SENATE—*Monday, June 26, 1995*

(Legislative day of Monday, June 19, 1995)

The Senate met at 11 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:

Almighty God, the Divine Sovereign of this land and Lord of our lives, You have told us in the Scriptures that, "Righteousness exalts a nation" (Prov. 14:34) and "when the righteous are in authority, the people rejoice" (Prov. 29:2).

As we begin a new week we reaffirm our commitment to exalt our Nation under You by seeking to be righteous leaders. We know that righteousness is to be right with You. We humbly confess whatever may keep us from being in a right relationship with You, both in our personal lives and in our work. Forgive the idols of our hearts. We also acknowledge that righteousness involves how we treat others. Forgive us when we are insensitive to their needs. How shall we be righteous in our deliberations and decisions without seeking and then doing Your will? Forgive any self-sufficiency that makes it difficult to be accountable to You.

In this bracing moment of a fresh encounter with You, we gratefully accept that it is by faith in You that we are made righteous with You. What You desire most is that we humbly trust You and follow Your guidance in all that we do and say. Lord, bless the women and men of this Senate and empower them to be the righteous leaders America urgently needs in this strategic hour. In Your holy name. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Mr. DOLE, is recognized.

Mr. DOLE. Thank you, Mr. President.

SCHEDULE

Mr. DOLE. Mr. President, leader time has been reserved, and there will be morning business until 12 noon.

At 12 noon we will resume S. 240, the securities litigation bill. There will be debate throughout the afternoon, and votes start at 5:15 today. The first vote is on a Bryan amendment regarding the statute of limitations; second, a Sarbanes amendment concerning proportionate liability; third, a Boxer amendment, which is relevant. I do not have the details on that amendment.

Further votes are expected throughout the evening. We would like to complete action on this bill today or before noon tomorrow morning.

Mr. President, leader time has been reserved.

MORNING BUSINESS

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from North Dakota.

Mr. DORGAN. Mr. President, my understanding is that the Senate is now in morning business. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DORGAN. Mr. President, I ask unanimous consent to be permitted to speak for 20 minutes as if in morning business.

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

THE BUDGET

Mr. DORGAN. Mr. President, in recent weeks we in the Senate have been treated to a political pony show on the floor of the Senate by those who seem to think it is their duty to wake up crabby and then share that mood with the rest of us. They come to the floor and parade around in political harness day after day complaining mostly about the President's budget or the lack of it. But more generally, they complain about anything they think they can blame on Democrats—spring rains, high winds, new diseases, cultural disorders.

And we have been patient in recent weeks while watching all of this and have been polite enough not to ask those who come to the floor, "Where is the budget?" that is required to be submitted to the Senate by the majority party. We have not asked that question because we have known where their budget is. It is 71 days late, 71 days beyond when the law requires the Congress to have passed a budget. These folks that had a plan for everything in the first 100 days apparently did not have a plan to meet their responsibility to have a budget by April 15. So it is 71-days later, and we are now told that this Thursday the budget will come to the floor of the Senate.

Where has it been? In conference, we are told. In conference with Democrats? No. Conference committees are usually between two parties. But not this one. This is in conference huddling behind closed doors, hatching new ideas about how to give the wealthy another tax cut and how to have the middle-income taxpayers in this country pay for it. Now they have figured it out, and they are going to unveil it here on the floor of the Senate.

So close your eyes just for a moment while I describe it and ask yourself: Is this not a curtain call to a play you have seen before? It is the let-them-eat-cake budget. They bring to the floor a budget that says let us have tax cuts for the very wealthy, let us have spending cuts for the very poor, and let us spend more money for defense and spend it on things that the Secretary of Defense says we do not need. This budget says we cannot afford star schools, but we must begin immediately building star wars. It says college should be made more expensive for young people and middle-income families and health care should cost more for the elderly and the poor. And all of this when finished, they claim, will produce a balanced budget.

Sound familiar? Well, this kind of budget represents the same old, tired ideas swaddled in designer clothes for the 1990's. America has seen this fashion show once before. It was about $4 trillion ago in debt. This is a budget with phony figures, bogus promises, and twisted priorities. I know they will explain it this week in sweet language and seductive promises. But as they do, remember the words of Emerson who said, "The louder he talked of his honor the faster we counted our spoons."

One hundred years from now historians will look back at 1995 and none of us will be able to explain what we did in 1995 because we will not be here. But they will be able to view a little bit about how we felt, what we felt the priorities were in our country by what we spent the public resources on.

This budget will surely cause future historians to scratch their heads and wonder how a country deep in debt with the wealthy getting wealthier and the poor getting poorer could develop a budget which says that the rich have too little and the poor have too much and the solution is to simply cut our revenue by offering tax cuts to the most affluent and cutting back on our commitment to kids, the veterans, and to the elderly.

There is still time, it seems to me, for all of us, Republicans and Democrats, to have conference committees

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

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in which both parties conference and in which we establish real priorities that make sense for our country, that invest in our future, and that fight for the economic interests of the job creators and the workers in our country. We can do that. But it will not happen with the priorities established in the budget we are about to debate this week. This does not represent, sadly enough, a new direction. It is tired, failed old political dogma long since discredited. And we will have a lot of debate about this budget.

U.S. TRADE POLICY

But let me go beyond the budget to the source of our Federal budget. Even more important than the way we spend our public resources is the kind of economy America has with which to produce these public resources. What kind of a private sector, what kind of initiatives that create jobs and opportunities and economic growth in our country, can produce a country that advances our Nation and its people?

During the 50 years since World War II we have seen it in two distinct economic stories in America. The first 25 years after the Second World War we saw a country in which opportunities were abundant in America for working families. America saw its working families' incomes grow, real growth; opportunities expand, real opportunities.

So for 25 years people in this country received the fruit of an economy that worked and expanded. In the second 25 years we have seen a different kind of story. We have struggled as international competition has become tough and sharper.

We have seen in the last 20 years that the American families now have less income than they had 20 years ago, if you adjust for inflation. They have fewer opportunities than they had before.

Why is all of that happening? Because there is another deficit no one is talking about: the trade deficit. This nation has a record trade deficit; last year it was the highest deficit in human history.

What does that mean? It means American jobs going overseas, opportunity leaving our country. Frankly, there have not been more than two or three of us in this Chamber regularly talking about this trade deficit which shrinks opportunity in America.

You can make the case—not necessarily accurately—that a budget deficit is simply money we owe to ourselves, but you cannot make the same case on the trade deficit because the trade deficit must be repaid with a lower standard of living in our country.

It is interesting that today, on Monday, the stock market is at record highs, corporate profits at record levels, and last week the U.S. Department of Labor reported that real hourly wages dropped by 3 percent in 1994. A record decline in hourly compensation in this Nation.

Is it not interesting, the disconnection here?

They are having a high old time on Wall Street; corporate profits are doing fine. There is happiness in the boardroom. But what about around the dinner table with the American family whose real wages are decreasing? And the question today is: Why? What causes that disconnection?

I would like to go through a few charts that show what is happening in this country. First of all, our trade policy is a trade policy that injures our country from within and ships American jobs overseas.

I am not someone who believes we ought to erect walls around our country, but I do believe we ought to protect our economic base with good jobs, with good income, and expanded opportunities abroad.

Here are the trade deficits. All you have to do is look at the red lines, our trade losses, and these lines represent jobs. You will see where we are headed—the largest trade deficit in human history last year in this country.

Who are these deficits with? Well, I brought a chart to show what is happening with bilateral trade balances.

Everything on this side of the chart is a deficit, and we have a few surpluses with very small trading partners. Japan: big deficit; China: big deficit; Canada: big deficit; Germany, Taiwan, Italy, Venezuela. Over a $160 billion merchandise trade deficit last year.

Who do we have a surplus with? Well, the Netherlands, Argentina, Belgium—all very small surpluses. But the fact is we are being buffeted by very large trade deficits. In fact, these are last year's numbers. The first quarter of this year showed an all-time record high trade deficit—$45 billion in the first quarter.

Now, it is not an accident that these trade deficits are exploding. Our manufacturing and other productive sectors are withering. Good jobs are being replaced. Americans are working for less.

Why is that happening? It is happening because more and more corporations, the artificial persons we recognize in law, are interested in international, global profits, not American profits.

How do you do that? You simply find a foreign location where it is cheap to produce and send your products here. Produce your shoes in Indonesia and sell them in Pittsburgh. Produce your shirts in China and sell them in Bismarck.

That is the disconnection that is happening in this country, a wholesale movement of American jobs overseas to produce where it is dirt cheap, produce where you can hire 12-year-old kids to work for 12 cents an hour for 12 hours a day and then ship your product back into our marketplace, back into America.

I ask you, is that fair competition for an American business to have to compete with? The answer is no. Is that fair competition for any American worker to have to compete with? The answer is no.

We fought for 50 years in this country for higher standards, saying you ought to have to pay a living wage; you ought to have a safe workplace for your workers; you ought not to dump pollution into the air and chemicals into the water.

Those are battles we have had, and we have put them behind us in our country. We have a minimum wage; we have a safe workplace; we have OSHA; we have pollution laws; and, yes, they are a nuisance, but the fact is we now have cleaner air and cleaner water than 20 years ago. Why? Because we succeeded.

However, those who control our economic output, the agents of production, all too often say, well, that is fine, but if that is the way you want to be, if you want to force us to pay living wages to people, if you want to force us not to degrade the environment, if you want to force us to have safe workplaces, then we will go elsewhere where we are not encumbered, where we are not a nuisance. And the plant leaves America and a job goes somewhere else and an American family is out of work. But the plant produces a product that then comes back to America and undercuts the manufacturer who stayed here, undercuts the worker who toils here. And that is the dilemma.

Let me turn to China. I wish to talk about a couple of countries and just take a look at what is happening with our trade with these countries.

China: In 1987, we had a surplus with China; this year, a $30 billion deficit with China. This country has to say to China: We are sorry; you are friends of ours. We like you to be a trading partner, but we are tired of being a cash cow for hard currency for China. If you want to ship all your goods to America, then start buying more from America.

Do you know that when you send wheat to China, we have to subsidize it below the cost of production to get the Chinese to buy it? That is an example of the absurd trade policy in this country. So American jobs are now in China. The agents of production believe they can produce cheaper in China and sell it back in New York and Cincinnati. And maybe they can. But is that fair trade? Is that what we ought to subject the American worker and the American business to in the name of competition? It is not fair where I come from.

Mexico. Well, we just had a Mexican trade agreement called NAFTA. In 1992, we had a big trade surplus with Mexico. This year, we are going to have a big deficit, more than $15 billion. The same is true with Canada. It seems to me that we ought to be able to win a trade agreement now and then. For the last 20 years have we sent our folks out

to negotiate trade agreements, and we have lost.

Japan: a $65 billion trade deficit. Now, the President, to his credit, for the first time in a long time, has stood up and said to the Japanese: We are sorry, but we are going to insist you open your markets and if you do not there will be consequences.

I mentioned NAFTA. When we debated NAFTA here in Congress, the prophets of nirvana said if we just pass this NAFTA with Mexico, we will have all these new jobs in America. They predicted 170,000 new jobs in America, and some predicted many, many more. Guess what? This year, our trade deficit with Mexico means we will lose 200,000 jobs overall.

The surge of wholesale imports from Mexico this year results in part because of the devaluation of the peso, but also because the trade agreement with Mexico was negotiated in a way that was, in my judgment, just fundamentally incompetent. It did not serve America's economic interests.

You can see our actual experience with NAFTA on this chart. Here you can see the rapidly growing trade deficits in the same high-skilled manufacturing sectors where we were supposed to see more U.S. exports and more jobs. The charts show just the opposite has happened since NAFTA in our trade with Mexico in scientific instruments, electric equipment, autos, and auto parts.

This is not as was advertised. NAFTA was advertised as a plus for high-skill jobs in this country. They are still low-wage jobs in Mexico, but they are sending to us electronics, electronics parts, autos, auto parts. These used to be the good jobs in our country.

So we see the promises from all of these trade agreements. We see the promises about China, the promises about Japan. We see the promises with NAFTA, the promises with GATT, and they do not work.

Every single year, we go deeper in debt on trade. And what does that mean? It means fewer jobs with less income here in this country. The question is, what are we going to do about it? When are we going to decide in this country that we are going to stand up for our economic interests? This issue is not about the profits of international corporations who produce anywhere in the world and ship their products here. This issue is about American jobs. The American economic engine runs with good jobs that pay good income. As a country we cannot advance by seeing corporate profits reach record highs but, at the same time, see the earnings and benefits of American families cut back. Last week I saw a memo from one of this country's larger financial institutions, also involved in international competition. That company decided to get rid of 80 percent of its clerical workers and then contract out to workers who will not receive benefits. If you can hire people without benefits, you can save a lot of money.

Well, that is fine, but it seems to me that is a giant retreat from what we ought to be doing in this country. This country is not just about profit. It is also about advancing the standard of living of the American people.

I am a big fan of the private sector, the private market, the free market. I am a big fan of those who create jobs and opportunity in this country. I am a big fan of those who want to wean themselves from post-Second World War trade policies, that were largely foreign aid, and decide that we are going to insist, with every trading partner in this world—hold up a mirror—"treat us well because we are going to treat you like you treat us."

We, Uncle Sam, the United States of America, demand fair trade. We demand fairness for our workers. We demand fairness for our businesses. We are sick and tired of being pushed around, sick and tired of one-way free trade, sick and tired of American jobs moved overseas so the products of those jobs can be shipped back to us to be viewed on the market shelf by someone who is unemployed. That is not what I view to be an adequate future for our country.

What can we do about all this? We can finally begin to decide that the trade policy we followed after World War II does not work any longer. There is nothing at all wrong with standing up for American economic interests. It is not inconsistent with fostering free trade or expanded trade to stand up for economic interests in our country. We should and we must decide as Americans when we expand trade agreements, when we expand trade opportunities, to insist with others in our world who are our competitors, and are skilled, true competitors, that they treat us fairly.

We were perfectly able, in the first 25 years after the Second World War, to extend a hand of foreign aid and trade policy to Western Europe and the Pacific rim. When I walked to school in a town of 300 people I knew every single day—because it was evident all around me—that the United States was the biggest, the best, the most, and we won in international competition just by waking up in the morning.

But it has changed. The Japanese are tough. The Germans are shrewd. They are good competitors. China is able to produce some things at much less cost than we do. So the question is, are we going to recognize that change and develop public policies that protect the economic interests of our country, or are we going to be willing to continue to be washed away in a sea of red trade ink that compromises American jobs and compromises American income?

I indicated some weeks ago that I was going to give a series of four or five discussions on the floor of the Senate on the subject of trade, where we are and where we ought to be heading. This is the second time I have come to the floor to discuss this.

You see what is happening in our country with respect to income in the past half century. In the first 25 years, every portion of the income group—the green bars on the chart—experienced significant real income gains; in the past 25 years, losses in real income for the bottom 60 percent.

It does not take, it seems to me, someone to be out in the work force losing their job to understand this. The evidence is clear. It ought to be clear to everybody. We now see a circumstance where the American families have to increase the number of people in the households working in order to add income. The chart shows that families reached higher income not by individuals earning more, but by putting more family members into the work force. That is the only way they can add any income, because the income per capita per worker is declining in our country.

And one last chart. This shows more graphically than any what has happened with respect to real income in our country, real hourly compensation. Income during the first 25 years after World War II, the green line, goes steadily up, and in the second 25 years, the red line, real income is down.

If we do not wake up in this country and decide to do something about this, this country's economy is not going to be the economic engine that produces the resources to even allow us to debate priorities in a budget.

Budget represents the priorities of public resources. Adequate public resources must come from a healthy, growing, vibrant economy, and it darn sure is not growing much when you have trade policies that move America's strength overseas.

I will return to the floor with other presentations on trade, along with proposed solutions. I appreciate your indulgence.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

Mr. THURMOND. Mr. President, I ask unanimous consent to speak for 3½ minutes as in the morning hour.

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

TRIBUTE TO GEN. CARL MUNDY, COMMANDANT OF THE U.S. MARINE CORPS

Mr. THURMOND. Mr. President, I rise today to recognize one of this country's most distinguished military leaders, Gen. Carl E. Mundy, 30th Commandant of the U.S. Marine Corps.

General Mundy is retiring after 38 distinguished years of service to our country during which he has served this Nation honorably in a number of very important posts. Among these are the commanding general of the Fleet Marine Force Atlantic, the II Marine Expeditionary Force, and the Allied Command Atlantic Marine Striking Force. General Mundy has received numerous decorations for his service including the Legion of Merit, the Bronze Star, and the Purple Heart which he received while serving in the jungles of Vietnam.

Mr. President, General Mundy is a leader, visionary, and a warrior. As he completes his watch, he leaves behind a Corps of Marines that is ready to respond instantly to the Nation's "911" calls, relevant to meet the defense needs of the Nation into the next century, and capable of meeting the requirements of today's national military strategy.

As Commandant of the Marine Corps, General Mundy has been a central figure in shaping the post-cold-war military. He has acted as a principal author on a number of key Department of Defense white papers. Among these papers, "From the Sea" and "Forward . . . From the Sea," have been instrumental in outlining the future role of naval and marine forces. He has been a tireless spokesman for the Department of Defense and has traveled extensively throughout the country to speak to citizens on key issues related to national security.

Mr. President, it is with deep regret that I wish General Mundy and his wife, Linda, farewell. He has always provided us the benefits of his great wisdom. He has continuously lived up to the Marine Corps motto: Semper Fidelis.

Mr. President, General Mundy is truly one of the few, one of the proud. He is, and always will be, a U.S. marine. Our Nation is proud of him, and we wish him well in the future.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE 50TH ANNIVERSARY OF THE U.N. CHARTER

Mrs. KASSEBAUM. Mr. President, 50 years ago today, the victorious nations of World War II gathered in San Francisco to sign the charter that created the new United Nations. It was a time of enormous hope and promise, and the world's expectations ran high. No country had more influence in shaping that international organization than the United States. From the details in the charter to the name of the new organization itself, American leadership—then at its strongest on the heels of victory in the war—was everywhere in evidence. Just as American hesitation doomed the League of Nations a quarter-century earlier, so American leadership in 1945 gave the world the United Nations.

I would like, Mr. President, today to express a strong belief that America must again lead in the significant reforms that are now necessary to save this valuable organization for generations to come.

There is much criticism of the United Nations, and much of that is well-deserved. The Secretariat has ballooned into a collection of bloated, often ill-operated bureaucracies. The structure of the Security Council reflects a bygone era. The Trusteeship Council has outlived its usefulness.

There is mismanagement, waste, and general lack of accountability. Too often, there is no focus and no real sense of priorities.

But there also is much muddled thinking in America's approach to the United Nations. In much of the country—including Washington—there is much misunderstanding and confusion about the organization's purposes and structures. The standards by which we judge its success or failure have become unrealistic. And there are some who would take us again down the failed path of the League of Nations and sacrifice a valuable international organization for domestic political gain. I believe we must fix the United Nations, and only the United States can provide the leadership to get the job done. There are several reforms that I think we can achieve without amending the charter.

First, we should lead those reforms that can be accomplished without amending the charter. I have joined with Congressman LEE HAMILTON, the ranking member of the International Relations Committee in the House of Representatives, in putting forward some thoughts on reforms that can be accomplished without opening the Pandora's box of amending the charter. Let me summarize some of the suggestions:

First, focus on the core agencies. The United Nations today has more than 70 agencies under its umbrella. We would finance only a handful of agencies that serve core purposes of the organization, for instance the International Atomic Energy Agency [IAEA], the World Health Organization, and the High Commission on Refugees. Other agencies should be abolished, merged, or financed at the discretion of one or more of the core agencies.

Second, peacekeeping. This is a difficult one, Mr. President. In the heady days of the cold war, and after the cold war, expectations for peacekeeping grew far out of control. But the truth is that peacekeeping has inherent limits, and many of the failed hybrid operations we have undertaken—such as nation building in Somalia—which probably ultimately turned out to be better than was assumed at the time that the forces were withdrawn, and peace enforcement in Bosnia—which has ignored those limits. Future peacekeeping should be limited to classic operations.

Third, conferences. Conferences have come to dominate far too much of the United Nations time, resources, and attention. The United Nations should get out of the conference business and focus itself on more meaningful activities. Otherwise, we run the risk of just being a traveling road show from summit to summit.

Last, accountability. Today, the United Nations is accountable to no one. We should significantly strengthen the Office of the Inspector General and give it some real teeth. The member states should also reform the process by which they select the Secretary-General, to ensure that his or her accountability and selection is primarily one of skills and ability to administer the Organization.

I think this is enormously important and probably very difficult to achieve. It is one of the more sensitive areas to deal with, and yet it is the key to making much of it work as it should.

I think we should take the lead in reforms that would require amending the charter. I, for one, believe membership in the Security Council should be reformed to better reflect the realities of contemporary international politics.

Nations such as Japan and Germany, which pay large portions of the U.N.'s bills and are powerful international players, should have permanent seats on the Council; and, of course, the Charter's reference to them as enemy states should be struck. The number of nonpermanent members should be expanded to better accommodate major regional powers.

We should also eliminate the Trusteeship Council established to handle the problems of decolonization. It has outlived its purpose. Rather than search for a new purpose for this Council, we should ask whether it should exist at all.

Mr. President, the other major area for reform is in our thinking about what the United Nations is and what its role should be in American foreign policy. We cannot expect the United Nations to be clearer in purpose than is its most powerful member state.

At its core, the United Nations is a collection of sovereign states and is beholden to them for guidance, funding, and, ultimately, legitimacy. The political decisions that drive the Organization and define its proper role in international politics must be made in national capitals, not in New York.

I have grown increasingly concerned about the tendency toward a fuzzy multilateralism that has come to mark U.N. policy toward the United Nations. We have shown a penchant for dumping difficult problems in the lap of the United Nations and then complaining when no solution is forthcoming. The tragedy in former Yugoslavia may be the most dramatic current example of this phenomena. The truth is, we cannot so easily wash our hands of difficult decisions.

The United Nations is not a substitute for American leadership in international affairs. Rather, it is one avenue available to exercise that leadership.

I believe we must own up to the truth about our role in the United Nations. The United Nations has many failures, but we fool ourselves if we merely point fingers at New York and blame the United Nations for its shortcomings. The United States is first among equals in the U.N. system. The failures of the United Nations are, in reality, our own.

We would do well to reflect honestly on that unavoidable truth. On this golden anniversary, we must decide whether we will continue to muddle along, or whether the United States once again will assume its unique mantle of leadership at the United Nations. I, for one, believe we must lead.

CONGRATULATING THE SOUTH AFRICAN RUGBY TEAM

Mrs. KASSEBAUM. Mr. President, on Saturday South Africa defeated heavily favored New Zealand in the world rugby championship. I rise today to congratulate the South African rugby team, as well as the people of South Africa, on this historic victory.

For years, because of its apartheid policies, South Africa has stood on the outside of international sports competitions. From the Olympics to the World Cup, South Africa—a country of intense sports fans—had become isolated and banned from many competitions. And more than most other sports, rugby had become closely associated with the former white government and its apartheid policies.

After this history, the image of President Nelson Mandela—a man imprisoned for 27 years in his fight against apartheid—handing the World Cup trophy to the white captain of the rugby team is indeed a powerful symbol of the dramatic changes in South Africa. Throughout the country, whites and blacks alike celebrated the victory of the Springboks, the mascot of the national team.

Mr. President, I join with the international community in congratulating the people of South Africa on winning the rugby World Cup. It has been a dramatic and historic time in South Africa. This victory, bringing together all South Africans, exemplifies the progress to date and the hope for the future of a great country.

CYBERPORN

Mr. GRASSLEY. Mr. President, there is an article from Time magazine and an article from the Spectator magazine that I ask unanimous consent to have printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. GRASSLEY. Mr. President, this morning I want to speak on a topic that has received a lot of attention around here lately. My topic is cyberporn, and that is, computerized pornography. I have introduced S. 892, entitled the Protection of Children from Computer Pornography Act of 1995.

This legislation is narrowly drawn. It is meant to help protect children from sexual predators and exposure to graphic pornography.

Mr. President, Georgetown University Law School has released a remarkable study conducted by researchers at Carnegie Mellon University. This study raises important questions about the availability and the nature of cyberporn. It is this article I ask to have printed in the RECORD.

Later on, on this subject, some time during the middle of July, I will be conducting hearings before the full Judiciary Committee to fully and completely explore these issues. In the meantime, I want to refer to the Carnegie Mellon study, and I want to emphasize that this is Carnegie Mellon University. This is not a study done by some religious organization analyzing pornography that might be on computer networks.

The university surveyed 900,000 computer images. Of these 900,000 images, 83.5 percent of all computerized photographs available on the Internet are pornographic. Mr. President, I want to repeat that: 83.5 percent of the 900,000 images reviewed—these are all on the Internet—are pornographic, according to the Carnegie Mellon study.

Now, of course, that does not mean that all of these images are illegal under the Constitution. But with so many graphic images available on computer networks, I believe Congress must act and do so in a constitutional manner to help parents who are under assault in this day and age. There is a flood of vile pornography, and we must act to stem this growing tide, because, in the words of Judge Robert Bork, it incites perverted minds. I refer to Judge Bork from the Spectator article that I have permission to insert in the RECORD.

My bill, again, is S. 892, and provides just this sort of constitutional, narrowly focused assistance in protecting children, while also protecting the rights of consenting adults to transmit and receive protected pornographic material—protected, that is, under the first amendment.

Also, according to the Carnegie Mellon University study, cyberporn is really big business. Some computer networks which specialize in computer pornography take in excess of $1 million per year.

Later this week, I am going to introduce the Antielectronic Racketeering Act of 1995 which will target organized crime which has begun to use the awesome powers of computers to engage in criminal activity.

As we all know from past debates in this body, organized crime is heavily involved in trafficking illegal pornography. The Antielectronic Racketeering Act will put a dent into that.

In closing, Mr. President, I urge my colleagues to give this study by Carnegie Mellon University serious consideration, and I urge my colleagues to support S. 892. I yield the floor.

EXHIBIT 1

[From the Spectator, Feb. 4, 1995]

AN ELECTRONIC SINK OF DEPRAVITY

NEW YORK.—If last year it was merely modish to be seen speeding down the information superhighway, this year it is fast becoming essential, at least in America. Hitch your wagon to cyberspace, says the new Speaker of the House, Mr. Newt Gingrich, and your democracy will become absolute, with all America joined together for the first time into one vast and egalitarian town meeting.

Mr. Gingrich made this all clear two weeks ago when he unveiled a new system for bringing Congress to the electronically connected populace, which in honour of President Jefferson is called "Thomas". Anyone with a computer and a modem at home or in the office (or even up in the skies, courtesy of USAir's new back-of-the-seat telescreens) may now, with only the click of a few buttons, find the text of any bill, any resolution, any government statement.

Mr. Gingrich is hugely excited by this idea—going so far as to suggest, and not at all facetiously, that perhaps every citizen be given a thousand-dollar tax deduction to allow him to buy himself a laptop computer. Thus will all America be conjoined, he argues, and thus will its democracy be ever strengthened as in no other country on earth.

Fine, say I, and not just because I will become richer by $1,000. For the last three years or so I have been a dedicated and enthusiastic user of the Internet. (The Internet—"the net" to those in the know—began innocently enough 20 years ago as a vast worldwide network of computers, linked together by government-funded telephone lines, with high-powered government-funded "exchanges" to speed calls on their way, which enabled universities and governments to swap information. Five years or so ago, its controllers opted to make it more democratic, and now anyone is able to connect to it; tens of thousands of new subscribers join every day, and the net is becoming truly global, with at least 20 million regular users.)

I am a typical enough user. I send electronic mail—e-mail—to everyone who is

similarly hooked up (it is lightning fast and essentially free); and I browse through the world's libraries and data-bases to do research for whatever book I happen to be writing. I bask happily in the Panglossian principle that the Internet seems to enshrine. By virtue of the net, I have complete freedom to explore and trawl for anything I want in what has become by custom an untrammelled, uncontrolled, wholly liberated ocean of information. The Internet seems and sounds to be something almost noble. One can understand why the US Congress named its own portion of the net after Jefferson: all knowledge there is is on hand for all the people—just the kind of thing the great man would have liked.

But this week, while I was peering into an area of the Internet where I have hitherto not lingered, I discovered something so appalling as to put all such high-minded sentiments into a quite different perspective.

I had stumbled, not entirely accidentally, into a sinkhole of electronic but very real perversion. The first thing I read, almost as soon as I entered it, was a lengthy, very graphic and in stylistic terms quite competently composed narrative that presented in all its essentials the story of a kidnapping, and the subsequent rape, torture, mutilation and eventual murder of the two victims. That author called himself by a codename, Blackwind; and while it is quite likely that he is American, almost as certain that he is well-educated and quite possible that he is at least a peripheral member of the academic community, we know, and are allowed to know, nothing else about him.

His anonymity is faultlessly safeguarded by a system of electronics which has been built into the Internet, and which even the police and the other agents of the state are unable, technically or in law, to penetrate. This is, from their point of view, highly regrettable. Blackwind's offerings—and the very similar stories currently being published on the Internet by scores of men who are in all likelihood as deranged as he seems to be—should be subject to some kind of legal sanction, and for one very understandable reason: the victims of the story he has written are small children.

One is a six-year old boy named Christopher, who, among other indignities, suffers a castration—reported in loving detail—before being shot. The other is a girl named Karen, who is seven years old and is raped repeatedly by no fewer than nine men, before having her nipples cut off and her throat slashed.

At the moment of my writing this, I find that there are perhaps 200 similar stories presently circulating and available on one of the so-called "newsgroups" on the Internet. The choice of tales is endlessly expanded and refreshed by new and ever more exotic stories that emerge into this particular niche in the other every day, almost every hour. You want tales of fathers sodomizing their three-year-old daughters, or of mothers performing fellatio on their prepubescent sons, or of girls coupling with horses, or of the giving of enemas to child virgins? Then you need do no more than visit the newsgroup that is named "alt.sex.stories" and all will reliably be there, 24 hours a day, for everyone with a computer and a telephone, anywhere on (or above) the face of the earth.

There are about 5,000 separate newsgroups on the net, each one of them presenting chatter about some scintilla of human knowledge or endeavour. I have long liked the system, and found it an agreeable way to discover people around the world who have similar interests. I used to tell others who were not yet signed up to the net that using newsgroups was like going into a hugely crowded pub, finding in milliseconds those who wanted to talk about what you wanted to know, having a quick drink with them before leaving, without once having encountered a bore.

