people at his town meeting, and he went ahead and joined in this deal to take $245 billion that could be used for deficit reduction and give it particularly to those who are the wealthiest among us.

Mr. President, the proposed tax cut jeopardizes not only an opportunity to eliminate the Federal deficit and balance our books, it risks our Nation's economy. Mr. Greenspan and the Federal Reserve may be considering lowering interest rates because of the possibility now of some sort of recession. But a fiscally irresponsible tax cut of $245 billion could put any plans to lower interest rates on hold, and might even lead to an interest rate increase.

To accommodate this unnecessary tax cut and to accommodate an unjustified increase of $58 billion, to an already bloated defense budget, this document that was cooked up in the last few days adds to defense and forces draconian cuts in the most important programs in the budget. There are stark parallels between the level of the tax cuts, also, and the proposed cuts to Medicare, Mr. President. The tax cut figure from last night is $245 billion. The Medicare cuts that the Republicans say we have to have is $270 billion. It is not hard to conclude, Mr. President, a very simple proposition: Medicare cuts are being made to fund tax cuts, especially for upper income people.

I happen to be one who has said on this floor repeatedly that some cuts in Medicare can be made. Certainly, we can make some cuts in administrative aspects, in some formula-driven overpayments, and other areas. But what this tax cut means is that the very harsh Medicare cuts included in the budget agreement have to happen. They could be reduced significantly, cut in half, or almost completely eliminated, if we did not have this $245 billion tax cut. The same goes for the Medicaid cuts. There has been a lot of talk about Medicare, but what about the impact on the poor because of these $180 billion in Medicaid cuts? You could completely wipe out that cut and still have $65 billion left over if you did not do this irresponsible tax cut.

The Senator from Massachusetts has prepared a list here of what the priorities really are represented by the decision to do tax cuts instead of having an earlier balanced budget while taking care of people. The priorities for the Republican agenda here with this big tax are slashing Medicare, slashing education, reducing college opportunities that are already very thin, and lowering wages for working families.

Mr. President, we do not even have to have most of the Medicare cuts. We do not have to have the Medicaid cuts. We do not have to have the cuts in student loans, if we use a little willpower and resist the temptation to hand out goodies to people in the form of tax cuts they do not want anyway.

Mr. President, this budget imposes devastating cuts to essential programs in order to fund increases to the defense industry. In fact, the way I like to talk about it, there are at least three sacred cows protected by this budget resolution: The first one is the tax cut; a $245 billion sacred cow that could help solve our problems and should be taken care of and eliminated.

Second, corporate tax loopholes, growing at a rate of 24 percent, second only to entitlements at 27 percent, are not touched. They are completely protected by this budget resolution.

Finally, almost unbelievable to my constituents, the third sacred cow—the Defense Department budget, which not only is not cut, it is actually increased. Everybody in this game at this point says, "Gee, we have to increase the defense budget at a time when we are trying to balance the Federal budget."

More important than Medicaid, education, and college is protecting tax loopholes, protecting tax cuts, and giving up more money to the Defense Department.

Mr. President, possibly an even greater tragedy of this budget agreement is that it missed an opportunity. This compromise missed maybe the opportunity to set forth the plan to balance the budget that would have had bipartisan support in Congress, and more importantly, broad-based support from the American people.

I suppose there is a tiny hope that this budget agreement still could be prevented. I do not hold much hope for it, but there is a chance, nevertheless, if we defeat this irresponsible budget agreement, we could go back to the drawing board.

I know we could fashion a budget plan that would have the support of the majority of this body, and in this case the Members on both sides of the aisle. It would be a plan that could achieve a balanced budget not only by the year 2002 or 2000, but even earlier; a plan that would have a very good chance of enacting all the ensuing appropriations and reconciliation bills into law. Most importantly, Mr. President, it would be a plan that would have the support of the American people.

I know the votes are there. In their hearts, I think many of my colleagues on both sides of the aisle know it, too. If the leadership would allow Senators to do it, I bet we could have a plan drawn up and passed within a week.

Of course, that is almost certainly not going to happen. The leadership will not permit Members to vote their conscience. There are many Members in this body on the other side of the aisle who know and have said to me that tax cuts do not make sense at this time.

Whatever happened to the charade in the Senate during the budget resolution debate? We heard Members on the other side say there is no tax cut in the budget resolution; what are you talking about? Some Members tried to point out there was a $170 billion item that said if certain things happened, we would have $170 billion available that could be used for a tax cut.

On the television and on the Senate floor the fraud was perpetrated that that $170 billion was not specifically devoted to tax cuts. Some of the Members on the other side were more straightforward, including the Chair. He did not mess around. He put out an amendment that said if there is $170 billion, it shall be used for a tax cut. That at least was honest. He was not pretending. The Chair does believe in the tax cut and was straightforward about it.

He had a good day yesterday. Not only did that $170 billion get locked in, he got it up to $245 billion with the help of the Members of the other body. This whole charade that was played out in the national media that the Senate Republicans were trying to fight the tax cut has been permanently put to rest.

Both the other House and this body are led by folks who intend to deliver a tax cut, at the same time they are trying to tell the American people their top priority is balancing the Federal budget.

Extreme elements have made it clear what happens to Members when they vote their conscience. Presidential politics has further taken a budget that is already thoroughly contaminated. But, there is still the tiniest hope.

I urge my colleagues on the other side to consider that avenue. I worked on deficit reduction packages with Members of both parties, and the spirit and willingness to work together for a fair package is there. The group led by the Senator from Nebraska [Mr. KERREY] and the Senator from Colorado [Mr. BROWN] is one example of a bipartisan deficit reduction effort in which I had the chance to participate.

And I am proud to be working with my good friend from Arizona, Mr. MCCAIN, on a number of budget reforms. I know there are Members on both sides of the aisle who want to work together. I know there are Members on the Republican side who are simply embarrassed to put forward an irresponsible tax cut at this time.

Mr. President, I urge them to look at this again, to consider rejecting this agreement and forcing the body to consider, instead, a responsible budget.

Mr. President, we need to pull back from this tax cut. We need to make a budget that is tough, that makes justifiable cuts to all areas of Government. Mr. President, we need a budget that gets rid of this unwarranted tax cut.

I yield the floor.

Mr. KENNEDY addressed the Chair.

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

Mr. KENNEDY. Mr. President, first of all, I want to commend my friend and colleague from Wisconsin for his excellent presentation. He has spoken with great eloquence about the role that we will be faced with here in the U.S. Senate in these next several days.

Most importantly, he has pointed out responsible alternatives that can help this Nation deal with its fiscal challenges. I think all Members would be wise to heed the clarity of his thinking and the power of his persuasion.

I thank him very much for an excellent presentation. I certainly hope our colleagues will pay attention to it. I?

Mr. President, as the Senator from Wisconsin has pointed out, and what is increasingly apparent to the Members of this body and I think to the American people, is that there is an ongoing process that is taking place in both the House of Representatives and Senate as to what is going to be the investment policy of the United States; how we are reflecting our priorities of what we are going to invest in or cut back in; what groups are going to benefit from these decisions and judgments, and who is going to pay a price for it.

That process has been going on for a number of weeks. Now, with the announcement that was made last evening, the focus has become sharper as to the direction that the Congress will follow.

Mr. President, the Republican budget deal announced yesterday is one more salvo in the Republicans' continuing war on working American families. In fact, it's another attack on senior citizens, children, families, and veterans.

It pretends to protect Social Security, while making harsh cuts in Medicare. But the distinction is a false one, because Medicare is part of Social Security. Like Social Security, Medicare is a compact between the Government and the people that says "Pay into the trust fund during your working years, and we will guarantee good health care in your retirement years."

Any senior citizen who has been hospitalized or who suffers from a serious chronic illness knows full well there is no security without Medicare; the cost of illness is too high. A week in an intensive care unit can cost more than the total yearly income of most senior citizens.

In fact, the Republican attack on Social Security is even more direct. The Medicare part B premium is deducted directly from Social Security checks.

In particular, it is the low and moderate-income elderly who will suffer most from Medicare cuts. Eighty-three percent of all Medicare spending is for older Americans with annual incomes below $25,000; two-thirds is for those with incomes below $15,000.

The conference agreement maintains the misplaced priorities of the bills passed separately by each House.

The Medicare cuts are so deep as to break America's contract with the elderly—even worse than the draconian cuts passed by the Senate.

Over the life of the resolution, the average senior will have to pay an additional $3,200. Elderly couples will have to pay $6,400. Seniors with the highest health costs will pay even more.

The authors of the resolution do not seem to understand that the elderly cannot afford these cuts. The average senior only has an income of $17,750 a year. Seniors already pay 21 percent of their income for health care—a greater amount than they paid before Medicare was even enacted. Eighty-three per cent of Medicare spending is for seniors with incomes of less than $25,000. Two-thirds is for seniors with incomes of less than $15,000.

These cuts are so deep that they will devastate not only seniors but our health care system as a whole. Rural hospitals, public hospitals, and academic health centers will be particularly hard hit. The leaders of academic medicine concluded that these cuts will mean that "Every American's quality of life will suffer."

Cutbacks in Medicare and Medicaid will shift costs to every working family in the form of higher health care charges and higher insurance premiums.

Medicare is part of Social Security. Seniors have worked hard all their lives. They have earned their Medicare. They deserve it. It is wrong to break the promise of Medicare to pay for tax cuts for the wealthy. It is a false economy to shift costs from the Federal budget to the family budgets of senior citizens and working families.

The Medicaid cuts are equally wrong. Five to seven million children will lose their coverage. One million seniors will lose coverage. States will face huge new fiscal burdens.

This proposal is wrong for seniors. It is wrong for working families. It is wrong for children. And it is wrong for America.

The fundamental unfairness of this proposal is plain. Because of gaps in Medicare, senior citizens already pay too much for the health care they need. Average elderly Americans pay an astounding one-fifth of their income to purchase health care—more than they paid before Medicare was enacted 30 years ago. And the reason we enacted Medicare was because the elderly faced a health care crisis then.

Lower income, older seniors pay more than a fifth of their income for health care. Medicare does not cover prescription drugs. And its coverage of home health care and nursing home care is limited.

Unlike private insurance policies, Medicare does not have a cap on out-of-pocket costs. It does not cover eye care or foot care or dental care. Yet this budget plan piles additional medical costs on every senior citizen—while the Republican tax bill that has already passed the House gives a lavish tax break to the rich.

It is interesting to compare the generous benefits that the authors of this resolution enjoy under the FEHBP plan available to every Member of Congress to the much less comprehensive benefits provided by Medicare. Medicare has no coverage at all for outpatient prescription drugs, although they are fully covered under Blue Cross-Blue Shield Standard, the most popular FEHBP plan. The combined deductible for doctor and hospital services under Blue Cross/Blue Shield is $350. For Medicare, the combined deductible is $816. Blue Cross/Blue Shield covers unlimited hospital days with no copayments. Under Medicare, seniors face a $179 per day copayment after 60 days and $358 after 90 days. After 150 days, Medicare pays nothing at all.

Medicare covers a few preventive services, but it does not cover screenings for heart disease, colorectal cancer, and prostate cancer—all covered by FEHBP benefits. Dental services are covered for Members of Congress—but not for senior citizens. Members of Congress are protected against skyrocketing out-of-pocket costs by a cap on their total liability, but there is no cap on how much a senior citizen has to pay for Medicare copayments or deductibles.

Members of Congress earn $133,600 a year. The average senior's income is $17,750. For the limited Medicare benefits they receive, seniors pay $46 a month, but for their comprehensive insurance coverage Members of Congress will pay a grand total of $44 a month. Senior citizens pay $2 more out of incomes only about one-eighth as large.

Republicans do not seem to understand that the average senior citizen has an income of only $17,750 a year. The Republican budget will force millions of elderly Americans to go without the health care they need. Millions more will have to choose between food on the table, heat in the winter, paying the rent, and paying for medical care. Any plan that does that is cruel and unjust.

Senior citizens have earned their Medicare. They have paid for them, and they deserve them. Yet our Republican friends would deny them these much deserved benefits.

How do they explain this to senior citizens? This is a budget that Marie Antoinette would love—"let them eat cake." And it is Medicare that is being sent to the guillotine.

The Medicare cuts in this resolution harm more than senior citizens. These proposals will also strike a severe blow to the quality of American medicine—damaging hospitals and other health care institutions that depend heavily on Medicare.

These institutions provide essential health care for Americans of all ages, not just senior citizens. Progress in medical research and training of health professionals depends on the financial stability of these institutions academic health centers, public hospitals, and rural hospitals will bear an especially heavy burden. As representatives of the academic health centers that guarantee our world-renowned excellence in health care said of the Republican budget, "Every American's quality of life will suffer as a result."

In addition, these massive costs will inevitably impose a hidden tax on workers and businesses. They will face increased costs and higher insurance premiums, as physicians and hospitals shift even more costs to the non-elderly. Accordingly to recent statistics, Medicare now pays only 68 percent of what the private sector pays for comparable physicians' services; for hospitals care, the figure is 69 percent. The proposed Republican cuts will widen this already ominous gap.

Republicans have argued that the deep cuts are needed to save Medicare from bankruptcy. The hypocrisy of this claim is astonishing. Just a few weeks ago—before they began to feel the political heat on Medicare cuts—the Republicans passed a tax bill in the House that took almost $90 billion in revenues of the Medicare hospital insurance trust fund over the next 10 years—and brought it that much closer to insolvency. We did not hear a word then about the impending bankruptcy of Medicare.

We also did not hear about it when last year's Medicare trustee's report was issued. Republicans were too busy last year blocking health reform and pretending there was no health care crisis at all.

This year's trustees report actually shows the Medicare trust fund to be in a stronger financial position than last year. The new-found Republican concern for the solvency of the Medicare trust fund is a sham—a convenient pretext to rob Medicare to pay for tax breaks for the rich. Medicare is nowhere near as bankrupt as Republican priorities.

It is true that the April 3 report of the Medicare trustees projects that the Medicare hospital insurance trust fund will run out of money by 2002. But few if any Republicans would be talking about Medicare cuts of this magnitude, absent the need to finance their tax cuts for the wealthy. As the Medicare trustees themselves noted in their report, modest adjustments can keep Medicare solvent for an additional decade—plenty of time to find fair solutions for the longer term.

Similar projections of Medicare insolvency have been made numerous times in the past, but adjustments enacted by Congress were able to deal with the problem without jeopardizing beneficiaries. Now is no different. For example, an estimated 20 percent of all Medicare hospitalizations could be avoided with better preventive services and more timely primary and outpatient care. As much as 10 percent of all Medicare expenditures may be due to fraud, and could be reduced or eliminated by better oversight.

Some Republicans have accused Democrats of attempting to scare America's senior citizens. Senior citizens do have reason to fear what this budget resolution will do to their Medicare benefits. But the real fearmongers are those who attempt to cloak their misguided budget in demagoguery about the bankruptcy of Medicare.

We do not have to destroy Medicare in order to save it.

Another false Republican argument in defense of Medicare cuts is that they are not really a cut, because the total amount of Medicare spending will continue to grow. The fact is that the Republican plan calls for spending far less on Medicare than the Congressional Budget Office says is necessary to maintain the current level of services to the elderly.

Every household in America knows that if the cost of your rent, the cost of your utilities, and the cost of your food go up—and your income stays the same—you have taken a real cut in your living standard.

Only in Washington could someone say with a straight face that making senior citizens pay hundreds of dollars a year more for their medical needs is not a cut in their benefits. Every senior citizen understands that.

Republicans speak of a cut in defense, even though defense spending has stayed stable. Apparently, the same Republican logic does not apply to senior citizens that applies to defense. Well, I say to them—a cut is a cut is a cut—whether it is in Medicare or Social Security or national defense.

The third specious Republican argument is that Medicare costs can be cut by encouraging senior citizens to join managed care. True, such care may help bring Medicare costs under control—in the long run. Enrollment by senior citizens in managed care is already increasing rapidly. It is up 75 percent since 1990. But no serious analyst believes that increased enrollment in managed care will substantially reduce Medicare expenditures in the timeframe of the proposed Republican cuts.

In fact, according to the General Accounting Office, Medicare now actually

loses money on managed care, because the healthiest senior citizens tend to enroll in managed care and the payment formula is too generous. This kind of problem can easily be worked out, and will help to restore the fiscal stability of the program. But the only way to save serious money in the short term on managed care is to penalize those who refuse to join. This harsh option has already been suggested by the Republican health task force in the House of Representatives.

I say to my Republican colleagues—it is wrong to force senior citizens to give up their freedom to choose their own doctors and hospitals. It is wrong to penalize them financially if they refuse to enroll in managed care.

The American people will never accept a policy that tells senior citizens they have a right to go to the hospital and doctor of their choice, or that puts unfair financial pressure on senior citizens to give up that right.

A further Republican argument is that deep cuts in Medicare are necessary to balance the budget. That argument refutes itself. It is nothing of the kind. All it proves is that Republican priorities are wrong. There is a right way to balance the budget, and a far-right way. And unfortunately, the Republicans have picked the latter.

It is true that we need to bring health care spending under control. But that applies to all health spending, not just Medicare. As President Clinton told the White House Conference on Aging last month, 40 percent of the projected increase in Federal spending in coming years will be caused by escalating health costs.

But what this Republican budget fails to recognize is that the current growth in Medicare spending is a symptom of the underlying problems in the entire health care system—not a defect in Medicare alone.

In fact, Medicare has done a better job than the private sector in restraining costs in recent years. Since 1984, Medicare costs have risen at an annual rate that is 24 percent lower than comparable private sector health spending. As a result, Medicare now pays only 68 percent of what the private sector charges for comparable physicians' services; for hospital care, the figure is 69 percent.

Slashing Medicare unilaterally is no way to balance the budget. It will simply shift costs from the budget of the Federal Government to the budgets of senior citizens, their children, and their grandchildren. That's not a real saving.

Moreover, senior citizens will also face greater discrimination from physicians and hospitals less willing to accept them as patients, because Medicare reimbursements are already much lower than the reimbursements available under private insurance. Previous cuts in Medicare have already led to serious cost shifting, as physicians and hospitals seek to make up their reduced income from Medicare patients by charging higher fees to other patients. The result has been higher health costs and health insurance premiums for everyone, as cost shifting becomes a significant hidden tax on individuals and businesses.

The right way to slow rising Medicare costs is in the context of broader health reforms that will slow health cost inflation in the system as a whole. That is the way to bring Federal health costs under control, without cutting benefits or shifting costs to working families. In the context of broader reform, the needs of academic health centers, rural hospitals, and inner city hospitals can also be met. Unilateral Medicare cuts alone, by contrast, will reduce the availability and quality of care for young and old alike.

The cuts in Medicaid proposed in the Republican budget are equally unfair—a total of $175 billion over 7 years. The double whammy of huge Medicare cuts and huge Medicaid cuts will hit hospitals and other health care providers even harder than Medicare cuts alone. Struggling State governments and State and local taxpayers will also face heavy burdens. Massachusetts would lose billions of dollars in Federal matching funds over the next 7 years. By the year 2002, we would need to increase State spending by 26 percent to maintain current program levels. Other States with higher Federal matching rates would be hit even harder.

States cannot afford these huge increases. And the impact of these arbitrary cuts on working American families is even more disturbing. Medicaid is a key part of the safety net for senior citizens, the disabled, and children. Two-thirds of all Medicaid spending is for senior citizens and the disabled. If an elderly American becomes sick enough to need long-term nursing home care, Medicaid is the only source of funding after personal savings are exhausted. Cuts in Medicaid will mean that needed care for senior citizens is denied. Heavy additional burdens will be imposed on their children and grandchildren.

At a hearing in the last Congress by the Labor and Human Resources Committee in Quincy, MA, one of the witnesses was a retired veteran named Clifford Towne, who lived with his wife Marie in South Dartmouth.

Clifford Towne is a veteran who fought in World War II. He worked hard all his life in the textile business. When he retired, he had over $100,000 in the bank. He owned his own home, and he had a good pension from Social Security. But both he and his wife developed serious medical problems. High medical costs that Medicare did not cover well enough—especially prescription drugs—had wiped out his savings. He had to run up large debts. As he told our committee, he tried to qualify for Medicaid, but his Social Security income was too high. "They told me," he said, "that the only way I could get help for my wife was to leave her. But after 48 years, I just couldn't do that. I'd rather kick the bucket than be forced to get a divorce. So my wife and I talked it over and decided that when we couldn't pay for the drugs any more, we just would have to stop taking the prescription drugs. We'd rather pass away together—or at least as close together as we can. About 3 or 4 months ago, I already cut down on drugs for my blood pressure. I don't want my wife to have to cut down on her medications until we have no other choice."

Children depend on Medicaid as well. Eighteen million children—more than a quarter of all children in our country—receive health care under Medicaid. More than half of these children are members of working families. Their parents work hard—most of them 8 hours a day, 40 hours a week, 52 weeks a year. Without Medicaid's help, all their hard work will not buy their children the health care they need.

We often hear that the reason to balance the budget is for America's children. A budget that denies health care to millions of children is the wrong way to express concern for their future.

Not only does the Republican budget slash health benefits for low-income children, it cashes out the investments we have made in the Nation's youth by cutting education programs severely over the next 7 years.

And for what purpose? To "ensure a better future for our children?" To provide them with "more and better opportunities than we now enjoy?" Nothing could be further from the truth.

Every parent knows that education is the foundation of a better life for their children. Deep Republican cuts in education betray the hopes and dreams of parents for their children and undermine the Nation's future strength. As America moves into the high-technology world of the 21st century, our schools and colleges and students need more help, not less.

The Senate budget contained the largest education cuts in U.S. history—over one-third of the investment in education by the year 2002, and $30 billion in cuts in financial aid to college students.

This budget conference agreement makes these completely unacceptable cuts worse. During floor debate on the Senate budget resolution, we passed a bipartisan amendment by a vote of 67 to 42 to restore $9.4 billion to student loan accounts so that students would not face increases in personal indebtedness of up to 50 percent. Republicans and Democrats in both the House and the Senate wrote to the conferees to urge them to adopt the Senate number on student loans. Fourteen Senate Republicans signed a "Dear Colleague"

letter to the conferees reinforcing this point.

And what does this budget agreement do? It requires $10 billion to be taken from students in the form of increased fees and interest rates on student loans; 88 percent of the cuts in student aid contained in this budget fall on families earning $75,000 or less. The Republicans claim to balance the budget to protect the next generation. But they are more than willing to bury this generation of students in debt. And for what? To pay for tax cuts for the wealthy.

The following is a summary of the consequence of the conference education cuts:

Overall: Largest education cuts in U.S. history; eliminates 33 percent of the Federal investment in education by year 2002 based on Congressional Budget Office estimates.

College aid: Cuts $30 billion in Federal aid to college students over the next 7 years. Half of all college students receive Federal financial aid; 75 percent of all student aid comes from the Federal Government.

Increases personal debt for students with subsidized loans by 20 to 48 percent by eliminating the in-school interest subsidy. Affects up to 4 million students a year; undergraduate students who borrow the maximum of $17,125 will pay an extra $4,920.

Reduces Pell grants for individual students by 40 percent by the year 2002, or terminates Pell grants altogether for over 1 million students per year, even assuming a freeze at 1995 funding levels.

Could increase up-front student loan fees by 25 percent, raise interest rates on student loans, or eliminate grace period for students to defer payment on loans after graduation.

School aid: Elementary and Secondary Education Act—Cuts funding for improving math and reading skills to 2 million children; reduces funding for 60,000 schools.

Safe and drug free schools—Cuts over $1 billion in antidrug and antiviolence programs serving 39 million students in 94 percent of the Nation's school districts.

Head Start: Denies preschool education to between 350,000 and 550,000 children.

Special education: Eliminates $5 billion in Federal support for special education services for 5.5 million students with disabilities.

Goals 2000: Denies assistance to 47 States and more than 3,000 school districts helping students to achieve higher education standards.

School-to-work: Cuts $5.3 billion from initiatives to improve job skills for up to 12 million students through local partnerships of businesses, schools and community colleges.

Technology: Eliminates Federal initiatives to develop and provide educational technology for the classroom through collaboration with private funders.

In the last Congress, Republicans and Democrats stood together as the education Congress. In the last Congress, we voted 98 to 1 to expand Head Start to make preschool available to more children. Yet the Republican budget eliminates hundreds of thousands of eligible children from Head Start over the next 7 years.

In the last Congress, we voted 77 to 20 to improve the way the Federal Government supports elementary and secondary education. We strengthened our commitment, through title I, to help children improve their basic reading and math skills. The Republican budget denies those services to millions of children and reduces funding for tens of thousands of schools. These damaging cuts would affect virtually every public school in the country, and many parochial and private schools as well.

In the last Congress, we enacted Goals 2000—again with a bipartisan vote—to support States in their efforts to develop high standards for students. The Republican budget denies assistance to States and thousands of school districts, drastically reducing Federal support for these essential reform efforts.

In the last Congress, we joined together to create school-to-work initiatives that provide seed money to every State to design and implement systems that will provide more effective connections for young people between classroom learning and real job opportunities in local communities. The Republican budget repeals this highly successful legislation. Additionally, it cuts billions of dollars over 7 years from a number of education and work preparation initiatives designed to improve the job skills for students.

In the last Congress, we launched the National and Community Service Program—another bipartisan effort—to support local efforts throughout the Nation that encourage young people to serve in their communities. Under the Republican budget, AmeriCorps and service learning are eliminated, denying funds for the 40,000 students planning to devote themselves to a year of full-time service in 1996 and the 550,000 students in American schools who could take advantage of service learning opportunities in and out of the classroom.

And what about the Nation's students and working families struggling to pay for college? In the last Congress we enacted the Student Loan Reform Act, which is saving the Nation's students over $2 billion in loan fees, lower interest rates, and more favorable repayment terms.

The Republican budget cuts Federal support for student financial aid by billions of dollars over the next 7 years. And this is not an area where States will pick up the slack; 75 percent of all student aid comes from the Federal Government, and one-half of the Nation's students receive Federal aid.

Under the Republican budget, no aspect of student aid would remain untouched. For 30 years, the Federal Government has paid the interest on federally subsidized Stafford loans while students are in college, so that the interest does not build up before students graduate and can begin paying back their loans. Under this Republican budget, that vital support would be denied.

Something has to give, and apparently the Republicans have decided that it is the Nation's students who must give.