And so, with an alphabetical list running from 'ab.fen'—which shows you how much fun you can have in Alberta—down to something in German called 'zer.zmetz.Wissenschaft.physik', the enthusiasms of the world's Internet-connected population are distilled into their electronic segments. Alberta-philes can chat with each other, as can German physicists, and those who would bore these are left to chat among themselves. In theory, an admirable arrangement.

By Jeffersonian rights it should be uplifting to the spirit. In reality it is rather less so. In far too many groups the level of discussion is execrable and juvenile. Arguments break out, insults are exchanged, the chatter drifts aimlessly in and out of relevance. This is a reality of the electronic world that few like to admit. It is prompting many browsers to suspect, as I do, that a dismayingly large number of users of this system are not at all the kind of sturdy champions of freedom and democracy and intellect that Mr. Gingrich and Mr. Gore would like them to be.

More probably, to judge from the tone and the language in many of the groups, they are pasty-faced and dysfunctional men with halitosis who inhabit damp basements. And it is for them, in large measure, that the newsgroups whose titles begin with the code-letters 'alt.sex' seem to exist.

There are 55 of these, offering manna for all diets. Some are fairly light-hearted; 'alt.sex.anal', for example contains much spirited chat about amusing uses to which you can put the colonic gateway; 'alt.sex.voyeurism' seems to contain reasonably harmless chatter between a whole worldful of civic-minded Peeping Toms, who like to advise one another which public loos in which national parks have eye-sized knotholes in their doors. There is also 'alt.sex.nasal.hair', into which I have not thus far been tempted.

There are a number of the groups, though, which are not so amusing. There is 'alt.sex.intergen', where the last letters stand for 'intergenerational', which is the current paedophile bulletin-board; and there is my current target, 'alt.sex.stories'. I came across it by accident, and I double-clicked my mouse to open it, briefly enthralled. It did not take many seconds before I realized I had been ill-prepared for what was on offer.

There is a kind of classification system. Each story entry lists a title, an author (invariably either a pseudonym, or posted via an anonymous computer that has laundered the words and made the detection of the author impossible), and a series of code-words and symbols that indicate the approximate content.

Blackwind's many offerings—there were about 200 stories in all, with Blackwind contributing perhaps 15 of them—usually fell into the categories that are denoted by the codes 'm-f, f-f, scat.pedo.snuff', meaning that they contain scenes of male-female sex, female-female sex, scatological imagery, paedophiliac description and the eventual killing of the central victim. You quickly get, I think, the drift. Others are more horrifying still—those that end with the invariable 'snuff' scene, but whose enticements on the way include 'best', 'torture', 'gore' or 'amputees', and which refer to sex with animals, bloodlettings, sadistic injury, and the limitless erotic joy of stumps.

It is important to note that no one polices or, to use the Internet word, 'moderates', this group. (Some of the more obscure and non-sexual newsgroups do have a volunteer, usually a specialist in the field, who tries to keep order in what might, if unchecked, become an unruly discussion.) On 'alt.sex.stories' there is only one man, a Mr. Joshua Laff of the University of Illinois at Urbana, who oversees the group, in a somewhat lethargic way. He helpfully suggests the code-words for the various kinds of perverse interests. He indicates to people who want to talk about sex stories, rather than actually contributing them, that they would be better advised to post their gripes on 'alt.sex.stories.discussion', next door, and so on.

But Mr. Laff has no admitted scruples about what is permitted to go out over the air. So far as he is concerned, the First Amendment to the Constitution protects all that is said on 'alt.sex.stories' as free speech. What is demonstrated on these thousands of electronic pages is a living exhibition of the birthright of all who are fortunate enough to be born in the land that has given us the National Rifle Association, the Reverend Jimmy Swaggart, and Blackwind.

In truth, Mr. Laff and those who support the published existence of such writings are technically right. No obscene pictures are published—these could be banned in law. No obscene truths are proffered, so far as we know—no confessions of real rapes, nor of actual acts of pedorasty. And since all the stories are prefaced with warnings that those under 18, or those of sensitive disposition, should read no further—devices that presumably attract precisely those they purport to deter—so, the authors seem to agree, their ramblings do no harm at all.

Most individual States legislate firmly or less so against printed pornography: but so far no one has successfully prosecuted the Internet—not least for the reason that with so amorphous, so global and so informal a linking of computers, who out there can be held responsible? People like Blackwind simply open accounts at what are known as 'anonymous posting systems', and their words become filtered through two or three computers in such a way that the original source can never be known, and the perpetrator of any possible crime becomes impossible to find. And, anyway, those who endlessly cry First Amendment! Here we want to say that the publishing of more words, even those from so clearly depraved an individual as Blackwind, can do no harm at all.

Commonsense would argue otherwise. A long and graphic account of exactly how and at what hour you wait outside a girls' school, how best to bundle a seven-year-old into your van, whether to tell her at the start of her ordeal that she is going to be killed at the end of it (Blackwind's favoured *modus operandi*), how best to tie her down, which aperture to approach first, and with what—such things can only tempt those who verge on such acts to take a greater interest in them.

Surely such essays tell the thinker of forbidden thoughts that there exists somewhere out there a like-minded group of men for whom such things are really not so bad, the enjoyment of which, if no one is so ill-starred as to get caught, can be limitless. Surely it is naive folly—or, at the other end of the spectrum, gross irresponsibility—to suppose otherwise.

Such material is not, I am happy to say, universally available. Some of the big corporations which offer public access to the Internet—America On-Line, CompuServe, Prodigy, Mr. Murdoch's Delphi—have systems in place that filter out the more objectionable newsgroups. On America On-Line you may read the ramblings on 'alt.sex.voyeurism' and probably even 'alt.sex.nasal.hair', but you may read no 'alt.sex.stories', nor may you learn techniques for having real relationships, as paedophiles like to say they have, with young children.

But for those with the wherewithal to find more robust and uncontrolled access to cyberspace—and that means, quite frankly, most of the world's computer users, be they 90 years old or nine—all newsgroups are equally available, the evil along with the excellent. The question we have to ask is whether that should continue to be the case.

One might not mind so much if the material were being confined to the United States, where most of it originates. But in fact it manages to seep its electronic way everywhere, from Wiltshire to Waziristan. And crucially, no mechanism is yet in place allowing foreigners—whose laws might well be far less tolerantly disposed to it—to filter it out.

A computer owner in Islington or Islamabad can have easy and inexpensive access to material over the net which would be illegal for him or her to read or buy on any British or Pakistani street. In China, pornographers would be imprisoned for publishing material that any Peking University students can read at the click of a mouse; and the same is true in scores of other countries and societies. The Internet, we smugly say, has become a means of circumventing the restrictive codes of tyrannics. But the reverse of this coin is less attractive; it also allows an almost exclusively American contagion to ooze outwards, unstoppable, like an oil spill, contaminating everyone and everything in its path.

We cannot, of course, prevent: such things being thought. We may not prevent them being written for self-gratification alone. But, surely, science and the public can somehow conspire and co-operate to see that such writings as are represented by 'scat.pedo.torture.snuff' and the like are neither published nor read, and that they do not in consequence have the opportunity to spread outwards as an electronic contagion from the minds of those who, like Blackwind, first create them.

The Jeffersonian model for universal freedom which Mr. Gingrich so rightly applauds could not take into account the barbarisms of the modern mind. Nor could it imagine the genius by which such barbarisms can be disseminated as they are today, in seconds, to the remotest and still most innocent corners of the world. Someone, perhaps even the Speaker of the House of Representatives, is going to have to consider soon the implications, for ill as well as good, of our venture out onto the information superhighway, or else there are going to be some very messy electronic traffic accidents.

[From Time Magazine, June 1995]

CYBERPORN—ON A SCREEN NEAR YOU

(By Philip Elmer-Dewitt)

It's popular, pervasive and surprisingly perverse, according to the first survey of online erotica. And there's no easy way to stamp it out.

Sex is everywhere these days—in books, magazines, films, television, music videos and bus-stop perfume ads. It is printed on dial-a-porn business cards and slipped under windshield wipers. It is acted out by balloon-breasted models and actors with unflagging erections, then rented for $4 a night at the corner video store. Most Americans have become so inured to the open display of eroticism—and the arguments for why it enjoys special status under the First Amendment—that they hardly notice it's there.

Something about the combination of sex and computers, however, seems to make otherwise worldly-wise adults a little crazy. How else to explain the uproar surrounding the discovery by a U.S. Senator—Nebraska Democrat James Exon—that pornographic pictures can be downloaded from the Internet and displayed on a home computer? This, as any computer-savvy undergrad can testify, is old news. Yet suddenly the press is on alert, parents and teachers are up in arms, and lawmakers in Washington are rushing to ban the smut from cyberspace with new legislation—sometimes with little regard to either its effectiveness or its constitutionality.

If you think things are crazy now, though, wait until the politicians get hold of a report coming out this week. A research team at Carnegie Mellon University in Pittsburgh, Pennsylvania, has counted an exhaustive study of online porn—what's available, who is downloading it, what turns them on—and the findings (to be published in the Georgetown Law Journal) are sure to pour fuel on an already explosive debate.

The study, titled Marketing Pornography on the Information Superhighway, is significant not only for what it tells us about what's happening on the computer networks but also for what it tells us about ourselves. Pornography's appeal is surprisingly elusive. It plays as much on fear, anxiety, curiosity and taboo as on genuine eroticism. The Carnegie Mellon study, drawing on elaborate computer records of online activity, was able to measure for the first time what people actually download, rather than what they say they want to see. "We now know what the consumers of computer pornography really look at in the privacy of their own homes," says Marty Rimm, the study's principal investigator. "And we're finding a fundamental shift in the kinds of images they demand."

What the Carnegie Mellon researchers discovered was:

There's an awful lot of porn online. In an 18-month study, the team surveyed 917,410 sexually explicit pictures, descriptions, short stories and film clips. On those Usenet newsgroups where digitized images are stored, 83.5 percent of the pictures were pornographic.

It is immensely popular. Trading in sexually explicit imagery, according to the report, is now "one of the largest (if not the largest) recreational applications of users of computer networks." At one U.S. University, 13 of the 40 most frequently visited newsgroups had names like alt.sex.stories, rec.arts.erotica and alt.sex.bondage.

It is a big moneymaker. The great majority (71 percent) of the sexual images on the newsgroups surveyed originate from adult-oriented computer bulletin-board systems (BBS) whose operators are trying to lure customers to their private collections of X-rated material. There are thousands of these BBS services, which charge fees (typically $10 to $30 a month) and take credit cards; the five largest have annual revenues in excess of $1 million.

It is ubiquitous. Using data obtained with permission from BBS operators, the Carnegie Mellon team identified (but did not publish the names of) individual consumers in more than 2,000 cities in all 50 states and 40 countries, territories and provinces around the world—including some countries like China, where possession of pornography can be a capital offense.

It is a guy thing. According to the BBS operators, 98.9 percent of the consumers of online porn are men. And there is some evidence that many of the remaining 1.1 percent are women paid to hang out on the "chat" rooms and bulletin boards to make the patrons feel more comfortable.

It is not just naked women. Perhaps because hard-core sex pictures are so widely available elsewhere, the adult BBS market seems to be driven largely by a demand for images that can't be found in the average magazine rack: pedophilia (nude photos of children), hebephilia (youths) and what the researchers call paraphilia—a grab bag of "deviant" material that includes images of bondage, sadomasochism, urination, defecation, and sex acts with a barnyard full of animals.

The appearance of material like this on a public network accessible to men, women and children around the world raises issues too important to ignore—or to oversimplify. Parents have legitimate concerns about what their kids are being exposed to and, conversely, what those children might miss if their access to the Internet were cut off. Lawmakers must balance public safety with their obligation to preserve essential civil liberties. Men and women have to come to terms with what draws them to such images. And computer programmers have to come up with more enlightened ways to give users control over a network that is, by design, largely out of control.

The Internet, of course, is more than a place to find pictures of people having sex with dogs. It's a vast marketplace of ideas and information of all sorts—on politics, religion, science and technology. If the fast-growing World Wide Web fulfills its early promise, the network could be a powerful engine of economic growth in the 21st century. And as the Carnegie Mellon study is careful to point out, pornographic image files, despite their evident popularity, represent only about 3 percent of all the messages on the Usenet newsgroups, while the Usenet itself represents only 11.5 percent of the traffic on the Internet.

As shocking and, indeed, legally obscene as some of the online porn may be, the researchers found nothing that can't be found in specialty magazines or adult bookstores. Most of the material offered by the private BBS services, in fact, is simply scanned from existing print publications.

But pornography is different on the computer networks. You can obtain it in the privacy of your home—without having to walk into a seedy bookstore or movie house. You can download only those things that turn you on, rather than buy an entire magazine or video. You can explore different aspects of your sexuality without exposing yourself to communicable diseases or public ridicule. (Unless, of course, someone gets hold of the computer files tracking your online activities, as happened earlier this year to a couple dozen crimson-faced Harvard students.)

The great fear of parents and teachers, of course, is not that college students will find this stuff but that it will fall into the hands of those much younger—including some, perhaps, who are not emotionally prepared to make sense of what they see.

Ten-year-old Anders Urmacher, a student at the Dalton School in New York City who

likes to hang out with other kids in the Treehouse chat room on America Online, got E-mail from a stranger that contained a mysterious file with instructions for how to download it. He followed the instructions, and then he called his mom. When Linda Mann-Urmacher opened the file, the computer screen filled with 10 thumbnail-size pictures showing couples engaged in various acts of sodomy, heterosexual intercourse and lesbian sex. "I was not aware that this stuff was online," says a shocked Mann-Urmacher. "Children should not be subjected to these images."

This is the flip side of Vice President Al Gore's vision of an information superhighway linking every school and library in the land. When the kids are plugged in, will they be exposed to the seamiest sides of human sexuality? Will they fall prey to child molesters hanging out in electronic chat rooms? It's precisely these fears that have stopped Bonnie Fell of Skokie, IL, from signing up for the Internet access her three boys say they desperately need.

"They could get bombarded with X-rated porn, and I wouldn't have any idea," she says. Mary Veed, a mother of three from nearby Hinsdale, makes a point of trying to keep up with her computer-literate 12-year-old, but sometimes has to settle for monitoring his phone bill. "Once they get to be a certain age, boys don't always tell Mom what they do," she says.

"We face a unique, disturbing and urgent circumstance, because it is children who are the computer experts in our Nation's families," said Republican Senator Dan Coats of Indiana during the debate over the controversial anti-cyberporn bill he co-sponsored with Senator Exon.

According to at least one of those experts—16-year-old David Slifka of Manhattan—the danger of being bombarded with unwanted pictures is greatly exaggerated. "If you don't want them you won't get them," says the veteran Internet surfer. Private adult BBSs require proof of age (usually a driver's license) and are off-limits to minors, and kids have to master some fairly daunting computer science before they can turn so-called binary files on the Usenet into high-resolution color pictures. "The chances of randomly coming across them are unbelievably slim," says Slifka.

While groups like the Family Research Council insist that online child molesters represent a clear and present danger, there is no evidence that it is any greater than the thousand other threats children face every day. Ernie Allen, executive director of the National Center for Missing and Exploited Children, acknowledges that there have been 10 or 12 "fairly high-profile cases" in the past year of children being seduced or lured online into situations where they are victimized. Kids who are not online are also at risk, however; more than 800,000 children are reported missing every year in the U.S.

Yet it is in the name of the children and their parents that lawmakers are racing to fight cyberporn. The first blow was struck by Senators Exon and Coats, who earlier this year introduced revisions to an existing law called the Communications Decency Act. The idea was to extend regulations written to govern the dial-a-porn industry into the computer networks. The bill proposed to outlaw obscene material and impose fines of up to $100,000 and prison terms of up to two years on anyone who knowingly makes "indecent" material available to children under 18.

The measure had problems from the start. In its original version it would have made online-service providers criminally liable for any obscene communications that passed through their systems—a provision that, given the way the networks operate, would have put the entire Internet at risk. Exon and Coats revised the bill but left in place the language about using "indecent" words online. "It's a frontal assault on the First Amendment," says Harvard law professor Laurence Tribe. Even veteran prosecutors ridicule it. "It won't pass scrutiny even in misdemeanor court," says one.

The Exon bill had been written off for dead only a few weeks ago. Republican Senator Larry Pressler of South Dakota, chairman of the Commerce committee, which has jurisdiction over the larger telecommunications-reform act to which it is attached, told Time that he intended to move to table it.

That was before Exon showed up in the Senate with his "blue book." Exon had asked a friend to download some of the rawer images available online. "I knew it was bad," he says. "But then when I got on there, it made Playboy and Hustler look like Sunday-school stuff." He had the images printed out, stuffed them in a blue folder and invited his colleagues to stop by his desk on the Senate floor to view them. At the end of the debate—which was carried live on c-span—few Senators wanted to cast a nationally televised vote that might later be characterized as pro-pornography. The bill passed 84 to 16.

Civil libertarians were outraged. Mike Godwin, staff counsel for the Electronic Frontier Foundation, complained that the indecency portion of the bill would transform the vast library of the Internet into a children's reading room, where only subjects suitable for kids could be discussed. "It's government censorship," said Marc Rotenberg of the Electronic Privacy Information Center. "The Amendment shouldn't end where the Internet begins."

The key issue, according to legal scholars, is whether the Internet is a print medium (like a newspaper), which enjoys strong protection against government interference, or a broadcast medium (like television), which may be subject to all sorts of government control. Perhaps the most significant import of the Exon bill, according to EFF's Godwin, is that it would place the computer networks under the jurisdiction of the Federal Communications Commission, which enforces, among other rules, the injunction against using the famous seven dirty words on the radio. In a Time/CNN poll of 1,000 Americans conducted last week by Yankelovich Partners, respondents were sharply split on the issue: 42 percent were for FCC-like control over sexual content on the computer networks; 48 percent were against it.

By week's end the balance between protecting speech and curbing pornography seemed to be tipping back toward the libertarians. In a move that surprised conservative supporters, House Speaker Newt Gingrich denounced the Exon amendment. "It is clearly a violation of free speech, and it's a violation of the right of adults to communicate with each other," he told a caller on a cable-TV show. It was a key defection, because Gingrich will preside over the computer-decency debate when it moves to the House in July. Meanwhile, two U.S. Representatives, Republican Christopher Cox of California and Democrat Ron Wyden of Oregon, were putting together an anti-Exon amendment that would bar federal regulation of the Internet and help parents find ways to block material they found objectionable.

Coincidentally, in the closely watched case of a University of Michigan student who published a violent sex fantasy on the Internet and was charged with transmitting a threat to injure or kidnap across state lines, a federal judge in Detroit last week dismissed the charges. The judge ruled that while Jake Baker's story might be deeply offensive, it was not a crime.

How the Carnegie Mellon report will affect the delicate political balance on the cyberporn debate is anybody's guess. Conservatives thumbing through it for rhetorical ammunition will find plenty. Appendix B lists the most frequently downloaded files from a popular adult BBS, providing both the download count and the two-line descriptions posted by the board's operator. Suffice it to say that they all end in exclamation points, many include such phrases as "nailed to a table!" and none can be printed in Time.

How accurately these images reflect America's sexual interests, however, is a matter of some dispute. University of Chicago sociologist Edward Laumann, whose 1994 Sex in America survey painted a far more humdrum picture of America's sex life, says the Carnegie Mellon study may have captured what he calls the "gaper phenomenon." "There is a curiosity for things that are extraordinary and way out," he says. "It's like driving by a horrible accident. No one wants to be in it, but we all slow down to watch."

Other sociologists point out that the difference between the Chicago and Carnegie Mellon reports may be more apparent than real. Those 1 million or 2 million people who download pictures from the Internet represent a self-selected group with an interest in erotica. The Sex in America respondents, by contrast, were a few thousand people selected to represent a cross section of all American. Still, the new research is a gold mine for psychologists, social scientists, computer marketers and anybody with an interest in human boards, they left a digital trail of their transactions, allowing the pornographers to compile data bases about their buying habits and sexual tastes. The more sophisticated operators were able to adjust their inventory and their descriptions to match consumer demand.

Nobody did this more effectively than Robert Thomas, owner of the Amateur Action BBS in Milpitas, California, and a kind of modern-day Marquis de Sade, according to the Carnegie Mellon report. He is currently serving time in an obscenity case that may be headed for the Supreme Court.

Thomas, whose BBS is the online-porn market leader, discovered that he could boost sales by trimming soft- and hard-core images from his data base while front-loading his files with pictures of sex acts with animals (852) and nude prepubescent children (more than 5,000), his two most popular categories of porn. He also used copywriting tricks to better serve his customers' fantasies. For example, he described more than 1,200 of his pictures as depicting sex scenes between family members (father and daughter, mother and son), even though there was no evidence that any of the participants were actually related. These "incest" images were among his biggest sellers, accounting for 10 percent of downloads.

The words that worked were sometimes quite revealing. Straightforward oral sex, for example, generally got a lukewarm response. But when Thomas described the same images using words like choke or choking, consumer demand doubled.

Such findings may cheer antipornography activists; as feminist writer Andrea Dworkin puts it, "the whole purpose of pornography is to hurt women," Catharine MacKinnon, a

professor of law at the University of Michigan, goes further. Women are doubly violated by pornography, she writes in Vindication and Resistance, one of three essays in the forthcoming Georgetown Law Journal that offer differing views on the Carnegie Mellon report. They are violated when it is made and exposed to further violence again and again every time it is consumed. "The question pornography poses in cyberspace," she writes, "is the same one it poses everywhere else: Whether anything will be done about it."

But not everyone agrees with Dworkin and MacKinnon, by any means; even some feminist think there is a place in life—and the Internet—for erotica. In her new book, Defending Pornography, Nadine Strossen argues that censoring sexual expression would do women more harm than good, undermining their equality, their autonomy and their freedom.

The Justice Department, for it part, has not asked for new antiporn legislation. Distributing obscene material across state lines is already illegal under federal law, and child pornography in particular is vigorously prosecuted. Some 40 people in 14 states were arrested two years ago in Operation Longarm for exchanging kiddie porn online. And one of the leading characters in the Carnegie Mellon study—a former Rand McNally executive named Robert Copella, who left book publishing to make his fortune selling pedophilia on the networks—was extradited from Tijuana, and is now awaiting sentencing in a New Jersey jail.

For technical reasons, it is extremely difficult to stamp out anything on the Internet—particularly images stored on the Usenet newsgroup. As Internet pioneer John Gilmore famously put it, "The Net interprets censorship as damage and routes around it." There are border issues as well. Other countries on the Internet—France, for instance—are probably no more interested in having their messages screened by U.S. censors than Americans would be in having theirs screened by, say, the government of Saudi Arabia.

Historians say it should come as no surprise that the Internet—the most democratic of media—would lead to new calls for censorship. The history of pornography and efforts to suppress it are inextricably bound up with the rise of new media and the emergence of democracy. According to Walter Kendrick, author of The Secret Museum: Pornography in Modern Culture, the modern concept of pornography was invented in the 19th century by European gentlemen whose main concern was to keep obscene material away from women and the lower classes. Things got out of hand with the spread of literacy and education, which made pornography available to anybody who could read. Now, on the computer networks, anybody with a computer and a modem can not only consume pornography but distribute it as well. On the Internet, anybody can be Bob Guccione.

That might not be a bad idea, says Carlin Meyer, a professor at New York Law School whose Georgetown essay takes a far less apocalyptic view than MacKinnon's. She argues that if you don't like the images of sex the pornographers offer, the appropriate response is not to suppress them but to overwhelm them with healthier, more realistic ones. Sex on the Internet, she maintains, might actually be good for young people. "[Cyberspace] is a safe space in which to explore the forbidden and the taboo," she writes. "It offers the possibility for genuine, unembarrassed conversations about accurate as well as fantasy images of sex."

That sounds easier than it probably is. Pornography is powerful stuff, and as long as there is demand for it, there will always be a supply. Better software tools may help check the worst abuses, but there will never be a switch that will cut it off entirely—not without destroying the unbridled expression that is the source of the Internet's (and democracy's) greatest strength. The hard truth, says John Perry Barlow, co-founder of the EFF and father of three young daughters, is that the burden ultimately falls where it always has: on the parents. "If you don't want your children fixating on filth," he says, "better step up to the tough task of raising them to find it as distasteful as you do yourself."

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I thank my friend and colleague from my neighboring State of Iowa, whose usual good judgment has never been questioned by this individual. I thank him very much for addressing this matter.

I, too, read the article that he referenced in Time magazine. I got in on just the end of his remarks.

May I inquire of my friend from Iowa, did he have printed in the RECORD that portion of the Time magazine article from this morning's Time magazine?

The PRESIDING OFFICER. The Chair will observe he did.

Mr. EXON. I thank the Chair.

If it was not referenced, I would reference the graphic picture on the front of Time magazine today, which I think puts into focus very distinctly and directly what my friend from Iowa and this Senator has been talking about for a long, long time.

I would also reference for the RECORD and ask unanimous consent to have printed in the RECORD, interestingly enough, simultaneously a similar story along the same lines that appeared in this morning's weekly edition of Newsweek magazine.

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

[From Newsweek, July 3, 1995]

NO PLACE FOR KIDS?

A PARENT'S GUIDE TO SEX ON THE NET

(By Steven Levy)

When the annals of cyberspace are uploaded for future generations, digital historians will undoubtedly include a scene from the Senate chamber earlier this month: Nebraska Democrat James Exon brandishing a thin binder now known as the blue book. Inside were images snatched from the shadows and thrust into the center of public discourse. Women bound and being burned by cigarettes. Pierced with swords. Having sex with a German shepherd. As Exon puts it, images that are "repulsive and far off base." Images from the Net.

Exon compiled his blue book to persuade his Senate colleagues to pass his Communications Decency Act. Partially moved by a private showing in the Senate cloakroom, they did so, overwhelmingly. It is not clear whether the act, which places strict limits on all speech in computer networks, will find its way into law, but its Senate passage was a transforming blow against the Internet empire. Even the most vehement of the Internet's defenders now face a real problem: how to maintain free speech when well-chronicled excesses give the impression that much of cyberspace is a cesspool.

Indeed, most of the dispatches from the electronic world these days seem to dwell on the dark side. The most prevalent type of anecdote involves someone like Susan Tilghman, a medical doctor in Fairfax, Va. Last fall she hooked the family computer to America Online (AOL). Her sons, 12 and 15 years old, enjoyed it so much that she and her husband sought to find out why. Clicking on files their boys had read, the astonished parents found "pornographic pictures in full color," says Tilghman, "We were horrified." She pulled the modem plus immediately.

Then there are the actual busts of online pornographic rings. Just as in the physical world, traffic in obscene material is illegal in cyberspace, and authorities are beginning to prosecute zealously. The most recent raid occurred last week in Cincinnati, targeting not only purveyors of porn but more than 100 individuals who had allegedly downloaded pornographic images of children via AOL.

Most disturbing of all are the tales of sexual predators using the Internet and commercial online services to spirit children away from their keyboards. Until now parents have believed that no physical harm could possibly result when their progeny were huddled safely in the bedroom or den, tapping on the family computer. But then came news of cases like the 13-year-old Kentucky girl found in Los Angeles after supposedly being lured by a grown-up cyberpal.

These reports have triggered a sort of parental panic about cyberspace. Parents are rightfully confused, faced with hard choices about whether to expose their children to the alleged benefits of cyberspace when carnal pitfalls lie ahead. As our culture moves unrelentingly toward the digital realm, some questions—and answers—are finally coming into focus.

HOW MUCH SEX IS THERE IN CYBERSPACE?

A lot. Brian Reid, director of the Network Systems Laboratory at Digital Equipment Corp., reports that one of the most popular of the thousands of Usenet discussion groups is the "alt.sex" group. He estimates that on a monthly basis between 180,000 and 500,000 users drop in. A glance at some World Wide Web sites shows that while the digital home of the Smithsonian Institution took seven weeks to gather 1.9 million visits, or "hits," Playboy's electronic headquarters received 4.7 million hits in a seven-day period last month.

And this week the Georgetown Law Journal will release a survey headed by Marty Rimm, a 30-year-old researcher at Carnegie Mellon University. In his paper, "Marketing Pornography on the Information Superhighway," Rimm concentrated mostly on adults-only bulletin boards (the equivalent of X-rated bookshops). He provides solid evidence that there's loads of hard-core stuff in cyberspace. Rimm wrote a computer program to analyze descriptions of 917,410 dirty pictures (he examined about 10,000 actual images, to check the realiability of the descriptions). His conclusion: "I think there's almost no question that we're seeing an unprecedented availability and demand of material like sadomasochism, bestiality, vaginal and rectal fisting, eroticized urination . . . and pedophilia."

HOW EASY IS IT TO AVOID THE SEXUAL MATERIAL?

Donna Rice Hughes (yes, that Donna Rice), spokesperson for an anti-pornography group called Enough is Enough!, claims that "children are going online innocently and naively running across material that's illegal even for adults." But the way the Internet works, that sort of stuff doesn't tend to pop up uninvited. "When you watch TV it comes right to you," says Donna Hoffman, associate professor of business at Vanderbilt University. "But on the Internet, you're in an environment with 30 million channels. It's up to you to decide where to go. You don't have to download the images on alt.sex.binaries."

Groups with "binaries" are the picture files, the ones containing the most shocking images. To find them, one needs a good sense of digital direction. Depending on the software you have, you may need a mastery of some codes in the notoriously arcane Unix computer language, or it can involve a few well-chosen clicks of the mouse. In any case, there's no way you get that stuff by accident.

Kids are very hungry to view sexual materials, and left to their own devices they will find that the Internet provides them with an unprecedented bonanza. In predigital days, getting one's hands on hot pictures required running an often impenetrable gantlet of drugstore clerks and newsstand operators, and finding really hardcore material was out of the question. Not so with the Net. Frank Moretti, associate headmaster of the Dalton School in New York City, which offers Internet access beginning in junior high, thinks that we can deal with that. "There's a candy store around the corner from our school that has just about every kind of pornographic image," he says. "The challenge is to help our children use self-discipline."

IS THE INTERNET A HAVEN FOR PREDATORS?

After years of online activity, "there have been about a dozen high-profile cases," says Ernie Allen, president of the Arlington, Va.-based National Center for Missing and Exploited Children. "It's not a huge number, but it does indicate that there are risks. But there are risks in everything a child does. Our concern is the nature of the technology. It creates a false sense of security."

What parents should warn kids about is the classic scenario described by Detective Bill Dworn, head of the Sexually Exploited Child Unit of the Los Angeles Police Department: "The pervert can get on any bulletin board and chat with kids all night long. He lies about his age and makes friends. As soon as he can get a telephone number or address, he's likely to look up the kid and molest him or her." In real life, this hardly ever happens. Most online services have policies to monitor chat rooms, particularly those designated as "kids-only." No guarantees, but not many kidnappers.