And it is not only student loans that will be slashed by the Republican budget. Over the next 7 years, Pell grants will drop steeply. This decline in buying power comes at a time when the cost of attending State universities is rising by an average of 5 percent per year.

Three other major sources of Federal student aid—supplemental educational opportunity grants, State student incentive grants, and Perkins loans—would also be drastically cut by this budget.

This is not sharing the pain. This is a full-scale assault on the Nation's students and working families.

Thousands of students from across the country have written to me by mail and on the Internet to describe in personal terms what these cuts in student aid would mean to them. They speak of the sacrifices their parents are making, the extra jobs they are holding down, and the value of every dollar in financial aid making it possible for them to pursue their education.

Let me share with you a few examples of the moving testimony I have received from students across the country.

A student attending medical school in Massachusetts writes:

> I am a 24-year-old African-American woman, born and raised in St. Louis, Missouri. I come from a poor, working class, two-parent household. I am proud to say that I was the first African-American valedictorian at my high school. I went on to college at a private institution. I received very much needed financial aid while there, including loans and scholarships. My parents helped as much as they could, but with two other children, they could only help a little . . . Without the Stafford and Perkins loans that I received, I would not have been able to continue my education. After graduating from college I was accepted to an Ivy League medical school where I am still very much dependent on federal financial aid. I hope to practice primary care pediatrics in an indigent community. I am close to finishing school and may not be affected by such harsh cutbacks, but I am very concerned for the future generation of students.

Under the Republican budget a student following this course of study could well face over $40,000 in additional interest payments at the end of her medical training.

A student from New York writes:

My mother just got laid off today. I only have one year left before I receive my bachelor's degree. I don't want my opportunity and those of others to be cut short.

Everyone in the White House, on Capitol Hill, and in the State governments had their opportunity. Why are you taking away ours?

A college graduate from Colorado writes:

I am not a student, but I'm raising my voice in support of government backing for student loans. If it were not for student loans, I would not have been able to attend college. My mother was supporting two kids and we lived in government subsidized housing—the projects. There was simply no way she could have paid for a college education for us, so we applied for loans and more loans. I received some grants and a great deal of loan assistance, and still I worked at McDonald's. I am now a consulting writer and I never have to look for work . . . it looks for me. This is a most wonderful life and I wouldn't have had any chance at all of attaining it without those student loans and grants. Please do whatever it takes to ensure that others get this chance . . . it is what allowed me to become who I am today, and I thank you all.

Another student, from Maine, summed up the situation: "If you think education is expensive—try ignorance."

The Republican budget turns its back on investing in our future—our children's education. It is the wrong priority for the Nation, and that makes no sense.

Children will also suffer because the Republican budget cuts back on the earned income tax credit. The earned income tax credit gives families with incomes of up to $28,000 a year the incentive to enter the work force and become self-sufficient. It makes work pay by providing a tax credit up to 40 cents for every dollar a low-income worker earns. The average credit is $1,400 a year. It offers major assistance to working families to raise their standard of living and climb out of poverty.

The Senate Republican budget slashes billions of dollars from the earned income tax credit over the next 7 years. That's an unacceptable tax increase of $1,400 for 12 million working American families and their children.

Tax increases for the working poor—and tax cuts for the rich. What a shameful commentary on Republican priorities and the Republican budget. No wonder the country is turning against the Republican Congress.

Republicans claim that they are interested in moving welfare recipients into work. But slashing the earned income tax credit, along with the other punitive proposals in the Republican welfare reform bill, makes a mockery of that claim. These cuts will encourage dependence, not independence. They will weaken the safety net that protects working families and children from falling into poverty.

The earned income tax credit has always had bipartisan support in the past. President Reagan called it "the best anti-poverty, the best pro-family, the best job creation measure to come out of Congress." It is shocking that the Republicans are proposing to cut this tax credit for low-income workers to pay for tax breaks for the rich.

During the budget debate last month, Democrats offered amendments to use the $170 billion tax cut fund not only to restore the earned income tax credit for working families, but protect Medicare and Medicaid as well as reverse the cuts in the student loan program. On amendment after amendment, the Republican majority voted to protect only one thing—their tax breaks for the rich and the special interests, instead of helping working families and their children.

One of the worst examples of Republican misplaced priorities is their blatant attempt vote to keep the tax loophole open for billionaires who renounce their American citizenship in order to avoid paying taxes on the massive wealth they've accumulated in America. These unpatriotic bums get a tax loophole—and hard-working low-income Americans get a tax increase. Does anyone in America seriously agree with those shameful Republican priorities?

The Joint Committee on Taxation recently completed its long-awaited study on the billionaires' tax loophole, and the report was a further blatant attempt to save the loophole, rather than close it.

According to earlier revenue estimates, closing the loophole would raise $3.6 billion over the next 10 years. Clearly, substantial revenues are at stake.

At least the Finance Committee tried to close this flagrant loophole.

But it reappeared in the bill in conference with the House, supposedly because a few so-called technical issues needed to be addressed.

It turns out that the only serious technical issue was how to keep the loophole open. Well, our Republican friends studied the issue as hard as they could, and a few days ago, they came up with a way to save as much of the billionaires' loophole as possible.

It took a bit of work. But the Ways and Means Committee has finally found the ways and means to keep the loophole open. Earlier this month, they reported out a bill to do it. They have even given the bill an appropriate number: H.R. 1812. What a perfect number for a tax loophole bill—1812. That is about the year their thinking on tax reform stopped. Well, I think we will just try to bring their 1812 bill into the 20th century when it gets to the Senate—and close that loophole the way it ought to be closed—closed tight on those unpatriotic billionaires.

I just wish our Republican friends would put as much time and effort into closing tax loopholes and reducing corporate welfare as they put into keeping these loopholes open. We would save tens of billions of dollars, and be able to balance the budget fairly, instead of balancing it on the backs of Medicare and education and low-income working families.

The chairman of the Ways and Means Committee proposed to tinker with the existing law—and in a way which does not address the fundamental problems of this tax loophole.

First, the proposal allows expatriates to pay no U.S. tax on their gains if they are willing to wait 10 years before they sell their assets. This part of the loophole already exists in current law, and has been repeatedly pointed out. There is no logical reason to leave it open.

Second, one of the major problems of current law is the fact that gains from foreign assets built up during U.S. citizenship are not subject to U.S. tax after expatriation. Yet, some of the most flagrant cases of expatriate tax abuse involve individuals who avoided taxes on foreign income.

Any serious proposal to address these issues must tax the gains on the expatriate's worldwide assets, and this tax must be imposed at the time of expatriation.

Third, expatriates will continue to use tax planning gimmicks to avoid taxes on gains from domestic assets by shifting income from the domestic to the foreign side of the ledger. As long as the Tax Code exempts foreign assets from taxes upon expatriation, taxpayers will find new ways to shift their assets and avoid their taxes.

Fourth, the proposal allows billionaires to avoid the expatriation tax by taking up residence in certain countries with which the United States has a tax treaty that prevents taxation of former citizens. An expatriate and their lawyer can easily find tax havens with such tax treaties, and we ought to reject that easy means of tax avoidance.

Fifth, the so-called reform cannot be effectively enforced. Expatriates can leave U.S. tax jurisdiction without paying a tax or posting security. Expatriates will merely fill out a form at the time of expatriation, and the IRS will be left holding the bag.

At the very time when Republicans in Congress are cutting Medicare, education, and other essential programs in order to pay for tax cuts for the rich, they are also maneuvering to salvage this unjustified loophole for the super wealthy. I say, this loophole should be closed now and closed tight—no ifs, ands, or buts. I intend to do all I can to see that it is.

Working families have been asked to shoulder too much of the burden of deficit reduction in the Republican budget. The cuts in important health, education, and income assistance programs will diminish the opportunities

of millions of Americans to improve their lives and their future. I urge the Senate to reject this unconscionable budget.

All Members urge our colleagues and the American people to take the time to focus on exactly what the alternatives are that are being recommended by the Republican leadership in the House of Representatives and in the Senate of the United States.

The reason that we urge this very careful attention over these next few days is because of the enormous consequences that it is going to have on them, on their children, and on their parents.

No judgment will have been made in recent times that will be more decisive as to the impact on American families than the outcome of these budget considerations.

The actions that we took here in the last Congress that saw the changes in the Head Start Program to reach younger children and improve the quality of its services, in the title I education program for disadvantaged children, in Goals 2000, in the School-to-Work Program, in the direct loan program—all are reflective of Republican and Democratic efforts to protect the priorities of working families in this country, that education is important. With this budget, that effort is significantly undermined. And it is undermined not just in this Congress but it is undermined for the next 7 years. That is what we are talking about. That is why this whole debate and discussion is of such importance.

We are not just talking about what is going to be appropriated in 1 particular year. We are deciding a glidepath for the next 7 years and we are making judgments about what is going to be invested in the children of this country over the next 7 years. What we are talking about is what is going to be the increase in out-of-pocket payments for our seniors over the period of the next 7 years. And what we are talking about, which is the most unconscionable item, is what is going to be going into the pockets of the wealthiest individuals and corporations over the period of the next 7 years.

That is the issue that is before this country. That is the issue of importance for every American family to take note of. We are urging their focus and attention on this issue today and over the period of these next several weeks.

Mr. SARBANES. Will the Senator yield?

Mr. KENNEDY. I will be glad to yield.

Mr. SARBANES. This 7-year blueprint which the Republican budget plan is laying out for the country, is it not correct that the cuts in the investments in the future—cuts in education, in college opportunities, in work training programs, all of the things that build a stronger economy—that those cuts intensify in each of the subsequent years as you move through the 7-year period?

So that people need to understand. I think the Senator is making an extremely important point. This is not just the plan for next year. It is the plan for 7 years. Furthermore, the way this plan is structured, as I understand it, the impact will intensify as we move through the time period so what people will experience in the first year of the plan, which I submit will be very draconian, will worsen as the time passes through the 7-year period. Is that correct?

Mr. KENNEDY. The Senator is absolutely right and is focused on what might be considered a subtlety because it is not talked about and is deemphasized by those who are supporting this program. But in reality the Republican budget is going to adversely impact our seniors and our children over the next 7 years, in a cumulative way, which I believe will do serious damage to the next generation as well as older generations as well.

Mr. SARBANES. Will the Senator yield? Do the tax cuts for the wealthy that are provided in this plan—in other words, what the plan is doing is sharply curtailing opportunities for working people, taking the money that is realized from that, and then using it, as I understand it, to give a tax cut to the very wealthy. Do those tax cuts occur in the beginning or in the front of this 7-year period? Or do they occur at the end of the 7-year period?

As I understand it, with the changes made in the budget conference the tax cuts now will be part of the reconciliation and therefore will become applicable at once, or in the near future, for the benefit of the very wealthy while the rest of the population will begin to bear these cuts and then bear them throughout the 7-year period, is that correct?

Mr. KENNEDY. The Senator is absolutely correct. Not only do you have the imbalance of the cuts on working families, on their children, and on senior citizens, but you also have this enormous benefit to the wealthiest individuals through this tax break.

I would just ask my friend and colleague, if these cuts went in as incentives to improve our economy and create more jobs, you might be able to find some justification. But the nature of these cuts—it is like taking billions of dollars and throwing them off the Capitol. Some people will pick them up and buy tee shirts and hotdogs, but the benefits will go in the most extraordinary way to the wealthiest individuals without having the real, positive impact in terms of encouraging investment in our society.

Would the Senator agree with that?

Mr. SARBANES. I think the Senator is absolutely right. People have to understand, because people say we want to eliminate the deficit, then they say we ought to cut spending, but with this plan, a good part of the cut in spending is not to eliminate the deficit but to provide a pool of money which can then be given as tax cuts for the people at the very top of the income scale. In effect, what this budget plan is doing is, it says to people on Medicare, our senior citizens: You are going to take a reduction in your Medicare services. It says to young people who want to go to college, it is going to become much more costly for you to go to college. And the reason this is happening, a good part of the reason this is happening, is to create a pot of money with which to give these tax cuts.

I submit, anyone weighing the equities of this and the desirability of this in terms of investing in the future would conclude it would be better to keep open the opportunities for college, not to subject our senior citizens to higher risks with respect to medical treatment and medical care, not to impact on child nutrition and feeding programs, school lunches, and so forth —not to hit those programs so heavy and to give up on the notion of giving a large tax cut to very wealthy people.

I do not understand the rationale for doing that, in terms of the priorities of the country, I say to my distinguished colleague.

Mr. KENNEDY. The Senator has stated it well. I think it is important for all Americans who are going to pay attention to this debate to understand who are really being adversely impacted—working families and their children.

First of all, for the very young members of their families, they are going to be adversely impacted by the cutbacks in terms of the support for education reform in the schools across this Nation. If they have children that qualify for the Head Start Program, there will be 500,000 fewer children who will participate in this program. If they were dependent upon any kind of help and assistance in the Summer Job Program, that opportunity will be cut back. Their smaller children will be adversely impacted with the reduction in support for the public schools of this country.

Second, they are going to be adversely impacted if they have sons and daughters who go on to the fine schools and colleges in this country. One of the great phenomena that has taken place since the end of World War II is how American universities have dominated the world. Of the 140 great universities, 127 of them are in the United States of America. That is because of the policies which provide help and assistance to children; why we have a research program, and how those universities now are working with the private sector. They have been absolutely a phenomenal success to the benefit of our

young people, the sons and daughters of working families. And 75 percent of all the funding for help and assistance to those children comes from the Stafford Loan Program and the other Federal support programs. Seventy percent of the children in the State of Massachusetts are dependent for that help and assistance. This is going to mean a $30 billion reduction in this program over the next 7 years—$30 billion in the education support programs for the young men and women.

Now let me just mention that not only will we see a reduction in the support for the education programs for children, we will see an increase of what their parents are going to have to pay as well. This is not just a family that is out somewhere in Main Street America. If they were working on the lowest level of the economic ladder, they would have qualified for the earned income tax credit that would help keep them off welfare and in jobs. We see the $20 billion earned income tax credit expansion being effectively taken off the plate as to not benefit those working families.

What we are saying to the Medicare recipients, two-thirds of which are only making $17,000 a year, is that they will have an average increase of $3,200 over the next 7 years.

So we see the damage that is being done to the children of working families. We see the damage which is being done to the seniors who have paid into the Medicare Program and are entitled to that benefit. We see the reduction in the support of individuals that are going to those schools. And we see the slashing of the EITC Program for working families. The leadership in the Congress is opposed to an increase in the minimum wage, and is trying to bring a reduction under Davis-Bacon to diminish working families' income, which averages $27,000. You have to ask yourself, what have working families done to deserve this?

Does the Senator from Maryland agree that this is not a wholesale assault on the working families of this country?

Mr. SARBANES. That is right. What is happening is there is a massive effort to shift the economic benefits to a small group at the top of the income scale, a trend that has already been going on over the last decade and a half.

I ask the Senator from Massachusetts, does the provision from the conference committee drop the forgiveness of paying interest on your student loans while you are in school?

Mr. KENNEDY. The Senator is correct. If I could just mention in responding to that, does the Senator remember when this body, Republicans and Democrats alike, saw a restoration of billions of dollars to the Student Loan Program? I think it was an amendment of the Senator from Maine, OLYMPIA SNOWE, cosponsored by the Senator from Illinois. And after all the speeches that were made in support of that program, all the speeches of individuals who went on record to increase our investment in education, the ink was not even dry before the Republican conferees dropped it in conference.

I mean, does the Senator from Maryland find that is a way in which we attempt to reflect our commitment to higher education? And second, going back to the increase in interest payments on borrowing while the student is in school and college, mark this, every young person in America: You will pay an additional 30 percent in student loans as a result. And, as the Senator from Maryland said, why? To give $245 billion to the wealthiest individuals. The young people of this country will say: All right. We are prepared to tighten our belts if everyone else is doing it. We are prepared to try to deal with the national challenge and a national need.

But are you prepared to support a program that says you are going to put that on the backs of the young people under the phony argument that we are doing this in order to get the country out of debt? Young Americans will be in debt for years and years to come as a result of this.

Does the Senator from Maryland think that makes any sense?

Mr. SARBANES. Absolutely not. People have to understand that under the existing program, which is now about to be changed, young people and their families take out loans in order to finance their college education. That is tough because it means they come out of school with a burden hanging over them which they then have to pay off as they go through their working lives. Not to compound that problem, under the current system, the interest on those loans is abated or forgiven while they are in school, so you are not in this situation where you took out a loan and then you have to pay interest on the loan while you are in school. I think that is reasonable. That is sensible.

It is bad enough that you are taking on this heavy burden of paying off in the future. At least, do not compound the financial problem which these families confront at the very time they are trying to get a college education for their young men and women.

This proposal, as I understand it, will drop that provision, so they will be confronted then with the task of an additional burden added onto their loan responsibility in order to get a college education. It is tough enough now. I have talked with these families. They come to see me. They are desperate to find a way for their young son or daughter to get through college. The young people themselves are desperate. Sometimes they go out there holding three or four jobs at the same time to try to get enough money. They are committed to getting through college. Many families have never sent children to college before. It represents a breakthrough. They are out on an uncharted path.

Mark this: Other industrialized countries do not put their young people under this kind of stress and strain in terms of furthering their higher education. They make it possible for their young people with talent and ability to get a higher education. Why do they do that? Because they recognize that the benefit of further education is not only to the individual who gets it. That is an obvious benefit. But it is a benefit to society. They build a stronger society by making it possible for their young people to get an education. Here we are retreating from that challenge.

Mr. KENNEDY. The Senator has stated it accurately. But it is even worse than that. Last year, we moved in a very gradual way toward a direct loan program to permit young people to borrow at the same level at which the Federal Government borrows. That would mean lower interest rates, allowing an additional $2 billion to be available for education to try to get a handle on the ever-increasing escalation of costs for tuition.

Effectively, with the action of the Budget Committee, that very modest but important step that can save kids anywhere from $1,000 to $2,000 over the period when they are going to school is effectively wiped out. Here we had a bipartisan effort to do it.

Beyond this, the Senator from Maryland is familiar with the President's program that says in this area of education, he had a small tax deduction as well. His program in terms of the reduction in taxes is focused on education. The Republicans are going to make it more difficult for the students of this country to be able to afford to get an education. And what was on the other side? What we ought to be debating out here on the floor of the U.S. Senate is what the President suggested, and that is the following: That families with incomes up to $100,000 would be able to deduct up to $10,000 in tuition from their taxes to make it more affordable. Second, that they would be able to deduct the interest that they are paying on their debt.

Why does it make any sense when we permit deductions on interest on homes for wealthy individuals and we permit the deduction of other expenses for industry, why should we say education is of less importance?

That is what this President was fighting for. That is what we ought to be debating. If there is anything out here, any resources that could be used for tax cuts, would the Senator not agree with me that it makes a great deal more sense than taking the kinds of cuts in Medicare, in education, in slashing wages for working families

and using it for the wealthiest individuals?

Mr. SARBANES. May I ask the Senator a question. Does the budget resolution cut back the earned-income tax credit program which was established to help working families get above the poverty line? This helps families, I think, with incomes up to $27,000 or $28,000.

Mr. KENNEDY. The Senator is correct. We have some 84,000 families, and we have about 300,000 individuals in my own State of Massachusetts.

Mr. SARBANES. Just in the Senator's State alone.

Mr. KENNEDY. In my State alone. And this was targeted, as the Senator understands. It had strong support from President Reagan and other Republicans. It had bipartisan support as well. And as the Senator understands, the reason for that is because of the increasing obligation that these families have in terms of paying the increase in Social Security and other tax programs just when they were moving off that bottom rung to the second rung of the ladder.

Mr. President, $26,000 a year is not a lot to pay a mortgage, put food on the table, clothe your kids, and try to give them at least some limited relief.

As the Senator knows, in that budget there is a continuation of about $4 trillion over the next 7 years of what we call tax expenditures which are available to wealthy corporations and companies.

At the same time they kept these tax breaks for the rich, they targeted the earned income tax credit. They took that away. They effectively raised the taxes on the lowest income people.

I would just finally ask, does the Senator not find it somewhat extraordinary they have eliminated the EITC, the earned income tax credit, without addressing the billionaire's tax loophole?

We found those economic forces working their way in that conference committee after our Finance Committee and the Senate went on record to close that tax loophole that says to Americans, become modern Benedict Arnolds; renounce your citizenship; take your money and go overseas and do not pay any taxes.

We have been out here trying to get that closed. They need some additional money. Why are they closing that loophole? Oh, yes, there is quietness about it, no explanation.

It does not take a lot to figure out how that ought to be closed. However, they found all different ways of cutting back on children, the smallest children, the most vulnerable, cutting back on education, targeting our senior citizens. But they refuse to close the biggest and most unjustified loophole of all.

I just wonder if the Senator does not feel that that is something which the American people ought to begin to wonder about. They have read about it. They have heard about it months ago. They should be wondering why is it that we cannot have that loophole closed as well.

Mr. SARBANES. The Senator is absolutely right. It is very important for the public to understand that a tax measure built into the law before, which would have allowed working families to get an earned income tax credit in order to improve their position to support their family—these are people making up to $27,000 a year—that is being cut back, that is being cut back at the same time that it is proposed to give tax breaks to people making hundreds of thousands of dollars a year.

Where is the fairness or the equity in that? If you were not giving a tax break, then you would have an argument about where the cuts should come, and there I think this program is draconian, but at least it would be in that context. But what is happening is you are cutting a tax provision to benefit working families in order to give a tax break to people making six-figure incomes, and to compound the bizarre nature of this, they are unwilling to close the billionaire's expatriate tax loophole on which the Senate has gone on record, I think unanimously or almost unanimously——

Mr. KENNEDY. No, two votes on that side of the aisle.

Mr. SARBANES. All right—to do away with it. And these are people, extremely wealthy people, literally billionaires we are talking about, who renounce their American citizenship in order to avoid paying American taxes. And the Treasury has worked out a proposal whereby they will not be able to get away with that. The conference was unwilling to encompass that proposal and to include it in the report.

So you have these tremendously wealthy people in effect walking scot-free from paying reasonable taxes. When you talk about this, the other side says, well, there you are; it is class warfare.

The class warfare is coming from the people at the top who are pulling in these benefits. That is the real class warfare that is happening here. Those who have much want more, more, more, and they throw the burden on those who have little, those who are struggling to make it through the day, struggling to educate their children, senior citizens who are struggling to meet their medical need problems, young families that are worried about how they are going to provide for their parents, worried about how they are going to provide for their children.

They cut back on the very programs designed to address those problems—Medicare, college loans, child nutrition programs, earned-income tax credit for working families—they cut back on those programs and at the same time that they are cutting back on those programs, they are giving large tax breaks to people with six-figure incomes, well above $100,000 a year.

Now, what is the sense of that? Where is the equity in that? Where is the wisdom in that in terms of investing in America's future? Those making those large incomes ought to be concerned about what is happening to working families and their children because you cannot reside at the top of the house with any sense of security and comfort when the foundations down below are not solid. And those foundations need to be solid. We have to break out of this mentality of trickle-down economics: You put it all in at the top, and somehow it is going to trickle its way down to ordinary people. We need percolate-up economics where you create prosperity in the great base of American society. The people at the top will benefit from that, as will everybody else. But it will work its way up; it will come up from the grassroots; it will come up from working people; we will have a strong middle class, which was always the hallmark of a strong American economy and which we are losing. This budget resolution is a classic example of how to intensify those negative trends.

Mr. KENNEDY. Let me just review with the Senator from Maryland one other major impact that this has. Let us take the State of Massachusetts. This kind of reduction on the budget is going to mean $1.2 billion less in scholarship assistance for students in the next 7 years. We can say, well, maybe the States are going to make up that difference. Just ask what has happened in Massachusetts over the last 5 and 7 years in terms of tuition.

The States have not been making it up. The States have not been making that contribution. And that has been true in every State of the country.

In my State of Massachusetts, with this Republican budget, it is going to mean a loss of $9.8 billion in Medicare and $4.6 billion in Medicaid over the next 7 years to the elderly and to the neediest people in our State, as well as to education. I do not know what it is in the State of Maryland, but the cuts in Medicare and Medicaid will likely be equally harsh.

Who are the ones getting the help and assistance of Medicaid? Sixty-seven percent of the Medicaid money is spent for long-term care for the elderly poor and the rest for the disabled. And the rest are going to be the 5 to 7 million American children that are the poorest children in this country that are going to be off the list. Where are the States going to be coming up with that kind of money?

Who is going to pick that up? What has been the record of the States over the last 15 years in terms of the poorest children? It has been unacceptable.

They say, "Look, we can do this here, we will just shift all of this back to the States." I know in Massachusetts, those kinds of offsets are not indicated in the Governor's budget, and I have not found any Governors across this country that have said they are prepared to make up the difference.

So what is going to happen? Here it is, long-term care, frail elderly who have no other resources, have qualified for the Medicaid; and the disabled, with all of the attendant costs and needs that families have when they have a disabled child—the emotion of that—the Medicaid program just providing enough to get along and provide some of those essential services are being told that they are going to have a $175 billion cutback.

If you are talking about the Medicare, which our seniors have paid into, if you are talking about the Medicaid, which serves the most vulnerable people in our society, if you are talking about the children of working families and you do not qualify for these Stafford loans or Pell grants. The Pell grants, in terms of purchasing, are alone going to decrease 40 percent in value over the next 7 years. You have to be needy in order to qualify for those grants. We are talking about men and women, workers in America, playing by the rules, working 45 hours a week, 52 weeks out of the year, paying taxes and trying to bring up families, and this is going to hit every aspect of their life.

I am just wondering whether the Senator feels that the States, as former chairman of the Joint Economic Committee, are going to be in an position to be able to make all of this up?

Mr. SARBANES. If the Senator will yield, most of the Governors have been very clear that they cannot make it up. They are just not in a position to do so. Now what that means, because you talk about these cuts and you talk about numbers, you have to talk about services and people.

And what it means, as the Senator from Massachusetts so eloquently pointed out, is the frail elderly who are now benefiting from the Medicaid program in terms of long-term care in nursing homes and so forth and so on. What is going to happen to those people? What is going to happen to them and to their families? Some families are stretched beyond the limits trying to handle the problem of their aged parents—beyond the limits.

Is it not enough of a burden to face the emotional and the psychological stress and strain which goes with that kind of problem? Talk to a young couple, with a parent who has Alzheimer's and is in a nursing home, about what they are up against, just emotionally what they are up against, the stress in their lives. Then you are going to add to it an intense financial and economic stress.

Why are we doing this? Why are we subjecting so many of our people to this incredible pressure? We have to cut so we can give big tax breaks, that is one reason. We will not reform the medical care system, which might well help us to deal with these problems; we are unwilling to do that.

So we leave this incredible pressure and burden on ordinary families all across America to face what for many of them are desperate problems. It is the same thing with educating their children. Any young couple will tell you that is one of the prime worries in their mind, how they are going to educate their young children.

We tried to put together a system. We had the Pell grants, which is a grant, not a loan. It has diminished in impact because we say we cannot afford it, so we shift it over to loans. We said, "All right, you take a loan, you will enhance your earning capacity, you will pay it back over your working career." Now the loan is going to be compounded because we are not going to forgive the interest charge. So this is what has happened.

Mr. KENNEDY. I ask the Senator just to draw his attention to the issue of fairness with regard to Medicare. I think the Senator from Maryland is familiar with what happened at the start of this year about whatever laws we apply and pass here we ought to make applicable to the Congress and to the Senate. That is a principle with which I agree. We could have done it last year. We had resistance from our Republican friends. Now we have passed it.

But there is an interesting flip side to that issue, which is about the benefits that we get. Should we not make sure that the people across the country are going to get the benefits that we get?

The Senate and the House of Representatives have resoundingly said no when it comes to health care reform. You have that little blue form, any Member of Congress or the Senate does not have to fill it out in order to participate in the Federal employees program. I do not know of any Senator who has filled that out. They are all taking advantage of it. So we see what happens under the program that is being put forward.

The annual incomes of Members of Congress is $133,000; for seniors, $17,750.

The monthly premiums, $44; the seniors, $46.

Deductible, $350; for the seniors, $816.

On the hospital care, we have unlimited care and theirs is defined and limited.

We have prescription drugs covered; not covered for our seniors. That is a key area we had included in President Clinton's program last year.

On the dental care, we are covered; our seniors are not covered.

And then a whole range of preventive services which are included, and they have some benefits but not nearly as extensive.

Then we take care of our out-of-pocket limit of $3,700 and there is no out-of-pocket limit for the senior citizens.

It seems to me if you have that $245 billion out there in the Republican budget, that we ought to be able to look out after our senior citizens and try to at least make these more equitable, some of these more fair, some of these that are important lifelines for our senior citizens to live in some peace and some dignity.

These are the issues, Mr. President. We are talking essentially about who is going to bear the burden of these economic cuts. Make no mistake about it, it is going to be the youngest people in this country who are going to find it more difficult, more expensive to go on to the schools and colleges. It is going to be the reduction of services that working families are going to need. It is going to be the concern of working families in recognizing that their parents are going to have to pay much more out of their pockets for the Medicare coverage which they are receiving now.

It is basically unfair to put that kind of burden on working families and to have the benefits for the wealthiest individuals.

So, Mr. President, these are the issues which we are going to have a chance to debate as we move on through. This debate is enormously important and of great consequence. It is going to have a direct impact on every family in this country, not just for this year, but over the period of the next 7 years. It is going to affect every parent and every child. That is what is going to be before this Senate and before the House in these days and weeks to come. We urge them to give it their attention, and let their Members of Congress know where they stand.

Do they think we ought to have these kinds of cuts in education and in the quality of life of our seniors in order to have a tax benefit for the wealthiest individuals? I say "no." That will be an issue we should debate, and we ought to hear from the American people as to what they believe.

I yield the floor.

PRIVATE SECURITIES LITIGATION REFORM ACT

The Senate continued with the consideration of the bill.

Mr. D'AMATO. Mr. President, I would like to speak on the amendment that was submitted by my colleague, Senator BRYAN. The issue of whether we should extend the statute of limitations to bring an implied right of action is fraught with confusion.

In 1991, the Supreme Court, for the first time, set the statute of limitations on implied private rights of action. Before the Court's ruling there

was no unified statute of limitations in these kinds of cases. The statute of limitations varied from State to State. Whether you could bring suit depended entirely on what the statute of limitations was in any particular State.

In the 1991 Lampf case, the Court finally set a standard statute of limitations. There has been no evidence shown that extending this Supreme Court set statute to 5 years will benefit wronged investors. In fact, extending the statute of limitations will do nothing more than hold a sword over businesses, and create more of an unreasonably long opportunity for litigation.

That is why we will be opposing this amendment to extend the statute of limitations. The bill holds to the statutes of limitations set by the Lampf case, 1 year from the time of discovery. It seems to me that once you discover fraud, you should be able to bring a lawsuit within 1 year. To extend that to 2 years is unreasonable. If you have discovered a fraud, then bring the suit. Why would you need 2 years?

Also, the SEC has the authority to bring suit at any time on behalf of investors who have been wronged; the SEC has no statute of limitations. Extending the statute of limitations to 2 years will make our judicial system a paradise for these lawyers.

We have not diminished the right to bring a suit after fraud has been discovered, you can bring a suit 5, 10 years later through the SEC. However, the lawyers do not make money in huge settlements when the SEC brings suit, so they oppose the provision. I would rather have the SEC bring suit so that the defrauded investors actually recover their losses when a settlement is made. In fact, the function of the Securities and Exchange Commission is to protect the investor.

The SEC recently forced Prudential to set up an open-ended disbursement fund to compensate investors who were defrauded in the 1980's. I am confident that these investors are actually getting that money. The SEC had the authority to require this firm to set aside $330 million for investors, and the SEC did not skim off $30 million of that settlement for lawyers. Is that not the way the system should operate?

We debate whether 1 year is enough time after the fraud is discovered to bring suit. I ask, why would 1 year not be enough time? Investors are protected by the SEC's authority after that 1 year has expired. By limiting the statute of limitations to 1 year, however, we are able to stop lawyers from shopping around for years, looking for any possible violation to allege. If there is fraud which comes to light after the statute of limitations has expired the SEC can always bring suit. Understand that in most cases there is no fraud, the lawyers search until they find something with which to allege fraud so that they can force the defendants to settle. We need to stop this wasteful practice.

We are not protecting people who commit fraudulent actions. We are saying that you cannot allege fraud year after year, just to make the charge. Again, I stress if there is a real fraud, doggone it, we know that the SEC will bring suit. This is not a new practice for the SEC, they have done it before and they will do it again. The SEC, however, will not waste time or money on a multiplicity of specious, spurious claims. So when the proponents of the extension of the statute of limitations say that investors brought 300 suits and the SEC only brought 1, I would note that those 300 suits were mostly frivolous. I would rather have one meritorious suit that recovers money for investors and is not used as a vehicle to extort money, than hundreds of meritless suits.

So when we talk about extending the statute of limitations understand that we are not doing anything more, in most cases, than giving people an opportunity to fish around until they catch a way to allege fraud and file a lawsuit. Once fraud has been discovered, I think it is preposterous to say that more than 1 year is needed to bring suit. Remember, most of these cases allege fraud although no fraud has been committed. They allege fraud in order to force defendants to settle because they cannot defend themselves without putting themselves at risk of even greater losses.

So I very strenuously oppose the extension of the statute of limitations, which I think would do a great disservice to the litigation system. The Supreme Court, the highest court in the land, established this statute of limitations and stated the need for uniformity in that statute.

I would like to make two other observations. I read in a New York Times editorial that we are making it impossible to bring suit. This is not the case, we are only limiting the ability of lawyers to use these cases as a collection vehicle to enrich themselves just by alleging fraud. I will repeat that the SEC can bring a case where it believes fraud has been committed, without any statute of limitations, and the private right of action is still available in the State court system. If a State court, or State legislature extends the statute of limitations to 5 years from the commission of fraud and 2 years from the time of discovery, investors will be able to file suit. Of course, even in the terrible Keating case suit was brought within a year of discovery and within 2 years of fraud. So when people say we are against extending the statute of limitations, I answer, yes, we are going to bar specious claims, ridiculous claims brought only to enrich the lawyers, however we keep protections against real fraud. In fact, the Securities and Exchange Commission, I believe, is in a much better position to judge where there is merit and where there is not in these cases.

Mr. President, I have nothing further to add on the amendment put forth by my distinguished colleague, Senator BRYAN.

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

The amendment offered by the distinguished Senator from Nevada [Mr. BRYAN] on the statute of limitations question is a very important amendment. I hope my colleagues will consider it very carefully over the weekend and again on Monday, when we will debate the amendment and have a vote on or in relation to the amendment.

Let me say that Senators DODD and DOMENICI, when they introduced their bill, included a provision on the statute of limitations that closely parallels what Senator BRYAN has offered.

They recognized the statute of limitations problem and they sought to correct it in the package which they introduced. In fact, they apparently thought it was of such consequence that in the title to their bill, they put it first and foremost.

Their bill as introduced is to amend the Securities Exchange Act of 1934 to establish a filing deadline, and to provide certain other things. They put it right up front. That gives Members, perhaps, some indication of recognition of its importance.

That provision was then dropped out in the committee's consideration—very unwisely, some Members think—and the measure now before the Senate does not contain that provision, which was in the original bill as introduced by Senators DOMENICI and DODD. Of course, the amendment offered by the distinguished Senator from Nevada, Senator BRYAN, is trying to correct that situation.

Now, once again, we hear this argument made about the frivolous suits or the strike suits, but that really is not related to the statute of limitations problem.

A shorter statute of limitations may well knock out meritorious suits, as well. Now, we tried to get a distinction between meritorious suits and frivolous suits with other provisions of the bill—provisions that we are not trying to amend here on the floor.

In other words, there has been an acceptance of the proposition that there is something of a problem that we need to try to deal with. Certain provisions in this bill do that, and represent an appropriate change in the existing securities litigation system.

Other provisions, we submit, go well beyond that. They are excessive and constitute overreach, and will in effect, reduce investor protections. We hope, in the course of the consideration of this measure, to change those provisions, to strengthen investor protections and, in effect, to make this a better bill, and eventually, if one could

alter it sufficiently, make it worthy of broad-based general support.

The statute of limitations problem does not reach the question of the distinction between meritorious suits and frivolous suits, unless one is going to assert the proposition: "Well, the more immediate the statute of limitations, the more suits you can knock out."

It makes no distinction whether we are knocking out meritorious suits or frivolous suits. In fact, probably you will more likely knock out meritorious suits, since those usually take time to work out, and if people are responsible, they do not bring the suit until they have asserted a substantial basis for it.

Now, Senator BRYAN earlier today said it takes the SEC itself—with all of the resources that it has, all of the expertise that it has, all of the experience that it has—about 2.2 years to bring a suit once they begin working on it.

That is the SEC. What does that mean for investors who are trying to bring private suits in terms of what constitutes a reasonable statute of limitations for them?

Second, the 2- and 5-year time periods were what was generally applicable throughout a good period of our experience with the Securities and Exchange Act. It worked well. I have heard very little criticism of how it worked over that time period.

I have heard criticisms of other aspects of the litigation system, but not really sharp criticism with respect to the statute of limitations question. As I indicated earlier, in fact, a provision was included in the bill that Senators DODD and DOMENICI are pushing, this effort to revise the securities litigation system, very strongly. They included that in the legislation which they proposed.

The Senate Banking Committee, in 1991, unanimously, just a couple of years ago, unanimously approved a provision that provided for the 2- and 5-year statute of limitations. The 2 years would mean that from the time you learned of the fraud, you would have 2 years to bring your action. These are complicated cases. You want people to bring responsible actions, and bringing responsible actions means it takes time to prepare them.

In some respects, a shorter statute of limitations is an invitation for the filing of, in a sense, not well-grounded suits, because you just want to get in under the wire and you will go ahead and file the suit. The 5-year period would be the statute no matter what, even if you had not discovered the fraud.

Now, unless we change that, it is only a 3-year period. Some of these things are concealed—they are concealed from the victims. In fact, the previous Chairman of the SEC, Mr. Breeden, testified to that effect:

> Adoption of these measures will give private litigants a more realistic timeframe in which to discover that they have been defrauded, while also accommodating legitimate interests in providing finality to business transactions and avoiding stale claims.

The shorter period does not allow investors adequate time to discover and pursue violations of securities laws. Many of these things are very complicated. There is a lot of deception and concealment involved. The 1- and 3-year limits really break with 40 years of legal precedent.

I just hope that the Senate, when it considers this matter, will adopt the Bryan amendment, and go to the 2- and 5-year limitation period. I think it is reasonable. Some States have longer periods, as a matter of fact. I think it is reasonable to go to the 2- and 5-year standard, which is generally what prevailed over four decades of experience with the security laws.

I am very hopeful my colleagues, in considering this amendment on Monday, will be supportive of it.

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. BAUCUS. 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. BAUCUS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The Bryan amendment.

Mr. BAUCUS. Mr. President, I ask unanimous consent to speak as if in morning business.

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

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. I thank the Chair.

(The remarks of Mr. BAUCUS pertaining to the introduction of S. 963 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The pending business is the Bryan amendment to the securities litigation bill.

Mr. LEAHY. I thank the Presiding Officer.

Mr. President, I ask unanimous consent to proceed as in morning business.

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

LET US KEEP TRYING TO WORK WITH RUSSIA

Mr. LEAHY. Mr. President, Vice President GORE is going to travel to Moscow this week to meet with Russian Prime Minister Victor Chernomyrdin. The meeting takes place amid a renewed challenge to President Yeltsin and the Prime Minister by conservative elements of the Russian Duma. Certainly just this morning's newspapers gives us a pretty clear understanding of what is happening.

I want our Vice President and their Prime Minister to know that I support their efforts to strengthen cooperation between our two countries. I believe here in the United States, despite our concerns about issues like Chechnya, Russia's continuing efforts to establish democracy and an open market economy actually merit our support. I believe that the American people want to engage the Russians constructively. We want to assist them with reform. Most of all, we want to prevent a return to the authoritarianism of the old Soviet regime.

One topic of conversation between the Vice President and the Prime Minister will be the future of United States aid to Russia. Some Senators have argued that the aid should be terminated, or at least substantially curtailed, and I do not agree.

Indeed, I find that after a slow start 3 years ago, the United States aid program to Russia is now making a significant contribution to advancing political and economic reform. I would like to just lay out a few examples.

The largest element of U.S. aid is to provide technical assistance to help the Russians privatize their state-owned enterprises. Think what we have here. We have people who have lived their entire lives in a centrally planned economy. They do not have any idea how to run a private enterprise. They have never had to sell their products. They have never had to worry about productivity. In fact, when the Berlin Wall fell, there probably were not more than 100 people in the Soviet Union who actually knew how to analyze an honest corporate profit-and-loss statement. They also did not have stock markets, banks or the legal system necessary to support private enterprise. You could not enter a contract in Moscow and have it enforced in St. Petersburg. You could not enter a contract in Moscow and have it enforced in other parts of Moscow.

I think it is in our national interest to help them acquire this know-how. Thanks in large part to our assistance, 50 percent—50 percent—of the Russian gross domestic product now comes from the private sector, and with United States help the Russians are drafting a commercial code, setting up stock markets, and training their police to fight the organized crime that could so easily stifle entrepreneurship.

I support this aid effort. I support the aid effort because I think that the more successful private enterprise Russia has, the more people are going to be resisting any attempt to reestablish Communist dictatorship.

I want to assure other Senators we are simply not shoveling money out the door to them. In fact, many aid

dollars are going to Americans. We are sending Americans over to show people how to run a private enterprise economy.

More and more, we are leveraging our taxpayer dollars with contributions from the private sector. There are private enterprises that are interested in participating in the assistance program as a part of an effort to sell products. There are also lots of volunteers. In fact, these enterprises and volunteers allow us to multiply what we do.

Another significant element is bringing Russians to the United States. Most of us remember the days of the Soviet Union. The Government prevented most Russians from seeing what life outside their country was like. Unless you held a special privileged position in academe or the government, you could not leave. Most people only had a vague notion of the advantage of living in an open society. I think that the more Russians actually visit the West, talk to Americans, see how we live, the more likely it is they will resist a return to totalitarianism.

Some have suggested that we suspend all aid to show our objections to the sale of nuclear reactors to Iran, or Russian actions in Chechnya. Of course, I am intensely concerned about what is happening in Chechnya. Russian military violence against civilians has far exceeded accepted standards of civilized behavior, regardless of what they claim was the provocation by Chechen separatists. Use of landmines aimed primarily at the civilian population is just one of the egregious things they have done.

By its actions in Chechnya over the last 6 months, the Russian Government shows it still has a lot to learn about democratic values and respect for human rights. I hope now with the current negotiations they are finally learning. In fact, that is why I joined with Senator MCCONNELL this spring in insisting on shifting some of our proposed aid to Russia to provide humanitarian assistance to the Chechens as a token of our disapproval.

Let us think about what we are talking about as far as aid to Russia is concerned. We are talking about $200-$300 million overall in aid. Think about what we spent in waging the cold war over the years with the former Soviet Union. This does not even cover the interest on what we used to spend. It is also a drop in the bucket compared to the Russian Government budget. If we cut the aid off, nobody in the central government in Russia is going to notice, because the amounts would not be that large. The people who will notice are those reformers and those entrepreneurs and those in the private sector in Russia who are pointing to the West and the United States especially as somebody who is helping them move to democracy. They will notice, because they are the ones who will find their voices not heard as well if aid is cut off.

And so, Mr. President, I support the Vice President's mission to Moscow. I believe that promoting democratization of the second greatest military power in the world enhances U.S. security. I know that the Vice President will convey forcefully to Prime Minister Chernomyrdin America's concerns regarding Chechnya and the Iran reactor sale. I also know that he will work to strengthen dialog and cooperation between our two countries. And I do not know of any better way to promote world peace.

MAJOR LEAGUE BASEBALL ANTITRUST REFORM ACT

Mr. LEAHY. Mr. President, I note that we are approaching the end of June. We are approaching the July Fourth weekend. I must say, I hear staff and everybody else's sigh of relief, and I agree.

But as we approach the July Fourth weekend, we know the all star game, featuring the finest major league baseball players, cannot be all that far behind. It looks like the all star game will actually be played this year and the year-old dispute about player pension fund payments has now been resolved.

We should also note that this year the major league season did not begin until a Federal judge granted an injunction, and the owners and the players, who shut the game down last August and robbed the fans of pennant races and the world series, finally declared a cease-fire in their ongoing hostilities. They then had to scramble to begin a shortened 144-game schedule.

Another unfair labor practice proceeding against the owners is still pending, although that hearing has now been postponed. I hope that this is a sign that the owners and the players will finally do the right thing, finally be responsible, finally get back to the bargaining table and reach a collective bargaining agreement that will remove the cloud that is hanging over the rest of the season and all of major league baseball.

I am not the only one who expresses that concern, Mr. President. Look at the fans. Interest in major league baseball is undeniably down. Attendance figures show it. They are down between 20 and 30 percent. I suspect the viewership figures show it and certainly advertising and merchandising revenue show it as well.

In fact, in another major blow to the grand old game this morning, both NBC and ABC have indicated that they are not even going to bid on broadcast rights for baseball in the future.

When I go to a baseball game this evening, I suspect for the first time in years I am going to see empty seats. I think that is really something we should all be concerned about, those who love baseball.

Older fans have been turned off, and the younger ones have decided to spend their time and attention on other pursuits.

Of course, injuries to some of the star players have not helped. Those injuries are not the cause of baseball's decline, however. Indeed, other players and teams are having outstanding seasons and major league rosters are full of bright, young, talented players.

The problems are anger, disillusionment, and disdain. As the season began, the acting commissioner was quoted as saying:

> We knew there would be some fallout. It's very tough to assess, but there is a residue from the work stoppage, there's no question. There is a lot of anger out there.

Let me tell him, there is. At our February 15 hearing on legislation to end baseball's antitrust exemption, I asked the acting commissioner how fans get their voices heard. I will quote what I said at that time:

> Fans are disgruntled; I mean, they are really ripped. Do they vote with their feet?

I asked that question of the acting commissioner at that hearing. Unfortunately, that was in February. The strike dragged on, fans suffered through the owner's experiment with so-called replacement teams—and what a laugh that was—and the matter remains unsettled and unsettling.

Mr. Selig answered me last February by declaring he understood the frustration fans were feeling, but he observed that when the strike ended, there would be an enormous healing process. I told him back in February, "The longer you go, the harder that healing process is going to be."

I wish I had been wrong; I believe I was right. Because it is sad that for some, the wounds will not heal; for others, it will take a very long time; for still others, they will never have the attachment to the game that begins in childhood and binds generations and nurtures over time.

I do not think that those who are the game's current caretakers appreciate the damage they have done. I do not believe those who are running major league baseball today, with few exceptions, realize the enormous damage they have done to baseball. Slick advertising and discount tickets and special giveaway nights are not going to make up the difference. The last year has been disastrous. There are a lot of people who are more interested in their own egos and own pocketbooks than they were in the true interest of the fans.

What the fans are saying is,

> You took us for granted, you hurt us, you insulted us, you disregarded us, you worried only about your own egos and your own pocketbooks, so now maybe we will let you know how we feel.

With broadcast networks, who were partners with the baseball owners in

the baseball network, today indicating that they will be abandoning the game, fans across the country who had expected to follow their teams over free television will likely be forced to suffer another blow.

Nothing has been solved. The problems and differences persist, and things are getting worse. There is no collective bargaining agreement and, as far as the public is aware, no prospects of one any time soon. To borrow from an old baseball observer, "It ain't over."

Why should people return to the game or, as we are apparently viewed, why should we patronize this commercial activity if the risk remains of having affections toyed with again and having hopes of a championship dashed—not by a better team but by competing economic interests?

So I believe the time has come for the Senate to act. The Senate Antitrust Subcommittee has reported a bill to the Judiciary Committee. This consensus bill, S. 627, is sponsored by Senators HATCH, THURMOND, MOYNIHAN, GRAHAM, and myself. It would cut back baseball's judicially created and aberrational antitrust exemption. Congress may not be able to solve every problem or heal baseball's self-inflicted wounds, but we can do this: We can pass legislation that will declare that professional baseball can no longer operate above the law. We can say the same laws that apply to every other business apply to baseball. The antitrust laws that apply to all other professional sports and commercial activity should apply to professional baseball, as well. Professional baseball has a very special exemption that no other business got. It was given to them with the trust and expectation that they would use it in the best interests of the game. They have violated that trust. They have had people testify before us who were less than candid with the Congress. And they turned their backs on the most important people—the hundreds of thousands, even millions, of fans throughout this country.

Along with the other members of the Judiciary Committee, I recently received a report of the section on antitrust law of the American Bar Association that examines the Hatch-Thurmond-Leahy, et al., bill. The antitrust section of the ABA reasons that professional baseball's antitrust exemption is not tailored to achieve well-defined, justified public goals. The antitrust section, therefore, supports legislative repeal of the exemption of professional major league baseball from the Federal antitrust laws. Moreover, the report notes that putting professional baseball on an equal footing with other professional sports and business and having the antitrust laws apply "cannot fairly be criticized as 'taking sides'" in baseball's current labor-management battle.

I look forward to working with our Judiciary Committee chairman to have our bill, S. 627, considered by the Judiciary Committee at our earliest opportunity and then promptly by the Senate. It is time the Senate act and end this destructive aberration in our law. Then maybe when baseball is subject to the same laws as everybody else, when they are subject to the same laws as all other professional sports, as all other commercial activity, maybe they will realize that they are not above the law—just as I hope they begin to realize they are not above the fans' interests.

So, Mr. President, when I go to the baseball game this evening—something I will thoroughly enjoy doing with friends and family—I hope I see more people than we have seen in the past. But I also hope I see owners and players coming together to put the interests of baseball above themselves.

Mr. President, I ask unanimous consent that the report of the ABA section on antitrust law be printed in the RECORD.

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

REPORT OF THE SECTION OF ANTITRUST LAW OF THE AMERICAN BAR ASSOCIATION ON THE PROPOSED MAJOR LEAGUE BASEBALL ANTITRUST REFORM ACT OF 1995—JUNE 9, 1995

These views are presented on behalf of the Section of Antitrust Law of the American Bar Association. They have not been approved by the Board of Governors or House of Delegates of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

INTRODUCTION

On March 27, 1995, Senators Hatch, Thurmond, Moynihan, Leahy and Graham introduced the Major League Baseball Antitrust Reform Act of 1995 (the "Baseball Antitrust Act").[1]

The bill would amend the Clayton Act[2] to subject the business of professional major league baseball to the federal antitrust laws.

EXECUTIVE SUMMARY

The Senate is considering legislation to reverse major league professional baseball's judicial exemption from the antitrust laws. The exemption dates to a 1922 Supreme Court decision that the business of major league professional baseball was not engaged in interstate commerce.

Supreme Court decisions affirming the baseball exemption on the grounds of *stare decisis* in 1953 and 1972 indicate that judicial reversal of the exemption is highly unlikely. These decisions cite repeated Congressional consideration and inaction in support of the conclusion that it is up to Congress to repeal the exemption.

The American Bar Association disfavors any exemptions that are not narrowly tailored to achieve well-defined goals. The baseball exemption, rooted in a limited, long-since-abandoned, view of interstate commerce, does not meet this test. Accordingly, the Section of Antitrust Law of the American Bar Association (the "Section" or the "Antitrust Section") supports legislative repeal of the exemption of professional major league baseball from the federal antitrust laws.

Repeal of the baseball exemption can and should permit uniform development of antitrust law in the sports industry. The Supreme Court has ruled that other sports businesses are subject to the federal antitrust laws, giving rise to a substantial body of sports-related antitrust law, notably in connection with football and basketball. The very interest in uniform application and development of antitrust law that prompts support for repeal of baseball's anomalous exemption demands that Congressional consideration of any such provision be industry-wide rather than baseball-specific.

DISCUSSION

In 1922, the Supreme Court ruled that the business of professional baseball was not engaged in interstate commerce, and, consequently, was exempt from antitrust scrutiny.[3] Both professional baseball and judicial interpretation of the commerce clause subsequently evolved. In 1953, the Court upheld the exemption in a *per curiam* opinion.[4] By 1972, the Court, acknowledging that professional baseball was in fact a business engaged in interstate commerce,[5] refused to overturn the exemption on the ground that Congressional failure to reverse it was tantamount to endorsement.[6]

The Court's adherence to precedent, in 1953 as well as 1972, was based on Congress' positive record of inaction. Removal of professional baseball's antitrust exemption has been the subject of various unsuccessful legislative efforts. At least one such effort, in the early 1950's, was abandoned in the belief that the Supreme Court would reverse its earlier position with respect to baseball.[7] In baseball terms, the Supreme Court and Congress have been pointing to one another and shouting, "Yours" for decades.[8]

It has long been the position of the American Bar Association that any exceptions to antitrust regulation should be narrow and focused to achieve well-defined goals.[9] Professional baseball's exemption is neither. Accordingly, we recommend that major league baseball should be made subject to the same antitrust laws generally applicable to all other American businesses in general and sports businesses in particular.[10] To that end, we support the bill, S. 627, proposed by Senators Hatch, Thurmond, Leahy, Moynihan and Graham, to the extent that each reverses baseball's anomalous antitrust exemption and places professional baseball on the same footing as other professional sports.