And if the child is propositioned? "It happens, but it's less upsetting if a child is prepared for it," says Sherry Turkle, an MIT professor whose coming book, "Life on the Screen," includes data about the experiences of nearly 300 kids on the Net. "Better to warn the child and instruct him to say, 'I'm not interested,' and just leave."

All the publicity about predators has tarnished the image of chat rooms. But the talk areas may have value. "Kids are finding ways to experiment with self-presentation," says Turkle. She's talked with kids about "Net sex," where kids dabble in interactive erotica like this:

I'm kissing you.
You fondle my hair.
I fondle your breast.

Sometimes there is conscious gender-swapping. Sometimes things go farther than the kids intended. Still, Turkle thinks that there may be benefits in this; after all, no one gets pregnant in cyberspace. "Adolescence used to be a timeout, sexually speaking," she says. "But in the age of AIDS, sexual experimentation is a deadly game. The Internet is becoming a way to play with identity, where adolescents can develop a sense of themselves."

CAN NEW LAWS SUCCESSFULLY ADDRESS THE PROBLEM?

The Exon amendment is very broad. It could hamper communication between adults—the essence of online activity—and might not even solve the problems that kids face. "It would be a mistake to drive us, in a moment of hysteria, to a solution that is unconstitutional, would stultify technology, and wouldn't even fulfill its mission," argues * * * Berman, director of the Center for Democracy and Technology.

But Berman and others have a secret weapon: the House of Representatives. "There's a generational difference between the House and Senate," says Berman. "They understand the technology and they're not afraid of it." The only question was whether this pro-technology impulse, along with a loathing for government regulation, would lead Speaker Newt Gingrich and his minions to defy their allies in the religious right, whose "Contract With the American Family" calls for "protecting children from exposure to pornography on the Internet."

The question was answered last Tuesday night when a caller on a cable-TV talk show asked Gingrich what he thought of Exon's amendment. "I think it has no meaning and no real impact . . .," the speaker said. "It is clearly a violation of free speech and it's a violation of the rights of adults to communicate with each other."

But that was not the worst news for would-be monitors of cyberspace. Conservative Republican Chris Cox of California has teamed with liberal Democrat Ron Wyden of Oregon to develop the grandiosely entitled Internet Freedom and Family Empowerment Act. Basically, the bill would forbid the federal government from creating any regulatory agency to govern the Internet, relying instead on a variety of means (not yet determined) to protect children. Cox hopes that such legislation will encourage a free-market solution to cybersex from . . . more new technology.

CAN HIGH-TECH SOLUTIONS HELP?

Ultimately, James Exon's greatest contribution to the protection of children may not be his legislation but the fear of it has created in Silicon Valley and its virtual environments. Already parents can buy some sophisticated software to block children's access to questionable material. More is on the way; two weeks ago Microsoft, Netscape and the Progressive Networks joined together to develop new prophylactic devices. "The Exon amendment certainly raised consciousness," says Mike Homer of Netscape. "But we believe there is a variety of fairly straightforward tools that would allow us to self-regulate." More than 100 companies have called, asking to help. Another, paragraph complementary, scheme in the works is KidCode, a means by which the addresses on the World Wide Web will have voluntary ratings embedded. "Places that provide erotica on the Internet are wild about the idea of voluntary ratings," says Nathaniel Borenstein, designer of KidCode. "They don't want to sell to kids."

Meanwhile, one solution has already hit the market: SurfWatch, created by an eponymous Silicon Valley firm. Its software works by matching a potential Net destination to a proprietary list of forbidden sites. In addition, the $50 software package looks for objectionable language. Once parents or educators install it, they have at least one line of defense. "This is the kind of software that can offer the individual choice as opposed to censorship," says SurfWatch vice president Jay Friendland.

Last week a bogus press release circulated on the Net for a fictional product called Babe Watch that "looks exactly like SurfWatch but instead of blocking access, actually goes out and locates Web sites with good pictures of babes." Undoubtedly a real-life version is in the works. "If you're a 16-year-old A-quality hacker, you'll be able to turn us off," says Friendland.

WILL THE PROBLEM EVER GO AWAY?

The bottom line when it comes to kids, sex and the Internet is that no matter what laws we pass and what high-tech solutions we devise, the three of them together will never be less volatile than the first two alone. We can mitigate but not eliminate the drawbacks of high tech; there's no way to get its benefits without them.

It's a trade-off that Patricia Shao understands. About six weeks ago, her 13-year-old daughter, visiting a friend, was in an online-service chat room when they were propositioned to have "cybersex." Shao was shocked, and even more so when her daughter casually told her, "This is what happens when we're online." "They thought it was just a crackpot," says Shao, a Bethesda, Md., marketing executive. Instead of pulling the cyberplug, however, Shao took pains to educate herself about online sex. She even engaged in some political activism, signing on with a pro-Exon anti-pornography group. And ultimately, Shao's family purchased its own America Online subscription after her daughter's close encounter with a pixilated stranger.

If there were more built-in programs like SurfWatch available to her, Shao ways, she'd probably use them. But in the meantime she is making do with the more old-fashioned method of talking to her kids—and trusting them. "I've warned my children about the obscene material out there, and I trust them not to access it." As careful parents will do, she monitors the family online activity somewhat, by tracking the hours they are logged on. But as with other passages—going out alone, driving a car—ultimately, you have to let kids grow up. Even if some of the growing up happens online.

Mr. EXON. The story Newsweek tells is not dissimilar. Alarming facts have been brought out into the open even further with the publication in these two national magazines. The Newsweek article is entitled "Sex Online: What Parents Should Know."

I very much appreciate having the time to take a look at the legislation the Senator from Iowa has introduced. I do not know how it is significantly different from the measure that was introduced by Senator COATS and myself, known as the Decency Act, and approved on the Senate floor by a vote of 86 to 14, if I remember it correctly.

I simply say, this is an ongoing battle. If we have not done anything else, I hope all will recognize today at least Americans know that there is a real,

real problem, primarily with regard to our children, our innocent children—at least as we like to think of them.

It seems to me all of the profit-making motives are now sizing the Internet to make money on, and I applaud the efforts of the Senator from Iowa and the legislation that he just indicated he intended to introduce with regard to crime taking over a more important part of the Internet. That happens wherever there is an exciting new development.

Once again, I emphasize this Senator has followed with keen interest the development of the Internet. It so happens this Senator probably is one of the few Members of this body who was on the original Internet. The original Internet, the only thing like it, was the amateur radio network that I became involved as a very young lad, 16 or 17 years old, growing up in Lake Andes, SD, and I communicated, dit-dit da-dit, with people all over the United States. Of course you had to have a license to be an amateur radio operator; you had to pass certain tests. I guess no one ever thought about that first Internet being used for the purposes that this Internet is being used.

Nevertheless, as the senior member of the Armed Services Committee I was very much involved in the Internet development. Some people wonder where did the Internet come from? It came from and was borne by taxpayers' dollars, out of the national defense budget. It spread far beyond that at this time, and I certainly say and emphasize once again, I am a strong supporter of the Internet, the information superhighway. But for a long, long time, beginning seriously a little over a year ago, I began to develop legislation that would hopefully make the information superhighway a safer highway for kids and families to travel. The legislation that was passed by the Senate on a 86 to 14 vote within the last week or so was a follow-on to a proposal that I addressed and attached to the telecommunications bill out of the Commerce Committee last year.

The concept of all of these has been to make a constructive suggestion, recognizing constitutional rights. Like that portion referred to by the Senator from Iowa, the measure crafted by myself and Senator COATS and our staffs, with the help of an awful lot of people, does provide protection, constitutional guarantees oftentimes supported by the courts in a whole series of areas including the laws that we have always had regarding obscenity on the telephone lines and also laws similarly against transportation of pornographic and obscene materials through the U.S. mail. Further, our law incorporates the protections under the first amendment that have been argued out and thoroughly discussed and held by the courts under the Dial-a-Porn statutes, which is another form of pornography.

It is safe to say, the issue has been engaged. I think that is for the good. Once again, I cannot speak for my cosponsor, Senator COATS, or any cosponsor of the measure that passed the Senate, but this Senator simply says I am willing to listen to any improvements or changes that should be made in this bill. But I certainly am not going to stand by and see it watered down to the place where it is totally meaningless.

Therefore, I say I think we have accomplished a great deal by clearly, for the first time, illuminating and bringing this to the attention of parents of the United States of America. And parents still are required, I suggest, to play a key role in how we develop this and how it is administered. But the parents, I think, cannot do it alone. Therefore, I hope we can continue to work together in a constructive fashion and not listen to the voices that simply say, "I want what I want when I want it on the Internet and I don't care what ill effect that might have on kids."

We have to continue to work together. I hope there is a way to solve this problem for the good of all.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

The Senator from New Mexico is advised we have 1 more minute remaining in morning business.

Mr. BINGAMAN. Mr. President, I ask unanimous consent I be allowed to speak in morning business for up to 10 minutes.

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

SCIENCE EDUCATION

Mr. BINGAMAN. Mr. President, I want to speak for a few minutes here this morning to oppose cuts for science education that were made June 20, in the House Appropriations Committee, related to the Energy Department. Congress is engaged in an important process to reduce the Federal budget and I support that process. I recognize very difficult choices will have to be made. But I want to be sure, to the extent I can, that the process remains thoughtful and maintains our national commitment to improvement in education and our national investment in education, at the same time that we proceed toward a balanced budget. Cuts being proposed for science education in the Department of Energy appropriation do not meet that test of thoughtfulness and support for investment in education.

In 1989, President Bush met with the 50 Governors throughout this country in an education summit in Charlottesville, VA. That was a historic occasion because for the first time the Governors and the President met together to discuss that important issue of how to improve education in the country.

In 1990, they published goals for this country, and one of those goals, which I believe was an extremely important goal for us to commit ourselves to, was the goal of making this country first in the world in math and science education by the year 2000. This is the backdrop against which we need to judge what we are doing in this appropriations process here in the Congress in these weeks.

I am told that the House appropriations bill, that I referred to before, significantly reduces the $160 million for science education embedded in various parts of the Department of Energy, and it eliminates altogether the funding for two line items which are focused entirely on education. Those two line items are:

First, the University and Science Education Program in the Department of Energy Office of Science Education and Technical Information. The House appropriations mark for this program has reduced the funding from the proposed $55 million, which the President asked for in his budget, to absolutely zero.

The second of these two line items is the Department of Energy Technology Transfer and Education Program for Department of Energy Office of Defense Programs. The House mark for this program was reduced from $249 million in fiscal year 1996—that was the proposed level—to $15 million, including a cut to zero funding for the $20 million line item earmarked for science education at our three national weapons laboratories.

Obviously, Mr. President, this is of concern to me because this directly affects two of those national laboratories in my home State of New Mexico, Sandia and Los Alamos National Laboratories.

First, let me describe the impact of the elimination of the Science Education and Technical Information Program. This cut eliminates the central coordinating and evaluation mechanism for all of the Department of Energy education activities, which is the Office of Science Education and Technical Information. In eliminating this office, Congress would eliminate the administrative infrastructure for other Department of Energy science education offices' programs, the only Department of Energy office in which education is not just an ancillary function.

In addition, this cut would eliminate the laboratory cooperative science centers, which leverage the much larger investment in science and technology expertise residing in the Department of Energy Laboratory System. These centers connect thousands of students and teachers each year in high schools, colleges, and graduate programs with scientists at our Department of Energy

laboratories. The centers provide training and mentoring, and hands-on laboratory experiences both at the laboratories themselves and at local public schools and universities. They provide internships, faculty research opportunities, and professional development enhancements and lab-school partnerships. They also help support the Department of Energy's scientists' participation in a variety of State and local systemic education reform activities, such as the National Science Foundation's State systemic reform initiatives.

These cuts will weaken the pipeline of well-trained scientists supported by the 73 percent of programs funds that go to universities to train future engineers, technicians, and scientists for current and future work force needs. They will eliminate Department of Energy work to support and strengthen the caliber of science and math education at the secondary and at the college levels, and the 1996 priorities for work force development, systemic education reform, science literacy, evaluation, and dissemination.

Mr. President, the Department of Energy education cuts will have a particularly damaging effect for those who benefit from the education activities of Sandia National Laboratory and Los Alamos National Laboratory in my home State of New Mexico.

First, they will suffer education cuts as part of the centers that I just described. Second, they will also suffer the loss of their part of the additional $20 million for education programs concentrated at Sandia, Los Alamos, and at Lawrence Livermore National Laboratories, the Nation's three weapons laboratories.

For Sandia National Laboratory, this would eliminate education outreach funding which in 1995 was $6 million from the Office of Defense Programs, $2.3 million from the Office of Science Education, and almost $2 million from other internal funds to reach a total of over $10 million.

This will mean the loss of K through 12 student enrichment programs, K through 12 teacher professional development programs, college and university programs, and programs for educational technology.

For Los Alamos National Laboratory, it would eliminate educational outreach funding again for the 1995 fiscal year, which amounted to $6.3 million from the Office of Defense Programs, $1.3 million from the Office of Science Education, $600,000 from other parts of the Office of Energy Research, for a total of about $8 million.

This would mean the loss of nationally recognized model science and math programs relied upon by the States that they serve for high-quality professional development for our teachers.

Together, these cuts in the two programs will hurt science education in the country, and it will especially hurt science education in my home State of New Mexico. They will weaken the infrastructure support for science education and work force preparation. These are the kinds of priorities that we need to protect. We need to reassert our commitment to reaching the education goals that were established by President Bush and the Governors in 1989. We should not undermine those goals by making these kinds of shortsighted cuts.

Mr. President, as we work to reach deficit reduction and to reach a balanced budget, we need to make our priorities clear. One of our priorities needs to be retaining funding for science and math education. I hope that when the Senate passes its appropriations bill, it will see to it that the funds for these programs are retained, and that we can prevail in conference with the House.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I ask unanimous consent that I be allowed to proceed for 5 minutes as if in morning business.

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

THE BUDGET

Mr. INHOFE. Mr. President, I want to take a moment or two to respond to something that was said earlier in morning business when the Senator from North Dakota gave his usual eloquent discourse on populism, and the fact that he used phrases that Republicans have a philosophy where the rich are paid too little and the poor are paid too much. That was in reference to a budget that will eliminate the deficit by the year 2002.

It is always difficult to stand on the floor and defend an effort to really do something about the deficit because those individuals who want to continue the social programs, who want to continue business as usual, will stand up and make it look as if those of us who are trying to be fiscally responsible, those of us who recognize that it is not any of us in this Chamber but future generations that are going to have to pay for all of this fun we are having right now, that somehow we are not acting responsibly. I think the elections of November 8, 1994, were very clear warning signals that we are going to change, we are not going to have business as usual in America.

But the thing that disturbed me more than anything else that was said by the distinguished Senator from North Dakota [Mr. DORGAN], was the reference to a national defense system, national missile defense system, star wars. This is the first warning sign that I have heard in this cycle that we are going to have in fact opposition, people wanting to make it look like those of us who want to have a national missile defense system, somehow we are looking up in the stars in a Buck Rogers kind of syndrome, that it is something that is very expensive and something we cannot have.

I would like to suggest, Mr. President, that we have an opportunity to prepare now to defend ourselves against a future national missile attack. It was not long ago that Jim Woolsey, who was the chief security adviser to the President of the United States, President Clinton, made the observation that our intelligence informs us that there are between 20 and 25 countries that either have or are developing weapons of mass destruction—either nuclear, chemical, or biological—and are developing the missile, the means of delivering those warheads.

This is a very frightening thing, when we stop and realize that we in America do not have a missile defense system. Most people think we do have it somehow, but we do not.

Many of us can remember what happened back in 1972 when the ABM Treaty was agreed to, that back in 1972 it was a treaty predicated on the assumption that there were two superpowers in the world, the Soviet Union and the United States. I suggest, Mr. President, that there are many of us who believe that the threat out there to the United States security could be greater now than it was back then because at least then we could identify who the enemy was. And now, as Jim Woolsey said, there is a proliferation, a number of countries that have this technology, and many countries that have already demonstrated they are not friends of United States are getting a missile system to deliver warheads.

So I believe that we must be very cautious and not use the normal populace, partisan patter that you hear around this Chamber so much when people start talking about star wars. It is not star wars. We have an ability—and we demonstrated that we are going to use the current Aegis system that we have a $50 billion investment in—to have a high-tier missile defense system that we will be desperately needing in the very near future.

So I hope my colleagues will refrain from taking political advantage of the situation we are in by not saying exactly what it is, and that is that there is a threat out there and the United States of America does not have a national missile defense system.

I thank the Chair. I yield the floor.

50TH ANNIVERSARY OF THE UNITED NATIONS

Mr. DOLE. Mr. President, today is the 50th anniversary of the signing of the U.N. Charter. Amid high hopes at the end of the Second World War in Europe, the United Nations Charter was

signed in San Francisco. Fifty years later, the record of the United Nations is mixed, and the expectations of its founders have not been met.

The United Nations has had some important accomplishments—on international air travel, eradicating smallpox, and sharing information about global concerns ranging from weather to health. But the United Nations at 50 is an organization at a crossroads—if the United Nations is to survive another 50 years, there must be fundamental change. If the United Nations is to be more than a debating society with 185 members, there must be fundamental change. And if the United Nations is ever to fulfill the hopes of its founders, there must be fundamental change.

Much was written this last weekend about the past and future of the United Nations. In my view, the best single piece was by Senator NANCY KASSEBAUM and Congressman LEE HAMILTON—one a Republican and the other a Democrat, I might add. On each of the key issues facing the United Nations, they made important points.

On peacekeeping, they conclude the United Nations has overreached. Much criticism of the United Nations in the last 5 years has centered on the failures of U.N. peacekeeping. The tragic record of Somalia and Bosnia make one fact very clear—the United Nations is not capable of mounting serious military operations. Nor should it be. Monitoring an agreement between two or more parties is one thing the United Nations can do. Imposing an agreement is something it cannot. The United Nations should be limited to peacekeeping, not peace enforcing.

Senator KASSEBAUM and Congressman HAMILTON also suggested the United Nations focus on key agencies and functions—such as the International Atomic Energy Agency—and quit wasting time and money on the dozens of agencies which no longer serve a useful purpose—if they ever did. In my view the United States should push to abolish wasteful organizations—and withdraw if we are unsuccessful. Examples of unnecessary or duplicative bureaucracies include the International Labor Organization, the United Nations Industrial Development Organization, the U.N. Conference on Trade and Development, and many more.

The Kassebaum-Hamilton article suggests an end to U.N.-hosted conferences which cost millions and accomplish very little.

Finally, and most importantly, Senator KASSEBAUM and Congressman HAMILTON focus on the importance of accountability at the United Nations. Last year, Congress tried to move the United Nations toward an inspector general. Progress has not been sufficient. An individual was appointed, but with limited powers, and under the authority of the U.N. Secretary General. I expect Congress to revisit the issue this year. Much more needs to be done: Promotions based on merit, real investigations of U.N. waste, shutting down bloated bureaucracies. Reforming the United Nations is a tall order—but the alternative is to give up on an organization that could still live up to the ideas of some of its founders.

Mr. President, the United Nations can be an important tool to advance American interests—as long as America leads the way. The answer to the problems of the United Nations is not getting the United States out of the United Nations, it is getting common sense into the United Nations.

There are two very different U.S. approaches toward the United Nations—one pursued by the Bush administration and one pursued by the Clinton administration. In 1990–91, the United Nations gave valuable support for American and allied efforts to liberate Kuwait. But 2 years later in Somalia, the United Nations changed the mission and began a vendetta against one Somali faction. Many brave Americans died in the ensuing disaster. Nation building was complete failure, and the United Nations finally left Somalia little better than when the humanitarian mission began.

The lesson is clear—if the United States is not in the driver's seat at the United Nations, the United Nations will take us for a ride. If the United Nations is to realize its potential—and if American support for the United Nations is to continue—real reforms must begin now. No more window dressing but real reform to build a foundation for future U.S. support for the United Nations. I expect the Congress will continue to lead the way to reform as it has before. And I expect to work with Senator KASSEBAUM, Congressman HAMILTON, and other interested colleagues in this 50th anniversary year. I ask unanimous consent that their article be printed in the RECORD.

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

[From the Washington Post, June 25, 1995]

FIX THE U.N.

(By Nancy Landon Kassebaum and Lee Hamilton)

As we celebrate the 50th anniversary of the United Nations Charter this month, it is time to ask what we want the United Nations to be and what we realistically can expect it to do. These hard questions are neither academic nor abstract. Our answers will determine whether the United Nations can be an effective international forum or is merely a debating society destined for irrelevance.

To mark this golden anniversary, we believe the United States must lead a bold and broad effort to reinvent the United Nations and give it new life. While it may be an indispensable institution, the United Nations today is a terrible mess. We need a decisive change of course that produces a smaller, more focused, more efficient United Nations with clearly defined missions.

For America, the U.N. is not a charity but an important tool for advancing our vital national interests abroad. Our foreign policy requires an effective United Nations, just as we need a powerful military, vigorous diplomacy, solid alliances, prudent foreign aid and healthy international financial institutions. Taking away these tools one by one, or sharply restricting their use, will inevitably diminish our ability to build coalitions and construct the sort of strong policy that Americans expect.

If the United States abdicates leadership at the United Nations, we will weaken our ability to pursue our vital national interests around the world. To allow the U.N. to continue drifting would be to squander, in large part, the opportunity that now exists for creating a more stable, peaceful and prosperous world in the 21st century.

Clearly, the U.N. has fallen short of its potential. During the Cold War, superpower rivalry paralyzed the Security Council and marginalized the General Assembly. With its central organs in deadlock, the U.N. shifted resources to secondary activities staffed by a bloated bureaucracy more intent on advancing its own goals than the cause of world peace. Today, lines of authority are confused, blurred and duplicated. Basic missions and activities have ballooned into plodding exercises that produce mountains of paper and little, if any, real results.

Despite this harsh assessment, we consider ourselves friends of the United Nations. The U.N. detractors are far less generous or forgiving, and they are prepared to draw the purse strings to a close. If we fail to meet this urgent need for bold reform, we will witness the slow death of the one institution that can direct both the international community's attention and its resources toward the common problems before us and can provide the moral and legal authority to build coalitions that serve our common interests.

One way or another, change will come. Congress is prepared to compel changes in the U.S. role at the United Nations by continuing the piecemeal approach to U.N. reform that we have employed for many years. We believe, however, that the time has come for a comprehensive reorganization. Legislation now before Congress would call upon the President to develop a plan for the "strategic reorganization" of the United Nations. We hope the President will join with us to seize this opportunity. Reforming the United Nations is too important and too complex a job for Congress to undertake alone with only the blunt instruments at its disposal.

We propose several areas on which to concentrate reform:

FOCUS ON CORE AGENCIES

Today the United Nations has more than 70 agencies under its umbrella. They range from the high-profile International Atomic Energy (IAEA) to the obscure U.N. Research Institute for Social Development (UNRISD). At a time when we are eliminating low-priority programs from our own foreign policy institutions, we need to take similar bold steps at the United Nations.

We must focus resources and energy on a handful of core agencies that are most important and best reflect the range of purposes of the U.N. system. These core agencies would be an integral part of that system and would report directly to the secretary general. Three agencies that already serve core purposes of the U.N. system should be strengthened: the IAEA to combat the threat of weapons of mass destruction, the World Health Organization to deal with all important trans-national health issues and the

High Commission for Refugees, which ought to be empowered to deal with all refugee and humanitarian relief issues.

The United States should finance only core agencies rather than the long list of U.N. organizations that now find their way into appropriations bills. Other agencies should be abolished, merged or financed at the discretion of one of the core agencies. This prescription is dramatic, but we believe that only triage can save the institution as a whole.

PEACEKEEPING

Expectations for U.N. peacekeeping have grown far beyond what is rational, and there has been a corresponding rise in ambiguity about peacekeeping's nature and capabilities. Peacekeeping is diplomacy with light arms. It is not designed to fight wars. We believe that recent failures show that "peace-enforcement" should be struck from the U.N.'s vocabulary and that future peacekeeping should be limited to classic operations in which "Blue Helmets" stand between suspicious parties only after diplomacy has secured a peace to be kept.

Peacekeeping is successful when it respects these limitations, as it did in Namibia, Cambodia, Mozambique and El Salvador. Situations that require more robust military action are better handled directly by the member states, as we learned in the effective response to Iraq's invasion of Kuwait.

CONFERENCES

We fear that the United Nations is in peril of becoming little more than a road show traveling from conference to conference. If an issue is serious, a conference will not solve it; if it is not serious, a conference is a waste of time.

The number and cost of U.N. conferences have exploded—the recent "social summit" in Copenhagen may have cost $60 million—and they often focus on subjects usually reserved for domestic politics. Conferences are seen by many as a cheap way to placate narrow but vocal constituencies. But the truth is they carry a steep price. The domestic backlash against conference-produced agreements has been strong, not because Americans oppose their noble purposes but because people doubt that international agreements are the best means for securing them. The price is paid in diminished public and congressional support for the U.N. system as a whole and in the diversion of scarce funds from more pressing needs.

We propose ending U.N.-sponsored conferences. To the extent countries deem a specific international conference essential, it should be organized and financed on an ad hoc basis, outside the U.N. system, with user fees paid by countries that choose to participate.

ACCOUNTABILITY

Today, the United Nations is accountable to no one. Despite thousands of pages of budget documents produced each year, we don't know how many employees it has, how funds are spent or which programs work. After a decade of "no real budget growth," the budget has almost doubled. Sexual harassment, mismanagement, and cronyism are all too common at the U.N. Those engaged in such practices are not punished, but those who report them are.

Congress tried to address these problems by mandating the establishment of an inspector general at the United Nations. To date, this office has been a disappointment. We are prepared to take strong measures, including withholding funds, until this office is strengthened and functions properly. The U.N. must be accountable to the nations that pay its bills.

We also believe the time has come to inject more accountability into the Secretariat by reforming the process by which the secretary general is selected. Unlike a head of state, the secretary general is a chief administrative officer—not a chief executive. Skills and administrative ability, not nationality or political connections, should be the decisive qualifications for the secretary general. It is important that the selection process become more open and transparent.

We offer these proposals to kick off a debate that must occur soon. The United Nations as it exists today is not sustainable. The Cold War excuses for inaction are gone. If the United Nations does not begin to fulfill its true potential, it will be left to suffocate in endless debates over meaningless issues or will become a side show in the realm of international politics. The danger of irrelevance is imminent.

The preamble to the charter sets forth bold objectives To "save succeeding generations from the scourge of war . . . to reaffirm faith in fundamental human rights . . . to establish conditions under which justice . . . can be maintained, and . . . to promote social progress and better standards of life in large freedom." These purposes remain as important today as they were half a century ago. The task for our generation is to ensure that the machinery of the United Nations works. Today it does not.

ADMINISTRATION VETO THREAT ON REGULATORY REFORM

Mr. DOLE. Mr. President, as I stated on the floor last Thursday, I and other Senators, particularly Senators JOHNSTON and HEFLIN, have been working to craft a bipartisan regulatory reform bill that we can take up tomorrow. Senator JOHNSTON and I placed a discussion draft in the RECORD that incorporated many of the ideas included in various bills. We then worked through last weekend, and are still working, on final text that takes into acccount comments and suggestions by Democrat and Republican Senators to improve the bill. I understand that at 6 o'clock today a group of us will meet with Senator DASCHLE, the Democratic leader, to see if we can make further improvements.

So I must say I was surprised and dismayed, in the middle of these negoatiations, to receive a letter last Friday night from the OMB Administrator for Regulatory Affairs threatening a veto of any bill that closely followed the discussion draft. Let me point out this was just a discussion draft.

The timing of this veto threat is not helpful, nor I suspect was it intended to be. For one thing, the letter relied on generalizations so bland as to be meaningless. But it also continued a pattern of distortions of the regulatory reform bill which call for a response.

Among the list of complaints in this letter was a description of the bill as containing a "supermandate," that is, a requirement to consider costs that would override other statutory goals such as promoting health and safety and protecting the environment. One can debate the merits of a supermandate, but it is irrelevant to this bill. The text of the bill makes clear that it is intended to "supplement, and not supersede" other laws. This type of staff work does not serve the President well.

But it is not the first time that President Clinton's rhetorical embrace of regulatory reform has been undermined by his own handpicked officials publicly attacking any meaningful attempt to enact such reforms. One example stands out because it is an example both of the distortions at play in this debate and, ironically, of the value of the reforms we propose.

At various times, the present Administrator of EPA has stated that cost-benefit analysis requirements would have prevented a rule getting lead out of gasoline and consigning a generation to lead poisoning. This is false.

In fact, EPA refused to do a cost-benefit analysis initially in 1982 when a rule on lead phaseout was being considered. However, after a cost-benefit analysis was performed that showed the social benefits outweighed the costs of a quick phaseout of lead, EPA issued a new rule in 1984 providing for a quick phaseout of lead. That rule also introduced a new concept—market-based mechanisms—that allowed trading in lead permits that sped up the phaseout of lead and reduced the economic costs of the regulation.

So, not only has the Administrator gotten her facts wrong, she chose the wrong example. Getting lead out of gasoline occurred precisely because a cost-benefit analysis supported doing so. And that analysis helped produce a regulation to achieve that goal through market-based mechanisms that reduced the economic impact.

Both cost-benefit analysis and market-based mechanisms are at the heart of the reforms we propose. We should have a debate on these important issues, but that debate will not be furthered if President Clinton continues to duck the issue and allow his officials to muddy the debate with arguments that have nothing to do with the bill the Senate will actually consider.

I want to point out again, we are working, I think, in good faith, Members of both sides of the aisle, Democrats and Republicans, to see if we can put together a good regulatory reform bill; and hopefully one that will be signed by the President.

A PRESIDIO TRUST

Mr. DOLE. Mr. President, today I am pleased to cosponsor S. 594, legislation which provides for the administration

of the Presidio in California. I have discussed this legislation with my colleagues, Senator CAMPBELL and Senator FEINSTEIN, and feel that this legislation allows for the national recognition of the Presidio while also taking into account concerns about the growing demand for Federal funding for National Park Services. Through this innovative approach to managing one of our Nation's finest landmarks, we can ensure the preservation of the Presidio while also providing significant opportunities to the local community.

The unique history of the Presidio's operation as a military post dates back to 1776. Its designation as a national historic landmark in 1962 recognized the importance of the post in many military operations. After the Army closed the post, the National Park Service took over the Presidio. When comparing our limited resources against the increasing number of national parks and historic sites which have become the responsibility of the Federal Government, it becomes apparent that we must find new ways to manage and preserve such important resources.