The courts have readily acknowledged, and the Section agrees, that a certain level of cooperation among franchises is essential to the business of baseball and that this is an important difference from most other businesses. Although, for example, the Dodgers and Giants may want to dominate one another on the field, they do not want their rivals to go out of business. There is little dispute that sports businesses can agree on many matters, such as scheduling and rules of play, essential to the joint enterprise.[11]

Accordingly, baseball owners may persuasively argue that they may lawfully enter into agreements as joint venturers that owners of other business could not. However, much the same can be said of other American sports businesses. While baseball owners particularly emphasize franchise relocation issues and their commitment to the minor leagues in support of the exemption, all professional sports leagues face franchise relocation issues and at least one, professional hockey, supports a minor league player development structure. With parity in circumstances should come parity in treatment under the law.

Footnotes at end of article.

Arguments as to the alleged necessity of various trade restraints can and should be made in court. Like professional baseball and commerce clause interpretation, antitrust law has also evolved since 1922. The "rule of reason" standard of review, which has largely supplanted the labeling of various acts as *per se* antitrust violations, and which is routinely applied to antitrust cases involving sports,[12] will afford baseball ample opportunity to demonstrate that specific cooperative activities among its franchises do not unreasonably restrain competition. Any truly pro-competitive conduct should be adequately protected by proper application of the rule of reason. The existing baseball exemption is not based on any determination to the contrary; indeed, because of the exemption, there is essentially no judicial history upon which to base a contention that the rule of reason cannot be properly applied to professional baseball. Nor do fact-specific applications of the rule of reason in cases involving other sports support such a contention.

In addition, professional baseball cannot and should not be prevented from seeking explicit Congressional authority for internal governance of, for example, minor league player development or the location of major league franchises.[13] The antitrust laws sanction legitimate efforts to petition the government for legislative action. While we take no position at this time on the need for any particular grant of such authority, we note that the current judicial exemption immunizes professional baseball from antitrust scrutiny without the factual predicate necessary for Congress to make an informed determination. Continuation of this exemption is therefore inconsistent with the goal of narrow, focused exceptions to antitrust principles and the status of the other major sports businesses that do not enjoy exemptions.

The proposed legislation would permit judicial determination of the proper application to baseball of the labor and antitrust laws. The non-statutory labor exemption, and the statutory labor exemption, embody the delicate and sometimes elusive balance between the oft-conflicting goals of antitrust law and labor law. Properly striking this balance is no small task, particularly in the context of professional sports. The contours of this body of law have been shaped by decisions rendered over more than half a century.[14] The judicial process of resolving the proper application of the non-statutory exemption to professional sports is well under way,[15] and the proposed legislation will further this process.

We neither endorse nor reject the major league player associations' argument that were professional baseball subject to antitrust laws, the non-statutory labor exemption would not exempt from antitrust scrutiny the owner's unilateral imposition of a salary cap.[16] Such an argument should be made in court, so that it may be resolved in harmony with analogous cases. Similarly, the courts are also the proper forum for resolution of any dispute over whether and to what extent labor markets are a proper subject of antitrust regulation.

Putting professional baseball on an equal footing with other professional sports cannot fairly be criticized as "taking sides" in favor of players in baseball's current labor strife. Representatives of the baseball owners have repeatedly argued that baseball's current exemption is irrelevant to its bargaining relationship with major league players because the owners' conduct is protected by the labor laws and the non-statutory labor exemption.[17] Repeal of the exemption will afford the owners the opportunity to prove this contention. Freeing them from the responsibility to do so, by Congressional inaction, would be "taking sides" in favor of the owners.

We look forward to working with the members of the Judiciary Committee on legislation to reverse major league baseball's exemption from the antitrust laws.

FOOTNOTES

[1] A copy of the proposed legislation, S. 627, is appended hereto. Differing versions of legislation on this topic had been introduced by Senators Hatch, Moynihan and Graham (S. 415) and Senators Thurmond and Leahy (S. 416) earlier. Hearings on both of these bills were conducted by Senator Thurmond's Subcommittee on Antitrust, Business Rights and Competition on February 15, 1995.

[2] 15 U.S.C. 12 *et seq.*

[3] *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs*, 259 U.S. 200, 208–209 (1922).

[4] *Toolson* v. *New York Yankees*, 346 U.S. 356, 357 (1953); *see also United States* v. *Shubert*, 348 U.S. 222 (1955) (Commenting on *Toolson*: "Congress, although it had actively considered the [*Federal Baseball*] ruling, had not seen fit to reject it by amendatory legislation." 348 U.S. at 229.)

[5] *Flood* v. *Kuhn*, 407 U.S. 258, 282 (1972) (Respondent Baseball Commissioner Kuhn's Answer to Flood's Complaint included the admission that "under present concepts of interstate commerce defendants are engaged therein.") 407 U.S. at 291 (Marshall J., dissenting).

[6] "Remedial legislation has been introduced repeatedly in Congress but none has ever been enacted . . . [t]his, obviously, has been deemed to be something other than mere congressional silence and passivity." 407 U.S. at 283.

[7] Subcomm. on Study of Monopoly Power of the House Comm. on the Judiciary, Organized Baseball, H.R. Rep. No. 2002, 82d Cong., 2d Sess. (1952).

[8] "If there is any inconsistency or illogic in [baseball's retention of the exemption after Supreme Court rulings that other professional sports are subject to the antitrust laws], it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this court." *Flood, supra*, at 284.

[9] *See, e.g.*, McCarran-Ferguson Act Recommendations of ABA Commission to Improve Liability Insurance System (Feb. 1989).

[10] In every other instance in which a court has had to decide whether an organized sport is subject to the antitrust laws, the court has decided in the affirmative. *Radovich* v. *National Football League*, 352 U.S. 445 (1957) (professional football); *Haywood* v. *National Basketball Association*, 401 U.S. 1204 (1971) (professional basketball); *Nassau Sports* v. *Peters*, 352 F. Supp. 870 (E.D.N.Y. 1972) (professional hockey); *Deesen* v. *Professional Golfers' Ass'n of America*, 358 F.2d 165 (9th Cir.), *cert. denied*, 385 U.S. 846 (1966) (professional golf); *Washington State Bowling Proprietors Ass'n* v. *Pacific Lanes, Inc.*, 356 F.2d 371 (9th Cir.), *cert. denied*, 384 U.S. 963 (1966) (professional bowling); *Amateur Softball Ass'n of America* v. *United States*, 467 F.2d 312 (10th Cir. 1972) (amateur softball). Comm. on the Judiciary, H.R. Rep. No. 103–871, 103d Congress, 2d Sess. 15 n. 71 (1994).

[11] *National Collegiate Athletic Ass'n* v. *Board of Regents of University of Oklahoma*, 468 U.S. 85 (1984).

[12] *National Collegiate Athletic Ass'n.* v. *Board of Regents of University of Oklahoma*, 468 U.S. 85 (1984); *Los Angeles Mem. Coliseum Comm'n* v. *National Football League*, 726 F.2d 1381 (9th Cir. 1984), *cert. denied, sub. nom. National Football League* v. *Oakland Raiders*, 469 U.S. 990 (1984).

[13] The proposed legislation addresses both the minor league and franchise relocation issues, stating that nothing in the proposed legislation shall be construed to affect the applicability or non-applicability of the antitrust laws to minor league or franchise relocation issues. The legislation also would not affect the application of the Sports Broadcasting Act of 1961.

[14] *Apex Hoisery* v. *Leader*, 310 U.S. 469 (1940); *United States* v. *Hutcheson*, 312 U.S. 219 (1941); *Allen Bradley Co.* v. *Local Union No. 3, IBEW*, 325 U.S. 797 (1945); *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965); *Local Union No. 189, Amalgamated Meat Cutters* v. *Jewel Tea Co.*, 381 U.S. 676 (1965); *Connell Constr. Co.* v. *Plumbers & Steamfitters Local 100*, 421 U.S. 616 (1975).

[15] *Mackey* v. *National Football League*, 543 F.2d 606 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977); *McCourt* v. *California Sports, Inc.*, 600 F.2d 1193 (6th Cir. 1979); *Bridgeman* v. *National Basketball Ass'n*, 675 F. Supp. 960 (D.N.J. 1987); *Powell* v. *National Football League*, 930 F.2d 1293 (8th Cir. 1989(, *cert. denied*, 498 U.S. 1040 (1991); *Brown* v. *Pro Football, Inc.*, 782 F. Supp. 125 (D.D.C. 1991); *appeals docketed*, Nos. 93–7165, 94–7071 (D.D.C. Sept. 27, 1993, Mar. 31, 1994); *National Basketball Ass'n* v. *Williams*, 857 F. Supp. 1069, 1071 (S.D.N.Y. 1994), aff'd, 1995 U.S. App. Lexis 1531 (2d Cir. Jan. 24, 1995).

[16] On February 15, 1995, Kevin J. Arquit, an attorney representing the Major League Baseball Players Association, testified before the Senate Subcommittee on Antitrust, Business Rights and Competition that "efforts by owners unilaterally to impose new conditions would not be protected by the labor exemption and would be subject to antitrust scrutiny if the baseball exemption were lifted." Statement of Kevin J. Arquit, at 8.

That same day, Major League Baseball Players Association executive director Donald Fehr testified that the provision of proposed S. 415 which states that the non-statutory labor exemption shall not apply to unilaterally imposed terms which differ substantially from the provisions of the basic agreement which expired on December 31, 1993 is "no more than a restatement of current law." Statement of Donald Fehr, at 10.

[17] For example, on February 15, 1995, the baseball's owners' attorney James Rill testified before the Senate Subcommittee on Antitrust, Business Rights and Competition that, "[t]he National Labor Relations Act governs the relationship between teams and players . . . Thus, the elimination of baseball's antitrust exemption would have no effect on matters involving major league players' salaries or working conditions, the subjects of the current strike, now or in the future, so long as the players remain unionized" (p. 10).

That same day, acting baseball commissioner Allan Selig testified that, "because the Union would not bargain collectively with us on the overriding issue of the players' salaries . . . we have not been able to reach an agreement . . . [W]e will play the 1995 season, including spring training, with those players who want to come to work . . . None of that has a scintilla to do with the antitrust laws or the antitrust exemption enjoyed by Baseball. Our relationship with the players is governed by the federal labor laws" (pp. 3–4).

Mr. LEAHY. Mr. President, I note that the distinguished Senator from Ohio is on the floor.

I yield the floor.

Mr. DEWINE. Mr. President, I ask unanimous consent to proceed as in morning business.

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

AT-RISK YOUTH

Mr. DEWINE. Mr. President, this Congress and the American people are now engaged in a historic debate about welfare. I would like to talk this afternoon about the people we need to focus on in that debate.

Mr. President, when I was in Youngstown, OH, a couple of months ago, I visited a church that ran a program for what is termed "at-risk youth." The kids that I saw that evening were seated in a circle talking about their lives, talking about their problems. One of the teenagers was asked this question: "Why do you get up in the morning?" That is a simple question. This young man responded: "Because I don't want to be dead."

Mr. President, people that were there that evening thought he might have missed the meaning of the question and misunderstood it. So they asked him

his goals for the rest of the day. He said, again, that he did not want to die.

That was his objective for an average day.

Mr. President, that teenager, that young man, is growing up in a different country from most of the rest of us—a country most of us would have a very difficult time recognizing.

Now, the sociologists call that teenager at risk. That is kind of a strange term. As parents, we know that, in a sense, all children are at risk at all times. But these children are at risk in a different sense, in a different way. They are in grave danger of living very sad, very unhappy, very tragic lives.

By the term "at-risk," we mean children who are not learning the skills they need to really participate at all in society; children who are more than a grade behind in school; children who drop out; children who are abused, assaulted and live in constant danger of violent crime; children who are homeless or who run away from home. By at-risk, we mean children who are having children, children who are juvenile offenders themselves, already experiencing the justice system because of the crimes that they have committed.

By at-risk, we mean children who live in neighborhoods where work is more the exception than the rule, children who do not have any responsible adults playing a meaningful role in their lives—no role models, no one to look up to, no one to trust.

These young people are growing up so far outside the mainstream that they are going to have really very little chance of ever joining what you and I know as the American community.

They will certainly have very little chance to ever participate in the American dream.

Mr. President, these young people do not share in the values of America. It is not so much that they reject our values. It is not that they are protesting against our values. Rather, they never learned these values to begin with. This group of young people is, unfortunately, tragically, growing.

Since 1965, the juvenile arrest rate for violent crime has tripled. Children are the fastest growing segment of the criminal population.

Mr. President, since 1975, homelessness has been on the rise, and it has increased faster among families with children than among any other group. Every year, nearly one million young people between the age of 12 and 19 are themselves victims of violent crime.

Mr. President, too many young people are not getting the education they need either. Since 1960, we have spent 200 percent more on public schools, in real dollars. But the quality of education is not improving. A 1988 study found that of all the nations tested, the United States finished dead last in science.

In my home State, the State of Ohio, the Ohio Department of Education says that they really do not have complete statistics on graduation. But the statistics they do have suggest that of the children who enter Ohio high schools, only 75 percent graduate 4 years later. But that statistic really sugarcoats the much more dismal reality in many of our cities. In Youngstown, OH, for example, the reported figure is that only 46 percent graduate after 4 years; in Columbus, only 44 percent; and in Toledo, only 37 percent. I suspect that these figures would not be different in any major city in this country today.

Mr. President, these children are really not being educated. We all know what not educating a young person leads to. According to the educational testing service, half of the heads of households on welfare are dropouts. That should not be a surprise. The Ohio Department of Rehabilitation and Corrections—our State prison system—reports that at least 25 percent of the inmates in Ohio prisons are dropouts.

I would say, Mr. President, based on my own experience as Lieutenant Governor in Ohio and being in charge of our prison system and working with the Governor in this area, that figure is probably a lot higher than that.

Mr. President, these young people are falling behind every day. They are falling behind too far and too fast. Almost 5 million children are growing up in neighborhoods where the majority of men are unemployed for most of the year.

And certainly too many children are having children. Since 1960, the rate of unmarried teenagers having children has increased almost 200 percent.

Since 1960, the percentage of families headed by single parents has also tripled. You hear a lot, of course, about single-parent families. But I feel that too many people really are missing the point. They are missing the point about why this is really an important issue and what all of the ramifications really are.

Let me point out for the Senate, Mr. President, one reason why that statistic, that figure, is so very important. It is important because children growing up in single-parent families are poorer than children, on the average, who live with two parents.

Children who do not have fathers around are five times more likely to be poor. They are also 10 times more likely to be extremely poor, to live in the kind of grinding poverty which is very hard to escape.

Mr. President, it is hard to escape this poverty because it is more than economic poverty. It is a poverty, really, of the spirit, the poverty especially of young men who are growing up with no role models.

It is a basic fact of human existence that when boys grow up without fathers, they become men without knowing what mature manhood really is supposed to be. That is really what fatherhood is all about, giving young people an adult male, a role model, to learn from. Young people need to have strong adult role models around if they are going to break out of the cycle of dysfunctional behavior.

All the social pathologies I talk about in this speech really reinforce each other. Only the involvement of strong, caring adults in children's lives can ever truly break this vicious cycle.

Consider another fact: 54 percent of all females who drop out of school are either pregnant at the time or already have children. Mr. President, the early, decisive intervention of a strong adult role model can certainly prevent a lot of problems. The young people I am talking about many times lack fathers. They lack role models, they lack education, they lack hope. That is why America today is losing these young people.

The class of young people I am talking about who are seriously at risk is growing, and it is heading toward an explosion, right in the middle of what is and what should remain the richest, greatest, the most powerful country in the world.

Mr. President, that is simply wrong. We, as a society, cannot afford to lose more and more young people to social trends that hurt people and destroy lives. We simply cannot let this problem continue to grow. We have to do everything we can to roll back that tide of what really is a social collapse.

Now, this is not going to be an easy tack. It will be an extremely difficult task. It will take a lot more than Government programs to get America through what amounts to a full-scale social crisis. We need churches, businesses, labor groups, and, indeed, all of American society to reach out to these young people in a way that is truly effective.

This past Wednesday, the Labor and Human Resources Committee reported out the Work Force Development Act. This is, of course, the Senate's job training bill. Mr. President, as we shift responsibility for job training to the States, because I think we should, there will be a temptation to focus the job training effort to a relatively—I say "relatively"—easier task, like assisting the skilled and educated workers who are temporarily out of work. They certainly need help.

I think that our Nation must have a different primary focus. I believe we must target America's No. 1 problem and tackle it head on. There are millions of young people in this country who are growing up in an environment that really all but guarantees their failure. If our job training legislation does not make a difference in the lives of these young people, we will be sacrificing not just an entire generation, but because these kids are having kids, we will be sacrificing the generation to follow.

We will sacrifice more than that, really, because this is an issue not just about these children's future, it is about who we are as a people. These young people are really not strangers among us. They are us. We will not be able to rest until we have brought the young people back into the American mainstream—a mainstream of work, a mainstream of responsibility, and a mainstream of opportunity.

That is why, Mr. President, during Wednesday's hearing, I proposed an amendment that would establish, as part of the Senate job training block grant, a $2.1 billion fund for programs to help these threatened young people.

My amendment passed the committee by a vote of 12 to 4. I believe that our committee's intent could really not be more clear. We must have a national focus on at-risk youth.

Mr. President, I held a job training field hearing in Ohio a few weeks ago. I heard from people on the front lines, the people who get up every morning and try to make a difference by helping train some of these young people. I also heard at that hearing from some of these young people themselves. It is pretty clear from what we heard that their needs are not being met by our current system.

In fact, State job training programs many times simply do not focus on this very difficult but crucial task. If we, as Americans, want to do something about this problem, I believe that we have to have a national commitment.

Now, it remains as true as ever that Federal mandates are not—let me repeat, are not—an effective way to tackle social problems. That is why it is essential we not try to prescribe particular solutions from Washington, DC. We do not need more micromanagement out of this Capitol.

However, I do believe what we should do is make a national commitment to target this at-risk youth population. At the same time we make this national commitment, we must match that national commitment and a national setting of priorities with a commitment to give the States the maximum amount of flexibility to design their own programs to target this group of our young people.

Mr. President, the history of the last 30 years proves that the Federal Government does not have the answers. We have to give the States the funding and the flexibility they need to design and support programs that will, in fact, work.

I also believe we must, as a nation, as a people, say that the saving of this group of young people is, in fact, a national priority. Even now, as we speak today, a number of communities are pointing the way to possible solutions. They are doing it with programs that may be partially federally funded, may not be federally funded at all, may have some State money in them, or some of the programs I have seen have no government money. A number of the communities I have visited are really leading and pointing the way.

The Youngstown church, for example, which I mentioned earlier at the beginning of my remarks, is a place where kids can go between the end of school, when they get out of school, and bedtime. It is a place where they have things to do and a place where they are safe.

Being safe from physical violence is a good start. In Cleveland, OH, Charles Ballard started a program 13 years ago that helped teach these young people how to be fathers. His organization, the Institute for Responsible Fatherhood, is making a big difference; 2,700 men have participated so far, and 97 percent of the program's graduates are, in fact, supporting their own children.

Last week, Mr. Ballard announced he will be expanding his program to five new cities. I had the opportunity to see him last week when he stopped by my office here in Washington.

In San Jose, CA, there is a project called CET that provides 3 to 6 months of vocational training to disadvantaged young people and adults. A study of this local San Jose program indicates that the young people who participate in it end up doing substantially better many years into the future. Their annual earnings increase by more than $3,000 a year. That is one of the best results ever achieved by such a youth training program.

Their success in San Jose is really because the program is tied closely—very closely, intimately—to the local labor market. The CET program's staff keeps in close touch with local employers so they know what jobs really exist in the community, so that they are training people for jobs that really exist. CET emphasizes practical job training over more rigid, classroom-focused instruction.

Mr. President, Cleveland, OH, has a program called Cleveland Works. This program provides training, day care, and health care for welfare recipients. Each welfare recipient receives some 400 or 500 hours of training, and then gets placed with one of the 630 employers who participate in that area in the program. These workers get full-time wages and health care benefits for themselves and for their families. Cleveland Works has tracked all of its clients over the last 9 years and about 80 percent of them —80 percent—never go back on welfare.

Cleveland Works breaks down the barrier between the two cultures of work and welfare. It can be done. Cleveland Works is a success story that is already being replicated by dedicated people in six other American cities.

At the other end of the State is Cincinnati. In Cincinnati's Over-the-Rhine district there is a program called Jobs Plus, which I personally visited, which gives intensive training and counseling to at-risk individuals. All Jobs Plus clients are enrolled in a 90-day program, a crash course in the values and skills that are required in the working world. But the Jobs Plus program does not stop when the client gets a job. The client is then encouraged to join the Jobs Plus Club, to get moral support for what can be a very tough transition to a life of work and responsibility.

Should we mandate any of these programs nationally? No. I do not think so. But they look like good programs, and I think it would be wise for local communities across the country who are concerned about their at-risk youth to consider programs such as these.

The bottom line is that we have to keep on looking for the answers. There is no one right answer. We have to keep the focus on this problem. We have to keep the focus on this challenge. We have to do that. We have to keep reminding ourselves about the problem because there is simply too much of an incentive for us to forget these kids. There is a wall between these children and the rest of America, a wall every bit as real as if it were the stone wall of a prison or a jailhouse. We need to bring that wall down.

That is why, as we discuss the job training legislation and the welfare reform bill that will certainly follow, we must not lose sight of these particular children who have simply been forgotten for too long.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I congratulate the Senator from Ohio for his very thoughtful and indepth statement on the job training programs and how they should be adjusted to better deal with the issue of actually training people versus just creating bureaucracy. I think his proposals are excellent and I hope this Senate will take heed of what he has said and follow them closely. As a member of the Labor Committee, I have certainly tried to do that relative to his recommendations.

Mr. President, I ask unanimous consent to proceed as in morning business.

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

THE BUDGET CONFERENCE AGREEMENT

Mr. GREGG. Mr. President, I want to talk a little bit here today, however, about the budget conference agreement which has just been reached, because I do think there has been some information presented in the community at large that is inaccurate and misleading. This budget conference, which I had the opportunity to serve on, has reached agreement between the House and the Senate as announced last night

by Leader DOLE and Speaker GINGRICH. It is a very positive event for America. It is the first balanced budget in 25 years, something we are in dire need of if we are as a nation to put our fiscal house in order and to pass on to our children a country which is prosperous rather than a country which is bankrupt.

Those of us who have been working hard in the effort of trying to bring fiscal responsibility to this Government, to make sure we have a nation that does not continually spend away the legacy of our children, are proud that we have been successful in developing this budget. I think there are some points about the balanced budget that need to be noted. As we go into the debate next week, I am sure there will be a lot of discussion and a lot of hyperbole. But I hope we begin from a basis of fact.

Some of the facts that are important are these. First, if we continue on our present course of spending, the Medicare trustees have told us—and four of the Medicare trustees happen to be members of the administration, including the Secretary of HHS and the Secretary of the Treasury—have told us that the Medicare trust fund will go bankrupt in the year 2002. Under the law, once the Medicare trust fund goes bankrupt it cannot spend any money. There will, therefore, be no health insurance program for our seniors. This needs to be addressed. The conference agreement which we have reached addresses that issue and reverses that insolvency situation.

Second, we know that if the Federal Government continues to spend in the pattern which is presented in the original budget of the President and in the President's budget as recalculated, the President's most recent budget as recalculated by CBO, that we would add over $1 trillion of new debt to our children's shoulders over the next 7 years. That would be a burden that would be unfair to load on them and which we cannot afford to do. I am glad to report that this budget conference does not do that.

This conference leads us to a balanced budget and, as a result of leading us to a balanced budget, it takes out of the debt stream almost $1 trillion. That is debt our children will not have to pay. That is interest on that debt that we and our children will not have to pay. That is very important.

Of course there are a lot of side effects that are very positive to reaching a balanced budget and to passing this resolution. They include the fact that for the first time in 25 years, the world community will be able to look at this country and say we have our fiscal house in order. As a result, interest rates will come down for Americans and that will benefit us as a Government, but more important, it will benefit our citizens for, in borrowing to buy a home or improve on their home or to buy a car or to educate themselves or their children, they will pay significantly less because interest rates will have come down as a result of us passing this conference report, which is a balanced budget. So that is some of the good news that comes from this proposal.

I heard reported on the news—and this is what I wanted to specifically address this morning—as I was coming in, by a national organization funded by the Federal Government, that this budget proposal cuts Medicare by $270 billion and increases defense spending by $33 billion. If you wish to compare apples to oranges, and you wish to take great leave with the English language, maybe you could say something like that. But if you wish to be at all accurate or fair, you would have trouble defending that statement.

The fact is, Medicare spending goes up significantly under this budget. Under the present projected spending patterns, Medicare will increase at 10 percent annually for as far as the eye could see. We cannot afford that rate of growth. That is three times the rate of inflation. It happens to be 10 times the rate of inflation in the private sector's premium costs on health care. And if it continued to grow at that rate, as I mentioned earlier, the trustees of the Medicare trust fund have told us that the Medicare system would go bankrupt.

But there is no proposal to cut Medicare. There is no proposal at all to cut Medicare. There is a proposal to slow that rate of growth, to slow that rate of growth to 6.4 percent, which happens to be twice the rate of inflation. What does that mean in real dollars? It means over the next 7 years we will be adding in spending to Medicare, $349 billion over what would be a freeze baseline. In other words, if you froze spending today, you would pull that straight line out, and this is what we spend on Medicare today. How much will we spend over the next 7 years? We will be increasing spending by $349 billion. In fact, over the next 7 years, we will spend more on Medicare than was spent over the last 7 years. What will the average recipient see as a result of this increased spending? They will see that instead of getting $4,300 today in benefit support payments, they will be getting $6,300 by the year 2000. And in the year 2002 alone, the increase in Medicare spending will be $96 billion.