This legislation proposes a Presidio trust, ensuring the continued preservation of the post with assistance from the local community. This trust, established within the Department of the Interior, would manage the renovation and leasing of specific Presidio properties. The revenues generated from these leases would then offset the cost of maintaining the Presidio as a national park, reducing the need for Federal funding. In my view, this legislation represents the best approach to ensure the efficient management and preservation of the Presidio at the least cost to the taxpayer. The importance of public sector participation in this effort to maintain the Presidio sets this initiative apart from others, and I am pleased to support it.

CHIEF JUSTICE OF THE SUPREME COURT WARREN BURGER

Mr. GRAMS. Mr. President, I rise to pay tribute to a great Minnesotan—former Chief Justice of the U.S. Supreme Court Warren Burger, who passed away yesterday.

Warren Burger was a native of St. Paul, MN.

He got is first taste of law taking night classes at the University of Minnesota while working during the day selling insurance. Warren Burger later received his law degree from the old St. Paul College of Law.

In his early career, he never gave much thought to pursuing a career on the bench, one time telling friends, "I never had a passion to be a judge."

But he accepted the challenge when, as an assistant attorney general in the Justice Department, President Eisenhower offered him a seat on the U.S. Circuit Court of Appeals for the District of Columbia.

Thirteen years later, President Nixon elevated him to the High Court.

As Chief Justice for 17 years, Warren Burger lead the Court through a tumultuous period in American history—first Vietnam, and later Watergate.

The Burger Court could be tough, and the Chief Justice's own law and order reputation was well deserved, but Warren Burger's judicial opinions were fair and often reflected his conservative Midwestern upbringing.

Fortunately, his legacy did not end with his retirement from the bench in 1986. Warren Burger continued his crusade to educate the public about the Constitution and the courts. And he never forgot his Minnesota roots.

Returning home often, he would stop by his alma mater, now called the William Mitchell College of Law, to share his years of knowledge and experience with the students and judges of tomorrow.

Mr. President, the Nation has lost a great leader, and Minnesota has lost a great friend. I join my colleagues in expressing our deepest sympathies to the family of Chief Justice Warren Burger.

STATEMENT OF PRESIDENT LEE TENG-HUI OF TAIWAN

Mr. DASCHLE. Mr. President, during a recent visit to Cornell University, the President of the Republic of China on Taiwan, Lee Teng-hui, recently outlined his views about democracy. In his speech, President Lee underscores a number of reasons for the close ties between the American people and the people of Taiwan. I commend the full text of President Lee's remarks to my colleagues' attention and ask unanimous consent that it be printed in the RECORD at this point.

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

ALWAYS IN MY HEART

(By Dr. Lee Teng-hui)

It is a great honor for me to be invited to deliver the Olin lecture at my alma mater, Cornell University. It has been a long and challenging journey, with many bumps in the road, yet my wife and I are indeed very happy to return to this beloved campus.

This trip has allowed both of us to relive our dearest Cornell experiences. The long, exhausting evenings in the libraries, the soothing and reflective hours at church, the hurried shuttling between classrooms, the evening strolls, hand in hand—so many memories of the past have come to mind, filling my heart with joy and gratitude.

I want to thank you, President Rhodes, for your hospitality and for your unflagging support of my visit here to my alma mater.

I thank you, my fellow alumni, for your understanding and support as I undertake this important sentimental journey.

I thank the many, many friends in the United States who have been so supportive of my visit to your great country again.

And I also want to thank the people of this academic community, my professors and classmates, for the deep and lasting influence that Cornell University has had on my life. The support each of you has given means a great deal to me.

I deem this invitation to attend the reunion at Cornell not only a personal honor, but, more significantly, an honor for the 21 million people in the Republic of China on Taiwan. In fact, this invitation constitutes recognition of their remarkable achievements in developing their nation over the past several decades. And it is the people of my nation that I most want to talk about on this occasion.

LISTENING TO THE PEOPLE

My years at Cornell from 1965 to 1968 made an indelible impression on me. This was a time of social turbulence in the United States, with the civil rights movement and the Vietnam War protest. Yet, despite that turbulence, the American democratic system prevailed. It was also the time I first recognized that full democracy could engender ultimately peaceful change, and that lack of democracy must be confronted with democratic methods, and lack of freedom must be confronted by the idea of freedom before it would be possible to hasten the day of genuine democracy and freedom. I returned to my homeland determined to make my contribution toward achieving full democracy for our society.

Ever since I became president of the Republic of China in 1988, I have sought to ascertain just what the people of my country want and to be always guided by their wishes. Ancient China's Book of History from over 2000 years ago, contains the phrase, "Whatever the People desire, the realm must follow." My criterion for serving as president is that I do it with the people in my heart. And it is obvious to me that most of all they want democracy and development. Democracy entails respect for individual freedom, social justice, and a sense of directly participating in the destiny of their nation. Economic development goes beyond attaining prosperity, it also involves equitable distribution of wealth.

Today we are entering a new post-Cold War era, where the world is full of many uncertainties. Communism is dead or dying, and the peoples of many nations are anxious to try new methods of governing their societies that will better meet the basic needs that every human has. There are many pitfalls in this search for a new rationale, and Man must strive to make the right choices with all the wisdom and diligence he can command.

Czech President Vaclav Havel said, "The salvation of this human world lies nowhere else but in the human heart." In my heart, I believe that the Taiwan Experience has something unique to offer the world in this search for a new direction. This is not to say that our experience can be transplanted entirely to fit the situation faced by other nations, but I believe that, without a doubt, there are certain aspects of this experience that offer new hope for the new age.

THE TAIWAN EXPERIENCE

By the term Taiwan Experience I mean what the people of Taiwan have accumulated in recent years through successful political reform and economic development. This experience has already gained widespread recognition by international society and is being taken by many developing nations as a model to emulate. Essentially, the Taiwan Experience constitutes the economic, political and social transformation of my nation

over the years, a transformation which I believe has profound implications for the future development of the Asia-Pacific region and world peace.

It is worth remembering what we in the Republic of China on Taiwan have had to work with in achieving all that we now have: a land area of only 14,000 square miles (slightly less than 1/3 the area of New York State) and a population of 21 million. My country's natural resources are meager and its population density is high. However, its international trade totaled US$180 billion in 1994 and its per capita income stands at US$12,000. Its foreign exchange reserves now exceed US$99 billion, more than those of any other nation in the world except Japan.

The Taiwan Experience bases peaceful political change on a foundation of stable and continuous economic development. Taiwan, under Presidents Chiang Kai-shek and Chiang Ching-kuo, experienced phenomenal economic growth. Currently, aside from economic development, Taiwan has been undergoing a peaceful political transformation to full democracy.

For many developing nations, the process of moving to a democratic system has been marked by a coup d'etat, or by the kind of "political decay" suggested by Professor Samuel P. Huntington. In sort, it is not unusual for such a process of transformation to be accompanied by violence and chaos. However, the case of Republic of China on Taiwan is a notable exception. Non-existent is the vicious cycle of expansive political participation, class confrontation, military coup and political suppression, which have occurred in many developing countries. The process of reform in Taiwan is remarkably peaceful indeed, and as such is virtually unique. In addition to the "economic miracle," we have wrought a "political miracle," so to speak.

The Taiwan Experience has regional and international dimensions as well. In 1994, the indirect trade between Taiwan and mainland China reached US$9.8 billion. Taiwan's indirect investment in southern mainland China, made through Hong Kong, amounted to nearly US$4 billion, according to estimates from various quarters. Taiwan's trade and investment have also been extended to members of the Association of Southeast Asian Nations, Vietnam, Russia, and countries in Central America and Africa.

Although the Republic of China on Taiwan has been excluded from the United Nations, it has accelerated the formation of an international network with economic ties as the key link. Recently, it has even begun to launch a project to build Taiwan into an Asian-Pacific Regional Operations Center, aiming at further liberalization and globalization of our economy.

I never allow myself to ever forget for a moment that Taiwan's achievements have been realized only through the painstaking effort and immense political wisdom of the people. However, success comes from difficulty, and the fruits of the Taiwan Experience are all the sweeter today from a recognition of the arduousness of the process.

POPULAR SOVEREIGNTY

We in the Republic of China on Taiwan have found that peaceful transformation must take place gradually, and with careful planning. Five years ago, on my inauguration day. I pledged to initiate constitutional reform in the shortest possible period of time. My goal was to provide the Chinese nation with a legal framework that is in accord with the times, and to establish a comprehensive model for democracy. These goals have since been realized with the support of the people.

Our constitutional reform was conducted in two stages. First, all the senior parliamentarians last elected in 1948 were retired. Then, in the second stage, comprehensive elections for the National Assembly and the Legislature were held in 1991 and 1992 respectively. This enabled our representative organs at the central government level to better represent the people.

Last year, the governor of Taiwan province, and the mayors of Taipei and Kaohsiung, the two largest cities in Taiwan which used to be directly administered by the central government as special municipalities, were directly elected by the people for the first time. Next spring, the president and vice president of the Republic will also be directly elected by the people for the first time.

With the completion of constitutional reform, we have established a multiparty system and have realized the ideal of popular sovereignty. This has led to full respect for individual freedom, ushering in the most free and liberal era in Chinese history. I must reiterate that this remarkable achievement is the result of the concerted efforts of the 21 million people in the Taiwan area.

Today, the institutions of democracy are in place in the Republic of China: human rights are respected and protected to a very high degree. Democracy is thriving in my country. No speech or act allowed by law will be subject to any restriction or interference. Different and opposing views are heard every day in the news media, including harsh criticism of the President. The freedom of speech enjoyed by our people is in no way different from that enjoyed by people in the United States.

I believe that the precept of democracy and the benchmark of human rights should never vary anywhere in the world, regardless of race or region. In fact, the Confucian belief that only the ruler who provides for the needs of his people is given the mandate to rule is consistent with the modern concept of democracy. This is also the basis for my philosophy of respect for individual free will and popular sovereignty.

Thus, the needs and wishes of my people have been my guiding light every step of the way. I only hope that the leaders in the mainland are able one day to be similarly guided, since then our achievements in Taiwan can most certainly help the process of econom'c liberalization and the cause of democracy in mainland China.

I have repeatedly called on the mainland authorities to end ideological confrontation and to open up a new era of peaceful competition across the Taiwan Straits and reunification. Only by following a "win-win" strategy will the best interests of all the Chinese people be served. We believe that mutual respect will gradually lead to the peaceful reunification of China under a system of democracy, freedom and equitable distribution of wealth.

To demonstrate our sincerity and goodwill. I have already indicated on other occasions that I would welcome an opportunity for leaders from the mainland to meet their counterparts from Taiwan during the occasion of some international event, and I would note, even rule out, the possibility of a meeting between Mr. Jiang Zemin and myself.

YEARNING TO PLAY A POSITIVE ROLE

When a president carefully listens to his people, the hardest things to bear are the unfulfilled yearnings he hears. Taiwan has peacefully transformed itself into a democracy. At the same time, its international economic activities have exerted a significant influence on its relations with nations with which it has no diplomatic ties. These are no minor accomplishments for any nation, yet, the Republic of China on Taiwan does not enjoy the diplomatic recognition that is due from the international community. This has caused many to underestimate the international dimension of the Taiwan Experience.

Frankly, our people are not happy with the status accorded our Nation by the international community. We believe that international relations should not be solely seen in terms of formal operations regulated by international law and international organizations. We say so because there also are semi-official and unofficial rules that bind the international activities of nations. This being so, we submit that a nation's substantive contribution to the international community has to be appreciated in light of such non-official activities as well.

During last year's commencement, President Rhodes brought up the old saying, "Be realistic. Demand the Impossible!" Well, over the last four decades, we have been extremely realistic while always trying to look forward, not backward, and to work, not complain. Accordingly, we have created the very fact of our existence and economic prosperity. We sincerely hope that all nations can treat us fairly and reasonably, and not overlook the significance, value and functions we represent.

Some say that it is impossible for us to break out of the diplomatic isolation we face, but we will do our utmost to "demand the impossible." Ultimately, I know that the world will come to realize that the Republic of China on Taiwan is a friendly and capable partner for progress!

If we view the recent economic, political and social developments in the ROC in this light, we have a basis for defining the status of my country in the post-Cold War and post Communist era. Only in this way can we propose a new direction for the new world order as we enter the 21st century.

CLOSE TRADITIONAL TIES

I want to once again express how grateful I am to be with you. My gratitude extends not only to Cornell but also to the United States as a whole. When we look back in history, we can immediately realize how close the traditional ties between our two countries are. Indeed, our shared ideals for human dignity, and peace with justice have united our two peoples in the closest of bonds.

The United States was extremely helpful in the early stages of Taiwan's economic development. We have never forgotten America's helping hand in our hour of adversity, so your nation occupies a special place in our hearts. Today, as the 6th largest trading partner of the United States, the Republic of China imports and exports US $42.4 billion worth of goods through our bilateral trade. We also are the number two buyer of US treasury notes. About thirty-eight thousand students from Taiwan are studying in the United States. Students who have returned have made important contributions to our society.

The Republic of China's development has been partly influenced by the experiences of its people while studying abroad. I gained substantial know-how in the mechanics of national growth and development from the faculty and students I worked with here in America at both schools where I studied. I had the chance to see democracy at its best

in the United States, and to observe its shortcomings as well. We in Taiwan believe that we have much to learn from an advanced democracy such as the United States; however, we also believe we should develop our own model. The success of our democratic evolution has provided tremendous hope for other developing nations, and we wish to share our experience with them. Our efforts to help others through agricultural development have been well received, and we are eager to expand our technical assistance programs to friendly nations in the developing world.

Taiwan has grown from an agricultural exporting economy to a leading producer of electronics, computers and other industrial goods. We are "paving the information highway" with disk drives, computer screens, laptop computers and modems. We are poised to become a major regional operations centers as well as to buy more American products and services to develop our infrastructure.

We stand ready to enhance the mutually beneficial relations between our two nations. It is my sincere hope that this visit will open up new opportunities for cooperation between our two countries.

It is for this reason that I want to publicly express my appreciation and admiration to President Clinton for his statesman-like decision. We are equally grateful to others in the administration, to the bipartisan leadership in Congress, and to the American people.

ALWAYS IN MY HEART

Whatever I have done as president of my nation. I have done with the people in my heart. I have thought long and hard about what my people want, and it is clear that most of all, they desire democracy and development. These wishes are no different than those of any other people on this planet, and represent the direction in which world trends will certainly continue.

As I have spoken to you today, I have done so with the people in my heart. I know that what my people would like to say to you now can be expressed by this simple message:

The people of the Republic of China on Taiwan are determined to play a peaceful and constructive role among the family of nations.

We say to friends in this country and around the world;

We are here to stay;

We stand ready to help;

And we look forward to sharing the fruits of our democratic triumph.

The people are in my heart every moment of the day. I know that they would like me to say to you, that on behalf of the 21 million people of the Republic of China on Taiwan, we are eternally grateful for the support—spiritual, intellectual and material—that each of you has given to sustain our efforts to build a better tomorrow for our Nation and the world. In closing, I say God bless you, God bless Cornell University, God bless the United States of America, and God bless the Republic of China.

Thank you very much.

FBI AGENTS REMEMBERED

Mr. PRESSLER. Mr. President, today marks the 20th anniversary of the murder of two fine young men who served their country in the Federal Bureau of Investigation. They were Special Agents Jack Coler and Ron Williams. They were murdered by Leonard Peltier, who is now serving two life terms in Leavenworth Penitentiary.

Ron liked living in South Dakota and particularly enjoyed the Black Hills. After coming to my State in 1975, he purchased a home in a quiet section of Rapid City, my State's second largest city, Jack was a guest in South Dakota. His home was in Colorado. He was halfway through a 60-day temporary duty assignment in the Rapid City FBI office when he was killed.

Special Agents Coler and Williams were law enforcement officers, serving our country, doing a job the Congress of the United States authorized them to do. They were young men—Jack was 28 years old; Ron was 27—at the very beginning of promising careers with a premier Federal law enforcement agency. They performed their duties with a great deal of pride.

Mr. President, the current issue of Outdoor magazine features an article by Scott Anderson, entitled "The Martyrdom of Leonard Peltier." Despite the rather sympathetic title, the article does a fairly good job of debunking the myth that has been created over the years by the non-native American, liberal Eastern establishment and Hollywood elites. When the article does portray Peltier as victim, it is not in the way previously done, ad nauseam, as a victim of some Government conspiracy to frame Peltier for murder. Rather, Peltier is portrayed as a stooge of attorneys, newspaper and book publishers, print and media journalists, and movie moguls who have used Peltier for two decades now to line their own pockets and advance their own liberal agenda and warped view of the world.

I particularly liked Mr. Anderson's comments about the book, "In the Spirit of Crazy Horse," by Peter Matthiessen. Mr. Anderson is to be commended for calling Matthiessen to task for writing what essentially is a work of fiction—subjected to two libel suits—not the work of fact he purported it to be. Unfortunately, over the years, Matthiessen's apologia for Peltier has been regarded biblically by those who choose not to rely on the facts and the trial proceedings for what really happened 20 years ago today. Matthiessen's comic book version of reality has been spun into various movies and pseudo-documentaries by the liberal establishment.

Mr. President, it seems all too predictable that Oliver Stone is using that book to make a movie about Peltier. Let us not forget that this is the same Oliver Stone who has distorted the collective public memory by foisting upon us the movie "JFK." I suspect that the American people will learn very little about what really happened 20 years ago today on the Pine Ridge Indian Reservation if they rely on the Stone version of the case.

Regrettably, should this pulp fiction eventually hit the big screen, I am sure we will see a resurgence of calls for a Presidential commutation of Peltier's life sentences. I would hope that President Clinton would hold to the recommendation of the man he appointed to a 10-year term to head the FBI, Louis Freeh, who has said "There should be no commutation of his [Peltier's] two life terms in prison." President Clinton has spoken laudably of his respect for law enforcement during the debate on last year's crime bill and in the wake of the Oklahoma City bombing. The men and women of law enforcement are more than worthy of his and other's words of praise. I hope he will always remember what a supreme display of disrespect it would be to these fine individuals if he caved in to the calls of the radical left and freed the man who murdered two of law enforcement's finest, 20 years ago today.

Mr. President, I ask unanimous consent that following my remarks there be printed a copy of an open letter to the President, published in the Washington Post on July 15, 1994, which was written by the representatives of more than 15,000 active duty and former FBI agents. It is one of the most concise and accurate accounts of the facts of the murders ever to appear in print. I would recommend its reading to all my colleagues on the 20th anniversary of the deaths of Special Agents Jack Coler and Ron Williams.

We should never forget the sacrifice made by these two fine men, nor forgive the man lawfully convicted and justly sentenced to spend the rest of his life behind bars for their murders.

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

[From the Washington Post, July 15, 1995]

DEAR MR. PRESIDENT: LEONARD PELTIER MURDERED TWO FBI AGENTS—HE DESERVES NO CLEMENCY

June 26, 1975, was a hot, dusty Thursday on the Pine Ridge Indian Reservation in southwestern South Dakota when two young FBI agents arrived from their office in Rapid City. It was about noon when Special Agents Ronald A. Williams, 27, and Jack R. Coler, 28, pulled into the Jumping Bull Compound area of the remote reservation seeking to arrest a young man in connection with the recent abduction and assault of two young ranchers in nearby Manderson, S.D.

Spotting a red and white Chevrolet Suburban van in which they believed the fugitive suspect to be riding, the two agents pursued it toward an open grassy bowl-like area. Unknown to Special Agents Coler and Williams, one of the three men in the vehicle was Leonard Peltier, a violent man with a violent past, a fugitive wanted for attempted murder of an off-duty Milwaukee police officer. Knowing the two vehicles pursuing him were occupied by FBI agents and believing they were seeking to arrest him on the attempted murder case, Peltier and his two associates abruptly stopped their vehicles and began firing their rifles at the agents.

Out of range of the agents' revolvers, Peltier and his friends continued firing. Other militants and radical members of the American Indian Movement (AIM) joined

them in shooting at the disabled and trapped agents.

Surprised by the sudden violence, outmanned, outgunned and at an extreme tactical disadvantage, Coler and Williams were both wounded and defenseless within minutes. Coler sustained a severe wound, the force of a bullet nearly tearing his right arm off. Williams, wounded in the left shoulder and right foot, removed his shirt during the hail of incoming rifle fire and fashioned a tourniquet around the arm of Coler, who had fallen unconscious. Coler, a former Los Angeles Police Department sergeant with two small sons, and Williams, an affable, friendly former FBI clerical employee, were at the mercy of Peltier and his associates. But there was to be no mercy that day for the fine young law enforcement officers.

Not satisfied with the terrible injuries they had inflicted, Peltier and two other men walked down the hill toward the ambushed officer. Three shots were heard. Williams, kneeling and apparently surrendering, was shot in the face directly through his outstretched, shielding hand. He died instantly. Coler, still unconscious, was shot twice in the head at close range. He died instantly after the second shot. Before leaving the murder scene, Peltier and his criminal associates stole the two dead agents' handguns and the .308 rifle Coler was going after when shot.

The crime scene examination testified to the brutality of the ambush. Coler and Williams had little chance to defend themselves. They had fired only five shots. In contrast, over 125 bullet holes were found in their two cars.

The investigation quickly focused on Leonard Peltier as the executioner. The murder weapon was determined to be a .223-caliber rifle. Witnesses identified Peltier as the only person at the murder scene in possession of a weapon that would fire a .223-caliber bullet, his weapon being a .223-caliber AR–15 semi-automatic rifle. Witnesses later testified that Peltier had possessed this rifle before, during and after the ambush. The murder weapons, with others used in the attack, was hidden, AIM sympathizers later spirited it from the area.

In September 1975, a stationwagon, heavily laden with weapons and explosives, caught fire and blew up on the Kansas Turnpike near Wichita. The murder weapon and Coler's stolen .308 rifle were recovered from the wreckage. One of the vehicle's occupants later testified that he had seen Peltier carrying the recovered .233-caliber rifle by the two FBI agent's cars on the day and at the time of their murder.

Following the June 26 murders, Leonard Peltier fled the Pine Ridge Indian Reservation. The FBI added him to its Ten Most Wanted list. Then, in November, 1975, an Oregon State trooper stopped a recreational vehicle in which Peltier was hiding. Peltier ran from the RV, fired at the officer and escaped. Coler's revolver, stolen when he was murdered, was found in a paper bag under the front seat of the RV. Peltier's thumbprint was on the bag.

When later arrested in Canada by the Royal Canadian Mounted Police, Peltier remarked that, had he known the officers were there to arrest him, he would have blown them out of their shoes. These are not the comments of an innocent man and portray the true character and violent nature of Leonard Peltier.

During his trial in U.S. District Court in Fargo, N.D., in April 1977, a jury convicted Peltier of the murders of Coler and Williams. A judge sentenced him to two consecutive life sentences. While incarcerated in the Lompoc, Calif., Federal Prison, and with outside assistance, Peltier shot his way out of jail, using a smuggled semi-automatic .223-caliber rifle to make the escape. A fellow AIM member was killed by guards during the escape. Several days later, after assaulting a rancher and stealing his truck, Peltier was captured. He was tried and convicted of the escape and of being a felon in possession of a firearm. Separate consecutive prison terms of two and five years were added to his two consecutive life sentences.

Peltier has since appealed his various convictions numerous times. Each time, the federal courts have upheld earlier court actions. The U.S. Supreme Court has twice denied Peltier petitions for certiorari, without comment. The record is clear. There are no new facts. The old facts have not changed and Peltier is guilty as charged.

Twice on national television, Peltier has admitted to firing at the two agents. He has openly stated that he feels no guilt or remorse for the murders. One has only to review his murderous misconduct when confronted by law enforcement officers to be convinced of that fact. Leonard Peltier has lived a life of crime. He has earned and deserves a lifetime of incarceration. Leonard Peltier is a murderer without compassion or feeling for his fellow man. In turn, he deserves no compassion.

Mr. President, on many occasions you have described this country's law enforcement officers as heroes and heroines. You have said that we must work together to ensure that hardened criminals who prey on the innocent receive punishment commensurate with the harm—physical, emotional and financial—that they have inflicted. We agree.

Peggy Coler, Special Agent Coler's widow, can't believe anyone would consider freeing Peltier, the man convicted of shooting her husband point-blank in the face while he lay unconscious. Her son, Ron, four years old when his dad died and now 22, can't understand how anyone could portray Peltier as the victim of this tragedy. Peggy and Ron Coler are against any thought of a pardon or commutation of Peltier's sentence. We agree.

Special Agent Ron Williams' mother, Ellen Williams, worries that Peltier's release into an unsuspecting society would only add to the list of grieving loved ones. She is convinced Peltier will commit violent acts against others. We agree.

Mr. President, it's time for Leonard Peltier to pay up. Our judicial system is overwhelmed, overworked and has spoken in this case, again and again. It's time to move on. Leonard Peltier is a vicious, violent and cowardly criminal who hides behind legitimate Native American issues. Leonard Peltier was never a leader in the Native American community. Peltier is simply a vicious thug and murderer with no respect or regard for human life, especially when law enforcement officers are involved. Our citizens, on and off the reservations, must be protected from predators such as Peltier. Our laws must be respected and obeyed or the penalty must be paid. The punishment must also fit the crime—and it does here.

Mr. President, since Leonard Peltier couldn't fool the federal courts, he is now trying to fool you and the public. He is shading and hiding the facts—and playing on sympathy. Don't let him get away with it, Mr. President. Sympathy is appropriate only for the dead heroes and their surviving families. Don't let their sacrifice be forgotten.

THE 50TH ANNIVERSARY OF THE UNITED NATIONS

Mr. DASCHLE. Mr. President, when President Truman addressed the opening session of the conference that met in San Francisco in April 1945, he told the gathered delegates, "You members of the conference are to be the architects of the better world. In your hands rests our future. By your labors at this conference we shall know if suffering humanity is to achieve a just and lasting peace."

Neither Truman nor any other realistic person then or later believed that an organization of the international community could, by itself, bring about an end to war. And, of course, the United Nations has not been able to achieve that.

But in regretting what an organization has not done, we should not overlook its achievements, and those of its associated organizations.

Today marks the 50th anniversary of the creation of the United Nations. It is the only world body which has endured for so long.

Commemorative ceremonies are taking place in San Francisco today to mark the occasion. The Senate and the Nation can be proud of the fact that, among the delegates to those ceremonies is a man who was present when the original delegates began to meet, Senator CLAIBORNE PELL of Rhode Island.

It is a tribute to the enduring ideals of public service in our Nation that many of those who served 50 years ago in San Francisco continued in long and distinguished careers of public service. We are fortunate that Senator PELL was able to return after 50 years.

The history of the world since the creation of the United Nations has been turbulent.

The United Nations Organization often has been as unpopular as it has been admired in the United States and around the world. Its shortcomings have been criticized, and its errors have been magnified by those who opposed its creation and their political heirs.

Like every organization created and manned by human beings, it is far from perfect.

But the same observation can be made about every form of human organization, governmental and corporate, public and private. None are perfect; all can bear improvement. What's significant isn't how far an organization falls short of perfection, but how close it has come to achieving its goals.

It is a remarkable fact that in a century drenched with the blood of innocents in wars both large and small, the United Nations has provided a forum in which some of the world community's most dangerous disagreements could be controlled, if not reconciled.

Those who argue that the organization is a failure because it hasn't

stopped war forget that throughout the long history of humankind, nothing has successfully stopped war. Huge, tyrannical empires like the former Soviet Union successfully curtailed wars among their component states—but that's not a model for peace that any free people can admire.

Today, when the painful costs of war in human life, human health, and hard-earned treasure is less visible to us in the fortunate nations of the Western World, it is tempting to suggest that the United Nations' shortcomings are so great, its failures so substantial, that it serves no further purpose that is in the American national interest.

There are many voices willing to make that claim. But they are mistaken.

In the post-cold war world, our Nation is the only remaining superpower. Our global trading partnerships and our security interests alike mean that American must be involved with the world.

It is not in the American interest to unilaterally take on the mediation of each and every conflict that may arise between nations. Yet a peaceful and stable world community is very much in our national interest.

There is no body other than the United Nations that can serve as a mediating forum for the disputes and conflicts that inevitably arise among the members of the international community. With all its shortcomings, if the organization did not exist, we would be forced to invent it.

In April 1945, when the idea of a world body was taking shape, President Truman observed, "When Kansas and Colorado have a quarrel over the water in the Arkansas River, they don't call out the National Guard in each state and go to war over it. They bring a suit in the Supreme Court of the United States and abide by the decision. There isn't a reason in the world why we cannot do that internationally."

In the wake of a half-century in which states have repeatedly gone to war, not to the negotiating table, Truman's words sound sadly idealistic. We think we know better.

But perhaps it is we who are being foolishly cynical. Perhaps it was Truman, that Midwestern man of great common sense, who understood more deeply what was at stake. He understood that if we did not strive to create a great organization, we would not achieve even a good one. He knew that if we approached the task with less than our ideals, we would reap much greater disappointment.

At a distance of 50 years, there is much many of us have forgotten about the times in which the United Nations was forged, and about the forces that made men and women work for its creation. On the anniversary of its creation, it is a good time to think back and remember that we are all charged with the responsibility Truman expressed 50 years ago: "We must build a new world, a far better world—one in which the eternal dignity of man is respected." That is a task every bit as important for our generation as it was for Truman's.

FORMER CHIEF JUSTICE WARREN BURGER

Mr. THURMOND. Mr. President, from the earliest days of our republic, the Supreme Court has always been one of the most important institutions in the land. Sitting at the top of the judicial branch, nine individuals pass judgment on cases of constitutional importance that are argued before them. Managing and administering this process is the Chief Justice, part referee, part historian, full time judge. It is a demanding job that requires patience, intelligence, and tact. I rise today to pay tribute to a man who excelled in that position, Warren E. Burger, who regrettably passed away yesterday.

Warren Burger grew up on a farm in Minnesota, the Heartland of America. He worked his way through college and law school, earning degrees from the University of Minnesota and the St. Paul College of Law, before beginning his career as an attorney. In 1953, President Dwight D. Eisenhower made Mr. Burger an Assistant U.S. Attorney General, beginning the Minnesotan's journey to the highest seat on the highest court of the land. Before joining the Supreme Court, Warren Burger would also serve on the Court of Appeals for the District of Columbia Circuit.

During the 17 years that he served as Chief Justice, the Court decided many issues that had a tremendous impact on American society. The results of many of the cases reviewed by the Burger Court came to be known as landmark decisions, ones that are likely to be studied by law students, professors, and historians for decades, if not centuries to come. It is not exaggerating to say that the actions of Warren Burger and his court did much to change life in America.

In 1986 Warren Burger resigned as Chief Justice of the Court, ending his two decade presence there, to chair the Committee on the Bicentennial of the Constitution. I served on this committee and I worked closely with the former Chief Justice to promote this special anniversary in the history of our Nation. I found Chief Justice Burger to be a man of integrity, ability, and dedication, whose deep interest in American history made him an effective and enthusiastic spokesman for this undertaking.

Mr. President, the Chief Justice and I differed on some issues, but he was an outstanding man who served this Nation ably and selflessly. He was a thoughtful adjudicator of cases, a strong advocate for the judicial branch, and most importantly, he cared for and believed deeply in the Constitution. He is a man who will certainly be missed by a host of friends, and I extend my deepest sympathy to the members of his family.

SERVICE, COMMITMENT, DEDICATION

Mr. ASHCROFT. Mr. President, it is an honor and a privilege to serve the people of Missouri and of this great country. Those of us who were elected in 1994 came here with a mandate from the people to change the way Washington does business. We were asked to reopen the door of self-government and to respect the liberties which have made our democracy a model for the world.

With this mandate before us, I want to share with my fellow Senators the pledge that every Member of my office has taken. It is a pledge of service, of commitment, and of dedication. It is a pledge we want to share with the American people. I ask unanimous consent that it be printed in the RECORD.

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

OATH OF OFFICE

We do solemnly swear that we will support and defend the Constitution of the United States against all enemies, foreign and domestic; and that we will bear true faith and allegiance to the same.

STATEMENT OF BELIEF, PURPOSE, PRINCIPLE, AND PRACTICE

We dedicate ourselves to principled public policy. We believe that Americans are endowed by their Creator with certain unalienable Rights, and among these are life, liberty and the pursuit of happiness. The power we exercise is granted by Missourians and the American people; we serve to secure their rights. Our commitment is to respect diverse political views and serve all people by whose consent we govern.

As people of liberty reach for opportunity and achieve greatness, our nation prospers. A government that lives beyond its means and reaches beyond its limits violates our basic liberties, and the nation suffers.

We dedicate ourselves to quality service. America's future will be determined by the character and productivity of our people. In this respect, we seek to lead by our example. We will strive to lead with humility and honesty. We will work with energy and spirit. We will represent the American people with loyalty and integrity. Our standard of productivity is accuracy, courtesy, efficiency, integrity, validity, and timeliness.

We hold that these principles are a sacred mandate. We take responsibility for these standards.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, one need not be a rocket scientist to know that the U.S. Constitution forbids any President's spending even a dime of

Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

So when you hear a politician or an editor or a commentator declare that "Reagan ran up the Federal debt" or that "Bush ran it up," bear in mind that the Founding Fathers, two centuries before the Reagan and Bush Presidencies, made it very clear that it is the constitutional duty of Congress—of Congress—a duty Congress cannot escape—to control Federal spending—which Congress has not done for the past 50 years.

Thus, it is the fiscal irresponsibility of Congress that has created the incredible Federal debt which stood at $4,887,614,064,494.86 as of the close of business Friday, June 23. This outrageous debt—which will be passed on to our children and grandchildren—averages out to $18,553.47 on a per capita basis.

A TRIBUTE TO FRED DUBRAY

Mr. PRESSLER. Mr. President, I rise today to extend my congratulations to Fred DuBray, an exceptional South Dakotan, who recently was awarded a Newsweek Achievement Award. Fred DuBray was recognized by the weekly magazine Newsweek for his vision and commitment to reviving the bison population in South Dakota and across the country.

Mr. DuBray is a member of the Cheyenne River Sioux Tribe, and is founder and president of the InterTribal Bison Cooperative [ITBC].

Bison always have held a special place in the hearts of many Native Americans, and in the history of the American continent. Often referred to as buffalo, bison play a significant role in tribal ceremonies and in other traditional customs of the Native Americans. Knowing what the bison mean to the Native American culture, Fred DuBray came up with the idea of reviving the bison population—and encouraging reservations to reap the economic benefits.

The InterTribal Bison Cooperative [ITBC], headquartered in Rapid City, SD, has proven to be a great success. It has brought economic development to Native American tribes across the country, where other economic projects had previously failed. In 1991, when it was founded, the ITBC consisted of only seven Indian tribes. Since then, it has expanded to include 36 tribes from 15 different States across the country.

Under Mr. DuBray's leadership, the ITBC has created more than 500 new jobs through the production and distribution of bison meat and bison byproducts. The number of consumers purchasing bison products has increased dramatically over the past 4 years.

In my home State of South Dakota, raising bison has proven to be a profitable venture for the Cheyenne River Sioux Tribe. In fact, the Cheyenne River Sioux recently received Federal assistance from the U.S. Department of Agriculture for the purchase of a mobile meat processor.

This state-of-the-art technology will allow the tribe to slaughter bison in a traditional manner, while processing and packaging the meat on the spot. The tribe also intends to allow other nearby tribes and private ranchers to benefit from the use of the mobile bison meat processor.

Fred's ingenuity is an inspiration to all Native Americans who, through creativity and hard work, are striving to achieve self-sufficiency, rather than dependency on Federal Government assistance. I am very proud of Fred DuBray's achievements, and I am very happy to see that he is receiving well-earned recognition from *Newsweek* magazine.

My wife, Harriet, and I extend our congratulations to Fred DuBray for his accomplishments thus far, and wish him continued success in his future efforts.

TRIBUTE TO WARREN BURGER

Mr. DOLE. Mr. President, a century-and-a-half ago, the great Daniel Webster said,

> We may be tossed upon an ocean where we can see no land—nor, perhaps, the sun or stars. But there is a chart and a compass for us to study, to consult, and to obey. That chart is the Constitution.

Today, Mr. President, the Senate joins with the rest of the country in mourning the passing of former Chief Justice of the United States, Warren Burger, a man who devoted his life to studying, consulting, and obeying the Constitution.

Chief Justice Burger's public life began in 1953, when he came to Washington to serve as an Assistant Attorney General in the Eisenhowewr administration.

Prior to that time, he was a respected attorney and civic leader in his home State of Minnesota. And when he arrived in Washington, he brought with him a great deal of midwestern common sense, practical experience, and an understanding of the importance of communities, neighborhoods, and families.

In 1956, President Eisenhower appointed Chief Justice Burger to the U.S. Court of Appeals for the District of Columbia circuit. He served there with distinction until 1969, when President Nixon selected him as Chief Justice of the United States.

During his 17 years as Chief Justice of the United States—a tenure which made him the longest serving Chief Justice in this century—Warren Burger authored over 244 majority opinions and assigned over 1,000 others.

Like most Americans, I agreed with some of those opinions, especially those that restored a sense of balance to our criminal justice system—and disagreed with others. But I never doubted Warren Burger's devotion to his country.

And I never doubted his devotion to making our judicial system and our courts run more efficently. Chief Justice Burger is due the credit he has received for the leadership he provided in improving education and training of judges and court personnel, and in the implementation of technological advances.

He created the National Center for State Courts, the Institute for Court Management, and the National Institute for Corrections, institutions which will continue to serve as his legacy for years to come.

Chief Justice Burger also spoke bluntly about the need of the members of the legal profession to always maintain the highest degree of ethics and professionalism.

When Chief Justice Burger left the court, he assumed the chairmanship of the commission honoring the Bicentennial of the Constitution. And he presided over that celebration's activities with great dignity and ability.

Warren Burger's devotion to increasing awareness of the Constitution continued until this year, when he published a book recounting 14 major Supreme Court cases.

Mr. President, I know all Senators join with me in extending our sympathies to Chief Justice Burger's son, Wade, his daughter, Margaret, and his two grandchildren.

AUTHORIZATION TO THE ARCHITECT OF THE CAPITOL

Mr. DOLE. Mr. President, at this time, on behalf of myself and Senator DASCHLE, I send a concurrent resolution to the desk and ask for its immediate consideration.

This resolution authorizes the removal of the catafalque from the Capitol to the Supreme Court where Chief Justice Burger's casket will lie in state.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

> A concurrent resolution (S. Con. Res. 18) authorizing the Architect of the Capitol to transfer the catafalque to the Supreme Court for a funeral service.

The PRESIDING OFFICER. Without objection, the concurrent resolution is agreed to.

So the concurrent resolution (S. Con. Res. 18) was agreed to, as follows:

S. CON. RES. 18

Resolved by the Senate (the House of Representatives concurring), That the Architect of the Capitol is authorized and directed to transfer to the custody of the Chief Justice

of the United States the catafalque which is presently situated in the crypt beneath the rotunda of the Capitol so that the said catafalque may be used in the Supreme Court Building in connection with services to be conducted there for the late Honorable Warren Burger, former Chief Justice of the Supreme Court of the United States.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PRIVATE SECURITIES LITIGATION REFORM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 240, which the clerk will report.

The 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.

Pending:

Bryan Amendment No. 1469, to provide for a limitation period for implied private rights of action.

Mr. BENNETT. Mr. President, I have listened to the debate on this issue from both sides of the aisle with great interest and have several observations that I would like to share with you and the others in the Senate as we come to this point.

As is pointed out often to me, and sometimes as I have pointed out during my political career, I am not a lawyer. I have not been blessed with the experience of having gone through law school or passed the bar or practiced law or any of the other kinds of experiences that go with being an attorney, which so many of our colleagues in the Senate have. Indeed, a majority, Mr. President, of the Members of this body are lawyers.

I have not kept exact tally, but I believe that the vast majority, if not 100 percent, of the people who have commented on this bill, have been lawyers.

No, I must correct myself. Mr. President, the Senator from California [Mrs. BOXER] is not a lawyer, and she has been very forthright in her opposition to this bill. So I would back away from that. But most of the people who have spoken on this have been lawyers. And I have noticed that they have addressed this issue on the basis of what will happen in court if S. 240 were to pass.

They have argued that back and forth, with lawyers saying: Oh, no, if S. 240 were passed, why, then this is how the courts would be forced to rule. And then other lawyers have risen and said: You are wrong; if S. 240 passes, the courts would not have that ruling at all; they would rule this way. Back and forth, so the argument goes between those who have had the experience of a legal education.

I wish to share with the Senate my view of this, which is based not on a legal background but upon direct experience and observation with what has been happening with strike suits as these have come to be known.

My first experience is a vicarious one, but I do my best to make sure that it is accurate. It is the experience that my father had after he left the Senate and began his last career, which was back in the business world serving on a variety of boards of directors.

I have told this story in the committee hearing, but I think it is appropriate to repeat here because it makes the point I intend to make.

One of the boards that my father went on after he left the Senate was a board of a mutual fund. The compensation of the directors was tied to the performance of the mutual fund. This is the kind of thing people are saying we ought to do with directors and chief executives, not just set a compensation and let it stay there, but have a compensation tied to the performance of the fund.

Once a year, the compensation of the directors would be adjusted as a result of the better performance of the fund during the year, and since the fund, at least during the time my father served on the board, always did better each year, the compensation went up each year.

My father received a stack of legal papers suing him for looting the assets of that particular mutual fund. He was a little startled, and he called the general counsel of the mutual fund and said, "What is this all about?"

"Oh," said the general counsel, "don't worry about that, Senator, it is just because 'Bennett' comes before all of the other directors in our alphabetical list, and there is a lawyer in New York who every year sues us, sues all of the directors, for looting the fund by virtue of the increase in compensation that comes as a result of the formula that we have." He said, "Because, as I say, your name is first alphabetically, you are the one filed with the papers. You notice it says 'Wallace Bennett, et al.' The 'et al.' means all of the other directors. If we had another director whose name began with 'A,' he would be the one on whom the papers would be served. Don't worry about it. We'll take care of it."

Dad said, "How are you going to take care of it? This is a very impressive lawsuit."

"Oh," he said, "we have in the budget $100,000 to send to that lawyer in settlement of this lawsuit. We do this every year. He files the lawsuit, we send him a check for $100,000, he goes away. It is a standard kind of thing that we have built into our budget."

"Why in the world are we paying this man $100,000 simply to file the lawsuit?"

"Well, Senator," he said, perhaps a little nonplused at my father's naivete, "the legal bills of our fighting this suit would be substantially in excess of $100,000. So the financially responsible thing for us to do for our shareholders is to settle it at the lowest possible price, and we found that this fellow will go away if we send him $100,000. And, therefore, we do the financially responsible thing by sending him $100,000."

Dad said, "That's extortion, that's blackmail, that's like the protection rackets, if you will, that the mafia runs when they come in and say in a particular storefront, 'You need some protection from somebody who might bomb this place.'"

He said, "Well, Senator, we have better things to do than respond to these kinds of lawsuits. The cheapest way out of this dilemma is simply send the man his $100,000 every year."

We are told during this debate, "Oh, these are hypotheticals." We are told, "Oh, we have to look at what might happen here, what might happen there." We are told, "Oh, the proponents of the bill are raising scare tactics of the worst possible case, and that is not the normal procedure at all."

I can assure you, Mr. President, this was an actual case, an actual circumstance where automatically the lawyer, by simply hitting the button on his word processor and turning out the same set of papers, received a check for $100,000 every year.

As I understand the case, to finish the story, that particular lawyer is no longer doing that, simply because he got greedy. He started to overreach and do this not only with the funds where my father was serving as a member of the board but other funds, assuming he would get the same treatment. Finally, one of them, managed by Merrill Lynch, decided to call his bluff and go to court with him.

Merrill Lynch had deeper pockets than the mutual fund on whose board my father sat, and they decided to reach into those pockets and pay the legal expenses necessary to close this operation down. So they called the man's bluff. They forced him to come up with the legal fees necessary to go to court, and he found he could not survive if he had to pay all the legal fees to actually prosecute the lawsuit and, thus, ultimately the whole thing was shut down.

I cite that because of the rhetoric that has surrounded this bill. We are not talking about what will happen in court in a theoretical lawsuit when we are talking about the impetus behind the writing and filing of this bill. We are talking about the fact that the vast majority of these lawsuits never get to

court and do not intend to go to court. They are filed not because the lawyer has discovered some great evil on behalf of the investor. They are filed because the lawyer knows full well that the company or mutual fund or pension fund, or whatever it is that is being accused, will find it cheaper to settle out of court than go through the legal hassle of paying all the bills necessary to resolve the issue in the courts.

During the hearing on this bill, Ralph Nader made the statement: No one settles out of court unless he has something to hide, and challenged me personally on that issue saying, no CEO who is responsible would ever settle a lawsuit out of court unless he had something to hide, and he then proceeded to lecture me as to what my duty would be assuming, perhaps erroneously, that I was a lawyer.

I said to him and I say here on the floor today, again, I am not a lawyer but I was a CEO of a company who settled a suit out of court about which we had nothing to hide. Indeed, all of the issues that were involved in that lawsuit were clearly on the public record, but the legal bills to prosecute that lawsuit were bankrupting our company.

Now, the company at the time was very, very small, it was very fragile and our legal bills were running $25,000 a month. I spoke to our lawyer and said, "What happens if we go to trial?"

Our lawyer said, "They will then go to a minimum of $25,000 a week."

There was no way that company could survive the drain of legal bills of $25,000 a week. So I said, "What will it take to settle?"

We signed an agreement settling that lawsuit that called upon us to pay the other party $2,500 a month. Some of our shareholders did not like it. They said, "Oh, we think it is terrible we have to pay them anything, because we're convinced we're right."

I said, "Look, you can be convinced you're right all you want. The issue is, can we afford to continue to press our legal position at a $25,000 a month tab all the way into court and then $25,000 a week? Swallow your pride about saying we want our position absolutely vindicated, take the $2,500 a month settlement and put this behind us and get on with our business."

It was one of the smartest business decisions we ever made.

I pointed this out to Mr. Nader in the hearing. I resent the suggestion that the reason we settled out of court was that we had something to hide. And I say absolutely that settlements out of court are made, 90 percent of the time, on the basis of pure economics; it is cheaper to settle than to continue to litigate. And if it is, swallow your position about making a point, do the wise economic thing and settle this suit.

That is where these strike suits come from—lawyers who recognize that reality. Settlements out of court are made on the basis of economics. They are not made on any other basis. That is why so many of these suits are filed. That is why the vast bulk of these suits are settled out of court, and that is why this has become—as the Senator from New Mexico [Mr. DOMENICI], pointed out—a magnificent way for some lawyers to practice because, as the Senator said, this is a practice without clients. What could be more fun than to be a lawyer with a practice without any clients, and with, in the case that I have cited in my father's circumstance, a guaranteed $100,000 per year income doing nothing more than mailing off a set of documents to a company that will write out the check because it is easier to do that than to go to court.

I point out to those who say, "Oh, this is not very widespread," that we had some testimony in the committee from a lawyer who says this is, in fact, never done. I asked him directly. I said, "Are you telling us that no lawyer ever files a strike suit solely on the belief that he will get a settlement out of court and not have to litigate it?" He said, "Senator, no lawyer ever does that." At that point, the credibility of that witness disappeared, as far as I was concerned, because I knew that it was done.

Well, this practice has created enough concern that we have a bipartisan basis of support for this bill. Indeed, the initial supporter, the initial mover and shaker on this bill was the Senator from Connecticut [Mr. DODD]—not known for his hard right-wing propensities and leanings. He is one of my good friends. We disagree about a number of things. He is a liberal Democrat and I am a conservative Republican. But I consider him one of the more thoughtful Members of this body. He was the moving force behind this bill in the first instance. He knows that these suits are filed for the purpose of getting settlements, not ever going to court. He was joined by Senator DOMENICI.

Senator DOMENICI told me over the weekend—we were in Utah together—he has been accused of the fatal sin of being a moderate by some portions of the conservative press. I said, "What did you do, plead guilty?" This is one of the more thoughtful Members of the Senate, as well. He is a careful lawyer. He understands all of the legal issues. He has pushed this bill right from the very beginning, and he, along with Senator DODD, is the principal cosponsor of the bill in this Congress.

It is a smokescreen, in my view, to spend all of your time talking about what may or may not happen in court if S. 240 passes, because that ignores the fact that the purpose of S. 240 is to deal with those people who file suits without any intention of going to court. We need to understand that as we are debating this bill.

Now, there have been some things said about this bill that I would like to set straight. One of the myths that has come out of this debate is that if S. 240 had been law at the time of the failure of the Lincoln Savings & Loan, Mr. Charles Keating would have gone scot-free and his victims would have been denied any kind of recovery. That is simply not the case, Mr. President. The safe harbor provisions of S. 240 would not have protected Keating and his co-defendants.

Keating's statements that bonds were federally insured and as safe as a bank deposit were fraudulent and obviously false and not covered by the safe harbor. The safe harbor applies to forward-looking projections, not to statements of fact that can be checked out in the past. For Keating to say the bonds were federally insured is not a forward-looking statement. Its very nature is a statement of past and existing circumstances, and they did not happen to be true. That is one of the reasons Mr. Keating is now out of the savings and loan business and under the protection and custody of the Federal Government.

Mr. SARBANES. Will the Senator yield for a moment?

Mr. BENNETT. Yes, I am happy to yield.

Mr. SARBANES. I wonder if we can get the time situation straightened out. Could I ask the Chair what time did we go on the bill?

The PRESIDING OFFICER. We resumed the bill at 12:16.

Mr. SARBANES. Mr. President, I ask unanimous consent that the time between 12:16 and 2 o'clock be treated as equally divided between the Senator from Utah and myself. When he completes his statement, I will put down the amendment. But the time he is using would come out of his side, and there will still be time left, unless he is going to go on for a very long time. I think that would equalize the situation in which we find ourselves.

Mr. BENNETT. I have no objection.

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

Mr. BENNETT. I know that the Senator from Maryland was scheduled to speak first, but no one was here, so I started. I would be happy to yield now if the Senator wishes to speak.

Mr. SARBANES. If the Senator would yield, I was going to offer an amendment on which the time would be equally divided. I am happy to withhold offering the amendment until the Senator completes his general statement. But I did not want the general statement to go on without getting this straightened out because there might not be much time left for the amendment.

Mr. BENNETT. I agree that the time of my statement will be charged against our time on the amendment.

Mr. SARBANES. Thank you.

Mr. BENNETT. I shall conclude so that we can move to the amendment of the Senator from Maryland.

We should understand that this debate and conversation about what may or may not have been the case in the Keating circumstance had S. 240 been in place is, in fact, irrelevant to the purpose of this legislation and to the direction that it will take in the future. The Keating codefendants could remain fully liable if S. 240 had been in place. The aiders and abettors would still be held accountable. The Keating claims are within the current statute of limitations, and the other 10(b)(5) reforms do not affect the recoveries.

So, Mr. President, I hope as we examine this whole circumstance, we keep in mind the purpose for which S. 240 was written in the first place. It is to deal with those people who file lawsuits without any expectation that they will ever come to trial but in the hope that the economics of the circumstance will force people to settle with them short of a trial, so that they can enjoy what, as I say, the Senator from New Mexico calls the "perfect" law practice—a law practice without clients and a law practice that does not require you to ever go to court, to ever hold discovery, to ever go through any procedure—simply file a set of papers and wait, as the lawyer in New York did who dealt with my father, for the check to arrive in the mail. That kind of thing is bad—it is bad for investors, it is bad for the country. That is the reason we are supporting S. 240.

I now yield the floor to the Senator from Maryland.

AMENDMENT NO. 1472

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

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Mr. SARBANES] proposes an amendment numbered 1472.

Mr. SARBANES. 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 134, strike line 6, and insert the following:

"(A) NET FINANCIAL WORTH.—Each

On page 134, strike lines 9 through 15, and insert the following: "that the net financial worth of the".

On page 134, line 23, strike "50 percent" and insert "100 percent".

Mr. SARBANES. Mr. President, I ask the Chair to state the time situation.

The PRESIDING OFFICER. The Senator from Maryland has 52 minutes. The manager of the bill has approximately 30 minutes.

Mr. SARBANES. Mr. President, before I turn to the provisions of the amendment, I want to make a few comments with respect to what my distinguished colleague from Utah said in his opening remarks on the consideration of this legislation today.

It is very important to understand that there are parts of this bill that Members are trying to amend and there are parts we are not trying to amend. There are parts which we think are desirable and worthwhile having. There are other parts that we think are excessive. They overreach. They go too far.

Those are the ones we are trying to correct. If we could get it corrected, we would have a total package of which one could be supportive.

Examples that are cited, many of them that are being cited, are, in fact, things we are prepared to try to correct with the provisions of this legislation, that we are not opposing. It is very important that that be understood.

The New York Times on Friday has an editorial headed "Protection for Corporate Fraud." It says, speaking of the Senate security bill:

. . . goes far beyond their stated purpose of ending frivolous litigation. The Senate securities bill sets out to protect corporate officials from being sued when they issue overly optimistic predictions of corporate profitability that are simply innocent misjudgment. Sponsors cite cases for opportunist shareholders who waited for a company's share price to nosedive, then sued on the grounds that their investment was based on fraudulent representations of the company's health. But to solve this infrequent problem, the bill would erect a nearly insurmountable barrier to suing officials who peddle recklessly false information. It would block suits against the accountants, lawyers, and other professionals who look the other way when the companies they serve mislead investors. The bill requires that suits be filed within a short statute of limitations and threatens plaintiffs who technically violate the court's procedures with heavy fines, including payment of the defendant's legal fees. These provisions would ward off frivolous suits. But they just as surely ward off valid suits. Securities markets work well when investors are confident that the data on which they base decisions is honest. The bill threatens that confidence.

Mr. President, I ask unanimous consent that that editorial be printed at the end of my remarks.

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

(See exhibit 1.)

Mr. SARBANES. The Baltimore Sun has an editorial "Safe Harbors for Financial Fraud." Let me quote very briefly from it:

In the wake of the Nation's savings and loan debacle, the financial derivative shock to U.S. pension systems, the junk bond manipulations of Mike Milken, one could expect Congress to bolster the rights of investors in securities fraud cases. Instead, Capitol Hill legislators are rallying to protect the interests of corporate executives, securities dealers, lawyers and accountants against the claims of victims of financial crimes.

Further on it says:

Originally drafted to reduce the number of frivolous investor lawsuits against corporations. . . .

And then it goes on to say:

But the sweeping protections included have fired the opposition of investor groups, advocates for the elderly and even the Federal Securities and Exchange Commission.

It closes by saying:

The arsenal of weapons against investors in the legislation shows that it is more about protecting the shadowy dealings of corporate leaders and their professional confederates than in limiting frivolous class action lawsuits.

This is the question. No one is protecting the frivolous class action lawsuit. The question is whether the provisions of the bill have gone beyond that and are excessive. We submit that they are. Those are some of the provisions we are now trying to change.

Mr. President, I ask unanimous consent that the Baltimore Sun editorial be printed in the RECORD.

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

(See exhibit 2.)

Mr. SARBANES. Mr. President, I made reference to an article that appeared in the New York Times on Sunday, authored by Mark Griffin, the director of the Utah securities division who is a board member of the North American Securities Administrators Association, comprising the securities regulators from the 50 States. Mr. Griffin is chairman of the Securities Litigation Reform Task Force of the North American Securities Administrators Association. In other words, all of the 50 State securities administrators.

That article entitled "Securities Litigation Bill Is Reform in Name Only." Just to quote briefly:

What's in a name? In the case of the Private Securities Litigation Reform Act of 1995, consumers will find a world class misnomer. Now before the Senate, the bill is more accurately described as securities litigation repeal. For millions of middle-class American investors, the fate of this bill—and the even more radical version passed by the House of Representatives in March—could spell the difference between recovering or losing billions of dollars from securities fraud.

Securities litigation reform began with the intent of putting some weights around the ankles of a few fleet-footed lawyers; but the measure now dangerously close to Senate passage would wind up being a noose around the neck of defrauded investors. While everyone agrees on the need for reasonable reform, numerous public-minded groups are strongly opposed to radical steps in the Senate bill, S. 240, that would snuff out key investor rights.

If securities litigation reform was the real goal here, the widespread support that exists for reasonable steps to curb lawsuit abuses would have ensured easy passage. But the bill now before the Senate would rein in frivolous lawsuits only by making it virtually impossible for consumers to pursue rightful claims.

He goes on later to say,

The reality is that the main intent of this legislation, despite what its proponents say,

is to provide a shield for all but the most extreme cases of fraud.

Mr. President, I ask unanimous consent that this article be printed in the RECORD at the close of my remarks.

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

(See exhibit 3.)

Mr. SARBANES. I will come back to this article because I think it is a perspective analysis of the situation in which we find ourselves.

Now, Mr. President, let me turn to the amendment which I sent to the desk, which deals with the issue of proportional liability and the departure from the concept of joint and several liability.

Let me recap very quickly the broader issue that was dealt with last and then the more narrowly focused amendment which I have offered and which I will then discuss. The bill changes the current system of joint and several liability to a new system of proportionate liability. Joint and several liability is the legal principle that says that each participant in a fraud may be held liable for all of the fraud victim's losses.

Under the Federal securities laws as they now are—not as they are being changed in this bill but as they are right now—each participant in a securities fraud—a corporate executive, an outside accountant, lawyer, investment banker—may be held liable for all of a victim's losses. In other words, if one of the fraud participants is bankrupt or if one of the fraud participants has fled the country, the other fraud participants make up the difference. So the burden, if one of the fraud participants is bankrupt or flees, does not fall on the innocent investor. It seems to me a rather simple concept. It is between those who have participated in the fraud—perhaps in varying degrees but nevertheless participated in it—they should be held accountable and have to sustain the burden before it is thrust upon the innocent investor. In fact, under the current system, the defrauded investors are able to recover their entire losses against any of the participants in the fraud. This bill will change that. The bill will change the system from joint and several liability to proportional liability for reckless defendants.

Who are reckless defendants under the securities laws as they now exist? The Federal securities law currently punishes two types of people who participate in a fraud: People who plan the fraud who intended to deceive the investors, and people who acted recklessly, who knew nothing about the fraud and did nothing about it—who knew about the fraud and did nothing about it.

The standard of recklessness used in the courts is not—last week, in fact, some of the people supporting this legislation talked about it as though it was negligent or just by chance that one got involved. The standard is—this is a quote out of the Sundstrand case:

> . . . a highly unreasonable omission 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 recklessness liability, under Federal securities fraud, is usually asserted against the fraud artist's professional advisers, his lawyers, accountants, appraisers, investment bankers, and so forth. Unfortunately, sometimes these people know about a fraud and do nothing about it. In those instances, the law holds them jointly and severally liable in that fraud. The bill changes that. It changes that. And the reckless participant will be liable only for a proportionate share of the investor's losses. If one of the fraud participants is bankrupt or fled the country or cannot be found, the losses will no longer be made up by other participants in the fraud. Instead, the innocent investor—the innocent investor will not recover his losses, even when other participants in the fraud are available to pay. Reckless participants in a fraud will be favored over innocent victims of a fraud, over individual investors, over State and local governments, over pension plans, over charitable organizations.

Securities regulators, Government officials, consumer groups, and others oppose this provision. The Chairman of the SEC wrote the Congress saying:

> The Commission has consistently opposed proportionate liability.

The North American Securities Administrators Association, which represents the 50 State securities regulators, wrote, urging the Senate "to lift the severe limitations on joint and several liability so that defrauded investors may fully recover their losses."

The Government Finance Officers Association, representing thousands of county treasurers, city managers, and so on, people who invest taxpayer funds and pension funds, are opposed to this provision. They wrote, on June 8, in a letter that was printed last week in the RECORD—and I ask unanimous consent their letter, along with the one from the North American Securities Administrators Association, again be printed at the conclusion of my remarks.

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

(See exhibit 4.)

Mr. SARBANES. They wrote:

> Fraud victims would find it exceedingly difficult to fully recover their losses. S. 240 sharply limits the traditional rule of joint and several liability for reckless violators. This means the fraud victims would be precluded from fully recovering their losses.

The National League of Cities, the Consumer Federation of America, the U.S. Conference of Mayors have all opposed this version of proportionate liability that puts fraud participants ahead of fraud victims. On Friday, we received a letter from the American Association of Retired Persons, which I would like to have printed in the RECORD.

I ask unanimous consent to do so.

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

AMERICAN ASSOCIATION
OF RETIRED PERSONS,
Washington, DC, June 23, 1995.

Re S. 240, the "Private Securities Litigation Reform Act."

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The Senate will soon be voting on S. 240, the Private Securities Litigation Act. While the American Association of Retired Persons (AARP) supports efforts to eliminate truly frivolous lawsuits, we cannot support this bill as reported out of the Banking, Housing, and Urban Affairs Committee. As currently written, many aggrieved investors with legitimate claims will be vulnerable to abusive practices in the securities marketplace.