How some national news media say we are cutting Medicare is beyond me, but they say it. Unfortunately, they are supported in that frame of reference by folks who are activists here in Washington. But it is inaccurate. It is inappropriate.

What we are doing in this proposal is proposing to slow the rate of growth in Medicare. That is accurate. We are proposing it because, if we do not do that, the Medicare trustees have told us that the system will go bankrupt. The way we are proposing to slow that rate of growth is, I think, constructive. We are going to say to senior citizens in this country, you can have more choices for health care. Instead of using fee-for-service, which is the most expensive system, we are going to give you the choice of also using fixed-cost health care such as HMO's, PPO's, things like that. It will allow you to purchase a health care system at the beginning of the year for a fixed cost and get all of the health care provided to you by one group. It will not say that you have to do that. You can still stay with fee-for-service, if you want. But if you decide to go to an HMO, we will encourage you to do that. As a result, we will slow the rate of growth.

There will also be some other action taken but it will be directed at making the system more efficient, more cost responsive, and continue to deliver first-class quality care. But under no circumstances will there be any cut in Medicare.

The same is true of Medicaid. There is no proposal to cut Medicaid. Yet, if we are to listen to some of the media descriptions of this budget conference, you would assume there was, because they say there is. Actually, Medicaid spending will go up $149 billion over the next 7 years. Yes, we are going to slow the rate of growth in Medicaid spending again. We have to. Otherwise, we end up bankrupting our children's future. But there is no proposal here to cut it; it is to slow the rate of growth. And we will continue to deliver first-class service and, in fact, I think we will end up with better services because hopefully we will send these dollars back to the States with fewer strings attached. As a result of doing that, I am sure the State governments—as the Presiding Officer, who was Lieutenant Governor from the great State of Ohio, knows—will deliver those services much more efficiently and better once they are freed from this huge bureaucracy which is the Federal Government. More people get more dollars in support of their needs, rather than more bureaucrats getting more dollars in support of their needs.

So the statement that we are cutting Medicare is inaccurate on its face. We are increasing Medicare spending by almost $349 billion over what would be a freeze level of 6.4 percent annually, a huge increase. Probably most healthy, it will still be the fastest growing function of the Federal Government.

Yet, if you were to listen to this news report, you would presume that we were slashing Medicare in order to increase defense. Well, Medicare will be the largest and fastest growing function of the Federal Government as result of this conference report.

And what will happen to defense? It goes down. It does not go up, it goes

down. The representation that we are increasing defense spending is once again on its face wrong. If you were to take today's defense number and freeze it for 7 years, of that number defense spending will go down by $15 billion over next 7 years. Essentially, it is flat funding. That would be the best way to describe it. But in real terms, it goes down $15 billion.

So the Defense Department accounts go down, and the Medicare accounts go up dramatically, which is the policy that is correct, by the way. That is exactly what we should be doing. We should be trying to get the Medicare system into a position where we can afford it, and into a position where the trust fund will be solvent. We must face the fact that we are going to have to downsize the military in the face of the post-cold-war period, and as a result of downsizing the military, less military spending will occur.

This is what this conference accomplishes. Overall, what the conference accomplishes is something that no other Congress has been able to do for 25 years. It balances the Federal budget. It slows the rate of growth of the Federal Government. It does not actually cut spending over that period, overall Federal outlays. In fact, overall Federal outlays will go from $1.5 trillion in 1995 up to $1.875 trillion in the year 2002. There will be an annual rate of growth of the Federal Government of 3 percent. But, as I stated earlier, in getting to a balanced budget, it eliminates almost $1 trillion of what would have been deficit spending had we stayed on the glidepath presented by the President. Well, there was no glidepath presented by the President. It was sort of a take-off path by the President in the deficit area; or if we just let things be as they are.

The reason we have done this is very simple. If we continue to run these deficits, if we do not address this issue now, as I said earlier, we will pass on to our children a nation which is bankrupt. That is not fair, and it is not right. It has been said many times on this floor by many members of our party that our reason, our purpose, in seeking this position here in the Senate is to put the fiscal house of the Federal Government in order—to downsize the Federal Government, and to return authority and the dollars to the States. This budget is the first step in accomplishing that goal.

I certainly congratulate Senator DOMENICI, who is the driving force behind developing this budget on the Senate side; Chairman KASICH, on the House side; and, obviously, Speaker GINGRICH and Leader DOLE, for having the foresight, the vision, and the courage to put together this most extraordinary budget which will pass to our children a very critical gift, which is the gift of a Government that is fiscally sound.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

MESSAGES FROM THE HOUSE

At 12:27 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1854. An act making appropriations for the legislative branch for the fiscal year ending September 30, 1996, and for other purposes.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1854. An act making appropriations for the legislative branch for the fiscal year ending September 30, 1996, and for other purposes; to the Committee on Appropriations.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1115. A communication from the Principal Deputy Under Secretary of Defense (Comptroller), transmitting, pursuant to law, a report of a violation of the Antideficiency Act, case No. 94-10; to the Committee on Appropriations.

EC-1116. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation to revise the manner in which the Army will participate in the establishment and operation of the National Science Center for Communications and Electronics; to the Committee on Armed Services.

EC-1117. A communication from the Acting Director of the Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report on the implementation of the Community Reinvestment Act; to the Committee on Banking, Housing, and Urban Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations, without amendment:

S. 961. An original bill to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to authorize reduced levels of appropriations for foreign assistance programs for fiscal years 1996 and 1997, and for other purposes (Rept. No. 104-99).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SANTORUM:

S. 960. A bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns, and for other purposes; to the Committee on the Judiciary.

By Mr. HELMS:

S. 961. An original bill to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to authorize reduced levels of appropriations for foreign assistance programs for fiscal years 1996 and 1997, and for other purposes; from the Committee on Foreign Relations; placed on the calendar.

S. 962. A bill to extend authorities under the Middle East Peace Facilitation Act of 1994 until August 15, 1995; considered and passed.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, and Mr. ROCKEFELLER):

S. 963. A bill to amend the medicare program under title XVIII of the Social Security Act to improve rural health services, and for other purposes; to the Committee on Finance.

By Mr. JOHNSTON:

S. 964. A bill to amend the Land and Water Conservation Fund Act of 1965 with respect to fees for admission into units of the National Park System and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself and Mr. DASCHLE):

S. Res. 141. A resolution to authorize representation by Senate Legal Counsel; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SANTORUM:

S. 960. A bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns, and for other purposes; to the Committee on the Judiciary.

THE 1995 COMMUNITY PROTECTION INITIATIVE ACT

• Mr. SANTORUM. Mr. President, today I am introducing the 1995 Community Protection Initiative Act, a bill to aid in the fight against crime in America. This bill exempts qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed weapons. The effect is to increase law enforcement potential by making thousands of highly trained law enforcement personnel available to deter crime in emergency situations, all at no additional cost to

the taxpayer. We will strike a strong blow for crime prevention without further burdening the Federal budget.

Further, this bill eliminates jurisdictional limitations and provides a clear and uniform rule to replace a complex variety of State and local laws. In an increasingly mobile society, it is important to eliminate confusion and provide these public servants the opportunity to react in a way that protects potential victims of crime throughout the country.

This is a commonsense and cost-effective step in the direction of crime control. To do otherwise would be similar to preventing someone trained in CPR from assisting a dying person merely because he or she was licensed in another jurisdiction. Law enforcement personnel are trained to think in a manner that protects lives. We need to allow them to act in the same manner by lifting current regulatory burdens.

This bill takes the precautions necessary to ensure that former and retired law enforcement officers have been properly trained in the use of firearms, have proper identification, and were in good standing during their prior employment. Moreover, the bill allows them to protect themselves, their families, and other citizens in need of assistance.

I look forward to enactment of this legislation. I also look forward to working with Representative CUNNINGHAM from California, who has introduced a similar measure in the House of Representatives. Together we can bring about a much needed reform and strengthen the crime fighting capabilities of our Nation's law enforcement community.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 960

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTON 1. SHORT TITLE.

This Act may be cited as the "1995 Community Protection Initiative".

SEC. 2. EXEMPTION OF QUALIFIED CURRENT AND FORMER LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED HANDGUNS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following new section:

"§ 926B. Carrying of concealed handguns by qualified current and former law enforcement officers

"(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer or a qualified former law enforcement officer and who is carrying appropriate written identification of such status may carry a concealed handgun.

"(b) As used in this section—

"(1) the term 'qualified law enforcement officer' means an officer, agent, or employee of a public agency who—

"(A) is a law enforcement officer;

"(B) is authorized by the agency to carry a handgun in the course of duty;

"(C) is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun; and

"(D) meets such requirements as have been established by the agency with respect to handguns;

"(2) the term 'qualified former law enforcement officer' means an individual who—

"(A) retired from service with a public agency as a law enforcement officer, other than for reasons of mental disability;

"(B) immediately before such retirement, was a qualified law enforcement officer;

"(C) has a nonforfeitable right to benefits under the retirement plan of the agency;

"(D) meets such requirements as have been established by the State in which the individual resides with respect to training in the use of handguns; and

"(E) is not prohibited by Federal law from receiving a firearm;

"(3) the term 'law enforcement officer' means an individual authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law, and includes corrections, probation, parole, and judicial officers; and

"(4) the term 'appropriate written identification' means, with respect to an individual, a document that—

"(A) was issued to the individual by the public agency with which the individual serves or served as a law enforcement officer; and

"(B) identifies the holder of the document as a current or former officer, agent, or employee of the agency.".

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 926A the following new item:

"926B. Carrying of concealed handguns by qualified current and former law enforcement officers.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of the enactment of this Act.•

By Mr. BAUCUS (for himself, Mr. GRASSLEY and Mr. ROCKEFELLER):

S. 963. A bill to amend the Medicare Program under title XVIII of the Social Security Act to improve rural health services, and for other purposes; to the Committee on Finance.

THE RURAL HEALTH CARE IMPROVEMENT ACT OF 1995

Mr. BAUCUS. Mr. President, I rise to introduce, along with Senator GRASSLEY and Senator ROCKEFELLER, the Rural Health Care Improvement Act of 1995.

They say that if you have your health, you have everything. Well, I must say that for the small communities all across Montana and America, access to health care is in danger. It is very tough to get good health care in rural parts of our country. What with cuts in Medicare reimbursement, 10 percent of the America's rural hospitals closed in the last decade. Ten percent of our rural hospitals have closed. The trend, unfortunately, shows no signs of improving.

And the rural health care crisis goes beyond access. That is because insurance policies are going up faster for the people who can least afford to pay—that is self-insured people like farmers, ranchers, and small business owners all across our country.

Rural areas also find it harder than cities and suburbs to attract doctors, to attract nurses, to attract people to provide health care. And health care providers in rural areas have less access to state-of-the-art medical technology than their colleagues do in the big cities and in the suburbs.

Yet, the Federal Government's usual approach to rural health care issues is one of indifference. No top-level official has the task of keeping rural health care firmly in line.

Renewing the tax credit for self-insured people was just a start. We need to preserve health care services in small towns. Rural doctors and nurses must be able to use the best available technology. And the Government must give permanent, top-level attention to rural health care issues.

That is the comprehensive strategy that this bill provides.

Let me review it in just brief detail.

First, keeping hospitals and clinics in small rural towns open. It is critical that these clinics stay open.

Our small rural hospitals have suffered for years with rigid and expensive Medicare regulations and Medicare reimbursements too low to let them stay open. So a few years ago I helped pass a bill giving some rural hospitals greater flexibility and Medicare reimbursements high enough to stay open.

This project is called the Medical Assistance Facility, otherwise known as MAF. They operate in Culbertson, Jordan, Circle, Terry, and Ekalaka, serving over 20,000 people.

That might not sound like very many people when you add the towns together, but let me tell you, when you are a town like Circle or Ekalaka, hundreds of miles away from the best of health care service in the world, these small clinics make a big, big difference. They are very important to them. The MAF maintains access to basic, acute, and emergency care services and provides inpatient care for up to 4 days. They have received glowing reviews from health experts, and other States have called in to ask how they can set up similar facilities.

But most important, people in these towns believe it is irreplaceable. Walter Busch, the administrator of Roosevelt Medical Center in Culbertson, had this to say:

The medical assistance facility has improved access to quality health care services in a cost-effective manner. It has restored health care services to four remote, rural communities and prevented loss of services

in two others. It is a very flexible program and yet one that has provided consistently high quality care.

Let me underline that point, Mr. President. Without MAF's, medical assistance facilities, or similar clinics, many small towns would have virtually no health care service. The MAF preserves health services and it saves money. A new GAO report will show that the MAF saved over $60,000 per 172 patients. So especially when the leadership's proposed Medicare and Medicaid cuts will so drastically increase the pressure on rural hospitals, we must keep them open. Our legislation makes the MAF permanent and allows similar facilities to open up all over rural America.

The second section offers grants for what is called telemedicine. These grants will let rural doctors and nurses upgrade their telecommunications and use modern computer networks to confer with specialists in other parts of our country. So a family practitioner, for example, with a tough case in Fergus County or on the Hi-line can have access to diagnostic files and also access to techniques at the National Institutes of Health or the Centers for Disease Control.

Just think of it. With the computer, a doctor or a nurse in a very small town in a small clinic can have access to files and techniques of the very best all around the Nation. They might not be able to use all the techniques, but at least he or she knows what is available and has a lot better access, a lot better information and can give better treatment for that patient.

We also include another program of grants to encourage networking among rural health care providers. This would let them share information on equipment and also, again, share techniques specifically designed for rural areas and also help allow much more cooperation and also more effective cooperation than exists today.

Third and last is a new permanent position of Assistant Secretary for Rural Health at the Department of Health and Human Services in Washington, DC. My State of Montana and a lot of States need more advocates within the Federal Government. People living in very rural, isolated areas need better advocates and more advocates in the Federal Government, more people who understand our unique problems and will push for solutions because, after all, there are a lot more people in the cities who push for city solutions. We need some way to kind of counterbalance, Mr. President, the advantage that the city folks have so that people in rural areas at least have someone to stand up for them and argue their case so that problems are not further exacerbated because they do not have someone.

So when this bill passes, the Department of Health and Human Services, with its hundreds of thousands of employees, will have a top-level official whose job it is to remember small towns like Culbertson, MT.

This will put a higher priority on rural health care and make sure that we have someone in the room when final decisions are made, for example, on Medicare or Medicaid and other health care programs.

Mr. President, rural America deserves fairness just like urban, big city America needs fairness. We in rural America deserve the same access to top-quality doctors and nurses, to new medical technologies and to basic health care just as everybody else does in America. And through this bill, without much expense, rural America can get fairness. It is just that simple.

I ask unanimous consent, Mr. President, to include a copy of the bill in the RECORD.

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

S. 963

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rural Health Improvement Act of 1995".

SEC. 2. MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—The Congress finds the following:

(A) One-quarter of the United States population, or about 65 million persons, reside in rural areas. Rural areas have a larger proportion of elderly residents. Rural populations have a higher infant mortality rate, and a 40-percent higher rate of death from accidents.

(B) Rural hospitals are forced to comply with burdensome and inflexible medicare requirements that do not fit the realities of the rural environment.

(C) Rural hospitals are inadequately reimbursed by the medicare program.

(D) Inadequate medicare reimbursement and burdensome and inflexible requirements contribute to the high closure rate among rural hospitals, resulting in reduced access to primary care and emergency services for millions of rural residents.

(E) Medical assistance facilities have been operating in Montana since 1990 and rural primary care hospitals have been operating since 1993. Both programs help rural hospitals adapt to the changing health care needs of the local community.

(F) The Inspector General of the Department of Health and Human Services has found that medical assistance facilities—

(i) provide access to health care in remote rural areas; and

(ii) are cost efficient.

(G) The Inspector General of the Department of Health and Human Services found that flexible medicare requirements are key to the success of medical assistance facilities.

(H) Twenty-one States applied to the Essential Access Hospital (EACH) program authorized in the Omnibus Budget Reconciliation Act of 1989. Seven States, West Virginia, California, Colorado, Kansas, New York, North Carolina, and South Dakota were awarded grants. Eleven hospitals have been designated rural primary care hospitals since final Federal regulations became effective in 1993.

(I) Medical assistance facilities and rural primary care hospitals promote the development of rural health care networks and result in increased access for rural residents to a variety of health care services.

(2) PURPOSE.—The purpose of this section is to establish the medicare rural hospital flexibility program and to allow all States to develop critical access hospitals.

(b) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.—Section 1820 of the Social Security Act (42 U.S.C. 1395i-4) is amended to read as follows:

"MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM

"SEC. 1820. (a) PURPOSE.—The purpose of this section is to—

"(1) ensure access to health care services for rural communities by allowing hospitals to be designated as critical access hospitals if such hospitals limit the scope of available inpatient acute care services;

"(2) provide more appropriate and flexible staffing and licensure standards;

"(3) enhance the financial security of critical access hospitals by requiring that medicare reimburse such facilities on a reasonable cost basis; and

"(4) promote linkages between critical access hospitals designated by the State under this section and broader programs supporting the development of and transition to integrated provider networks.

"(b) ESTABLISHMENT.—Any State that submits an application in accordance with subsection (c) may establish a medicare rural hospital flexibility program described in subsection (d).

"(c) APPLICATION.—A State may establish a medicare rural hospital flexibility program described in subsection (d) if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing—

"(1) assurances that the State—

"(A) has developed, or is in the process of developing, a State rural health care plan that—

"(i) provides for the creation of one or more rural health networks (as defined in subsection (e)) in the State,

"(ii) promotes regionalization of rural health services in the State, and

"(iii) improves access to hospital and other health services for rural residents of the State;

"(B) has developed the rural health care plan described in subparagraph (A) in consultation with the hospital association of the State, rural hospitals located in the State, and the State Office of Rural Health (or, in the case of a State in the process of developing such plan, that assures the Secretary that the State will consult with its State hospital association, rural hospitals located in the State, and the State Office of Rural Health in developing such plan);

"(2) assurances that the State has designated (consistent with the rural health care plan described in paragraph (1)(A)), or is in the process of so designating, rural nonprofit or public hospitals or facilities located in the State as critical access hospitals; and

"(3) such other information and assurances as the Secretary may require.

"(d) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM DESCRIBED.—

"(1) IN GENERAL.—A State that has submitted an application in accordance with subsection (c), may establish a medicare rural

hospital flexibility program that provides that—

"(A) the State shall develop at least one rural health network (as defined in subsection (e)) in the State; and

"(B) at least one facility in the State shall be designated as a critical access hospital in accordance with paragraph (2).

"(2) STATE DESIGNATION OF FACILITIES.—

"(A) IN GENERAL.—A State may designate one or more facilities as a critical access hospital in accordance with subparagraph (B).

"(B) CRITERIA FOR DESIGNATION AS CRITICAL ACCESS HOSPITAL.—A State may designate a facility as a critical access hospital if the facility—

"(i) is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1886(d)(2)(D)) that—

"(I) is located more than a 35-mile drive from a hospital, or another facility described in this subsection, or

"(II) is certified by the State as being a necessary provider of health care services to residents in the area; and

"(ii) makes available 24-hour emergency care services that a State determines are necessary for ensuring access to emergency care services in each area served by a critical access hospital;

"(iii) provides not more than 15 acute care inpatient beds (meeting such standards as the Secretary may establish) for providing inpatient care for a period not to exceed 96 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions), except that a peer review organization or equivalent entity may, on request, waive the 96-hour restriction on a case-by-case basis;

"(iv) meets such staffing requirements as would apply under section 1861(e) to a hospital located in a rural area, except that—

"(I) the facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open and fully staffed, except insofar as the facility is required to make available emergency care services as determined under clause (ii) and must have nursing services available on a 24-hour basis, but need not otherwise staff the facility except when an inpatient is present,

"(II) the facility may provide any services otherwise required to be provided by a full-time, on site dietician, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off site basis under arrangements as defined in section 1861(w)(1), and

"(III) the inpatient care described in clause (iii) may be provided by a physician's assistant, nurse practitioner, or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility; and

"(v) meets the requirements of subparagraph (I) of paragraph (2) of section 1861(aa).

"(e) RURAL HEALTH NETWORK DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'rural health network' means, with respect to a State, an organization consisting of—

"(A) at least 1 facility that the State has designated or plans to designate as a critical access hospital, and

"(B) at least 1 hospital that furnishes acute care services.

"(2) AGREEMENTS.—

"(A) IN GENERAL.—Each critical access hospital that is a member of a rural health network shall have an agreement with respect to each item described in subparagraph (B) with at least 1 hospital that is a member of the network.

"(B) ITEMS DESCRIBED.—The items described in this subparagraph are the following:

"(i) Patient referral and transfer.

"(ii) The development and use of communications systems including (where feasible)—

"(I) telemetry systems, and

"(II) systems for electronic sharing of patient data.

"(iii) The provision of emergency and nonemergency transportation among the facility and the hospital.

"(C) CREDENTIALING AND QUALITY ASSURANCE.—Each critical access hospital that is a member of a rural health network shall have an agreement with respect to credentialing and quality assurance with at least 1—

"(i) hospital that is a member of the network;

"(ii) peer review organization or equivalent entity; or

"(iii) other appropriate and qualified entity identified in the State rural health care plan.

"(f) CERTIFICATION BY THE SECRETARY.—The Secretary shall certify a facility as a critical access hospital if the facility—

"(1) is located in a State that has established a medicare rural hospital flexibility program in accordance with subsection (d);

"(2) is designated as a critical access hospital by the State in which it is located; and

"(3) meets such other criteria as the Secretary may require.

"(g) PERMITTING MAINTENANCE OF SWING BEDS.—Nothing in this section shall be construed to prohibit a State from designating or the Secretary from certifying a facility as a critical access hospital solely because, at the time the facility applies to the State for designation as a critical access hospital, there is in effect an agreement between the facility and the Secretary under section 1883 under which the facility's inpatient hospital facilities are used for the furnishing of extended care services, except that the number of beds used for the furnishing of such services may not exceed the total number of licensed inpatient beds at the time the facility applies to the State for such designation (minus the number of inpatient beds used for providing inpatient care in the facility pursuant to subsection (d)(2)(A)(iii)). For purposes of the previous sentence, the number of beds of the facility used for the furnishing of extended care services shall not include any beds of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a critical access hospital.

"(h) GRANTS.—

"(1) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.—The Secretary may award grants to States that have submitted applications in accordance with subsection (c) for—

"(A) engaging in activities relating to planning and implementing a rural health care plan;

"(B) engaging in activities relating to planning and implementing rural health networks; and

"(C) designating facilities as critical access hospitals.

"(2) RURAL EMERGENCY MEDICAL SERVICES.—

"(A) IN GENERAL.—The Secretary may award grants to States that have submitted applications in accordance with subparagraph (B) for the establishment or expansion of a program for the provision of rural emergency medical services.

"(B) APPLICATION.—An application is in accordance with this subparagraph if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing the assurances described in subparagraphs (A)(ii), (A)(iii), and (B) of subsection (c)(1) and paragraph (3) of such subsection.

"(i) GRANDFATHERING OF CERTAIN FACILITIES.—

"(1) IN GENERAL.—Any medical assistance facility operating in Montana and any rural primary care hospital designated by the Secretary under this section prior to the date of the enactment of the Rural Health Improvement Act of 1995 shall be deemed to have been certified by the Secretary under subsection (f) as a critical access hospital if such facility or hospital is otherwise eligible to be designated by the State as a critical access hospital under subsection (d).

"(2) CONTINUATION OF MEDICAL ASSISTANCE FACILITY AND RURAL PRIMARY CARE HOSPITAL TERMS.—Notwithstanding any other provision of this title, with respect to any medical assistance facility or rural primary care hospital described in paragraph (1), any reference in this title to a 'critical access hospital' shall be deemed to be a reference to a 'medical assistance facility' or 'rural primary care hospital'.

"(j) WAIVER OF CONFLICTING PART A PROVISIONS.—The Secretary is authorized to waive such provisions of this part and part C as are necessary to conduct the program established under this section.

"(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Federal Hospital Insurance Trust Fund for making grants to all States under subsection (h), $25,000,000 in each of the fiscal years 1996 through 2000.".

(c) REPORT ON ALTERNATIVE TO 96-HOUR RULE.—Not later than January 1, 1996, the Administrator of the Health Care Financing Administration shall submit to the Congress a report on the feasibility of, and administrative requirements necessary to establish an alternative for certain medical diagnoses (as determined by the Administrator) to the 96-hour limitation for inpatient care in critical access hospitals required by section 1820(d)(2)(B)(iii).

(d) PART A AMENDMENTS RELATING TO RURAL PRIMARY CARE HOSPITALS AND CRITICAL ACCESS HOSPITALS.—

(1) DEFINITIONS.—Section 1861(mm) of the Social Security Act (42 U.S.C. 1395x(mm)) is amended to read as follows:

"CRITICAL ACCESS HOSPITAL; CRITICAL ACCESS HOSPITAL SERVICES

"(mm)(1) The term 'critical access hospital' means a facility certified by the Secretary as a critical access hospital under section 1820(f).

"(2) The term 'inpatient critical access hospital services' means items and services, furnished to an inpatient of a critical access hospital by such facility, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.".

(2) COVERAGE AND PAYMENT.—(A) Section 1812(a)(1) of such Act (42 U.S.C. 1395d(a)(1)) is amended by striking "or inpatient rural primary care hospital services" and inserting "or inpatient critical access hospital services".

(B) Section 1814 of such Act (42 U.S.C. 1395f) is amended—

(i) on subsection (a)(8)—

(I) by striking "rural primary care hospital" each place it appears and inserting "critical access hospital"; and

(II) by striking "72" and inserting "96";

(ii) in subsection (b), by striking "other than a rural primary care hospital providing inpatient rural primary care hospital services," and inserting "other than a critical access hospital providing inpatient critical access hospital services,"; and

(iii) by amending subsection (*l*) to read as follows:

"(*l*) PAYMENT FOR INPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—The amount of payment under this part for inpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.".

(3) TREATMENT OF CRITICAL ACCESS HOSPITALS AS PROVIDERS OF SERVICES.—(A) Section 1861(u) of such Act (42 U.S.C. 1395x(u)) is amended by striking "rural primary care hospital" and inserting "critical access hospital".