More than 28 million Americans over the age of 65 rely in part on investment income to meet expenses. Though older investors once relied heavily on federally insured products such as certificates of deposit or savings accounts, lower interest rates have prompted many, including those who are not financially sophisticated, to invest in securities. In addition, because of the increasing use of defined-contribution (versus defined-benefit) pension plans, more and more people are using securities products when planning for retirement.

Older Americans fall prey not only to financial fraud, but also are injured by some practices within the "legitimate" investment industry. Some older investors are hit with hefty fees or subjected to "churning" of accounts to maximize profits for salespeople. Others routinely lose money in regulated investments that are unsuitable to their needs, are promoted in a misleading fashion, or are accompanied by inadequate and unclear disclosures. This money may represent a lifetime of savings, a lump sum pension payout, or proceeds from the sale of a home. Financial losses for retirees can mean a loss of basic support, with little opportunity to recapture lost income.

As currently drafted, S. 240 will shield wrongdoers from liability in a number of ways. As a result, the bill needs to be improved to help strike a better balance between protecting investors and eliminating claims without merit. AARP urges you to support amendments which may be offered calling for the following:

Maintenance of traditional joint and several liability among defendants. Under the bill as currently drafted, liability for reckless behavior would be narrowed to such an extent that it would be difficult, if not impossible, for small investors to be made whole for losses suffered. This amendment would protect investors against jailed, missing, or bankrupt malfeasors by restoring existing joint and several liability; and

Replacement of the safe harbor provision in the bill with a directive to the SEC to issue a rule which structures a safe harbor that protects both legitimate businesses and investors. S. 240 weakens current law by allowing an expansive safe harbor for forward-looking corporate statements that make exaggerated claims to attract investors, even if

these statements are made recklessly. Clearly, such statements would harm investors greatly and should not be immunized from liability.

If AARP can be of further assistance or if you have any questions, please have your staff contact Kent Burnette at (202) 434-3800.

Sincerely,

HORACE B. DEETS,
Executive Director.

Mr. SARBANES. That letter states:

As currently drafted, S. 240 will shield wrongdoers from liability in a number of ways. As a result, the bill needs to be improved to help strike a better balance between protecting investors and eliminating claims without merit.

Last week, an amendment was offered by Senators SHELBY, BRYAN, BOXER, and I, to try to strike a better balance with respect to the broad issue of joint and several liability. That amendment was defeated. I very much regret that was the case. The amendment that has just been sent to the desk is, therefore, not dealing with the broader issue of joint and several liability, which I have just outlined, but with a more narrow aspect of it.

I urge my colleagues to focus very carefully on the fact situation. Even the authors of the bill that is before us recognize that it is unfair to favor reckless lawyers, accountants, and investment bankers who participate in a fraud entirely over the individual investor victimized by the fraud. In fact, the bill has two provisions, one that would require reckless accountants and reckless lawyers to pay investors more than the proportionate share of the reckless advisers when a fraud artist is bankrupt or has fled the country, and another provision designed to make up for the entire losses of so-called small investors.

Let me examine these two provisions, and the amendment goes to these two provisions. The first provision says that all the defendants shall be jointly and severally liable for the uncollectible share of the small investor, but only under these very limited circumstances—first of all, only if the net worth of the investor is under $200,000. The committee report says that net worth includes all of the plaintiffs' financial assets including stocks, bonds, real estate, and jewelry.

How many investors are we talking about here? People who are able to buy stocks, are going to have a net worth under $200,000, particularly when the net worth includes the value of their home? How many elderly people who have saved for a lifetime have a net worth over $200,000? Their home is usually paid for or close to it. They have some other assets. For such a person, $200,000 is not a large net worth. I guess they would have to value the engagement ring, value the wedding ring, value the heirlooms. So it is a $200,000 net financial worth of the plaintiff.

The other provision says that the plaintiff will be held whole only if the recoverable damages are equal to more than 10 percent of the net financial worth of the plaintiff. Listen to this. You are only going to protect—the bill supposedly makes an effort to protect the small investor. But the definition of the protection is that the investor's net worth has to be under $200,000, and then you protect recoverable damages only if they are equal to or more than 10 percent of the net financial worth.

(Mr. THOMPSON assumed the Chair.)

Mr. SARBANES. Mr. President, let me just give you this example. A retired person, a small investor, retired person has a $190,000 net worth. A fraudulent stock scheme is practiced upon this person, and he loses $17,000. The person who perpetrated the scheme, this scam artist, has gone bankrupt. They flee the country, or whatever. The lawyer who advised the scam artist knew about this or was reckless in terms of knowing about this fraud, the standard I quoted earlier. Under current law, that person would be jointly and severally liable and would have to pay all of the damages. Under this provision, since the damages are not 10 percent of the net worth, the investor does not get that protection.

What is the meaning of this provision in the bill, if it has that kind of exclusion that simply swallows up any meaning? Here is a small investor, $190,000 net worth, loses $17,000 which is not 10 percent of the $190,000, and the small investor is not protected in that situation, and the participants in the fraud are able to avoid having to make that small investor whole. If you really mean trying to provide some protection for the small investor, this provision needs to be corrected.

Clearly, as written, hardly anyone is going to be protected. And the amendment that I have offered, one part of it, provides greater protection to small investors, people of modest means. The bill says you are protected only if you lose 10 percent of your net worth in a fraud. In other words, you have to lose $20,000 of a $200,000 net worth or $15,000 of a $150,000 net worth. My amendment deletes this 10 percent requirement. It says you do not have to lose 10 percent of your net worth in the fraud. Regardless of how much you lose in the fraud, if your net worth is $200,000 or less, you are protected.

So you have the very small investor who ought to be protected, not the reckless advisers to the corporate scam artists who participated in the fraud.

So we strike the provision in the bill that requires that the damages be equal to 10 percent of the net worth. So you have someone with a $200,000 net worth. If they lose something to this scam artist, they are going to be protected, and all the defendants will continue to be held jointly and severally liable in that instance. If you really want to talk about protecting small investors, you obviously have to make that change.

The second provision that is in this legislation, in the course of changing the joint and several liability scheme and shifting it to proportionate liability, even the authors recognize that was a very heavy weighting of the balance against the investors. So they said, "Well, in all instances we are going to require the reckless participants in the fraud to pay investors an additional amount over their proportionate share."

The additional amount, though, that is provided for is 50 percent. Let me give you an example. A con artist perpetrates a fraud. He is assisted by the reckless conduct of his lawyer or his accountant who knows about the fraud but does nothing to stop it. When the fraud is exposed, the con artist skips the country. The reckless adviser is found to be 10 percent responsible for the investor's losses.

Under the bill, there is an overage, and the reckless adviser could be held liable for up to 15 percent of the investor's losses; in other words, a 50-percent overage. So you give some additional marginal recovery to the investor.

The extra 50 percent payment required under the bill, in my judgment, does not go far enough toward making the investor whole. So the other part of this amendment increases the additional payment the reckless defendants pay, when the con artist is bankrupt or flees, from 50 percent of their proportionate share to 100 percent.

Under the example I gave a moment ago, a reckless adviser, a lawyer, investment banker, an accountant to the corporate swindler who did nothing to stop it was later found responsible for 10 percent of the fraud. As the bill is written, he could be held to 15 percent of it. This amendment would raise that to 20 percent. It would allow investors to recover a little bit more of their losses in cases of fraud.

I note that just on Friday when we were debating this bill my distinguished colleague from New York said in speaking about addressing this problem that we were outlining at the time:

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 is not able to pay, the 5 percent negligent defendant would be held responsible for 10 percent of the damages.

Well, that is what my amendment is trying to accomplish. The bill as written provides a 50 percent overage. So if you were 5 percent liable, under the bill you would go to 7½ percent. I actually think that this was, in effect, really the recognition of an appropriate increase, and this would double it. In that instance, you go from 5 to 10. If they were 10 percent liable, they would go to 20 percent liable.

So those are the two amendments here. I disagree with abandoning the

joint and several liability principle. That was voted on the other day. What we are now trying to do is to take the provision in the bill and to make it more reasonable with respect to the small investor. In some respects, I regard this as the "have-you-no-shame" amendment in terms of the provisions that are in the bill. We have provisions in this bill that if you are a very small investor with a net worth of under $200,000, you have to lose at least $20,000——

The PRESIDING OFFICER. The Senator has 20 minutes remaining.

Mr. SARBANES. Mr. President, I yield myself 1 minute.

You have to lose over $20,000 in order to be held whole by these defendants who have participated in this fraudulent scheme. If you are going to recognize the concept of the small investor and the need to provide some additional protection, do not render it meaningless by having this 10 percent requirement on losses. It is bad enough that you have defined the small investor as $200,000 of net worth including, including the person's home—including the person's home. Now, that is an awful lot of people.

The PRESIDING OFFICER. The Senator has 19 minutes.

Mr. SARBANES. I yield 1 more minute.

And then, in addition, to require that they lose at least 10 percent of their net worth, more than $20,000—you take a person, they have $200,000 of net worth. They have a home worth $150,000, which is modest in today's markets in most places in the country—worth $150,000. They have $50,000 worth of items for net worth which the bill has defined as including the jewelry and heirlooms and everything else. They are drawn into a fraudulent scheme. They lose $19,500, not 10 percent of the $200,000, and you are not going to hold them harmless. You are going to put the fraudulent perpetrators, the perpetrators of the fraud, ahead of the innocent investor.

Mr. President, it is an outrage. At a minimum we need to change this; otherwise, there is no shame left whatever.

Now, Mr. President, I understand that the Senator from the other side of the aisle has returned, and I will reserve the remainder of my time.

EXHIBIT 1

[From the New York Times, June 23, 1995]

PROTECTION FOR CORPORATE FRAUD

Two bills before Congress reveal how reckless the Republicans have become in their zeal to reduce regulation. The bills—which would "reform" laws governing securities firms and banks—go far beyond their stated purpose of ending frivolous litigation. What they would actually do is insulate corporate officials who commit fraud from legal challenge by their victims.

The Senate securities bill sets out to protect corporate officials from being sued when they issue overly optimistic predictions of corporate profitability that are simply innocent misjudgments. Sponsors cite cases where opportunistic shareholders waited for a company's share price to nosedive, then sued on the grounds that their investment was based on fraudulent representations of the company's health.

But to solve this infrequent problem, the bill would erect a nearly insurmountable barrier to suing officials who peddle recklessly false information. It would block suits against accountants, lawyers and other professionals who look the other way when the companies they serve mislead investors. The bill requires that suits be filed within a short statute of limitations and threatens plaintiffs who technically violate the court's procedures with heavy fines, including payment of the defendant's legal fees.

These provisions would ward off frivolous suits. But they just as surely ward off valid suits. Securities markets work well when investors are confident that the data on which they base decisions is honest. The bill threatens that confidence.

Banking legislation working its way through the House would also cause damage, both socially and economically. It would remove the Justice Department's authority to sue bankers and realtors who systematically block blacks and other minorities from renting apartments or getting mortgages. Apparently Justice has been too vigilant fighting discrimination for the G.O.P.'s taste. Astonishingly—in the wake of the fraud that brought down savings and loan institutions during the 1980's—the bill would weaken regulatory oversight over bank directors, requirements to provide independent audits and prohibitions against preferential loans to bank officials.

The bill leaves few customer protections in place. It would eliminate some requirements that banks report interest rates on customer accounts in uniform, easy-to-compare terms. It would also gut the Community Reinvestment Act, which requires banks to lend money in the neighborhoods where they take deposits or else possibly relinquish the right to merge or open and close branch offices. The act requires reform because enforcement is needlessly expensive. But the answer is to clarify and tighten standards, the solution the Administration has already taken.

The bill will make banks more profitable. But it will also invite some of the sordid practices that contributed to the $500 billion that the savings and loans failures cost taxpayers.

The Administration has expressed opposition to many of the banking provisions. But it has remained silent on the securities bill. Apparently, powerful Democrats, like Christopher Dodd of the insurance state of Connecticut, have pressured the White House to remain mum.

President Clinton seems eager to run as a candidate who could work with the Republican Congress but protect Americans from G.O.P. excesses. He could demonstrate his worth by vowing to veto the securities and banking bills—and any others that would put the interests of deceptive executives above those of ordinary voters.

EXHIBIT 2

[From the Baltimore Sun, June 26, 1995]

SAFE HARBORS FOR FINANCIAL FRAUD

In the wake of the nation's savings and loan debacle, the financial derivatives shock to U.S. pension systems, the junk bond manipulations of Mike Milken, one could expect Congress to bolster the rights of investors in securities fraud cases.

Instead, Capitol Hill legislators are rallying to protect the interests of corporate executives, securities dealers, lawyers and accountants against the claims of victims of financial crimes.

Legislation approved by the House and awaiting a Senate floor vote today would grant virtual immunity to these participants in securities fraud lawsuits. Executives who hype their companies' financial projections to jack up the stock price would be sheltered from legal action.

Bondholders defrauded by Charles Keating and his S&L scam, the largest in U.S. history, would find it almost impossible to sue the co-defendants for relief under the pending bill. They recovered $240 million from Keating's accountants, lawyers and securities dealers, although still losing nearly 40 percent of their money.

Originally drafted to reduce the number of frivolous investor lawsuits against corporations, the bill was pushed by Silicon Valley companies whose fortunes are highly volatile. But the sweeping protections included have fired the opposition of investor groups, advocates for the elderly and even the federal Securities and Exchange Commission.

The number of federal securities fraud cases has nearly doubled over the past decade. But the SEC, which polices securities fraud, says that investor lawsuits are important in accomplishing its mission. A study released last month by the Congressional Research Service finds the number of securities suits against companies "exceptionally small."

The loudest complaints have come from the elderly, whose retirement assets are most vulnerable to fraud. Senior citizens account for over 30 percent of securities fraud victims, according to a study by the Gray Panthers.

The House bill includes the chilling proviso that the losers of a fraud lawsuit must pay lawyer bills of those they sued. The Senate measure would limit defendant responsibility in lawsuits only to their degree of proven guilt, instead of making all parties liable for fraud settlements.

The arsenal of weapons against investors in the legislation shows that it is more about protecting the shadowy dealings of corporate leaders and their professional confederates than in limiting frivolous class action lawsuits. If the integrity of the marketplace is to be truly protected, the Senate will vote down this invitation to expanded investor fraud.

EXHIBIT 3

[From the New York Times, June 25, 1995]

SECURITIES LITIGATION BILL IS REFORM IN NAME ONLY

(By Mark Griffin)

What's in a name? In the case of the "Private Securities Litigation Reform Act of 1995," consumers will find a world-class misnomer. Now before the Senate, the bill is more accurately described as securities litigation repeal. For millions of middle-class American investors, the fate of this bill—and the even more radical version passed by the House of Representatives in March—could spell the difference between recovering or losing billions of dollars from securities fraud.

Securities litigation reform began with the intent of putting some weights around the ankles of a few fleet-footed lawyers; but the measure now dangerously close to Senate passage would wind up being a noose around the neck of defrauded investors. While everyone agrees on the need for reasonable reform,

numerous public-minded groups are strongly opposed to radical steps in the Senate bill, S. 240, that would snuff out key investor rights.

If securities litigation reform was the real goal here, the widespread support that exists for reasonable steps to curb lawsuit abuses would have insured easy passage. But the bill now before the Senate would rein in frivolous lawsuits only by making it virtually impossible for consumers to pursue rightful claims. Here we see the financial world's equivalent of the notorious Vietnam "hamlet strategy": we must destroy this village in order to save it.

The reality is that the main intent of this legislation, despite what its proponents say, is to provide a shield for all but the most extreme cases of fraud. Have the members of the Senate already forgotten the financial scandals of the 1980's that cost investors and taxpayers billions of dollars? Is it really good public policy to erect protective barriers around future wrongdoers who will be emboldened to emulate Lincoln Savings and Loan and Prudential Securities?

At the heart of consumer concerns over this legislation are two key problems.

Under current rules, public companies are prevented from deceiving investors by reasonable restrictions on statements concerning future corporate performance, known as "forward-looking statements." The original S. 240 created a limited "safe harbor" for such statements, but the harbor was changed to an ocean. So now the Senate is considering a measure that protects any reckless or irresponsible statement by a company about its future as long as the statement is represented as forward-looking and notes that actual results may differ.

The Senate bill narrowly defines as fraudulent only those statements "knowingly made with the expectation, purpose and actual intent of misleading investors." As if this was not a loose enough standard the bill require that each of the three conditions be proven separately in court.

Consequently, S. 240 is a dagger aimed at the heart of what makes possible strong public confidence in the markets: full, fair disclosure mandated under Federal securities law. Arthur Levitt, Jr., the Securities and Exchange Commission chairman, has noted: "I cannot embrace proposals which allow willful fraud to receive the benefit of safe harbor protection."

Perhaps the clearest sign, however, that the bill's proponents have sold middle-class investors down the river is their refusal to lengthen the time in which consumers can bring cases to court. The current rule derives from a 1991 Supreme Court decision that created a statute of limitations for Federal securities law cases of one year from discovery of a misdeed or three years from the commission of the act in question. This represented a serious reduction in the time available for such lawsuits, since Federal courts previously had relied on state standards for statutes of limitation.

Currently, 31 states permit longer than the "1 and 3" standard for the filing of state securities cases. What possible case can the backers of this bill make for keeping the time limit as short as possible so that future swindlers who cover their tracks carefully will get off the hook for good?

Fortunately, efforts are under way to pull the measure back toward the interests of small investors. Among the amendments expected to be deliberated on the Senate floor this week are measures that would: replace the expansive safe harbor for forward-looking statements with a directive to the S.E.C. to continue its rulemaking efforts in this area; lengthen the statute of limitations for private securities fraud actions; fully restore aiding and abetting liability under the securities laws, an established concept that before it was recently removed by a Supreme Court decision, made it possible to sue even indirect participants in a fraud, and lift the severe limitations the bill imposes on joint and several liability, allowing investors to continue recovering from all participants in the fraud.

The difference between reform and repeal of securities litigation is an enormous one for middle-class investors in America. Based on current payments to securities class-action claimants, it should be expected that shutting the doors of America's courthouses over the next five years to securities fraud victims will result in 1.79 million investors losing the right to recover approximately $2.87 billion. Even these numbers may underestimate matters.

By loosening the Federal laws that now empower citizens to go to court to restrain misconduct in our financial marketplace, Congress has the potential to unleash a new, painful era of financial fraud.

EXHIBIT 4

GOVERNMENT FINANCE OFFICERS ASSOCIATION,
Washington, DC, June 8, 1995.

Hon. PAUL S. SARBANES,
U.S. Senate, Washington, DC.

DEAR SENATOR SARBANES: I am writing on behalf of the more than 13,000 state and local government financial officials who comprise the membership of the Government Finance Officers Association (GFOA) to bring to your attention serious concerns we have with the Securities Litigation Reform Act, S. 240, recently approved by the Senate Banking Committee. As you know, the GFOA is a professional association of state and local officials who are involved in and manage all the disciplines of public finance. The state and local governmental entities our members represent bring a unique perspective to this proposed legislation because they are both investors of billions of dollars of public pension funds and temporary cash balances, and issuers of debt securities as well.

We support efforts to deter frivolous securities lawsuits, but we believe that any legislation to accomplish this must also maintain an appropriate balance that ensures the rights of investors to seek recovery against those who engage in fraud in the securities markets. We believe that S. 240 does not achieve this balance, but rather erodes the ability of investors to seek recovery in cases of fraud.

The strength and stability of our nation's securities markets depend on investor confidence in the integrity, fairness and efficiency of these markets. To maintain this confidence, investors must have effective remedies against those persons who violate the antifraud provisions of the federal securities laws. In recent years, we have seen how investment losses caused by securities laws violations can adversely affect state and local governments and their taxpayers. It is essential, therefore, that we fully maintain our rights to seek redress in the courts.

S. 240 would drastically alter the way America's financial system has worked for over 60 years—a system second to none. Following are the major concerns state and local governments have with this "reform" legislation:

Fraud victims would face the risk of having to pay the defendant's legal fees if they lost. S. 240 imposes a modified "loser pays" rule that carries the presumption that if the loser is the plaintiff, all legal fees should be shifted to the plaintiff. The same presumption, however, would not apply to losing defendants. The end result of this modified "loser pays" rule is that it would strongly discourage the filing of securities fraud claims by victims, regardless of the merits of the cases. This is particularly true for state and local governments that have lost taxpayer funds through investments, involving financial fraud in derivatives, for example, but who simply cannot afford to risk further taxpayer funds by taking the risk that they might lose their case and have to pay the legal fees of large corporations. The argument is made that a modified loser pays rule is necessary to deter frivolous lawsuits, but we understand there are only 120 companies sued annually—out of over 14,000 public corporations, and that the number of suits has not increased from 1974.

Fraud victims would find it exceedingly difficult to fully recover their losses. Our legal standard of "joint and several" liability has enabled defrauded investors to recover full damages from accountants, brokers, bankers and lawyers who help engineer securities frauds, even when the primary wrongdoer is bankrupt, has fled or is in jail. S. 240 sharply limits the traditional rule of joint and several liability for reckless violators. This means that fraud victims would be precluded from fully recovering their losses.

Wrongdoers who "aid and abet" fraud would be immune from cases brought by fraud victims. As you know, aiders had been held liable in cases brought by fraud victims for 25 years until a 5-4 Supreme Court ruling last year eliminated such liability because there was not specific statutory language in federal securities law. If aiders and abettors are immune from liability, as issuers of debt securities, state and local governments would become the "deep pockets," and as investors they would be limited in their ability to recover losses. The Securities and Exchange Commission and the state securities regulators have recommended full restoration of liability of aiders and abettors and GFOA supports that recommendation.

Wrongdoers would be let off the hook by a short statute of limitations. We had supported the modest extension of the statute—from one year from discovery of the fraud but no more than three years after the fraud to two years after the violation was, or should have been, discovered but not more than five years after the fraud was committed—that was contained in an earlier version of S. 240. We are disappointed that this extension was removed in the Committee's markup of the legislation and hope it will be restored when the full Senate considers the bill.

Under S. 240, corporations could deceive investors about future events and be immunized from liability in cases brought by defrauded investors. Corporate predictions are inherently prone to fraud as they are an easy way to make exaggerated claims of favorable developments to attract investors. The "safe harbor" in S. 240 is a very broad exemption and immunizes a vast amount of corporate information so long as it is called a "forward-looking statement" and states that it is uncertain and there is risk it may not occur. Such statements are immunized even if they are made recklessly. We believe this opens a major loophole through which wrongdoers could escape liability while fraud victims would be denied recovery.

Access to fair and full compensation through the civil justice system is an important safeguard for state and local government investors, and is a strong deterrent to

securities fraud. We believe. S. 240 as written does not provide such access to state and local governments or to other investors. Just as state and local government investors are urged to use extreme caution in investing public funds, the Senate should use extreme caution in reforming the securities regulation system.

We hope you will work to bring about needed changes in the legislation when it is considered by the full Senate. If there is any way we can help in this effort, please do not hesitate to call on us.

Sincerely,

CATHERINE L. SPAIN,
Director, Federal Liaison Center.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, June 20, 1995.

Re S. 240, the "Private Securities Litigation Reform Act."

Hon. PAUL S. SARBANES,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SARBANES: The full Senate may consider as early as Wednesday or Thursday of this week, S. 240, the "Private Securities Litigation Reform Act of 1995." On behalf of the North American Securities Administrators Association (NASAA), we are writing today to express the Association's opposition to S. 240 as it was reported out of the Banking Committee. In the U.S., NASAA is the national voice of the 50 state securities agencies responsible for investor protection and the efficient functioning of the capital markets at the grassroots level.

While everyone agrees on the need for changes to the current securities litigation system, not everyone is prepared to deny justice to defrauded investors in the name of such reform. Proponents of the bill make two claims: first, that they have modified the bill to satisfy many of the objections to the earlier version; and second, that the bill will not prevent meritorious claims from going forward. Neither claim is accurate. First, the changes made to the bill do little to resolve the serious objections to S. 240 raised by NASAA and its members. In fact, it may be argued that during the Banking Committee's deliberations the bill was made less acceptable from the perspective of investors. Second, it is NASAA's view that the bill succeeds in curbing frivolous lawsuits only by making it equally difficult to pursue rightful claims against those who commit securities fraud.

The reality is that the major provisions of S. 240 will work to shield even the most egregious wrongdoers among public companies, brokerage firms, accountants and others from legitimate lawsuits brought by defrauded investors. Do we really want to erect protective barriers around future wrongdoers?

NASAA agrees that there is room for constructive improvement in the federal securities litigation process. The Association supports reform measures that achieve a balance between protecting the rights of defrauded investors and providing relief to honest companies and professionals who may unfairly find themselves the targets of frivolous lawsuits. Regrettably, S. 240 as approved by the Senate Banking Committee fails to achieve this necessary balance.

Although this bill has been characterized in some quarters as an attempt to improve the cause of defrauded investors in legitimate lawsuits, that simply is not the case. Attempts to incorporate into the bill provisions that would work to the benefit of defrauded investors were rejected when the Banking Committee considered the bill. At the same time, the few provisions in the original bill that may have worked to the benefit of defrauded investors were deleted.

For example, during the Committee' deliberations: (1) the rather modest extension of the statute of limitations for securities fraud suits contained in the original version was deleted; (2) attempts to fully restore aiding and abetting liability under the securities laws were rejected; (3) a regulatory safe harbor for forward-looking statements contained in the original version of S. 240 was replaced with an overly broad safe harbor for such information, making it extremely difficult to sue when misleading information causes investors to suffer losses; and (4) efforts to loosen the strict limitations on the applicability of joint and several liability were rejected, making it all but impossible for more than a very few to ever fully recover their losses when they are defrauded. The truth here is that this is a one-sided measure that will benefit corporate interests at the expense of investors.

As state government officials responsible for administering the securities laws in our jurisdictions, we know the important role private actions play in the enforcement of our securities laws and in protecting the honesty and integrity of our capital markets. The strength and stability of our nation's securities markets depend in large measure on investor confidence in the fairness and integrity of these markets. In order to maintain this confidence, it is critical that investors have effective remedies against persons who violate the anti-fraud provisions of the securities laws.

When S. 240 is considered on the Senate floor, it is expected that several pro-investor amendments will be offered in an attempt to inject some balance into the measure. Among the amendments we expect to be offered are those that would: (1) extend the statute of limitations for private securities fraud actions; (2) fully restore aiding and abetting liability under the securities laws; (3) replace the expansive safe harbor for foward-looking statements with a directive to the Securities and Exchange Commission to continue its rulemaking efforts and report back to Congress; and (4) lift the severe limitations on joint and several liability so that defrauded investors may fully recover their losses.

On behalf of NASAA, we respectfully encourage you to vote in favor of all such amendments when they are offered on the Senate floor. If all four amendments are not adopted, we respectfully encourage you to oppose S. 240 on final passage.

NASAA regrets that the Association cannot support the litigation reform proposed as reported out of the Senate Banking Committee. The Association believes that this issue is an important one and one that should be addressed by Congress. However, NASAA believes that is more important to get it done right than it is to get it done quickly. S. 240 as it was reported out of the Banking Committee should be rejected and more carefully-crafted and balanced legislation should be adopted in its place.

If you have any questions about NASAA's position on this issue, please contact Maureen Thompson, NASAA's legislative adviser.

Sincerely,

PHILIP A. FEIGN,
Securities Commissioner, Colorado Division of Securities, President, North American Securities Association.

MARK J. GRIFFIN,
Director, Utah Securities Division, Chairman, Securities Litigation Reform Task Force of the North American Securities Administrators Association.

Mr. DOMENICI. Mr. President, we have 29 minutes on this amendment?

The PRESIDING OFFICER. There are 28 minutes 25 seconds.

Mr. DOMENICI. I yield myself 15 minutes.

Mr. President, I would like to speak to the Senate about this reform measure and in my own way lead up to the amendment which is the subject matter of today's discussion.

This new system—and that is what it is—builds a better system for investors in 12 very succinct, easy to understand ways.

First, it puts investors with real financial interests, not lawyers, in charge of the cases. It puts investors with real financial interests, not professional plaintiffs with one or two shares of stock, in charge of the case.

Second, it requires notification to investors that a lawsuit has been filed so that all investors can decide if they really want to bring a lawsuit. It is likely that people trusted to manage pension funds and mutual funds, that is, institutional investors, will get more involved under this new system. Actually, at this point, for the most part, they sit on the sidelines and let the class action lawsuit affecting them proceed, managed by the lawyer that filed it and the plaintiffs that were with them.

Third, this bill puts the lawyer and his clients on the same side. Reforms that change the economics of cases, proportionate liability, settlement terms and disclosure, are part of that.

Fourth, it prohibits special side deals where pet plaintiffs get $10,000, $15,000, or $20,000 for their part in a suit. It protects all investors, not just the lawyers' pet plaintiffs so that settlements will be fair to all investors.

Fifth, it stops brokers from selling names of investors to lawyers.

Sixth, it creates an environment where those running our corporations, CEO's or chairmen of the board, can and will talk about their predictions about the future without fear of being sued every time they make a prediction that turns out to be not exactly what happens to the company or somewhat off the mark. So it gives investors a system with better disclosure of important information. And this has to do with safe harbor, which will be discussed later today as we proceed with this bill.

Seventh, it provides better disclosure of how much a shareholder might get under a settlement and how much the lawyers will get so that shareholders can challenge excessive lawyers' fees.

Eighth, it prohibits secret settlements where attorneys can keep their fees a secret. This is a restriction on settlements under seal.

Ninth, limits the amount that attorneys can take off the top. Limits attorney's fees to a reasonable amount instead of the confusing calculations which are currently part of this system we want to amend and modify.

Tenth, provides a uniform rule about what constitutes a legitimate lawsuit. So that it will no longer matter where a case is filed. Investors in Albuquerque, N.M.; Atlanta, GA; New York City; or Nashville, TN, will have the same rules as investors in any of the other cities. That is pleading reform. It stops fishing expeditions where lawyers can force thousands of dollars, worth of discovery money and demand thousands of company documents before a judge can decide if the complaint really states a cause of action, so that it might be dismissed before the costs of discovery are ever incurred.

Eleventh, the last two make merit matter so that strong cases recover more than weak cases. It makes sure that people committing fraud compensate victims. It improves upon the current system so that victims will recover more than 6 cents on a dollar.

Twelfth, it will weed out frivolous cases. It gives lawyers and judges more time to do a good job to protect investors in meritorious cases. High-technology company executives can focus on running their companies and growing their businesses. Investors will get higher stock prices and bigger dividends.

This Senate bill, S. 240, which is before us does exactly what Chairman Arthur Levitt said the system should do—protect all investors, not just a few.

Having said that, obviously there are groups of Americans that may be considered to be more vulnerable than others in the American profile of people, but let me talk a little bit about senior citizen investors and what we were able to find out about what they want and what they do not want.