(B) The first sentence of section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended by striking "a rural primary care hospital" and inserting "a critical access hospital".

(4) CONFORMING AMENDMENTS.—(A) Section 1128A(b)(1) of such Act (42 U.S.C. 1320a–7a(b)(1)) is amended by striking "rural primary care hospital" each place it appears and inserting "critical access hospital".

(B) Section 1128B(c) of such Act (42 U.S.C. 1320a–7b(c)) is amended by striking "rural primary care hospital" and inserting "critical access hospital".

(C) Section 1134 of such Act (42 U.S.C. 1320b–4) is amended by striking "rural primary care hospitals" each place it appears and inserting "critical access hospitals".

(D) Section 1138(a)(1) of such Act (42 U.S.C. 1320b–8(a)(1)) is amended—

(i) in the matter preceding subparagraph (A), by striking "rural primary care hospital" and inserting "critical access hospital"; and

(ii) in the matter preceding clause (i) of subparagraph (A), by striking "rural primary care hospital" and inserting "critical access hospital".

(E) Section 1816(c)(2)(C) of such Act (42 U.S.C. 1395h(c)(2)(C)) is amended by striking "rural primary care hospital" and inserting "critical access hospital".

(F) Section 1833 of such Act (42 U.S.C. 1395*l*) is amended—

(i) in subsection (h)(5)(A)(iii), by striking "rural primary care hospital" and inserting "critical access hospital";

(ii) in subsection (i)(1)(A), by striking "rural primary care hospital" and inserting "critical access hospital";

(iii) in subsection (i)(3)(A), by striking "rural primary care hospital services" and inserting "critical access hospital services";

(iv) in subsection (*l*)(5)(A), by striking "rural primary care hospital" each place it appears and inserting "critical access hospital"; and

(v) in subsection (*l*)(5)(B), by striking "rural primary care hospital" each place it appears and inserting "critical access hospital".

(G) Section 1835(c) of such Act (42 U.S.C. 1395n(c)) is amended by striking "rural primary care hospital" each place it appears and inserting "critical access hospital".

(H) Section 1842(b)(6)(A)(ii) of such Act (42 U.S.C. 1395u(b)(6)(A)(ii)) is amended by striking "rural primary care hospital" and inserting "critical access hospital"..

(I) Section 1861 of such Act (42 U.S.C. 1395x) is amended—

(i) in the last sentence of subsection (e), by striking "rural primary care hospital" and inserting "critical access hospital";

(ii) in subsection (v)(1)(S)(ii)(III), by striking "rural primary care hospital" and inserting "critical access hospital";

(iii) in subsection (w)(1), by striking "rural primary care hospital" and inserting "critical access hospital"; and

(iv) in subsection (w)(2), by striking "rural primary care hospital" each place it appears and inserting "critical access hospital".

(J) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by striking "rural primary care hospital" each place it appears and inserting "critical access hospital".

(K) Section 1866(a)(1) of such Act (42 U.S.C 1395cc(a)(1)) is amended—

(i) in subparagraph (F)(ii), by striking "rural primary care hospitals" and inserting "critical access hospitals";

(ii) in subparagraph (H), in the matter preceding clause (i), by striking "rural primary care hospitals" and "rural primary care hospital services" and inserting "critical access hospitals" and "critical access hospital services", respectively;

(iii) in subparagraph (I), in the matter preceding clause (i), by striking "rural primary care hospital" and inserting "critical access hospital"; and

(iv) in subparagraph (N)—

(I) in the matter preceding clause (i), by striking "rural primary hospitals" and inserting "critical access hospitals", and

(II) in clause (i), by striking "rural primary care hospital" and inserting "critical access hospital".

(L) Section 1866(a)(3) of such Act (42 U.S.C 1395cc(a)(3)) is amended—

(i) by striking "rural primary care hospital" each place it appears in subparagraphs (A) and (B) and inserting "critical access hospital"; and

(ii) in subparagraph (C)(ii)(II), by striking "rural primary care hospitals" each place it appears and inserting "critical access hospitals".

(M) Section 1867(e)(5) of such Act (42 U.S.C. 1395dd(e)(5)) is amended by striking "rural primary care hospital" and inserting "critical access hospital".

(e) PAYMENT CONTINUED TO DESIGNATED EACHs.—Section 1886(d)(5)(D) of such Act (42 U.S.C. 1395ww(d)(5)(D)) is amended—

(1) in clause (iii)(III), by inserting "as in effect on September 30, 1995" before the period at the end; and

(2) in clause (v)—

(A) by inserting "as in effect on September 30, 1995" after "1820(i)(1)"; and

(B) by striking "1820(g)" and inserting "1820(e)".

(f) PART B AMENDMENTS RELATING TO CRITICAL ACCESS HOSPITALS.—

(1) COVERAGE.—(A) Section 1861(mm) of the Social Security Act (42 U.S.C. 1395x(mm)) as amended by subsection (d)(1), is amended by adding at the end the following new paragraph:

"(3) The term 'outpatient critical access hospital services' means medical and other health services furnished by a critical access hospital on an outpatient basis.".

(B) Section 1832(a)(2)(H) of such Act (42 U.S.C. 1395k(a)(2)(H)) is amended by striking "rural primary care hospital services" and inserting "critical access hospital services".

(2) PAYMENT.—(A) Section 1833(a) of such Act (42 U.S.C. 1395*l*(a)) is amended in paragraph (6), by striking "outpatient rural primary care hospital services" and inserting "outpatient critical access services".

(B) Section 1834(g) of such Act (42 U.S.C. 1395m(g)) is amended to read as follows—

"(g) PAYMENT FOR OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—The amount of payment under this part for outpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after October 1, 1995.

SEC. 3. OFFICE OF RURAL HEALTH POLICY.

(a) APPOINTMENT OF ASSISTANT SECRETARY.—

(1) IN GENERAL.—Section 711(a) of the Social Security Act (42 U.S.C. 912(a)) is amended—

(A) by striking "by a Director, who shall advise the Secretary" and inserting "by an Assistant Secretary for Rural Health (in this section referred to as the 'Assistant Secretary'), who shall report directly to the Secretary"; and

(B) by adding at the end the following new sentence: "The Office shall not be a component of any other office, service, or component of the Department.".

(2) CONFORMING AMENDMENTS.—(A) Section 711(b) of the Social Security Act (42 U.S.C. 912(b)) is amended by striking "the Director" and inserting "the Assistant Secretary".

(B) Section 338J(a) of the Public Health Service Act (42 U.S.C. 254r(a)) is amended by striking "Director of the Office of Rural Health Policy" and inserting "Assistant Secretary for Rural Health".

(C) Section 464T(b) of the Public Health Service Act (42 U.S.C. 285p–2(b)) is amended in the matter preceding paragraph (1) by striking "Director of the Office of Rural Health Policy" and inserting "Assistant Secretary for Rural Health".

(D) Section 6213 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 1395x note) is amended in subsection (e)(1) by striking "Director of the Office of Rural Health Policy" and inserting "Assistant Secretary for Rural Health".

(E) Section 403 of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 U.S.C. 300ff–11 note) is amended in the matter preceding paragraph (1) of subsection (a) by striking "Director of the Office of Rural Health Policy" and inserting "Assistant Secretary for Rural Health".

(3) AMENDMENT TO THE EXECUTIVE SCHEDULE.—Section 5315 of title 5, United States Code, is amended by striking "Assistant Secretaries of Health and Human Services (6)" and inserting "Assistant Secretaries of Health and Human Services (7)".

(b) EXPANSION OF DUTIES.—Section 711(a) of the Social Security Act (42 U.S.C. 912(a)) is amended by striking "and access to (and the quality of) health care in rural areas" and inserting "access to, and quality of, health care in rural areas, and reforms to the health care system and the implications of such reforms for rural areas".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

SEC. 4. MEDICARE REIMBURSEMENT FOR TELEMEDICINE SERVICES.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) the use of telemedicine services can increase access to specialized health care for rural residents; and

(2) although telemedicine services are currently being furnished to medicare beneficiaries across the country, providers of telemedicine services do not receive reimbursement for such services under the medicare program.

(b) PURPOSE.—It is the purpose of this section to improve access to specialized health services for rural medicare beneficiaries by

requiring the medicare program to reimburse providers for furnishing telemedicine services.

(c) METHODOLOGY FOR DETERMINING PAYMENT.—Not later than January 1, 1996, the Secretary of Health and Human Services shall develop and submit to the Congress a recommendation on a methodology for determining payments under title XVIII of the Social Security Act for telemedicine services (as defined by the Secretary).

By Mr. JOHNSTON:

S. 964. A bill to amend the Land and Water Conservation Fund Act of 1965 with respect to fees for admission into units of the National Park System and for other purposes; to the Committee on Energy and Natural Resources.

THE PARK RENEWAL FUND ACT

Mr. JOHNSTON. Mr. President, today I am introducing the Park Renewal Fund Act. This legislation would grant the Secretary of the Interior additional authority to impose and collect entrance fees at units of the National Park System and deposit those increased revenues in a special fund—the park renewal fund. These moneys could then be used, without the need for further appropriation, to help cover the cost of priority park maintenance and repair projects. The legislation also includes other provisions designed to enhance the Park Service's ability to generate badly needed funds from park users and other non-Federal sources.

Last year, I introduced park fee legislation at the request of the administration. The committee unanimously reported an amended version of that bill late in the session, but no further action was taken in the Senate. The bill I am introducing today is very similar to the version I introduced last year and incorporates the current administration position on park fees. Like last year, it is possible that changes will be made to this bill before it is reported from the committee. I welcome the attention of my colleagues to this bill and urge their support. I also look forward to their input and the input of others on how to improve the legislation. Although I am flexible on many provisions in this bill, there is, in my view, one concept that must be included in the final version of any park fee bill. New fee revenue generated by this legislation must go directly to the parks for use in the parks and not be diverted for nonpark purposes. There is considerable public support for paying higher park entrance fees if those fees are used to enhance the parks and visitor use and enjoyment of them. Without such a provision, there is no need to raise fees and certainly no incentive for the parks to collect them.

Mr. President, I ask unanimous consent that a section-by-section analysis and the text of the bill appear in the RECORD.

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

S. 964

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This act may be cited as the "The Park Renewal Fund Act."

SEC. 2. FEES.

(a) ADMISSION FEES.—Section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(a)) is amended as follows:

(1) Delete "fee-free travel areas" and "lifetime admission permit" from the title of this section.

(2) In paragraph (a)(1)(A)(i) by striking the first and second sentences and inserting in lieu thereof, "For admission into any such designated area, an annual admission permit (to be known as the Golden Eagle Passport) shall be available for a fee and under such conditions as to be determined by the Secretary of the Interior and the Secretary of Agriculture."

(3) In paragraph (a)(1)(B) by striking the second sentence.

(4) Delete paragraph (a)(2) in its entirety and insert in lieu thereof: "Reasonable admission fees for a single visit to any designated unit shall be established by the administering Secretary for persons who choose not to purchase the annual permit. A "single visit" means a continuous stay within a designated unit. Payment of a single visit admission fee shall authorize exits from and reentries to a designated unit for a period to be defined for each designated unit by the administering Secretary based upon a determination of the period of time reasonably and ordinarily necessary for such a single visit.

(5) In paragraph (a)(3) by inserting the word "Great" in the third sentence before "Smoky".

(6) In paragraph (a)(3) delete the last sentence.

(7) Delete paragraph (a)(4) in its entirety and insert in lieu thereof: "The Secretary of the Interior and the Secretary of Agriculture shall establish procedures for discounted admission fees to any citizen of, or person legally domiciled in, the United States sixty-two years of age or older, such discount to be received upon proof of age. Any such discount will be non-transferable, applied only to the individual qualifying on the basis of age, and given notwithstanding the method of travel. No fees of any kind shall be collected from any persons who have a right of access for hunting or fishing privileges under a specific provision of law or treaty or who are engaged in the conduct of official Federal, State, or local Government business."

(8) Delete paragraph (a)(5) in its entirety and insert in lieu thereof: "The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit to any citizen of, or person legally domiciled in, the United States, if such citizen or person applies for such permit and is permanently disabled. Such procedures shall assure that such permit shall be issued only to persons who have been medically determined to be permanently disabled. Such permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee and one accompanying individual to general admission into any area designated pursuant to this subsection, notwithstanding the method of travel.

(9) In paragraph (a)(6)(A) by striking "No later than 60 days after December 22, 1987" and inserting "No later than six months after enactment" and striking "Interior and Insular Affairs" and inserting "Resources".

(10) Delete paragraphs (a)(9) and (a)(11) in their entirety. Renumber current paragraph "(10)" as "(9)" and current paragraph "(12)" as "(10)".

(b) RECREATION FEES.—Section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(b)) is amended as follows:

(1) Delete "fees for Golden Age Passport permittees" from section title.

(2) Delete the following: "personal collection of the fee by an employee or agent of the Federal agency operating the facility".

(3) Deleting "Any Golden Age Passport permittee, or" and inserting thereof "Any".

(c) CRITERIA, POSTING AND UNIFORMITY OF FEES.—Section 4(d) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(d)) is amended by deleting from the first sentence, "recreation fees charged by non-Federal public agencies," and inserting in lieu thereof "fees charged by other public and private entities,".

(d) RULES AND REGULATIONS.—Section 4(e) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(e)) is amended by deleting "of not more than $100." and inserting in lieu thereof "as provided by law."

(e) FEDERAL AND STATE LAWS UNAFFECTED.—Section 4(g) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(g)) is amended by deleting the following in the first sentence "or fees or charges for commercial or other activities not related to recreation," and inserting "*Provided*, however, in those park areas under partial (if applicable) or exclusive jurisdiction of the United States where state fishing licenses are not required, the National Park Service may charge a fee for fishing.".

(f) TECHNICAL AMENDMENTS.—Section 4(h) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(h)) is amended—

(1) by striking "Bureau of Outdoor Recreation" and inserting in lieu thereof, "National Park Service";

(2) by striking "Interior and Insular Affairs of the United States House of Representatives and United States Senate" and inserting in lieu thereof, "Resources of the United States House of Representatives and on Energy and Natural Resources of the United States Senate"; and

(3) by striking "Bureau" and inserting in lieu thereof, "National Park Service".

(g) USE OF FEES.—Section 4(i) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(i)) is amended as follows:

(1) After "(i)" by inserting "USE OF FEES.—".

(2) In the first sentence of subparagraph (B) by striking "fee collection costs for that fiscal year" and inserting in lieu thereof, "fee collection costs for the immediately preceding fiscal year" and by striking "section in that fiscal year" and inserting in lieu thereof, "section in such immediately preceding fiscal year."

(3) In the second sentence of subparagraph (B) by striking "in that fiscal year".

(4) By adding the following at the end of paragraph (1): "(C) Notwithstanding subparagraph (A), beginning in fiscal year 1996 and each fiscal year thereafter, all additional fee revenue generated by the National Park Service through enactment of this legislation, as authorized to be collected pursuant to subsection 4 (a) and (b), shall be covered into a special fund established in the Treasury of the United States to be known as the 'National Park Renewal Fund'. In fiscal year 1997 and each fiscal year thereafter, the

amount of additional fee revenue generated in the immediately preceding fiscal year by the National Park Service through enactment of this legislation shall be available to the Secretary of the Interior, without further provision in appropriations acts, for infrastructure needs at parks including but not limited to facility refurbishment, repair and replacement, interpretive media and exhibit repair and replacement, and infrastructure projects associated with park resource protection. Such amounts shall remain available until expended. The Secretary shall develop procedures for the use of the fund that ensure accountability and demonstrated results consistent with the purposes of this Act. Beginning the first full fiscal year after the creation of the "National Park Renewal Fund", the Secretary shall submit an annual report to the Congress, on a unit-by-unit basis, detailing the expenditures of such receipts. In fiscal year 1996 only, fees authorized to be collected pursuant to subsections 4 (a) and (b) of this Act may be collected only to the extent provided in advance in appropriations acts.

(5) Paragraph (4)(A) is amended by striking "resource protection, research, and interpretation" and inserting in lieu thereof, "park operations".

(h) SELLING OF PERMITS.—Section 4(k) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(k)) is amended by:

(1) striking "selling of annual admission permits by public and private entities under arrangements with collecting agency head" from the title of this section, and

(2) deleting the last two sentences, regarding the sale of Golden Eagle Passports, from this section.

(i) CHARGES FOR TRANSPORTATION PROVIDED BY THE NATIONAL PARK SERVICE—

(1) Section 4(l)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(1)) is amended by striking the word "viewing" from the section title and inserting in lieu thereof "visiting".

(2) Section 4(l)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(1)) is amended by deleting the word "view" and inserting in lieu thereof "visit".

(3) Section 4(l)(2) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(1)) is amended by deleting paragraph (2) and inserting in lieu thereof: "Notwithstanding any other provision of law, the charges imposed under paragraph (1) shall be retained by the unit of the National Park System at which the service was provided. The amount retained shall be expended for costs associated with the transportation systems at the unit where the charge was imposed."

(j) COMMERCIAL TOUR FEES.—Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(n)) is amended by striking section (2) in its entirety and inserting in lieu thereof: "(2) The Secretary shall establish a flat fee, per entry, for such vehicles. The amount of the said flat fee shall reflect both the commercial tour use fee rate and current admission rates."

(k) FEES FOR SPECIAL USES.—Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a) is amended by adding the following at the end thereof:

"(o) FEES FOR COMMERCIAL/NONRECREATIONAL USES.—Utilizing the criteria established in Section 4(d) (16 U.S.C. 460*l*–6a(d)), the Secretary of the Interior shall establish reasonable fees for non-recurring commercial or non-recreational uses of National Park System units that require special arrangements, including permits. At a minimum, such fees will cover all costs of providing necessary services associated with such use, except that at the Secretary's discretion, the Secretary may waive or reduce such fees in the case of any organization using an area within the National Park System for activities which further the goals of the National Park Service. Receipts from such fees may be retained at the park unit in which the use takes place, and remain available, without further appropriation, to cover the cost of providing such services. The portion of such fee which exceeds the cost of providing necessary services associated with such use shall be deposited into the National Park Renewal Fund."

(1) FEE AUTHORITY.—Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a) is amended by adding the following new subsection at the end thereof:

(p) ADMISSION OR RECREATION USE FEES.—No admission or recreation use fee of any kind shall be charged or imposed for entrance into, or use of, any federally owned area operated and maintained by a Federal agency and used for outdoor recreation purposes, except as provided for by this Act.".

SEC. 3. PROHIBITION OF COMMERCIAL VEHICLES, DELAWARE WATER GAP NATIONAL RECREATION AREA.

(a) IN GENERAL.—Effective at noon on September 30, 2005, the use of Highway 209 within the Delaware Water Gap National Recreation Area by commercial vehicles, when such us is not connected with the operation of the recreation area, is prohibited, except as provided in section (b).

(b) LOCAL BUSINESS USE PROTECTED.—Subsection (a) does not apply with respect to the use of commercial vehicles to serve businesses located within or in the vicinity of the recreation area, as determined by the Secretary.

(c) CONFORMING PROVISIONS.—(1) Paragraphs (1) through (3) of the third undesignated paragraph under the heading "ADMINISTRATIVE PROVISIONS" in chapter VII of title I of Public Law 98–63 (97 Stat. 329), are repealed, effective September 30, 2005.

(2) Prior to noon on September 30, 2005, the Secretary shall collect and utilize a commercial use fee from commercial vehicles in accordance with paragraphs (1) through (3) of such third undesignated paragraph. Such fee shall not exceed $25 per trip.

SEC. 4. CHALLENGE COST SHARE AGREEMENTS.

(a) AGREEMENTS.—The Secretary of the Interior is authorized to negotiate and enter into challenge cost-share agreements with cooperators. For purposes of this section, the term—

(1) "challenge cost-share agreement" means any agreement entered into between the Secretary and any cooperator for the purpose of sharing costs or services in carrying out authorized functions and responsibilities of the Secretary with respect to any unit or program of the National Park System (as defined in section 2(a) of the Act of August 8, 1953 (16 U.S.C. 1c(a)), any affiliated area, or designated National Scenic or Historic Trail; and

(2) "cooperator" means any State or local government, public or private agency, organization, institution, corporation, individual, or other entity.

(b) USE OF FEDERAL FUNDS.—In carrying out challenge cost-share agreements, the Secretary is authorized to provide the Federal funding share from any funds available to the National Park Service.

SEC. 5. DONATIONS

(a) REQUESTS FOR DONATIONS.—In addition to the Secretary's other authorities to accept the donation of lands, buildings, other property, services, and moneys for the purposes of the National Park System, the Secretary is authorized to solicit donations of money, property, and services from individuals, corporations, foundations and other potential donors who the Secretary believes would wish to make such donations as an expression of support for the national parks. Such donations may be accepted and used for any authorized purpose or program of the National Park Service, and donations of money shall remain available for expenditure without fiscal year limitation. Any employees of the Department to whom this authority is delegated shall be set forth in the written guidelines issued by the Secretary pursuant to paragraph (d).

(b) EMPLOYEE PARTICIPATION.—Employees of the National Park Service may solicit donations only if the request is incidental to or in support of, and does not interfere with their primary duty of protecting and administering the parks or administering authorized programs, and only for the purpose of providing a level of resource protection, visitor facilities, or services for health and safety projects, recurring maintenance activities, or for other routine activities normally funded through annual agency appropriations. Such requests must be in accordance with the guidelines issued pursuant to subparagraph (d).

(c) PROHIBITIONS.—(1) A donation may not be accepted in exchange for commitment to the donor on the part of the National Park Service or which attaches conditions inconsistent with applicable laws and regulations or that is conditioned upon or will require the expenditure of appropriated funds that are not available to the Department, or which compromises a criminal or civil position of the United States or any of its departments or agencies or the administration authority of any agency of the United States.

(2) In utilizing the authorities contained in this section employees of the National Park Service shall not directly conduct or execute major fund raising campaigns, but may cooperate with others whom the Secretary may designate to conduct such campaigns on behalf of the National Park Service.

(d) GUIDANCE.—(1) The Secretary shall issue written guidelines setting forth those positions to which he has delegated his authority under paragraph (a) and the categories of employees of the National Park Service that are authorized to request donations pursuant to paragraph (b). Such guidelines shall also set forth any limitations on the types of donations that will be requested or accepted as well as the sources of those donations.

(2) The Secretary shall publish guidelines which set forth the criteria to be used in determining whether the solicitation or acceptance of contributions of lands, buildings, other property, services, moneys, and other gifts or donations authorized by this section would reflect unfavorably upon the ability of the Department of the Interior or any employee to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs. The Secretary shall also issue written guidance on the extent of the cooperation that may be provided by National Park Service employees in any major fund raising campaign which the Secretary has designated others to conduct pursuant to paragraph (c)(2).

SEC. 6. COST RECOVERY FOR DAMAGE TO NATIONAL PARK RESOURCES.

Public Law 101–337 is amended as follows:

(a) In section 1 (16 U.S.C. 19jj), by amending subsection (d) to read as follows:

"(d) 'Park system resource' means any living or nonliving resource that is located within the boundaries of a unit of the National Park System, except for resources owned by a non-Federal entity.".

(b) In section 1 (16 U.S.C. 19jj) by adding at the end thereof the following:

"(g) 'Marine or aquatic park system resourse' means any living or non-living part of a marine or aquatic regimen within or is a living part of a marine or aquatic regimen within the boundaries of a unit of the National Park System, except for resources owned by a non-Federal entity.".

(c) In section 2(b) (16 U.S.C. 19jj-1(b)), by striking "any park" and inserting in lieu thereof, "any marine or aquatic park".

SECTION-BY-SECTION—PROPOSED FEE LEGISLATION

Section 1. Entitles the bill the "The Park Renewal Fund Act."

Section 2. Makes several changes to the Land and Water Conservation Fund Act of 1965 to provide the Secretary of the Interior additional authority to manage the National Park Service fee program. Specific changes follow:

(a) Admission Fees:

(1) Strikes "fee-free travel areas" and "lifetime admission permits" from the section title as they were also striken in the text of this section.

(2) Strikes the first and second sentence to eliminate the cap on the amount to be charged for a Golden Eagle Passport ($25) and the language mandating entry coverage under the passport. The new language would authorize the Secretaries of the Interior and Agriculture to set the fee and conditions of coverage.

(3) Strikes the second sentence to eliminate the cap for annual park specific permits. The rest of the section stays intact and ties coverage of this permit to the same conditions to be developed for the Golden Eagle Passport.

(4) Deletes the length of stay limitations, allowing the administering Secretary to establish length of stays for specific units. It would also eliminate the cap on fees to be charged for single visit permits and other restrictions, which would be determined by the administering Secretary.

(5) Makes a technical correction by inserting "Great" before Smoky Mountains National Park.

(6) Deletes the sentence that exempts urban areas from fees. Current law prohibits admission fees at any unit of the National Park System which provides significant outdoor recreational opportunities in an urban environment and to which access is available at multiple locations. While not specifically saying fees would be charged, this change would provide authority for a review of the feasibility of charging fees at these areas.

(7) Authorizes the Secretaries of Interior and Agriculture to modify the Golden Age Passport program as it currently exists. The Secretaries would still be able to establish discounted admission fees upon proof of age. However, the discount would apply only to the eligible individual, and not to persons accompanying that individual, regardless of the method of travel.

(8) Limits coverage under the Golden Access Passport for the disabled to the individual holding the passport and one accompanying individual, regardless of method of travel. It also deletes the word "blind" throughout the paragraph and the portion having to do with the receipts of federal benefits.

(9) Directs the Secretary to provide to Congress within 6 months after enactment a report outlining the changes to be implemented.

(10) Deletes paragraph (a)(9), which states specific areas where fees will not be charged. This would not mean that fees would be charged, but would provide an opportunity for review (e.g., Canaveral National Seashore). Deletes paragraph (a)(11) which established special rates for Grand Tetons, Yellowstone, and Grand Canyon. With new fee authority, special rates as established for these areas would essentially become caps are unnecessary.

(b) Recreation Fees:

(1) Deletes personal collection of camping fees as one of the criteria used in determining whether a fee can be charged at a campground. Many campgrounds have gone to self-registration systems over the years in the effort to more efficiently use personnel. It is an outdated criterion, especially as more efficient and technological changes in collections occur. This section also removes the 50% discount in user fees for those 62 and over, but retains that discount for the disabled.