In March 1995, the National Investor Relations Institute commissioned a poll of Americans age 50 and over who invest in either stock or mutual funds.

Eighty-seven percent said they worried that lawsuits are diverting resources that could be used on product research and business expansion to create jobs; 79 percent said defendants should only pay damage awards according to their percentage of fault, the very issue that is partially at stake in the Sarbanes amendment; 81 percent said they would like to see mandatory penalties against lawyers who aid in bringing a frivolous suit; 70 percent said the lawyer of a frivolous lawsuit should pay the legal fees of both sides; 70 percent said at least one member of their household was a member of the American Association of Retired Persons.

I state that because this is what they think when asked about these subjects. Yet, the AARP seems somewhat on the other side, although it is hard to tell exactly what it is they want.

Those polls are correct. The Banking Committee record backs up the opinions of senior citizen investors.

Eighty-seven percent of senior citizen investors said lawsuits are diverting resources that could be used on product research and business expansion to create jobs. They are right. The Banking Committee hearing revealed, and I can go through a whole series of situations where precisely what that concern is, is revealed case by case by small- and medium-size and startup American companies.

John Doerr, venture capitalist was involved in three law suits: Settlement, $66 million; legal fees to defend, $12 million; management time, 20 person years, total over 10 years, $120 million.

The sum of $120 million will employ 200 first-rate engineers for a decade, creating faster, cheaper better products.

John G. Adler, CEO Adaptec, litigation costs of the "million dollar fishing expedition" would have paid for 20 additional engineers.

Dennis W. Bakke, AES spent an amount equal to one-half its annual budget for developing new power project throughout the world. Just one plant creates 1,300 jobs and $4 billion in economic activity.

D&O increased sevenfold over last decade. Adept Technology, the only U.S. robotics company, pays $450,000 for $5 million in D&O insurance. A similar Canadian company pays $40,000 for a $4 million policy.

The litigation tax represents a team of five or six engineers, a new product or new technology.

Ed McCracken, CEO Silicon Graphics: current system is "uncontrolled tax" on innovation that is "impacting real creation of jobs."

Seventy-nine percent of senior citizen investors say defendants should pay the damage award according to percentage of default. They are right. Present and former SEC Chairmen Levitt, Breeden, and Ruder agree with them, so do former SEC Commissioners Beese and Sommer.

Under current law, someone who is only 1 percent responsible can be made to pay the entire amount, the entire judgment, the entire award. Breeden, former SEC Chairman, called the present system "inverted, disproportionate liability." Parties who are central to perpetrating a fraud often pay little, if anything. At the same time, those whose involvement might be only peripheral and lacked any deliberation or any knowing participation in the fraud often pay most of the damage.

Joint and several is the engine that drives abusive securities lawsuits. Plaintiffs' class action lawyers know this and use it to extract settlements. We should not turn professionals into insurers. We should not turn accounting firms, lawyers, and others who are the professionals involved in securities into insurers. Inclusion of deep pocket defendants increase the likelihood of settlement. Including an accounting firm or underwriter, they might add about one-third to the expected settlement value of the case. That is what the National Economic Research Associate study said.

One accounting firm was sued for $200 million, paid $999,000 in settlement, spent $8.4 million in defense in a case growing out of gross fees to that firm of $91,000. No auditors for high-technology companies; hard-to-find directors—all of these things are happening—no choice but to settle. These are qualities that the current system is creating in our economic environment. No auditors for high-technology companies; hard-to-find directors; no choice but to settle.

These cases have a settlement rate between 85 and 95 percent. This is because no one can chance going to trial. The settlement rate for most civil litigation is 40 to 45 percent, a huge difference in these kinds of cases. Limiting joint and several liability will significantly reduce the number of frivolous suits brought against defendants who have done nothing wrong but are seen as deep pockets. One of the most active plaintiff class action lawyers wrote:

> Class actions are judicial monstrosities.

Enacting two-tiered liability will make sure we have fewer frivolous judicial monstrosities. This bill, S. 240, would retain current law for defendants who engage in knowing fraud. So when we speak of safe harbor and proportionate liability, let us understand that in this new law, defendants who engage in knowing fraud are liable for the entire amount and there is no safe harbor for them. Other defendants who have some culpability are responsible for their share of the judgment, with two exceptions, and they are two items we are speaking about on the floor today.

Small investors: All defendants are jointly and severally liable for small investors; that is, a net worth of $200,000 or less who lost 10 percent or more of their net worth.

In a very real sense, what we are doing there is providing some insurance for them and saying that this system ought to provide that kind of insurance.

Also, in the case of insolvent codefendants, we say the solvent defendants must make an additional payment up to 50 percent of their own liability.

All of these were efforts to make this bill unquestionably fair and fair-intentioned.

Let us move on to 81 percent of the senior citizen investors said they would like to see mandatory penalties against lawyers who aid in bringing frivolous suits; 70 percent said the loser of a frivolous suit should pay the legal fees of both sides. S. 240 makes a modest step to do what the seniors want and what they want us to do. It makes the judges—and I repeat, it makes the judges—look closer at these cases and to discipline lawyers who file frivolous suits.

Whenever one of these lawsuits is finished, dismissed, settled, or taken to trial, the judge is required to make a determination regarding all attorneys: Did the attorneys comply with rule 11? Did the case have some basis? Did the defense have some basis? If not, the judge must impose penalties, and if the judge finds that rule 11 was violated, the case was frivolous and the case was thrown out of court on a motion to dismiss, the presumption is the class action attorney will pay the prevailing attorney's legal fees. That is a far cry from loser pay but a small step in the direction of trying to get what 81 percent of the senior citizen investors said, and that is bring some accountability to lawyers who file frivolous lawsuits in this area of the law.

Seniors in the poll thought Congress should go further. Frankly, I would have preferred something stronger, but this is a good compromise and it ought to be retained and clearly will be a step in the right direction.

Seventy percent of the senior investors said at least one member of their households was a member of the AARP. AARP wrote the committee a letter on May 24. They oppose loser pay even though the poll showed seniors said it was a good idea. The bill has no loser pay provision. It has the provisions I have just described.

They oppose proportionate liability, yet the seniors polled thought it was a good idea. Any attempt to raise scienter knowledge from the standard of reckless to intentional omissions. The bill does not alter the conduct actionable under the securities law.

The PRESIDING OFFICER. The Senator has consumed his 10 minutes.

Mr. DOMENICI. I yield myself 5 additional minutes. They added to their opposition a concern about safe harbor which we will discuss later.

I ask that as part of my discussion here this morning with the Senate, that these poll results in detail be printed in the RECORD. They are only 2½ pages long.

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

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

NEW POLL FINDS SENIOR AMERICAN INVESTORS SUPPORT SECURITIES LITIGATION REFORM

WASHINGTON, March 22.—By an overwhelming margin, Americans aged 50 and over who invest in stocks or mutual funds say they favor legislation that would make it harder for lawyers to file frivolous securities lawsuits against America's high growth companies.

Nearly seven out of ten investors surveyed say they favor legal reforms to crack down on lawsuit abuse. According to a new survey conducted by Public Opinion Strategies for The National Investor Relations Institute (NIRI), eight out of ten (81 percent) say they would like to see mandatory penalties against lawyers "who aid in bringing a frivolous lawsuit"; more than two-thirds (70 percent) say the loser of a frivolous suit should pay the legal fees of both sides; and 79 percent say defendants should only pay damage awards according to their percentage of fault. Only 21 percent of those polled oppose litigation reform.

The survey, completed shortly after a 325–99 bipartisan vote by the House of Representatives for securities litigation reform, was released in advance of Senate consideration of reform measures.

It shows that older investors are concerned that excessive lawsuits hurt American competitiveness. Some (87 percent) say they worry that lawsuits are diverting resources that could be used on product research and business expansion to create jobs.

A similar number (88 percent) believe lawyers, not shareholders, are the primary beneficiaries of securities lawsuits. Asked about a variety of legislative options, investors favored measures to penalize those who abuse the system:

Question. Please tell me whether you would FAVOR or OPPOSE each of the following proposals.

[In percent]

	Total favor	Total oppose	Don't know/refused to answer
Requiring the loser of a frivolous lawsuit to pay legal fees for both sides	69	24	7
Requiring mandatory penalties for lawyers who aid in bringing a frivolous lawsuit	81	12	7
Forcing defendants to only pay damage awards according to their percentage of fault, instead of forcing them to pay damages they are not responsible for	79	12	9
Limiting so-called professional plaintiffs to five class action suits every three years	57	25	18
Prohibiting participation in a suit by an attorney owning the stocks or mutual funds at issue	58	31	11

Louis M. Thompson, NIRI President & CEO, said the survey demonstrates that many American investors are concerned that lawsuits erode the value of their investment savings as they near retirement age. More than one-third of those polled are age 65 or older and 70 percent said that at least one member of their household was a member of the American Association of Retired Persons.

"Frivolous lawsuits pose a direct threat to the financial well being of those Americans who are investing for their future, including retirement," Thompson said. "These lawsuits don't just target companies, they paste a bullseye on American investors."

Survey respondents also say stock price declines are a normal investment risk and not, by themselves, evidence of fraud or grounds for a lawsuit. Only 15 percent say an annual decline of 50 percent in a stock's value was grounds for a lawsuit, and only one in ten believe a 10 percent decline in a few days is grounds for legal action. However, 85 percent say a company that knowingly provides false information to investors should be sued.

The survey of 800 American investors aged 50 or above was conducted by Public Opinion Strategies on March 18-21. The survey has a margin of error of plus or minus 3.5 percent. All those surveyed reported investments in stocks or mutual funds. Copies of the full study can be obtained by calling NIRI at 703-506-3570.

The National Investor Relations Institute, now in its 25th year, is a professional association of 2,650 corporate officers and investor relations consultants responsible for communication between corporate management, shareholders, security analysts and other financial publics.

Mr. DOMENICI. Mr. President, S. 240 is good for small investors. Investor empowerment increases control over lawsuits and settlements. The current system involves class members who sign on the dotted line to claim their share of a settlement or recovery, usually amounting to 6 to 8 cents on the dollar. Investors receive also insufficient settlement information.

Lawyers often compromise the classes' best interests to maximize lawyer fees. Example: In the Prudential Insurance case, the attorneys wanted to settle for $37 million. The California securities director, Gary Mendoza, objected, and got the class $90 million. Then they wanted to base their fees on the bigger settlement, even though they originally were willing to settle the case for much less.

The bill shifts some of the power in these cases from the entrepreneurial class action attorneys to the people who have an expertise in managing retirement funds and other members of the class who are not "pet plaintiffs." It also vests more power in the judges who have to be the final arbiter of these cases, including the money that goes to the lawyers.

It requires lawyers to actually locate plaintiffs who genuinely are aggrieved before filing the suit. Notice of settlement proposals have to be sent to the class, be in a user-friendly format which they can understand, provide clear and specific information relevant to investors' decision whether to accept settlement, challenge legal fees, opt out or say no thanks.

Under the current system, individuals can be bound by the settlement without knowing anything about it. But under S. 240 investors will get a phone number to call for information, and we can go on with more and more details that make this a good bill for the investors of this country. Small investors, large investors, institutional investors, I hope, will be playing a more significant role in the future as we move to the courts of our land on these kinds of class action suits.

Now, Mr. President, I ask unanimous consent that a statement I have prepared regarding millions of dollars for the lawyers and coupons for the plaintiffs be printed in the RECORD at this point.

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

MILLIONS FOR LAWYERS, COUPONS FOR PLAINTIFFS

Members of the plaintiff class each received a $400 nontransferable coupon good for a year toward a new Ford in litigation concerning leaky roofs in Ford Mustangs. The lawyers received about $1 million in fees and expenses and "A Fistful of Coupons," New York Times, May 26, 1995.

Professors are known for their academic temperament. Professors are thoughtful and scholarly in their writings.

Professor John Coffee of Columbia Law School wrote about class action lawsuits where the plaintiffs get coupons and the lawyer takes the cash:

"These script settlements tend to be used by lawyers who are not zealous on behalf of the class."

Plaintiffs weren't so scholarly in their commentary:

"The whole idea that the lawyer collects a million and the person collects nothing is the most asinine thing that I have ever heard."

This plaintiff class would have benefited from S. 240: Most adequate plaintiff; disclosure of settlement terms; and attorney fee reform.

Mr. DOMENICI. Proportionate liability. According to Arthur Levitt, the current system is bad for all investors. So let me talk about that for a minute. Creating a sound liability scheme is a balancing exercise, all investors versus the plaintiffs' class action lawyers and investors who happen to be plaintiffs in the case. Investors who are plaintiffs get 6 to 14 cents on the dollar. The current system obviously is not working very well and, clearly, litigation has an adverse impact on investors and on businesses.

The current system is working even worse than many think. Investors are harmed when their company is frivolously sued. Stock prices are depressed. Dividends are less than they would have been, and management is sidetracked and loses much energy in figuring out what to do with a lawsuit instead of making the company work, grow, and prosper. Small companies cannot obtain outside directors and professional advisers; directors' and officers' insurance gets more and more expensive. That means they pay less for their company's activities. There would be smaller raises, fewer new jobs, and fewer new products.

Arthur Levitt, in his April 6 written testimony, after discussing the interest in compensating plaintiff/investors, said:

The Commission recognizes that there are competing policy considerations that are also derived from concern with the long-term interests of investors.

It is true that Chairman Levitt has made what I consider "sequentially evolving statements." His three most recent pronouncements indicate that he disagrees with the premise of the Sarbanes amendment that joint and several liability is always appropriate when a codefendant is insolvent.

Arthur Levitt supports modifying joint and several liability in certain contexts. Support for a two-tier liability system is one modification and S. 240 is a two-tier system.

In response to questions from Senators D'AMATO and SARBANES during the April 6 hearing, Arthur Levitt said:

I think in those instances where conduct was willful fraud or in those instances where we're talking about an issuer, that joint and several liability should still apply.

The bill retains joint and several liability for knowing fraud.

Arthur Levitt said further:

I think when we're talking about other instances, a proportionate liability scheme that was limited to fraud on the market cases where the conduct may have been reckless, I believe that would be a fair way of balancing it.

A May 25 letter to Chairman D'AMATO identifying problems with the committee print did not mention joint and several liability.

In the SEC's submission to OMB, they did not oppose the joint and several provision of S. 240 and did not argue for change sought by this amendment.

The SEC did not indicate any dissatisfaction with the way responsibility is allocated in the event of an insolvent codefendant.

Jane Bryant Quinn's article in Newsweek endorses proportionate liability.

We have to be concerned about real world effect of these litigation rules.

Mr. President, I ask unanimous consent that the Boston Globe editorial called "Stock Response," in which they end up saying the bill, as modified, before the Senate is a bill that should be adopted, be printed in the RECORD.

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

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

[From the Boston Globe]

STOCK RESPONSE

Younger, high-tech Massachusetts corporations give the state much of its economic vitality. But their volatility has provided fodder for litigants who exploit weaknesses in tort law to make extra bucks from the vulnerable. A bill now moving through Congress would tighten terms under which suits could be brought against corporations when performance fails to match expectations. It would also reverse the trend toward reducing information available to genuine investors.

So-called strike suits sometimes follow sharp drops in stock prices associated with unexpected bad news, usually failure to meet predicted performance in sales or profits. Such disappointments are more frequent among newer corporations that are often dependent on a single product or a narrow range of products. Performances are apt to be erratic, and the loss of a single customer can inflict serious but temporary injury to sales figures.

Enterprising lawyers specializing in identifying such situations sometimes team with stockholders—some with minor stakes—to bring quick suits when company officers had predicted better results. Too often it is the business equivalent of suing your tout sheet, or maybe the horse, if you lose money at the track. Managements frequently settle rather than engage in costly litigation, even though they might ultimately win at trial. Furthermore, they have become increasingly wary of making any projections, to the detriment of the full disclosure that underlies a free market.

A move to make such suits more difficult while protecting shareholders from fraud by unscrupulous managements has been evolving in Congress for three years. It permits managements, with important exceptions, to make forward-looking projections that identify risks involved.

Recent improvements in the bill have eliminated a loser-pays provision that would have chilled legitimate challenges to management practices, an important concession that preserves shareholder rights. It is essential that this protection be preserved in the conference committee as the bill inches toward final passage.

Mr. DOMENICI. Mr. President, State and local officials support reform. There are about 14 quotes from State officials who support it.

Mr. President, supporters of the securities litigation—we have about four sheets of them. And I just would like to call to the attention of the Senate in submitting these that State pension fund administrators and regulators from the States of Colorado, Delaware, Illinois, Massachusetts, North Carolina, Ohio, Oregon, South Carolina, and California are among those State supporters from the State regulatory side.

I ask unanimous consent that all of these be made a part of the RECORD.

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

THE OVERWHELMING CONSENSUS IN FAVOR OF SECURITIES LITIGATION REFORM

INVESTORS WANT REFORM

There is no denying that there are real problems in the current system—problems that need to be addressed not just because of abstract rights and responsibilities, but because investors and markets are being hurt by litigation excesses.—SEC Chairman Arthur Levitt ("Between Caveat Emptor and Caveat Vendor: The Middle Group of Litigation Reform," Remarks at the 22nd Annual Securities Regulation Institute, January 25, 1995).

Most shareholder suits are brought by people who care little, if at all, for shareholders as a group. The plaintiffs and their lawyers make grant statements about the integrity of the markets, but the primary motivation—and the primary outcome—is their own returns. Typically, plaintiffs get a small award, and their lawyers get a large one.—Nell Minow, LENS, Inc. ("Time to Wake the Sleeping Bear," Legal Times, February 13, 1995).

Our nation's securities laws were enacted to protect investors and to improve our capital markets. However, the perverse incentive of attorneys to file meritless claims has

created the exact opposite of the intended effects of our securities laws. Abusive lawsuits triggered by a small group of lawyers, inflict tremendous harm on our nation's financial system and on the individuals and organizations drawn into them.—Richard A. Eckstom, State Treasurer, South Carolina (Letter to Sen. Hollings, April 17, 1995).

. . . [T]he current system is not working and needs reform. Under our current system, defrauded investors are receiving too little compensation while plaintiffs' lawyers take the lion's share of any settlement.—Managers of Ten Pension Funds representing: The Massachusetts Bay Transportation Authority; The Teachers Retirement System of Texas; New York City Pension Funds; Champion International Pension Plan; The Connecticut Retirement and Trust Funds; The Oregon Public Employees Retirement System; The State of Wisconsin Investment Board; State Universities Retirement System of Illinois; Eastman Kodak Retirement Plan and The Washington State Investment Board (Letter to Sen. Dodd and Sen. Domenici, July, 1994).

[T]he amount of damages that plaintiffs have typically recovered represents only a percentage of their initial claim; but the lawyers who bring the claim extract substantial fees from any lawsuit filed. A system that was intended to protect investors now primarily benefits their lawyers.—J. Kenneth Blackwell, Treasurer, State of Ohio (Letter to Sen. D'Amato, March 10, 1995).

Because shareholders are on both sides of this litigation, it merely transfers wealth from one group of shareholders to another. However, it wastes millions of dollars in company resources for legal expenses and other transaction costs that otherwise could be invested to yield higher returns for company investors.—Judy Baar Topinka, State Treasurer, State of Illinois (Letter to Sen. Moseley-Braun, March 16, 1995).

Investors are also being harmed by the current system, as it shortchanges people who are victimized by real fraud . . . The plaintiffs' lawyers who specialize in these cases profit from bringing as many cases as possible and quickly settling them, regardless of the merits. Valid claims are being undercompensated in the current system because lawyers have less incentive to vigorously pursue them.—Janet C. Rzewnicki, Treasurer, State of Delaware (Letter to Sen. D'Amato, March 21, 1995).

The current situation in the law permits and even encourages the filing of lawsuits with very little merit against corporations. The benefits derived from these suits are going primarily to attorneys. However, the payments are actually coming from the pockets of serious, lifetime owners of the corporations like our members.—Thomas E. O'Hara, Chairman, National Association of Investors Corporation (Letter to Sen. Dodd, July 19, 1994).

Nearly seven out of ten investors surveyed say they favor legal reforms to crack down on lawsuit abuse. According to a new survey conducted by Public Opinion Strategies for the National Investor Relations Institute, . . . [s]ome (87 percent) say they worry that lawsuits are diverting resources that could be used on product research and business expansion to create jobs. A similar number (88 percent) believe lawyers, not shareholders, are the primary beneficiaries of lawsuits.—National Investor Relations Institute (Press Release, March 22, 1995).

The system of penalties and incentives contemplated by Congress is turned upside down. The winners in these suits are invariably lawyers who collect huge contingency fees, professional "plaintiffs" who collect bonuses and, in cases where fraud has been committed, executives and board members who use corporate funds and corporate owned insurance policies to escape personal liability. The one constant is that the shareholders pay for it all.—Ralph V. Whitworth, President, United Shareholders Association (Testimony before the Securities Subcommittee, Senate Banking Committee, July 23, 1993).

We are ones who are hurt if a system allows someone to force us to spend huge sums of money in legal costs by merely paying ten dollars and filing a meritless cookie cutter complaint against a company or its accountants when that plaintiff is disappointed in his or her investment. Our pensions and jobs depend on our employment by and investment in our companies. If we saddle our companies with big and unproductive costs that other companies do not pay, we cannot be surprised if our jobs and raises begin to disappear and our pensions come up short as the population ages.—Mayellen Andersen, Investor and Corporate Relations Director, Connecticut Retirement and Trusts Funds (Testimony before the Senate Banking Securities Subcommittee, July 21, 1993).

Shareholders . . . are likely to realize only a small percentage of their claims and have little active involvement in the lawsuit. Plaintiff's attorneys are clearly in the drivers seat.—Kurt N. Schacht, General Counsel, State of Wisconsin Investment Board (Letter to Sen. Domenici, September 27, 1993).

[T]he plaintiffs typically recover only a small percentage of their claim, as the lawyers extract large fees for bringing the suit. A system that was intended to protect investors now seems to benefit the lawyers.—Bill Owens, State Treasurer, State of Colorado (Letter to Sen. D'Amato, April 19, 1995).

The concern about, and the reaction to, meritless lawsuits has caused industry, as well as accounting, law and insurance companies, to increase their costs with price tags ultimately paid by the consumer and the investing public, including a large percentage of our retirees and pension holders.—Joseph D. Malone, Treasurer and Receiver General, Commonwealth of Massachusetts (Letter to Sen. D'Amato, March 22, 1995).

[M]eritless litigations cost companies millions of dollars—money that could be generating greater profit for the company and higher returns for investors.—Jim Hill, Treasurer, State of Oregon (Letter to Sen. Dodd and Sen. Domenici, June 21, 1994).

I believe there is a compelling need to reform the current system of securities litigation. The problem with the current system is two-fold. First, the current system too often promotes the filing of meritless claims. Perhaps more importantly, the current system does not adequately serve the interest it is designed to protect—the interests of defrauded investors.—Gary S. Mendoza, Commissioner of Corporations, State of California (Letter to Representative Fields, February 9, 1995).

Investors will be the beneficiaries of meaningful reform. The current system fails to distinguish cases of actual fraud from frivolous cases. Typical class members receive less than $.14 for their losses. A system where private attorneys have an incentive to seek out cases of genuine fraud and litigate them to conclusion will compensate investors properly and will not coerce settlements which are paid by the shareholders of innocent companies.—Christopher J. Murphy, Chairman, Association of Publicly Traded Companies (Testimony before the Securities Subcommittee, Senate Banking Committee, March 2, 1995, at 1).

[We] are all victims. The mere threat of a securities suit makes us reluctant to provide the marketplace with voluntary disclosures. This impedes the efficiency of the marketplace by preventing investors from receiving full and complete information. Investors are harmed because investment decisions will not be made on a fully informed basis and their stocks will be improperly valued. . . . Please help us turn the securities litigation system right side up by putting investors first and plaintiffs' attorneys last.—219 California High Tech Executives (Letter to Dianne Feinstein, July 21, 1994).

Much has been said about the fact that investors receive little, "pennies on the dollar", in terms of the actual settlement between the company and plaintiffs' attorneys. However, just as important is the point that the vast number of investors lost in these cases because during the period an emerging growth company is being sued its stock becomes moribund. Investors, large and small, are forced to wait the process out, sell off at a price that does not accurately reflect the company's true status and potential or exert pressure on company officials to settle the suit regardless of the fact that the suit is meritless.—James Morgan, President, National Venture Capital Association (Testimony before the Securities Subcommittee, Senate Banking, March 2, 1995, at 7).

Investors are ill-served by the present system. Because issuers fear abusive litigation, they have sharply curtailed the amount of information they are willing to disclose, leaving investors without information essential for intelligent decision making. To the detriment of shareholders, abusive securities litigation distracts companies from their principal tasks, discourages the development of new businesses and inhibits sound risk taking. Finally, the existing litigation system encourages suit regardless of merit and cost forces defendants to settle regardless of merit.—Lynn D. Dudley, Director of Retirement Policy, Association of Private Pension and Welfare Plans (Letter to Sen. Domenici and Sen. Dodd, March 17, 1995).

[M]eritless law class actions have skyrocketed. The need to defend unfounded litigation imposes a "litigation tax" on capital formation that must ultimately be paid by the investing public.—Marc E. Lackritz, President, Securities Industry Association (Testimony before the Securities Subcommittee, Senate Banking Committee, March 2, 1995, at 3).

If a suit is filed, it should be to redress a legitimate wrong. If a company pays a settlement, it should be because the company did something wrong. If an injured investor sues, that investor should get more than a few cents on the dollar. I think it is fair to say that the views I express today are held by a majority of institutional investors.—Joh Lukomnik, Deputy Comptroller, City of New York (Testifying before the Subcommittee on Telecommunications and Finance, House Energy and Commerce Committee, August 10, 1994).

MANAGERS OF PRIVATE OR PUBLIC PENSION FUNDS

Champion International Pension Plan: Champion International Pension Plan controls over $1.8 billion in total assets.

Connecticut Retirement and Trust Fund: The Connecticut Retirement and Trust Fund invests over $11 billion on behalf of over 140,000 employees and beneficiaries.

Eastman Kodak Retirement Plan: Eastman Kodak Retirement Plan manages over $10.9 billion in total assets and is ranked as one of the largest 60 pension plans in the U.S.

Massachusetts Bay Transportation Association: With over 12,000 participants, the Massachusetts Bay Transportation Association controls over $772 million in total assets.

New York City Pension Funds: Over $49 billion have been invested in the fund to insure the retirement security of 227,000 retirees and 130,000 vested employees.

Oregon Public Employees' Retirement System: Assets controlled by the fund total over $17.2 billion. The Oregon Public Employees' Retirement System is ranked among the largest 30 pension plans in the U.S.

State of Wisconsin Investment Board: One of the 10 largest pension funds in the United States, the State of Wisconsin Investment Board manages over $33 billion contributed by the State's public employees.

State Universities Retirement System of Illinois: The State Universities Retirement System is ranked as one of the country's 100 largest pension funds with total assets of $5.3 billion.

Teachers Retirement System of Texas: The Teachers Retirement System of Texas controls over $36.5 billion in total assets on behalf of its 700,000 members.

Washington State Investment Board: With assets totaling over $19.7 billion, the Washington State Investment Board is ranked in the largest 25 pension funds.

STATE PENSION FUND ADMINISTRATORS AND REGULATORS

Commissioner of Corporations, State of California.

Treasurer, State of Colorado.

Treasurer, State of Delaware.

Treasurer. State of Illinois.

Treasurer, Commonwealth of Massachusetts.

Treasurer, State of North Carolina.

Treasurer, State of Ohio.

Treasurer, State of Oregon.

Treasurer, State of South Carolina.

Mr. SARBANES. What is the time situation, Mr. President?

The PRESIDING OFFICER. The Senator has 17 minutes, 30 seconds, with 6 minutes 48 seconds on the other side.

Mr. SARBANES. I yield myself 5 minutes. I say to my colleague that I listened carefully to his statement and it really does not address this amendment. The statement really addresses the overall bill and the provisions of the overall bill.

There were some of the points he made with which I agree and some with which I disagree, but it did not really get to the question of the amendment before us. We had the debate on Friday on the joint and several issue, on Thursday night and Friday on the broad principle. We are now addressing the provision that is in the bill.

I want the Senator to explain to me the fairness or equity—obviously, the proponents of this legislation have recognized a necessity to protect the small unsophisticated investor. What they have provided is that if a plaintiff has a net worth of less than $200,000, he will be regarded as such a person—$200,000. This, by their own statement, includes all of the plaintiff's financial assets, including stocks, bonds, real estate, and jewelry. So if you own a home, that is going to get an awful lot of people close to the $200,000 right there. But in addition, it would be bad enough if they said if your net worth is $200,000 or less—you have to have a net worth of $200,000 or less in order to be fully protected. If you are slightly above that figure, you do not get full protection.

In addition, there is also a requirement that to be fully protected on recoverable damages, you have to have lost more than 10 percent of your net worth by this fraudulent scheme. So, in other words, if you are at the $200,000 figure, you have to have lost more than $20,000 in order to be fully protected. Why should someone who has a net worth of only $200,000 not be fully protected if they get caught in a fraudulent scheme and they lose $12,000? Or $15,000? Or $18,000? Where is the equity or the fairness in that?

If you are going to limit the small people—I think the limit is too great at $200,000, but this amendment does not address that part of the provision that is in the bill. This amendment addresses the provision that in addition to being limited to a $200,000 net worth, you have to have lost more than 10 percent of your net financial worth if you are going to be fully protected in recovering your damages.

The small people are really going to be hit hard. The small people are really going to be hit hard because someone who has a $200,000 net worth, but only $5,000 of risk, loses it all.

We say, "Well, that is too bad. You will not get full protection."

I cannot, for the moment, begin to understand the equity of that provision, and therefore the amendment that I have sent to the desk seeks to change that in order to provide additional protection for the small, unsophisticated investors who have been recognized in this bill as requiring some form of special protection.

Mrs. BOXER. Will the Senator yield?

Mr. SARBANES. I yield for a question.

Mrs. BOXER. I want to thank the Senator for this amendment. I wonder if the Senator has seen the extraordinary list of national, State, county, and local public officials—it is really from A to W, from Alabama to Wyoming—that opposes this bill in its current form.

I say to my friend that if some of these amendments are passed, this is going to make a great difference to a lot of these people, and I think to this administration, and certainly to this Senator.

We have the Government Finance Officers Association against it, the Municipal Treasurers Association of the United States against it, the National League of Cities, the National Association of County Treasurers and Finance Officers, the North American Security Administrators Association, and attorneys general from all over the country, including, I notice, from New Mexico and others.