(c) Amends the criteria used for setting fees to include comparable recreation fees charged by other public and private entities. Current law requires comparison with fees charged by non-federal public entities.

(d) Deletes a $100 cap on fines to comply with the Criminal Fine Improvement Act of 1987 (P.L. 100-185). This Act established uniform maximum fine levels for all Federal petty offenses at $5,000 for individuals and $10,000 for organizations (18 U.S.C. section 3571).

(e) Removes the prohibition on fees or charges for non-recreational and commercial uses. The language inserted addresses those few park areas where state fishing licenses do not apply and are not required because the areas are under either partial or exclusive jurisdiction of the United States. In these park areas (e.g., Glacier, Yellowstone) the legislative jurisdiction means that the United States (National Park Service) has, by cession or retention, all the authority of the state and state fishing laws and regulations do not apply.

(f) Changes the committee names to reflect current titles and conditions.

(g) Use of Fees:

(1) Technical change in the title.

(2 & 3) Allows the 15% retained by the Park Service and other agencies for fee collection costs to be figured on the collections of the previous year, instead of the current year. This will provide for a more accurate figure to be retained, based on a full year's collections, rather than partial year and estimates.

(4) Establishes a National Park Renewal Fund to be used for infrastructure repair, interpretive media and exhibit repair and replacement, and infrastructure projects associated with park resources. The fund would be established in 1996 with funds available beginning in 1997. It would authorize the National Park Service to retain and use, without further appropriation, all new revenue generated by this legislation. Procedures are to be developed for the distribution of these funds by the agency.

(5) Allows amounts covered into the existing U.S. Treasury special account for the National Park Service that are generated from admission fees, to be used for park operations as opposed to limiting their expenditure to resource protection, research, and interpretation.

(h) Deletes language requiring that private entities willing to sell Golden Eagle Passports pay the amount "up front". Also deletes this portion from the section title.

(i) Allows each park to retain 100 percent of receipts from fees for transportation services, when charged in lieu of an admission fee. Parks currently have authority to retain 50 percent of such fee receipts and deposit the remainder in the existing U.S. Treasury special account for the National Park Service, although no fees are currently collected under this authority.

(j) Combines the commercial tour use fee and admission fees for commercial vehicles into a flat fee per entry, for such vehicles. This would simplify fee collection and increase revenue.

(k) Authorizes "reasonable" fees for non-recreational or commercial uses of units that require special arrangements. Receipts from such fees would be retained at the park unit in which the use takes place and remain available to cover the cost of providing such services.

(l) Applies the Land and Water Conservation Fund Act to any federally owned area operated and maintained by a federal agency for outdoor recreation purposes.

Section 3. Renews the Secretary's expired authority to collect fees for commercial vehicles driving through the Delaware Water Gap National Recreation Area in Pennsylvania. Effective September 30, 2005, the park would be closed to commercial vehicles, except for local traffic. This section is identical to HR 536 as passed by the House of Representatives on March 14, 1995.

Section 4. Authorizes the Secretary to enter into challenge cost-share agreements with public or private entities to share the costs of authorized National Park Service activities.

Section 5. Authorizes the Secretary and certain National Park Service employees to seek donations for park purposes, subject to limitations established by guidelines.

Section 6. Allows the Federal government to recover the cost of damages to national park resources and the Secretary to use the money collected to repair damages. This authority would be provided by amending P.L. 101-337, which authorizes the Secretary to recover the cost of damages to national park marine resources, to cover damages to all national park resources.

ADDITIONAL COSPONSORS

S. 426

At the request of Mr. SARBANES, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 426, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia, and for other purposes.

S. 585

At the request of Mr. SHELBY, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 585, a bill to protect the rights of small entities subject to investigative or enforcement action by agencies, and for other purposes.

S. 607

At the request of Mr. WARNER, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 607, a bill to amend the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 691

At the request of Mr. SHELBY, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 691, a bill to amend title XVIII of the Social Security Act to provide for coverage of early detection of prostate cancer and certain drug treatment services under part B of the medicare program, to amend chapter 17 of title 38, United States Code, to provide for coverage of such early detection and treatment services under the programs of the Department of Veterans Affairs, and to expand research and education programs of the National Institutes of Health and the Public Health Service relating to prostate cancer.

S. 724

At the request of Mr. KOHL, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 724, a bill to authorize the Administrator of the Office of Juvenile Justice and Delinquency Prevention Programs to make grants to States and units of local government to assist in providing secure facilities for violent and chronic juvenile offenders, and for other purposes.

S. 890

At the request of Mr. KOHL, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 890, a bill to amend title 18, United States Code, with respect to gun free schools, and for other purposes.

SENATE RESOLUTION 141—TO AUTHORIZE REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. DOLE (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 141

Whereas, in the case of *William D. (Bill) Peterson* v. *The Honorable Senator Orrin G. Hatch*, No. 95-C-0352-S, pending in the United States District Court for the District of Utah, the plaintiff has named Senator Orrin G. Hatch as the defendant;

Whereas, pursuant to sections 702(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1)(1994), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent Senator Orrin G. Hatch in the case of *William D. (Bill) Peterson II* v. *The Honorable Senator Orrin G. Hatch*.

AMENDMENTS SUBMITTED

THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

SHELBY (AND OTHERS) AMENDMENT NO. 1468

Mr. SHELBY (for himself, Mr. BRYAN, Mrs. BOXER, and Mr. SARBANES) proposed an amendment to the bill (S. 240) to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the act; as follows:

On page 134, strike lines 5 through 24, and insert "uncollectible share in proportion to the percentage of responsibility of that defendant, as determined under subsection (c).".

BRYAN AMENDMENT NO. 1469

Mr. BRYAN proposed an amendment to the bill S. 240, supra, as follows:

On page 129, between lines 16 and 17, insert the following:

SEC. 111. STATUTE OF LIMITATIONS.

Title I of 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. STATUTE OF LIMITATIONS.

"(a) IN GENERAL.—Except as otherwise provided in this title, an implied private right of action arising under this title may 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.

"(b) EFFECTIVE DATE.—The limitations period provided by this section shall apply to all proceedings commenced after the date of enactment of this section.".

On page 131, strike line 1, and insert the following:

"SEC. 39. PROPORTIONATE LIABILITY.

Amend the table of contents accordingly.

BINGAMAN AMENDMENTS NOS. 1470–1471

(Ordered to lie on the table.)

Mr. BINGAMAN submitted two amendments intended to be proposed by him to the bill S. 240, supra, as follows:

AMENDMENT NO. 1470

Beginning on page 105, strike line 1 and all that follows through page 108, line 17.

On page 108, line 24, strike "(k)" and insert "(j)".

On page 109, line 8, strike "(*l*)" and insert "(k)".

On page 126, line 19, strike "(m)" and insert "(*l*)".

On page 127, line 6, strike "(m)" and insert "(*l*)".

Redesignate sections 104 through 110 as sections 103 through 109, respectively.

Amend the table of contents accordingly.

AMENDMENT NO. 1471

On page 85, strike line 24.

On page 86, line 1, strike "(1) SECURITIES ACT OF 1933.—" and insert the following:

"(a) SECURITIES ACT OF 1933.—".

On page 91, line 11, strike "(2) SECURITIES EXCHANGE ACT OF 1934.—" and insert the following:

"(b) SECURITIES EXCHANGE ACT OF 1934.—".

Beginning on page 96, strike line 25 and all that follows through page 104, line 22.

On page 105, line 5, strike "(j)" and insert "(i)".

On page 106, line 25, strike "(*l*)" and insert "(k)".

On page 108, line 24, strike "(k)" and insert "(j)".

On page 109, line 8, strike "(*l*)" and insert "(k)".

On page 126, line 19, strike "(m)" and insert "(*l*)".

On page 127, line 6, strike "(m)" and insert "(*l*)".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. D'AMATO. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on the future of the Legal Services Corporation, during the session of the Senate on Friday, June 23, 1995, at 9:30 a.m.

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

ADDITIONAL STATEMENTS

MEDICARE REIMBURSEMENT OF INVESTIGATIONAL MEDICAL DEVICES

Mr. GRAMS. Mr. President, I have come to the floor today to express my strong support for S. 955, the Advanced Medical Devices Access Assurance Act, introduced by Senator HATCH.

I believe enactment of this legislation will correct a problem facing many of Minnesota's medical device manufacturers, physicians, and academic medical centers.

The U.S. medical device industry is recognized throughout the world for the unsurpassed quality of its products and innovative technologies which have positioned us as the world's leader in medical device technology.

If we do not address Medicare's failure to reimburse for investigational medical devices involved in clinical trials, we will lose this position.

Large and small medical device manufacturers, many of which are located in my home State of Minnesota, are aggressively developing new devices every day.

The future of these manufacturers is dependent on their ability to bring these technologies to the market through clinical trials and the FDA approval process.

Unfortunately, today, these companies are unable to conduct clinical trials because of the fear and uncertainty surrounding HCFA's reimbursement policy.

By ignoring the benefits of medical device clinical trials, HCFA's policy

will increase hospital stays, increase health care costs, and increase mortality rates.

Each day that we delay reform efforts, doctors continue to be denied the opportunity for needed training, medical device companies continue to move their technologies and jobs overseas, and senior citizens continue to be denied access to the latest, most innovative medical technology.

America's medical technology community deserves better and most importantly, America's senior citizens deserve better.

We can no longer allow HCFA to ignore this pending crisis and as chairman of the Senate medical technology caucus, I look forward to working with Senator HATCH to make this legislation a top priority in the Senate.

PENNSYLVANIA STATION AND THE NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

• Mr. MOYNIHAN. Mr. President, last night the Senate passed the National Highway System legislation, and in so doing determined the future of our Nation's intermodal infrastructure. New York has an important role in an efficient national intermodal system.

A month ago I rose before the Senate to remark how pleased I was that the conference report for the Department of Defense supplemental appropriations bill included an appropriation of $21.5 million for capital improvements associated with safety-related emergency repairs to Pennsylvania Station in New York City. The station is the busiest intermodal station in the Nation, with almost 40 percent of Amtrak's passengers nationwide passing through every day. It is the linchpin for intermodal travel in the United States.

Unfortunately, it is also the most decrepit of the Northeast corridor stations, others of which, such as Washington DC's own Union Station, have been renovated with Federal grants. Today, Pennsylvania Station handles almost 500,000 riders daily in a subterranean complex that demands improvement. According to the New York City Fire Commissioner, there have been nine major fires at the station since 1987. Luckily, these fires have occurred at off-hours. As it stands, the station could not cope with an emergency when it is crowded with the 42,000 souls who pass through every workday between 8 and 9 a.m. In addition, structural steel in the station has shown its age and needs immediate repair. And these are just the most pressing needs.

There is also a need to add capacity as ridership grows. The station, designed in 1963, will not be able to accommodate the growing volume of people. It is projected that by the year 2005, New Jersey Transit ridership will increase 44 percent, Amtrak, 26 percent, and the Long Island Railroad, 9 percent. If we do not act now, pedestrian gridlock will shut us down in 10 years.

Happily, there is a redevelopment plan to change things for the better, a $315 million project to renovate the existing station in the only way possible: across the street into a portion of the neighboring historic James A. Farley Post Office. The plan will nearly double the access to the station's platforms, which lie far below street level beneath both buildings. Moreover, there is a financing plan in place that will accomplish this with $100 million from the Federal Government—$31.5 million has already been appropriated—$100 million from the State and city, and $115 million from a combination of historic tax credits, bonds supported by revenue from the project's retail component, and building shell improvements by the Postal Service, owner of the James A. Farley Building. Governor Pataki of New York and Mayor Giuliani of New York City strongly support the project and have made available funding in their budgets in accordance with a memorandum of agreement signed in August 1994.

Now, $26½ million can be used immediately for pressing safety repairs at the existing station, in the first step of the overall redevelopment effort. These are the first Federal funds into the project that will actually go toward construction, and they will count towards the Federal share of the $315 million project to transform the station into a complex capable of safely handling the crowds that have made Pennsylvania Station the Nation's busiest intermodal facility. The authorization approved in this bill for the remaining Federal share of the project will assure the viability of Pennsylvania Station into the 21st century.•

A TRIBUTE TO GEORGE E. NORCROSS, SR.

• Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to a man who never failed to rise to the challenge of serving his fellow human beings; George E. Norcross, Sr.

George started as a union organizer in the 1940's. He got involved in the labor movement because he understood that working people needed to come together to protect their common interests and promote their common goals. He translated that theory into practice when he founded and served as president of RCA Local 106 in Morrestown, NJ. His responsibilities to the local kept him busy, but they did not prevent him from becoming involved in other activities. His commitment to the labor movement ultimately resulted in his serving as president of the AFL-CIO Central Labor Council of South Jersey. In that capacity, he made sure that the union movement contributed to the community as a whole as well as its members.

George took steps to get the 80,000 members of the central labor council's 73 locals involved in community events. He became active in the United Way and served as chairman of the campaign in 1982 as well as holding other post of responsibility in that organization.

While George recognized the need for larger organizations like the United Way, he never lost sight of the obligation that labor unions themselves had to assist those in needs. He served as president of the union organization for social service which provided services to the community ranging from food banks to job training and clothing drives.

George is the kind of man who believed that Americans ought to care about their neighbors and accept a responsibility to help them. His life has been devoted to basic values: seeing all men and women as brothers and sisters, realizing that we share common dreams and face a common destiny, accepting the obligation and opportunity to give those in need a helping hand.

Mr. President, because of George, literally tens of thousands of lives have been improved and enriched. I join with those tens of thousands in wishing him a rewarding retirement and expressing our appreciation for all he has done, and all that he will continue to do.•

RURAL HEALTH IMPROVEMENT ACT OF 1995

• Mr. ROCKEFELLER. Mr. President, I am very pleased to be here with my colleagues from Montana and Iowa, Senators BAUCUS and GRASSLEY, to introduce a bill for rural America. The point of our bill is to help make sure that the people living in rural areas—who are disproportionately elderly—will be assured access to vital health care services, especially primary care and emergency care services. Our legislation is an effort to make sure that senior citizens are not forced to travel long distances in emergency situations or for simple, but life-saving reasons like getting certain tests.

Getting reliable access to health care services has always been a struggle for the people of rural West Virginia and the rest of the country. Now, as major changes are unfolding in the delivery of health care and throughout the health care system, many rural hospitals are being forced to re-examine and re-focus their mission and their capabilities.

Our bill steps in by giving rural hospitals across the country an important option that rural hospitals in West Virginia and 7 other States already have to be more responsive to the people in their areas. Under this bill, rural hospitals will be relieved of burdensome regulations that may interfere with their ability to meet the most critical health needs of their local community.

Currently, most rural hospitals have only one choice when faced with declining occupancy rates, declining Medicare and Medicaid reimbursement rates, and intense market pressures to lower their costs: closing their doors. Small, rural hospitals are simply not able to take advantage of the "law of large numbers" and economize like larger hospitals can. Under our legislation, when a full-service hospital is no longer sustainable, critical access hospitals will assure rural residents basic access to essential primary care and emergency health care services.

This legislation is modeled on two separate, ongoing rural hospital demonstration projects. It is modeled after a demonstration project in Montana, called the Medical Assistance Facilities or MAF Program which has been in existence since 1990 and the Essential Access Community Hospital and Rural Primary Care Hospital Program, more commonly referred to as the EACH/RPCH Program which exists in seven States.

Under these demonstration programs, limits are placed on the number of licensed beds and patient length of stays in the participating rural hospitals. In exchange, hospitals receive slightly higher Medicare payments to cover the important services they do provide—along with relief from Federal regulations that are intended for full-scale, acute care hospitals.

We believe, based on new cost information collected by the General Accounting Office, that our legislation will actually save the Medicare Program money. By giving hospitals some flexibility on staffing and other Federal regulations, hospitals can staff-up based on their patients' need, not just to meet regulations meant for completely different situations. We want to encourage the development of rural health networks, to help small, rural hospitals save money and improve quality by tapping into the resources of larger, full-service hospitals. The labors of health care should be divided according to who can do what best, but there absolutely is a role for rural hospitals and a reason for Congress to help them survive.

Mr. President, this legislation will make sure that rural residents will have immediate access to emergency care, and that they and their families won't be forced to travel long distances for routine medical care. Rural residents who need just a short stay in the hospital can stay and receive their care at the local hospital rather than traveling to a usually more expensive medical center.

The magnitude of Medicare cuts that are included in this year's budget resolution make this legislation especially critical. We must make sure that rural hospitals have the ability to react to huge Medicare cuts by becoming more efficient and closing down unused beds rather than by simply closing their doors.

I am very proud to note that West Virginia has been a leader in helping small, rural hospitals figure out how to adapt and cope with rapidly changing economic circumstances. Webster County Memorial Hospital and Broaddus Hospital in Philippi were two of the first few hospitals to be designated rural primary care hospitals nationwide. Seven other West Virginia hospitals are currently considering making the transition.

According to Steve Gavalchik, the administrator of the Webster County Memorial Hospital, if they had not been able to take advantage of the EACH/RPCH Program, the hospital might have been able to hang on for only about 16 to 18 months more before being forced to shut its doors. Now, Webster County hospital can focus on doing a few things well. Networking with an essential access community hospital has been invaluable as Webster County has made the transition to a rural primary care hospital. United Hospital Center, their hospital partner, has provided technical assistance, financial advice, quality assurance and quality improvement support.

For the people of Webster County, access to basic and emergency health care services would have been severely curtailed if Webster County Hospital had been forced to close. The nearest hospital is 43 minutes away—in the summer. In the winter, the drive is much more treacherous and takes up to 1½ hours or more. Patients with chronic obstructive pulmonary disease [COPD], diabetes, pneumonia, and congestive heart failure are the most common diagnoses of patients admitted for short term stays. Just imagine if these patients, most of them elderly were forced to travel an hour or so to get routine hospital care, not to mentioned the extra costs that would be involved for them and their families.

Family practice services are now available on site at the hospital because the doctors in the town moved into unused space. The doctors' practice have benefited from sharing resources, and the local health department has moved its headquarters to the hospital complex. As a result, the hospital and the local health department are now working together in ways they would have never thought of before. More important, patients benefit from the ease of having a central place to go to take care of their routine health care needs.

According to the hospital administrator at Broaddus Hospital, Susannah Higgins, Broaddus Hospital was also faced with possible closure prior to being designated an RPCH hospital. Now, Broaddus can function as a mini-hospital. Through its relationships with partner hospitals, Broaddus offers oncology, general surgery, ob-gyn clinic services on-site on a weekly basis. Family practice and internal medicine services are available on a daily basis. Lifesaving emergency services are on-site. Just recently a local resident severed his leg in a logging accident. He was transported to Broaddus Hospital in a private car. By the time he arrived at the emergency room he was in extremely, extremely critical condition. Fortunately, he was able to be stabilized and was later transported to a medical center. If emergency services had not been available in the area, there is a very good chance that man would not be alive today. When minutes and seconds literally count, a helicopter landing pad cannot take the place of having highly trained and qualified emergency doctors and nurses available immediately to stabilize and begin emergency care.

Webster County Memorial Hospital and Broaddus Hospital are examples of how rural communities can adapt to a changing health care marketplace. This legislation builds on the strengths of the current EACH/RPCH program and the Montana MAF program; improves them; and expands them to all 50 States so that rural hospitals all across America will have the same opportunities.

Mr. President, under our bill, newly designated critical access hospitals would be limited to 15 inpatient days and patient stays would have to be the kind involving limited duration—up to 96 hours, although exceptions are allowed in special circumstances, such as inclement weather or a patient's medical condition.

In this bill, we ease up on hospital regulations so that critical access hospitals can meet the needs of their community and not the needs of a Federal bureaucracy. We are not easing up on quality standards but have rather allowed hospitals to use common sense when it comes to staffing and certain other Federal standards. For instance, if there are no inpatient beds occupied, hospitals do not have to have a full complement of hospital staff on duty. Medicare reimbursement would take into account a small, rural hospital's fixed costs and the inability of small, rural hospitals to take advantage of some of the cost-saving measures that larger hospitals can implement.

Our legislation is targeted at the 1,186 rural hospitals nationwide with fewer than 50 beds. While these hospitals are essential to assuring access to health care services in their local communities, these hospitals account for only 2 percent of total Medicare payments to hospitals. Our country's small rural hospitals needs special attention. This legislation gives them that attention and the ability to adapt to a rapidly changing health care world.

Finally, this legislation would require the Secretary of HHS to submit a

report by next January on a methodology for Medicare reimbursement of telemedicine services. I recently, along with my colleague from Maine, Senator SNOWE, included an amendment in the telecommunications bill—that was passed by the Senate just last week—that will guarantee rural health care providers affordable transmission costs when it comes to telemedicine and other telecommunications technology. The provision in the bill we are introducing today is another important step to improving access to specialty and state-of-the-art medical care for rural residents.

Mr. President, I believe this legislation is critically important and, if enacted, will have an important difference on the health of rural residents across America. I am honored to be part of this effort, and intent on continuing to respond to the health care needs of the people in my State and rural America.●

DECLINE OF DEMOCRACY IN NIGERIA

● Mr. SIMON. Mr. President, today I remind my colleagues that June 12, 1995, was the second anniversary of the annulled election of Mashood Abiola as President of Nigeria. The people of Nigeria commemorated this anniversary with a general strike that brought business in Lagos and other cities to a standstill. The military regime of Gen. Sani Abacha marked the anniversary by rounding up and arresting dozens of Nigeria's prodemocratic leaders. As I speak today, General Abacha continues to hold in prison the legitimately elected leader of Nigeria; the general also continues to deny President Abiola badly needed medical attention.

Nigeria is a nation rich in natural and human resources. Besides producing 2 million barrels of oil a day, Nigeria mines significant amounts of coal, lead, zinc, and other minerals. Nigeria is also the most populous nation in Africa. In the 1960's and 1970's, the people of Nigeria set the standard for improving educational standards and promoting economic development in Africa. By the early 1980's, 100,000 men and women were graduating each year from Nigerian postsecondary institutions and one-third of the population belonged to the middle class. Observers of postcolonial Africa predicted that Nigeria would lead the way in building democracy and prosperity in sub-Saharan Africa.

Since that time, however, this optimistic outlook has been shattered. The military leaders of Nigeria have systematically looted their country's wealth and brought Nigeria to the edge of economic and political ruin. Today the Nigerian Government cannot even make interest payments on its foreign debt and is losing control over many of its territories. Fifteen years ago, Nigeria had a per capita income of $1,000, while today per capita income in Nigeria has dropped to $200 and the middle class has almost completely disappeared into poverty. This economic turmoil has undermined Nigeria's efforts to fight the spread of diseases like polio, riverblindness, and AIDS. Under the regime of General Abacha and his predecessors, Nigeria has become one of the busiest heroin trafficking points in the world.

In the past year General Abacha convened a constitutional conference to decide the future of the Nigerian Government. It is now clear that this conference was stacked with pro-military delegates. The conference ignored the views of the National Democratic Coalition and other groups both in Nigeria and in exile which advocate the restoration of democratic institutions in Nigeria. Quite predictably, the conference voted to indefinitely extend General Abacha's term.

The international community needs to intensify its efforts to restore democratic rule to Nigeria and end the flagrant human rights violations this military regime inflicts daily on the people of Nigeria. President Clinton has taken a good first step by suspending commercial flights to Nigeria and denying entrance to the United States to those people who are suppressing democracy in Nigeria. Up to now, however, these sanctions seem to have had no effect on the behavior of the military regime. I encourage the administration to make further efforts to push Nigeria toward democracy. The United States, along with the rest of the international community must support the prodemocracy movement in Nigeria with the same resolve we showed for the anti-apartheid movement in South Africa.

Support for democracy in South Africa required a unified response that increasingly isolated the South African Government from the rest of the global community. If General Abacha refuses to take any steps toward relinquishing his power, the United States should look at ways to increase diplomatic pressure on Nigeria. The administration should consider the recommendations of groups such as TransAfrica and the Parliamentary Human Rights Group to strengthen sanctions, including, perhaps, a temporary oil embargo on Nigeria. The future of Africa hinges on the development of democracy in countries like Nigeria. It is in our national interest to force Nigeria's military leaders to stop their human rights abuses and begin the transition to a legitimate democratic government.●

ORDER TO PRINT H.R. 956 AND S. 562 AS PASSED

Mr. DOLE. Mr. President I ask unanimous consent that H.R. 956 and S. 562 be printed as passed by the Senate.

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

MIDDLE EAST PEACE FACILITATION ACT

Mr. DOLE. I ask unanimous consent that the Senate proceed to the immediate consideration of S. 962, a bill introduced earlier today by Senator HELMS.

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

The clerk will state the bill by title.

A bill (S. 962) to extend authorities under the Middle East Faciltation Act of 1994 until August 15, 1995.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Mr. President, I ask unanimous consent that the bill be considered read the third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

So the bill (S. 962) was considered read the third time, and passed, as follows:

S. 962

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF AUTHORITIES.

Section 583 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236) is amended by striking "July 1, 1995" and inserting in lieu thereof "August 15, 1995".

AUTHORIZING REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 141, submitted earlier today by myself and Senator DASCHLE.

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

The clerk will state the resolution by title.

A resolution (S. Res. 141) to authorize representation by Senate legal counsel.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DOLE. Mr. President, the plaintiff in William D. (Bill) Peterson II versus the Honorable Senator ORRIN G. HATCH, a case pending in the U.S. District Court for the District of Utah, contends that his constitutional rights, including his first amendment right to petition the Government, have been violated because Senator HATCH has followed economic policies that differ from those the plaintiff advocates.

Lawsuits alleging that citizens have been aggrieved by Members' failures to act in accordance with the citizens' views have been filed against Members of Congress from time to time. As the Senate has noted previously in response to such lawsuits, every citizen has a constitutionally protected right to petition the Government for the redress of grievances. However, elected officials have the discretion to agree or disagree with communications they receive, and must be allowed to decide how best to respond to the many problems and points of view which are presented to them.

The following resolution would authorize the Senate legal counsel to represent Senator HATCH in this matter.

Mr. President, I ask unanimous consent that the resolution be considered and agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

So the resolution (S. Res. 141) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 141

Whereas, in the case of *William D. (Bill) Peterson II* v. *The Honorable Senator Orrin G. Hatch*, No. 95–C–0352–S, pending in the United States District Court for the District of Utah, the plaintiff has named Senator Orrin G. Hatch as the defendant;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1)(1994), the Senate may direct its counsel to defend Members of the Senate in civil actions relating to their official responsibilities: Now, therefore, be it *Resolved*, That the Senate Legal Counsel is authorized to represent Senator Orrin G. Hatch in the case of *William D. (Bill) Peterson II* v. *The Honorable Senator Orrin G. Hatch*.

ORDERS FOR MONDAY, JUNE 26, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 11 a.m., Monday, June 26, 1995; that following the prayer, the Journal of the proceedings be deemed approved to date, that the time for the two leaders be reserved for their use later in the day, and there then be a period for morning business until the hour of 12 noon, with Senators permitted to speak therein for up to 5 minutes each, with the exception of Senator HATCH, who will speak for up to 15 minutes; further, that at the hour of 12 p.m., the Senate resume consideration of S. 240, the securities litigation bill, under the provisions of the previous agreement.

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

PROGRAM

Mr. DOLE. Mr. President, for the information of all Senators, we will resume consideration on Monday at 12 noon on S. 240. We have reached agreement earlier today that we will have votes starting at 5:15 p.m. on Monday. There will be three votes, and prior to each vote there will be a brief 2 minute explanation of the pending amendment.

There could be additional votes after we have had a disposition of the amendments that I have referred to earlier today. It could be—though it probably will not happen—that they can complete action on S. 240 on Monday.

ORDER FOR RECESS

Mr. DOLE. I have a number of statements to make and I think also the Senator from South Dakota, the Democratic leader, has a statement to make.

I ask unanimous consent that after our statements, unless there should be further business, the Senate stand in recess.

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

CONGRATULATING SCOTT BATES FOR 25 YEARS OF SENATE SERVICE

Mr. DOLE. Mr. President, I want to take a moment today and call the attention of the Senate to the accomplishments of a good friend of the Senate community and an individual who performs one of the most vital functions in the Senate: The calling aloud and reporting by hand of each Senator's vote.

Mr. President, I know all of my colleagues join me in expressing a hearty congratulations to Scott Bates, the Senate's legislative clerk, on the occasion of his 25th anniversary of work in the Senate.

Scott began his Senate employment 25 years ago today, on June 23, 1970, when he was appointed the assistant bill clerk of the Senate. After growing up in Pine Bluff, AR, and graduating from Hendrix College, Scott came to Washington for what was to be a summer job in the Senate. Twenty-five years later—the longest summer on record—Scott finds himself seated at the rostrum of the Senate attending to the important duties of the legislative clerk.

Scott performed the duties of the assistant bill clerk and bill clerk from 1970 to 1975, when he became an assistant legislative clerk. As the Senate's bill clerk, Scott efficiently executed the important functions of assigning bill numbers to legislation, processing bills for printing, and entering information in the Senate's Legis computer system to indicate the status of bills and amendments. In fact, Scott was instrumental in converting the legislative tracking system from cumbersome index cards to a computerized system.

Due to his exemplary service and performance of duties, he was appointed as the Senate's legislative clerk on January 1, 1993. He continues to serve in this important role today. All of us who serve in the Senate are familiar with the meticulous care with which he manually takes and tallies rollcall votes and quorum calls and reads aloud bills and amendments when so ordered by the Senate's Presiding Officer.

Scott is quite experienced in the taking of rollcall votes, because he started doing so at the young age of 27. Since he probably has taken more votes than anyone in recent memory, it is no surprise that viewers of C–SPAN witness such an expert execution of that particular duty. I know all Senators appreciate his accuracy and professionalism under the frequent conditions of long and intense Senate sessions.

So it is with much gratitude that I congratulate Scott on this 25th anniversary of his Senate employment, and extend best wishes to Scott and his wife, Ricki, and their children Lisa, Lori, and Paul.

GRATITUDE FOR SCOTT BATES' 25 YEARS OF SENATE SERVICE

Mr. DASCHLE. Mr. President, the distinguished majority leader has not only spoken for both of us, but I think for all of us, in expressing our sincere gratitude to Scott.

To look at him, you would think he was five when he started, not 27. He still looks young and full of energy and vibrance. And that is the way he conducts himself each and every day. Many of us who have had the great fortune to work with Scott for a number of years have grown to admire him and his professionalism each and every day when he comes to work. It is not just the days when he has to call out each of our names, but it is the long days when he has to read a bill, page by page by page, that we have a great sympathy for him and for the positions he finds himself in from time to time.

But I know that all of us express today our sincere appreciation and congratulations to Scott. He epitomizes public service. He epitomizes what we hope to be the real model of public life each and every day.

As the distinguished leader said, it is his voice and his persona that people have the opportunity to see and hear each and every time they tune into C–SPAN. Let me also say how grateful we are to his family, because these jobs sometimes take people away from their families more than they should. It is only because we have understanding families, and families willing to support what it is we do here, that we can be here at all.

So to Scott's family, and to Scott personally, we say congratulations and thank you.

Mr. DOLE. I might say, too, that it is particularly hard when Senators mutter and mumble sometimes, and whether they voted "yes" or "no" or "I do not care." But it generally works out alright, because the RECORD is always accurate.

THE WAR ON CRIME

Mr. DOLE. Mr. President, in just over a week, Americans will celebrate Independence Day. But as we pay tribute to our heritage and our freedom; and as we remember what is right with America, we must also rededicate ourselves to fixing what is wrong.

And one thing that is most definitely wrong is that millions of Americans still live in fear of crime. Last fall, Republicans promised Americans that if they gave us a majority in Congress, we would do all in our power to bring an end to crime without punishment.

I have asked Judiciary Committee Chairman ORRIN HATCH to be ready to bring to the floor a crime bill sometime after the Fourth of July recess.

To his credit, President Clinton has spoken frequently and eloquently about the need to combat crime and drugs. But, as an important article in June 19th's Investor's Business Daily makes clear, the President seems to believe that rhetoric—and not resources—will win the fight against crime.

As the article states, President Clinton has repeatedly sought to reduce funding and personnel from the FBI, the DEA, and U.S. attorney's offices.

The effect of this withdrawal of resources can most clearly be seen in the war against drugs.

In 1992, 347 new DEA special agents underwent training. In President Clinton's first year in office, that number fell to zero. And his 1995 budget proposal forecast training no new agents in either 1994 or 1995. Under the President's proposals, total DEA personnel is slated to fall by nearly 800—from 6,149 in 1993 to 5,388 in 1995.

As a result, DEA arrests have decreased dramatically—from more than 7,800 in the last year of the Bush administration, to 5,279 in 1994. In those same years, Federal narcotics prosecutions have fallen by 25 percent.

All this is taking place at a time when surveys show that drug use among adolescents has climbed in the last 2 years.

President Clinton has also spoken eloquently about guns. Yet, as Investor's Business Daily details, the number of Federal prosecutions for firearms-related violations has fallen by 20 percent in the last 2 years.

Mr. President, I believe these numbers are very disturbing, and they will be analyzed more closely during the crime bill debate.

Talking tough is one thing. But getting tough is another. And Senator HATCH and I share a commitment to passing legislation that will give our law enforcement community the resources they need to stop the tidal wave of crime and drugs that has washed over so many of our communities.

Mr. President, I ask unanimous consent that the article by John Barnes in June 19th's Investor's Business Daily be printed in the CONGRESSIONAL RECORD.

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

[From Investor's Business Daily, June 19, 1995]

CLINTON'S REAL RECORD ON CRIME

(By John A. Barnes)

President Clinton's high-profile demand for an anti-terrorism bill has no doubt beefed up his image as "tough on crime."

Indeed, he has made co-opting the crime issue—traditionally a Republican preserve—a high priority for his administration and his party.

To that end, he pushed hard to pass last year's widely attacked crime bill, which the president bragged would add 100,000 new police officers to the streets. (The law is being rewritten by the new Republican Congress.)

But Clinton's "tough on crime" posturing has not been backed up by money for federal law enforcement since he took office.

In listing his priorities for funding, he repeatedly has sought to withdraw resources from the sharp end of federal law enforcement—the FBI, the DEA, U.S. attorneys' offices—while transferring funds to such areas as antitrust law, child abuse and civil rights.

For instance, 320 new FBI agents were trained in 1992 at the FBI's Academy, the last full year of the Bush administration. But not a single new agent graduated from the academy in 1993.

And Clinton asked for no new funding for new agents in his fiscal 1995 budget either, the first one for which he had a full year to prepare. Congress has approved around 600 new agents for this year.

In that same fiscal 1995 budget, Clinton forecast dropping the number of full-time equivalent FBI positions by 854, from 21,568 in 1993 to 20,714 by 1995, including a reduction of 436 special agents. The 1994 number was 21,034.

The argument could be made, of course, that with the winding down of the Cold War, the FBI no longer needs as many agents to fight domestic spying as it once did. And several hundred agents have been transferred from such work to more conventional law enforcement duties.

One would think that moving agents from espionage work to fighting more conventional street crime, however, would mean an increase in mid-career retraining. But that doesn't appear to be the case.

The number of agents receiving such training at the FBI academy has fallen sharply, from 14,741 in 1992 to 2,677 in 1994. The number of state and local police officers receiving training at the academy has likewise seen a sharp drop, from 7,395 in 1992 to 3,710 in 1994.

The Cold War may be over, but the war on drugs has not let up, and the cuts have been felt just as keenly at the Drug Enforcement Administration as at the FBI.

In 1992, 347 new DEA special agents underwent training. Like the FBI, that number fell to zero in 1993. The Clinton administration's fiscal 1995 budget forecast training no new DEA agents in 1994 or 1995 either.

The number of special agents fell by 123 between 1992 and 1994 and total DEA personnel was slated under the Clinton budget to fall from 6,149 in 1993 to 5,388 in 1995. The number in 1994 was 5,450.

DEA arrests fell from 7,878 in the last full year under Bush to 5,279 in 1994. Drug-related arrests made in cooperation with overseas law enforcement fell from 1,856 in 1992 to 1,522 in 1994.

Clandestine drug labs seized by specially trained DEA teams fell from 335 in 1992 to 272 in 1994.

Laboratory exhibits analyzed by DEA lab technicians in 1994 totaled 37,667, down from 41,225 two years earlier.

Forensic chemists trained by the DEA fell from 20 in 1992 to zero in 1994.

"Diversion" specialists—who investigate the diversion of prescription drugs from the licit to the illicit market—undergoing training fell from 40 in 1992 to none in 1994.

New DEA intelligence specialists, 140 of whom were trained in 1992, dropped to exactly zero in 1994.

The Interagency Organized Crime Drug Enforcement Task Forces have seen their budgets stagnate, meaning they have been reduced in real terms after inflation has been taken into account. Total spending on these task forces was $390.3 million in 1992. That outlay dropped to $387.4 million in 1993 and then to $385.2 million in 1994.

DROPPING PROSECUTIONS

Not surprisingly, given this withdrawal of resources, narcotics prosecutions have fallen 25% in just those two years, from 6,936 to 5,177.

And all this is taking place at a time when the University of Michigan's 1994 High School Drug Survey shows that drug use among adolescents has climbed in the last two years, coming after the end of the Reagan-Bush era's "Just Say No" campaign.

Marijuana use has doubled among eighth-graders, jumped two-thirds among 10th graders and one-third among 12th graders.

The Drug Abuse Warning Network of the National Institutes of Health has reported that emergency room admissions for cocaine-related emergencies rose 8% in 1993 and those for heroin are up 31%.

ANTI-DRUG PROGRAMS

At the same time, the Justice Department's funding for anti-drug-abuse programs has been cut back. From $497.5 million in the last year of the Bush administration, the program was reduced to $474.5 million in 1994.

"There's no question they've de-emphasized drug enforcement," said conservative legal analyst Bruce Fein. "I'm not sure if you could call the change dramatic, but it is noticeable."

Despite all the publicity given the Bureau of Alcohol, Tobacco and Firearms for its ill-fated raids in Waco, Texas, and in Idaho, the number of federal prosecutions for firearms-related violations has also fallen consistently under Clinton. There were 3,917 such prosecutions in 1992, a number that fell to 3,636 in 1993 and then 3,113 in 1994, a 20.5% fall.

At the same time, Clinton has been adding to the number of crimes on the federal statute books. In last year's crime bill, for instance, the following became federal crimes for the first time: murder by a federal prisoner or federal prison escapee; drive-by

shootings; murder of a state or local police officer assisting in a federal investigation; use of a weapon of "mass destruction" resulting in death.

But it hasn't been all cutting at the Clinton Justice Department. Some programs have received large increases in funding and clearly have Clinton's approval.

One is the antitrust division, presided over by Ann Bingaman, wife of Sen. Jeff Bingaman, D-N.M.

In the fiscal 1995 budget, the president asked to have its net outlays increased from $40.2 million to $50.8 million, a better than 20% increase. The actual outlays, as is almost always the case, turned out to be less than the requested figure, $47.3 million.

This division's major triumph recently was forcing Microsoft Corp.—one of the country's most successful companies—to give up its effort to merge with Intuit Inc., the leading publisher of personal finance software.

In addition, the unit announced it was looking into Microsoft's planned on-line service for possible antitrust problems.

Appropriations for programs that help victims of child abuse, a particular favorite of Attorney General Janet Reno, more than tripled during the first two years under Clinton, rising from barely $2 million in Bush's last year to $7.5 million in 1994.

Interestingly, missing children—which was the alarm bell issue of a decade ago—is apparently no longer "hot." From just over $10 million in 1993, the budget for this program was cut back to $6.6 million a year later.

Yet the budget for "conflict resolution programs" in the department's Community Relations Service was increased from $9.1 million in 1992 to $9.3 million a year later to $9.6 million in 1994.

The Justice Department is also now responsible for enforcing the Violence Against Women Act, which was a part of the 1994 Clinton crime bill.

The president's speech March 21 at the opening of the department's new office to enforce the act reflects Clinton's view of law enforcement well.

The president reeled off a stream of statistics supposedly showing that crime against women was soaring.

The president claimed that rapes were increasing three times faster than the overall crime rate. "Domestic violence," the president declared, was the "No. 1 health risk" to women between the ages of 15 and 44, "a bigger threat than cancer or car accidents."

But his numbers do not accord with government data or academic research in the area. Sociologists Dwayne Smith and Ellen Kuchta, writing in Social Science Quarterly, concluded there is no evidence that crimes against women are increasing faster than the overall crime rate and that, if anything, the rate seems to have decreased somewhat.

The study that supposedly showed domestic violence to be the "No. 1 threat" to young and middle-aged women was done in a single hospital emergency room in a high-crime neighborhood in inner-city Philadelphia. It counted street crime victims as well as victims of domestic violence.

CIVIL RIGHTS ACTIONS

The civil rights unit of Justice has received a 20% increase in funding under Clinton. Under Deval Patrick, the unit has become one of the busiest and highest profile agencies in government.

Patrick has specialized in using threats of civil rights lawsuits—and attendant bad publicity—to reach "consent decrees" with banks to loan more money to blacks and other minorities. This despite the fact that the proof of intentional discrimination by such institutions is sketchy at best.

The administration has engaged in plenty of other questionable law enforcement.

The Housing and Urban Development Department, for instance, has sought to bulldoze opposition to plans to place criminal halfway houses and drug rehabilitation centers in middleclass neighborhoods by threatening opponents with civil rights violations.

BUDGET RESOLUTION AGREEMENT

Mr. DOLE. Mr. President, I was pleased to join last night with Speaker GINGRICH and the chairmen of the Budget Committees, Senator DOMENICI and Congressman KASICH, in announcing an agreement between the Senate and House on the budget resolution—a monumental budget which will balance our Nation's books for the first time in more than a quarter of a century. As we said last night, this agreement is another historic step in bringing the Federal budget into balance in 7 years by slowing the growth of Government spending, by making Government leaner, more efficient and more cost-effective.

This budget finally turns off the out-of-control big government spending machine, and puts us on a responsible path to prosperity America can rely on well into the next century.

While we ratchet down the deficit to zero by the year 2002, we also provide for $245 billion in long overdue tax relief, putting more money in the pockets of American families and providing incentives for savings, economic growth and job creation. Importantly, this budget takes action to preserve, improve, and protect Medicare, while permitting Medicare and Medicaid spending to increase dramatically in the next 7 years. Furthermore, this budget does not touch Social Security, and it maintains our commitment to national security second to none.

The American people have been drowning in a sea of red ink, and this budget provides the liferaft they have been waiting for. Now, I know our opponents will try to deflate that liferaft with their sharp partisan darts and routine scare tactics, but the American people will not be fooled. They know the status quo is no longer acceptable, and they know leadership means making tough decisions.

Mr. President, this agreement reflects the product of countless hours of hard work, and on the Senate side, that effort has been led by my friend from New Mexico, Senator DOMENICI. The taxpayers of America are fortunate to have Senator DOMENICI on their side. He has done a remarkable job leading this historic effort, and I look forward to continuing to work with him to ensure enactment of the balanced budget. I would also like to commend our Senate Republican conferees for their crucial role in forging this agreement: Senators LOTT, BROWN, GRASSLEY, GORTON, GREGG, and NICKLES.

I think the icing on the cake would be if the President of the United States would announce his public support for a constitutional amendment for a balanced budget.

We are just one vote short in the Senate. I am certain the President of the United States could find that one vote with the six Senators who voted against the balanced budget this year, when they voted for it last year on the Democratic side.

Mr. President, I look forward to bringing this balanced budget conference report to the floor next week. We hope it will be no later than Thursday, but it could be on Friday. By statute, there are 10 hours of debate, and we will complete action on the budget resolution next week.

BAD NEWS FOR BOSNIA

Mr. DOLE. Finally, Mr. President, I have made a number of statements over the past couple of years on Bosnia. I keep thinking maybe someday there will be some good news about Bosnia; that people who do not really focus on it very much—Democrats, Republicans, it is not a partisan issue—maybe there is some good news that people might feel good about if they watch TV or listen to the radio or watch television.

But I am afraid there is more bad news on the Bosnian fronts.

First, word leaked out of a letter from Boutros Boutros-Ghali's Special Envoy, Yasushi Akashi, to Radovan Karadzic, the Bosnian Serbs' militant leader, intended to assure the Bosnian Serbs that despite the deployment of the European Rapid Reaction Force [RRF], the United Nations. would continue business as usual in Bosnia.

I have obtained a copy of that letter. I would note that the letter is addressed to H.E. Dr. Radovan Karadzic—the H.E. stands for His Excellency—a term usually reserved for dignitaries and government officials, not alleged war criminals.

The letter reads, and I quote:

> I wish to assure you that these theatre reserve forces will operate under the existing United Nations peace-keeping rules of engagement and will not in any way change the essential peace-keeping nature of the UNPROFOR mission. While the reserves will enhance UNPROFOR's security, the understanding and cooperation of the parties themselves will be the best guarantor of the force's continued effectiveness as an impartial force. The United Nations, troop contributing states and the Security Council have all recognized that the reserve force cannot and will not be a substitute for a political process aimed at an overall peaceful settlement of the Bosnian conflict.

Once again, Yasushi Akashi did what he does best as the United Nations' appeaser on the front lines: delivers good news to the Serbs, and bad news to the Bosnians.

This morning, we read that the French held secret negotiations with

the Serbs—in Pale and in the ethnically cleansed city of Zvornik. Reportedly, the French promised that in return for the release of the U.N. hostages, NATO would not conduct any further airstrikes on Serb positions. A lot of people suspected that and maybe this now makes it a fact.

Mr. President, the message is crystal clear: The United Nations has abandoned its mandate of protecting the so-called safe areas and intends to continue to bend to the will of the Serbs. And, it has done so not in the Security Council through a vote, but in back rooms with Serb militants whom French President Jacques Chirac publicly called "Terrorists."

When President Chirac met with congressional leaders he called for an end to the humiliation of the peacekeepers. In my view, letting war criminals blackmail the leaders of the Western World is humiliating—and an absolute outrage.

This brings us to the matter of the rapid reaction force, which is intended by the British and French to protect the U.N. forces in Bosnia. From these reports it is obvious that the rapid reaction force will not change the way UNPROFOR conducts its business. In other words, UNPROFOR will not do the job it was tasked to do by the Security Council in numerous resolutions—whether or not the rapid reaction force is deployed. In fact, the rapid reaction force appears designed to protect UNPROFOR so that it can continue not doing its job.

And this brings us finally to the question of why the United States should subsidize the rapid reaction force, let alone the entire UNPROFOR operation. We know that the taxpayer's dollars are being dumped in a big black hole because international leaders do not have the courage to do what is right and what is smart—and that is to withdraw the U.N. forces and lift the arms embargo on Bosnia. Can we in good conscience continue to appropriate funds for such a failure?

Well, the administration appears committed to this massive multilateral mess. In today's New York Times, administration officials were cited as considering the use of funds designated for humanitarian aid to pay for a U.S. contribution of about $100 million to the rapid reaction force. While there are budgetary reasons such a shift would be difficult, congressional opposition would likely be strong. The fact that anyone in the administration is thinking along these lines is shocking. People in Sarajevo and elsewhere in Bosnia are hungry—they cannot eat European pride. Furthermore, virtually the only effective United States activity in Bosnia and Herzegovina has been the provision of emergency humanitarian assistance.

Mr. President, the U.N. operation in Bosnia is in a meltdown. Now is the time to cut our losses, not sink more resources into a failed investment.

Mr. President, I ask unanimous consent a letter I referred to be printed in the RECORD at this point.

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

U.N. PEACE FORCES HEADQUARTERS,
Zagreb, June 19, 1995.

Dr. RADOVAN KARADZIC,
Special Representative of the Secretary-General for the Former Yugoslavia.

DEAR DR. KARADZIC: I wish to inform you that the Security Council has recently reviewed the latest report of the Secretary-General on the implementation of the mandate of UNPROFOR. On 16 June 1995, it adopted resolution 998 (1995), a copy of which is attached for your information. This resolution covers a number of different issues, including the status of the safe areas, and makes provision for the establishment of a rapid reaction capacity to enable UNPROFOR to carry out its mandate in a secure and safe environment.

Despite the recent intensification in hostilities, the United Nations and troop contributors remain committed to the continued presence of UNPROFOR in order to alleviate the suffering of all the people of Bosnia, and to facilitate the earliest possible end to hostilities through peaceful means. However, risks to UNPROFOR have increased dramatically and there has been a marked lack of respect by all sides with the security, safety and freedom of movement of UNPROFOR personnel. The Security Council has accepted the offer of a number of countries to provide flexible and mobile reserve military reinforcements in order to reduce the vulnerability of UNPROFOR personnel and to enhance the Force's capacity to carry out its humanitarian tasks.

I wish to assure you that these theatre reserve forces will operate under the existing United Nations peace-keeping rules of engagement and will not in any way change the essential peace-keeping nature of the UNPROFOR mission. While the reserve will enhance UNPROFOR's security, the understanding and cooperation of the parties themselves will be the best guarantor of the Force's continued effectiveness in an impartial force. The United Nations, troop contributing states and the Security Council have all recognized that the reserve force cannot and will not be a substitute for a political process aimed at an overall peaceful settlement of the Bosnian conflict.

I would like to emphasize that assistance for the delivery of humanitarian aid, and the protection of civilians from deliberate attacks, continue to be central to UNPROFOR'S mandate. Alleviation of the very serious humanitarian situation created by recent events in Sarajevo and other enclaves will be one of UNPROFOR's primary objectives. In this regard, the Security Council has demanded that all parties respect the status of the safe areas and has underlined the need for their demilitarization by mutual agreement, in order that attacks both into and out of the safe areas cease forthwith. I am confident that urgent action to achieve progress in this direction would be of enormous benefit to all parties. It would go a long way towards realizing an overall stabilization of the current situation.

The Secretary-General has, in his recent report on UNPROFOR, emphasized that the United Nations cannot operate in a political vacuum. In the past few days, leaders of the international community have also repeatedly emphasized that there can be no military solution to the conflict in Bosnia and Herzegovina, and the measures set out in Security Council Resolution 998 (1995) should be seen in this light. In view of the critical situation facing us all, I would urge you to take advantage of the current international climate in order that we may promote initiatives favourable to a dynamic and comprehensive peace settlement.

Yours sincerely,

YASUSHI AKASHI.

SENATE SCHEDULE

Mr. DOLE. Mr. President, there were a couple of reports that the August recess would start on August 4. That has not yet been determined. I saw in a couple of the Hill publications—one called the Hill, and I think the other was Roll Call—that that matter had been settled. We hope it will start as previously scheduled but it depends on what unfinished business there may be. I think August 4 would be the day we hope to start the recess, but it may go into the next week. It could be the 11th or even shortly after the 11th, if we have unfinished business.

We still have some very major pieces of legislation to deal with. One is certainly regulatory reform. We are working, in a bipartisan effort, Republicans and Democrats, to try to come together. If we can do that and complete action on that next week, that will be a big step in the right direction. I have been asked by the Democrat leader to sit down with him next week on that issue.

Also, before the recess, we have agreed to take care of the gift reform legislation and lobbying reform legislation. Again, we are attempting to work in a bipartisan way.

I have asked Senator LOTT to lead a group on our side to meet with a like group on the Democratic side to see if we cannot come to some conclusion for good, sound gift reform and lobbying reform legislation.

Welfare reform is another very important issue that will take some time to dispose of. I think it is fair to say—I can say on the Republican side, we are having problems coming together on some of the issues. That may be true on the other side. But we believe we can resolve any differences, at least on this side. That is a matter we want to do before the August recess.

In addition, there will be a number of appropriations bills that will be ready for action and a number of conference reports that will be ready for action.

Hopefully, in the month of July, we can consider crime legislation. That will depend on whether or not the Judiciary Committee will have the time to report out reform of the present crime statutes. Hopefully, again, that will have bipartisan support.

I am just speaking here from memory. I may have left out some critical

pieces of legislation. But the point I want to make is that obviously we want to start the recess as early as we can, hopefully on time. That decision has not been made. I know many of my colleagues have already made commitments in their own States for meetings, meeting with constituents, and I certainly want to honor all those commitments if we can. But the other side of the coin is, if we do not complete it, it means we are going to be here longer this fall. Hopefully, we can arrive at some agreement that will accommodate nearly all the views of Members on each side of the aisle.

RECESS UNTIL 11 A.M., MONDAY, JUNE 26, 1995

The PRESIDING OFFICER. Under the previous order, the Senate now stands in recess until 11 a.m. Monday, June 26, 1995.

Thereupon, the Senate, at 3:04 p.m, recessed until Monday, June 26, 1995, at 11 a.m.