These are people that do not have an ax to grind. I wonder if my friend has seen this incredible list. It is 10 pages, single spaced, of all the people who oppose this bill, and I have not even mentioned the consumer groups on this issue.

Mr. SARBANES. I am not sure I have seen the list, but I hope the Senator will include it in the RECORD so your colleagues will have the benefit of seeing the list.

We have a clash amongst interest groups, no question about it. We have a group of lawyers who very much are involved in the securities litigation which my colleagues on the other side say are abusing the existing system. They are trying to address that. We also have a lot of corporate people who want to shield themselves from liability on the other hand.

So we have vested economic interests coming from both directions, most of the judgment coming from groups that have no vested interest in it, questioning the provisions of this bill as being excessive and as going too far.

As the article in the New York Times on Sunday by Mark Griffin, the director of the Utah Securities Division, states:

> What's in the name? In the case of Private Securities Litigation Reform Act of 1995, consumers will find a world-class misnomer now before the Senate. The bill is more accurately described as securities litigation repeal.

In effect, what we have is a situation in which this is excessive; it goes too far. Even the proponents recognize that it went too far. They put this provision in that I am now trying to change, in a rather modest way, in order to make it have some meaning, rather than being almost meaningless.

It has a double requirement. You have to be below $200,000 net worth, and you have to lose 10 percent of your net worth. If you are some small, unsophisticated person with very limited means, below $200,000 net worth—that is, your house, your jewelry, your real estate, any stocks or bonds that you own, all of that added up gets you below $200,000—you would think at least we will protect that person fully, fully protect them.

Oh, no, no. In addition to having to be below the $200,000 net worth, you have to lose in this stock swindle more than 10 percent of your net worth. If your net worth is $195,000, all these things added up, you have to lose more than $19,500.

Suppose you are a small investor with a net worth of $195,000, all of these things I enumerated. Someone talks you into making an investment. A lot of elderly people get fast-talked on the

telephone or in person and make an investment of $5,000. They lose it; they lose it. The stock swindler goes bust, flees. There is no recovery there. The people advise the stock swindler, who were participants in the fraud on a reckless standard—on a reckless standard, the stock swindlers, lawyers, accountants, investment advisor, people drawn into this thing—they are protected ahead of this innocent investor who has lost $5,000. I cannot understand it.

I said before that this is a "have-you-no-shame amendment," I say to my colleagues on the other side with respect to what you are doing to these small investors. Senators recognize the problem of the small investor, the unsophisticated person, and fail to adequately give them any protection, is what it amounts to.

That is a very important aspect. I would like to get the response from the other side focused on the provisions of the amendment. All we do, we put the amendments forward, and then we hear a statement about the bill as a whole.

We said earlier, at the very beginning of the debate, that we accept certain aspects of this bill. The real question now is on the amendments which go to particular provisions in the legislation.

I yield the floor. Perhaps we can get a focus on this particular amendment and its provisions.

Mr. DOMENICI. Mr. President, I think the distinguished Senator knows that I was one of the Senators, along with Senator DODD, that introduced this legislation. I did not serve on the Banking Committee when this legislation was marked up.

Let me see if I can explain. I do not have any apologies for this. I think the committee went, in one sense, too far. We are here to say, "Okay, that is fine." Here is the theory: The Senator now would like to say this bill has gone a long way to try to get rid of the problems that joint and several liability brings to this kind of class action suit.

Now, if one does not believe that joint and several has created any problems for deep pockets who are almost in an infinitesimal amount involved in this case and makes them liable for the whole thing; if one does not believe that the accountants are not necessarily as liable unless knowingly participating in the fraud, that they should not be liable for the whole settlement or the whole verdict, if one does not believe that, obviously, those Senators ought to be for the Sarbanes amendment.

If a Member is for changing that—and I spent a considerable amount of time, not necessarily as well as it can be done—explaining that the unfairness of the application that law to cases of this type by lawyers in America today, if a person does not believe it has been applied unfairly, or that it is causing litigation to be filed that is meaningless, putting huge burdens on America's startup companies, if Members do not believe that and they want to go forward, then go with Senator SARBANES.

If you want to leave joint and several liability as it is, this essentially means no matter how much of the culpability is yours, you pay the whole amount whatever that amount is. We know what that is doing to the system. It is not helping clean up the system at all.

It is causing everybody in the chain of this kind of activity to buy huge insurance policies. We have an example here of one that I put in the RECORD. If you were in business in the United States, and exactly the same kind of business with exactly the same kind of activity in Canada, in one country it would cost $40,000, and in America it would cost $450,000.

That would not matter to some who do not think it matters what business has to pay. If that is a medium-sized business, $450,000 versus $40,000 for insurance coverage is a pretty big deal. It is like six to eight full-time engineers that could work at one of these companies. But they pay it in insurance so you can have this liability of joint and several. So every board of directors, every official, everybody in the company, the CPA's and everyone else, can be liable for the entire malfeasance of one.

If you do not agree with that statement, if you do not agree with that position, which is basis of this new bill, S. 240, which reformulates class action suits on securities, then you start considering, who should we exclude? Who should we exclude from what is now perceived to be a more fair system for everybody at large? I would assume that if you want to change that joint and several, that you no longer consider each and every possible defendant as the insurer of stockholders—whether they are little stockholders or big stockholders—they are not the insurer, that they will not lose money because somebody in the chain of this company did something wrong.

So what did the committee do? I say to my fellow Senators, they said OK, there could be some situations when we want to provide more than the proportionate liability, when we want to give a little bit of a break to some small investors who are poor. It did not mean that they were throwing the new system out. In fact, they have gone to great lengths in this bill saying the new system of proportionate liability will be better for everyone.

The answer to Senator SARBANES is much the same as one would give if we were on the floor discussing a Federal statute. When I was practicing law, if you stole $51 you committed a felony. If you stole $48 it was a misdemeanor. So you would come to the floor and say why $50? Or why did we not do $80? Or why did we not do $52? Why did we not cover the next little step? Just $51 should not be guilty of a felony. You have to draw the line somewhere.

So the committee said, we want to take care of a small group of investors whom this change in the law might affect adversely. So they drew some lines. That is all they did.

The Senator would like to draw the lines differently. Of course. The Senator from Maryland would like to draw a line very differently. He would like to throw this whole bill out. That is the line he would like. He would like to leave it like it is with maybe a few little soft amendments. He clearly does not want this bill to pass.

From my standpoint, there is no answer to why you draw lines of this type. If you want to have a debate in the Senate and say instead of $200,000 worth of net worth it should be $300,000, have the debate. If you want to say it should be $250,000, have the debate. Sooner or later you will draw the line somewhere or you will return to the old law.

Mr. SARBANES. Will the Senator yield on that point?

Mr. DOMENICI. I will be pleased to yield.

Mr. SARBANES. I have not tried to draw the line on the net worth issue at all. The Senator says if you want to put it at $250,000 or $300,000—I have not tried to change that line. I have not drawn that line at all. I have left the line at $200,000.

That response does not go to the amendment in any respect.

Mr. DOMENICI. OK. So, I answer the Senator's question before he finishes it by saying you delete the requirement that small investors lose at least 10 percent of their net worth.

Mr. SARBANES. That is right.

Mr. DOMENICI. You say it does not matter how much they lose of their net worth.

Mr. SARBANES. I am saying if you have a small investor, $200,000 worth of net worth—I am not trying to change the Senator's net worth—it could be $300,000, could be $100,000—your net worth includes their home, includes everything they have——

Mr. DOMENICI. So the Senator does not want any?

Mr. SARBANES. I am saying keep it at $200,000.

Mr. DOMENICI. Right.

Mr. SARBANES. But do not require, before they are held harmless they lose 10 percent of their net worth. You have someone with a $200,000 net worth, they loose $5,000 and you say, "Tough." That is a small investor. It is an unsophisticated person who is taking a real pounding. I am saying, why do you not let them at least collect what they lost? You have limited it to a class of less than $200,000 net worth. At least whatever they lose, let them recover.

Mr. DOMENICI. Let me just say, from this Senator's standpoint, as I

look at this law, proportionate liability is fair. It is better for the entire system than the joint and several before. And there have been hours of statements on the floor on why the new system is better for the country, more fair and all the other things that have been said about it.

If you want to start talking about changing that small group of investors that, somehow or another, the committee in reporting out this bill wanted to protect in some way, then I am not going to say the committee was perfect in every one of its lines. But I do not believe we ought to start with the premise that it is unfair when it could have been that there would not have been any exceptions, and that would have been a fair system. They decided to help small investors in some specific way. What they have done is not unfair. It may be unfair to you, Senator, and maybe to enough Senators to vote with you.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SARBANES. I just point out to the Senator that the notion that it was unfair was encompassed by the Senator when he put his bill in. This was in the bill, put in by the Senator. So the Senator himself departed from the absolutely rigorous application of moving to proportionate liability because he recognized it was not fair.

I am just making the point, the way it has been defined makes it so restrictive that these small, unsophisticated investors—which my colleague is asserting he is providing some protection for —are not going to get protection. I am urging my colleagues to change it in this respect in order to provide protection for these small people.

The fact of the matter is, the shift the Senator is doing is he is shifting the burden of uncollected damages off of the codefendant, who has abused the system, over to the insolvent defendant, the victim.

The Senator used an example between a misdemeanor and a felony, and he says you have to have a line. The line you have is you are still punishing the wrongdoer. The shift from a misdemeanor to a felony does not enable you to put the burden off on the victim of the crime. Here we are throwing it off on the victims, and you are doing it in such a way that they have no adequate protection. I think these small investors ought to be protected. I think the proportionate liability ought to be doubled. As the Senator from New York indicated the other day himself in making a statement, that is what this is directed to do. I say to my colleague, the way it is written now my colleague is going to have someone with a small net worth, they lose a small amount of money—he says, "Too bad."

They say, "But this fellow was a participant in the fraud. They were in this scheme that cheated me."

"Tough. Very sorry." And Mr. and Mrs. Small investor, all across the country, are going to feel the brunt. They are going to feel the brunt of this.

I should have tried to amend the net worth as well. I think the figure is much too low. But for the sake of drawing the distinctions we left the net worth. We just said all right, you got $200,000 net worth, you lose $15,000 in this fraudulent scheme. The person who directly perpetrated the scheme has fled. But his lawyer is around, his accountant is around, his investment counselor is around. And all of them were so reckless that they became participants in the scheme. They did not blow the whistle on this person and therefore you are entitled to collect from them. And I think you ought to be able to collect if you are the small person.

If you have lost less than 10 percent, you have a smaller loss—why should they not? That may be the only investment funds these people have. We are not talking about wealthy people here. And you are putting the burden—it is very important to understand, the law to date has been that all of the defendants can be held. If one of them goes bankrupt, then the others can be brought in and made to pay. And the victim is held harmless.

Now we are making the perpetrators of the fraud harmless as opposed to the victims.

Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator's time has expired. The hour of 2 o'clock now having arrived, the Senator from California is recognized to offer an amendment on which there will be 90 minutes debate.

The Senator from California.

AMENDMENT NO. 1473

(Purpose: To instruct the Securities and Exchange Commission to report to the Congress on whether senior citizens and retirement plans need enhanced protection from securities fraud)

Mrs. BOXER. 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 California [Mrs. BOXER] proposes an amendment numbered 1473.

At the appropriate place, insert the following:

SEC. . STUDY AND REPORT ON PROTECTIONS FOR SENIOR CITIZENS AND QUALIFIED RETIREMENT PLANS.

(a) FINDINGS.—The Congress finds that—

(1) senior citizens and qualified retirement plans are too often the target of securities fraud of the kind evidenced in the Charles Keating, Lincoln Savings & Loan Association, and American Continental Corporation situations;

(2) this Act, in an effort to curb unfounded lawsuits, changes the standards and procedures for securities fraud actions; and

(3) the Securities and Exchange Commission has indicated concern with some provisions of this Act.

(b) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall—

(1) determine whether investors that are senior citizens or qualified retirement plans require greater protection against securities fraud than is provided in this Act and the amendments made by this Act; and

(2) if so, submit to the Congress a report containing recommendations on protections that the Commission determines to be appropriate to thoroughly protect such investors.

(c) DEFINITIONS.—For purposes of this section—

(1) The term 'qualified retirement plan' has the same meaning as in section 4974(c) of the Internal Revenue Code of 1986; and

(2) the term 'senior citizen' means an individual who is 62 years of age or older as of the date of the securities transaction at issue.

Mrs. BOXER. Mr. President, thank you very much.

The reason I had the wonderful employee of the Senate read the amendment in its entirety is that it is pretty straightforward. As has been stated before, I am not an attorney. Because I tend to see these things in a very straightforward way, I have a rule that I have to really be able to show my amendment to the people I represent and make sure that they speak clearly to the point.

Is it not the case, Mr. President, that I have 45 minutes on my side, and Senator DOMENICI has 45 minutes on his side?

The PRESIDING OFFICER (Mr. FRIST). That is correct.

Mrs. BOXER. Mr. President, I yield myself such time as I might consume, but I ask if the President will let the Senator know when she has used about 20 minutes.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, since we are putting into the RECORD names of people and organizations, I wanted to make the point that in California a partial list of those who think this bill goes too far is as follows: The California State Association of Counties, the county of San Francisco, Napa County Deputy District Attorney, the Stanislaus County Board of Supervisors by resolution, the city of Barstow Finance Director, the city of El Monte Treasurer, the Glendale Treasurer, the city of Whittier Clerk-Treasurer, the Modesto Irrigation District, and that is a partial list.

I ask unanimous consent that be printed in the RECORD.

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

STATE-BY-STATE OPPONENTS TO S. 240, AS OF JUNE 22, 1995

ALABAMA

City of Mobile, Investment-Treasury Officer Arthur J. Barnes.

Pike County Commission, Administrator Steven W. Hicks.

State of Alabama, Securities Commission, Director Joseph P. Borg.

ARIZONA

City of Bullhead City.

City of Yuma, Accounting Director Gerald A. Zochowski.

ARKANSAS

City of Stuttgart, Finance Officer Jane W. Jackson.

Craighead County, Treasurer Russell H. Patton III.

State of Arkansas, Attorney General Winston Bryant.

CALIFORNIA

ACC Bond Holders.

California State Association of Counties, Executive Director Steven C. Szalay.

California Labor Federation—AFL-CIO.

City of El Monte, Treasurer Henry J. Velasco.

City of Barstow, Finance Director Evelyn Radel.

City of Glendale, Treasurer Elizabeth W. Evans.

City of Whittier, Clerk-Treasurer Gertrude L. Hill.

Congress of California Seniors, President Lois Wellington.

Congress of California Seniors—Los Angeles.

County of San Francisco, Chief Administrative Officer William L. Lee.

Gray Panthers of Marin, Convenor John Kouns.

Modesto Irrigation District, General Manager Allen Short.

Napa County, Deputy District Attorney Daryl A. Roberts.

Stanislaus County Board of Supervisors, Chairman Paul W. Caruso (resolution).

Contra Costa Times editorial opposing S. 240 (April 17, 1995).

COLORADO

Abbey of St. Walburga, Boulder.

Adams County, Treasurer Helen Hill.

Alamosa County, Treasurer Charlene Cockrum.

Arapahoe County, Treasurer Bernie Ciazza.

Benet Hill Monastery, Colorado Springs.

Capuchin Province of North America, Denver.

City of Denver, District Attorney A. William Ritter, Jr.

City of Denver, Employees Retirement Plan, Executive Director Michael Heitzman.

Chafee County Board of Commissioners, County Administrator Frank M. Thomas.

Colorado AFL-CIO, Jack Hawkins.

Colorado AFSCME, Cathy Bacino.

Colorado County Treasurers' Association, President Sherry M. Rose (resolution).

Colorado Public Interest Research Group, Rich McClintock.

Colorado Senior Organization of Active Retirees of International Steelworkers (SOAR), President Matt Peulen.

Colorado Seniors Lobby, President Richard Tucker.

Denver Federation of Teachers, Local 858, President Fleta Nockels.

Eagle County, Treasurer Sherry Brandon.

Freemont County, Treasurer Jenny Woltemath.

Gray Panthers of Colorado, President Eric Boyer.

Gunnison County, Treasurer Alva May Dunbar.

Jefferson County, Treasurer Bob Bammerlin.

La Plata County, Treasurer Edward Murray.

Machinists Union, District Lodge 86, President Ray Rivera.

Mesa County, Treasurer Gena Harrison.

Moffat County, Treasurer Joy Hammat.

Morgan County, Treasurer Robert Sagel.

National Council of Senior Citizens, Region 8, Director Matt Peulen.

Oil, Chemical & Atomic Workers Union of Colorado, Robert Wages.

Otero County, Treasurer Dennis Smith.

Ouray County, Treasurer Ramona Radcliff.

Retired Mens' Organization of International Steelworkers of Colorado, President Mike Baca (resolution).

Rio Grande County, Treasurer Peggy Kern.

San Miguel County, Treasurer Sherry Rose.

Sisters of St. Francis of Colorado Springs.

Sisters of St. Francis of Penance, Denver.

State of Colorado, Division of Securities, Commissioner Philip A. Feigin.

Summit County, Treasurer Larry Galliland.

Weld County, Treasurer Arthur Willis.

Yuma County, Treasurer Mary Lou Rose.

CONNECTICUT

City of New Britain, Finance Director John Jedrzejczyk.

City of Shelton, Finance Director Louis M. Marusici.

Connecticut Government Finance Officers Association, President Glenn S. Klocko.

Newington Public Schools, Business Administrator Alfred L. Villa.

Town of Darien, Finance Director Kathleen A. Clarke.

Town of Stonington, First Selectman David S. Burdge.

Town of Waterford, Finance Director Arthur H. Davis III.

DELAWARE

City of Dover, Finance Director Mike Karia.

City of Newark, Finance Director Patrick E. McCullar.

Delaware Association of Government Finance Officers, President Patrick E. McCullar.

FLORIDA

Benedictine Sisters of Florida.

Broward AFL-CIO.

Consumer Fraud Watch.

Dade County Board of Commissioners (resolution).

Dade League of Cities, President Helen L. Miller (resolution).

Delray Senior Citizens.

Escambia County Board of Commissioners, Chairman Willie J. Junior (resolution).

Florida AFL-CIO.

Florida AFSCME.

Florida Association of Court Clerks and Comptrollers.

Florida Association of Tax Collectors.

Florida Chapter, National Bar Association.

Florida Coalition to Protect Investor's Rights, Coordinator Susan Glickman.

Florida Consumer Action Network.

Florida Education Association.

Florida Government Finance Officers Association, President Rick Atkinson.

Florida Public Interest Research Group.

Florida Silver Haired Legislature, Inc.

Florida State Council of Machinists.

Florida State Council of Senior Citizens.

Gray Panthers of Sarasota-Manatee.

Gray Panthers of South Dade.

Northeast Florida Area Council of Senior Citizens.

Palm Beach County Sheriff's Office, Sheriff Charles A. McCutcheon.

South Florida Water Management District, Director of Finance E. Barrett Atwood, Sr.

United Faculty of Florida.

United Teachers of Dade.

Palm Beach Post editorials opposing S. 240 (June 3 and 5, 1995).

GEORGIA

City of Albany, Controller Chuck Olmsted.

City of Columbus, Mayor Bobby G. Poters.

City of Forest Park, Finance Director Sarah Davis.

Gwinett County, Director of Financial Services Charlotte J. Nash.

Municipal Electric Authority of Georgia, President and General Manager Frank L. Olson.

Municipal Gas Authority of Georgia, Executive V.P. and CFO Richard W. McCullough.

State of Georiga, Employees' Retirement System, Director Rudolph Johnson.

HAWAII

State of Hawaii, Employees Retirement System, Administrator Stanley Siu.

City and County of Honolulu, Finance Director Russell W. Miyake.

IDAHO

City of Pocatello, Clerk-Treasurer Peter B. McDougall.

ILLINOIS

American Province of Little Company of Mary Sisters, Provincial Offices, Evergreen Park.

Benedictine Sisters, Chicago.

Chicago and Suburbs Senior Senate, President Joseph Ramski.

Christian Brothers of Ireland, Chicago.

City of Alton, Treasurer Daniel V. Beiser.

City of Chicago, Mayor Richard Daley.

City of Danville, Comptroller Ron E. Neufeld.

City of Darien, Accoutant Marie Plunkett.

City of Decatur, Treasurer Beth B. Couter.

City of Galena, City Administrator Richard A. Schutlz.

City of Joliet, Management and Budget Director Robert D. Fraser.

City of Moline, Finance Officer Kathleen A. Carr.

City of Peoria, City Treasurer Mary A. Ulrich.

City of Rolling Meadows, Acting City Manager Gerald Aponte.

City of West Chicago, Director of Finance W.C. Warren.

Coalition of Active and Retired Employees P.A.C. (Police & Firemen).

Cook County, Assessor Thomas C. Hynes.

Felician Sisters, Mother of Good Council Province, Chicago.

Illinois Government Finance Officers Association, Executive Director William Stafford.

Illinois Municipal Treasurers Association, President Judith E. Madonia.

Illinois State Council of Senior Citizens' Organizations, President Gerald Prete.

LaSalle County, Treasurer Thomas C. Setchell.

Madison County, Chief Deputy-Treasurer Robert H. Chappell.

Missionary Sisters of St. Charles Borrome, Melrose Park.

Passionist Community, Holy Cross Province, Rev. Michael J. Hoolahan.

School Sisters of St. Francis of Christ the King, Lemont.

Servants of the Holy Heart of Mary, Provincial Administration Kankakee.

Sisters of Mercy of the Americas, Regional Community of Chicago.

Sisters of St. Casimir, Chicago.

Sisters of St. Francis, Joliet.

Village of Bolingbrook, Deputy Village Treasurer Harriet C. Allbee.

Village of Carol Stream, Finance Director Stan W. Helgerson.

Village of Carpentersville, Finance Director A. Donald Mazza.

Village of Niles, Finance Director/Treasurer George R. Van Geem.

Village of Sauk Village, Finance Officer Bev Sterrett.

INDIANA

Conference on Corporate Responsibility of Indiana and Michigan, Chairperson Mary John Walsh.

IOWA

Iowa Association of Counties, Executive Director Bill Peterson.

Iowa Municipal Finance Officers Association, President Marian K. Karr.

Jackson County Board of Supervisors, Chair John J. Wiley.

City of Cedar Rapids, Controller-Auditor Robert E. McMahan

City of Iowa City, Finance Director Donald J. Yucuis

KENTUCKY

Commonwealth of Kentucky, Kentucky Retirement Systems, General Manager Pamela S. Johnson

LOUISIANA

Parish of St. Charles, President Chris A. Tregre

Parish of Terrebonne Consolidated Government, Chief Administrative & Financial Officer Doug Maier

MAINE

City of Lewiston, Finance Director Richard T. Metivier

Maine Council of Senior Citizens, President John H. Marvin

Maine Municipal Association, State and Federal Relations Director Kenneth C Young, Jr.

Maine Retired Teachers Association, Vice President Philip A. Gonyar

Maine State AARP, Legislative Committee, Chair William H. Layman

Maine State Employees Association, Retirees Steering Committee Chair Eunice Cotton

Southern Maine Area Agency on Aging, Executive Director Laurence W. Gross

MARYLAND

Howard County, Director of Finance Raymond F. Servary, Jr.

Marianist Provincial House, Baltimore

State of Maryland, Office of the Attorney General, Securities Division, Commissioner Robert N. McDonald

MASSACHUSETTS

AFSCME Council 93, Executive Director Joseph M. Vonavita

Augustinians of the Assumption, Brighton

Citizen Action of Massachuetts, Director Edward Kelly

Essex County, Retirement Board, Chairman-Treasurer Katherine O'Leary

Fraternal Order of Police, Greater Boston Lodge, President Michael Giannetti

Hampshire County Commission, Legislative, Charter, and Code Committee, Chairman Vincent J. O'Connor

Industrial Cooperative Association Group, Director James Megson

Massachusetts Association of County Commissioners, President Robert Stone

Massachusetts Consumers' Coalition, Chairman Paul J. Schlaver

Massachusetts Jobs with Justice, Director Rand Wilson

Massachusetts Public Interest Research Group, Executive Director Janet Domenitz

Massachusetts Teachers Association, Vice President Melanie Kasperian

Norfolk County Board of Commissioners, President William O'Donnell (resolution)

Plymouth County Board of Commissioners, Chair John R. Buckley, Jr.

Sons of Mary, Framingham

State of Massachusetts, Attorney General Scott Harshbarger

Tax Equity Alliance for Massachusetts, Director Jim Braude

Teamsters Local 25, Recording Secretary/Field Representative Richard Reardon

Teamsters Local 122, Secretary/Treasurer John Murphy

Teamsters Local 504, Secretary/Treasurer Dave Robbins

Town of Concord, Finance Director Anthony T. Logalbo

Town of Wellesley, Treasurer/Collector Marc V. Waldman

Xaverian Brothers, American Northeastern Province, Milton

MICHIGAN

City of Ann Arbor, Finance Director Allen D. Moore

City of Bay City, Treasurer Judy M. Volk

City of Berkeley, Clerk/Treasurer Leona M. Garrett

City of Grayling, Treasurer Verna M. Meharg

City of Kalamazoo, Administrative and Financial Services Managing Director R. Keith Overly

City of Mount Pleasant, Finance Director Rick L. Sanborn

City of Southfield, Treasurer Roman J. Gronkowski

Charter Township of Ada, Treasurer Soberberg

Charter Township of Delta, Board of Trustees (resolution)

Charter Township of Garfield, Treasurer Judy McManus

Charter Township of Independence, Treasurer John Lutz

Charter Township of Van Buren, Treasurer Helen Foster

Conference on Corporate Responsibility of Indiana and Michigan, Chairperson Mary Joan Walsh

Genesee County, Controller Leonard D. Smorch

Grand Rapids Dominicans, Prioress Barbara Hansen

Macomb County Treasurer Association, President Pamela Kondziolka

Michigan Association of Counties, Executive Director Timonthy K. McGuire

Passionist Community, St. Paul of the Cross, Rev. Michael Hoolahan

Saginaw County, Treasurer Marvin D. Hare

State of Michigan, Auditor General Ramona Henderson Pearson

MISSISSIPPI

State of Mississippi, Office of the Secretary of State, Assistant Secretary of State for Securities and Business Services Susan Shands

MISSOURI

Boone County, Treasurer Kay Murray

Chesterfield Fire Protection Distric, District Administrator John W. Klos

City of Blue Springs, Director of Financial Isabel Stocklein

City of Brentwood, Finance Officer Susan L. Zimmer

City of Des Peres, Director of Finance Brett Vuagniaux

City of Ellisville, Director of Finance David S Daniels

City of Ferguson, Director of Finance Jo Ann Bordeleau

City of Fulton, Chief Financial Officer Jerry D. Ponder

City of Harrisonville, Mayor C. A. "Chuck" Jones

City of Lee's Summit, Treasurer Kathy VanGordom

City of Lexington, City Administrator Abigail Tempel

City of Macon, Finance Clerk Cathay Swan

City of Manchester, Director of Finance C. Lynn Wei

City of Moberly, Director of Finance and Personnel Nick Burton

City of O'Fallon, Director of Finance Laura Lashley Chiles

City of Richard Heights, City Manager Carl L. Schwing

City of Rolla, Finance Director Daniel L. Murphy

City of Sedalia, City Controller/Treasurer Pamela Burlingame

City of Shelbina, City Clerk Charlette Schwieter

City of Sugar Creek, City Clerk/Finance Officer Veronica A. Powell

City of Webster Groves, Acting City Manager Milton W. Matthews

Clay County, Treasurer Beverly Corum

Communication Workers of America District 6, Vice President Vic Crawley

Hickory County Commission, Presiding Commissioner Bob Breshears

Jesuits of the Missouri Province, St. Louis

Little Blue Valley Sewer District, Finance Director Jay Sells

Missouri AFL–CIO, State Director Daniel J. "Duke" McVey

Missouri AFSCME, Council 72, Bob Carico

Missouri Citizen Action

Missouri Council of Senior Citizens

John R. Perkins, Former Securities Division Director, Missouri Secretary of State

Municipal Finance Officers and Treasurer Association of Missouri, President Daniel L. Murphy

Society of the Sacred Heart, United States Province, St. Louis

St. Charles County, Finance Director Joseph M. Kernell

St. Louis County Municipal League, Executive Director Tim Fischesser

St. Mary's Institute, O'Fallon

Sistors of the Most Precious Blood, O'Fallon

State of Missouri, Attorney General Jeremiah W. (Jay) Nixon

Union of American Hebrew Congregations--Missouri

United Auto Workers, Region 5

St. Louis Post Dispatch editorial opposing S. 240 (May 9, 1995)

MONTANA

Butte Area Chapter of AARP, President Harold Kammerer

Butte Human Rights Coalition, Chair George Waring

Carbon County, Commissioner Mona Nutting (MACO resolution)

Coalition of Montanans Concerned with Disabilities, President Michael Regnier

Custer County Commission, Commissioner Janet Kelly (Custer resolution)

Dawson County, Treasurer Cindi Byron

Fergus County, Commissioner Vern Petersen (MACO resolution)

Flathead County, Commissioner Howard Gipe (MACO resolution)

Gallatin County Commission, Chairman Kris Dunn (resolution and MACO resolution)

Gallatin County, Treasurer Stan Hughes

Hotel Employees & Restaurant Employees Union, Local 427, Organizer Secky Fascione

Montana Association of Counties, Executive Director Gordon Morris (Resolution)

Montana Coalition For Nursing Home Reform, President Alice Campbell

Montana People's Action, Executive Director Jim Fleischman

Montana Public Interest Research Group, Executive Director Linda Lee
Montana Trial Lawyers, Executive Director Russel Hill
State of Montana, State Auditor Mark O'Keefe
Stillwater County, Commission Chairman Vicki Hyatt (MACO resolution)
Yellowstone County, Commissioner Mike Mathew (MACO resolution)

NEBRASKA

General Drivers and Helpers, Local Union No. 554, Secretary Treasurer Jerry Younger
Nebraska Association of Public Employees, Executive Director Bill Arfman
Nebraska Citizen Action, Director Walt Bleich
State of Nebraska, Department of Banking and Finance, Assistant Director Jack E. Herstein

NEVADA

City of Las Vegas, Treasurer Michael K. Olson
City of Wells, Clerk Michael T. Cosgrove
Clark County School District, Treasurer Kenneth D. Selch

NEW JERSEY

Consumers for Civil Justice
New Jersey Conference of Mayors, Executive Director Don Fauerbach
New Jersey Fraternal Order of Police, President Richard Whelan
New Jersey Government Finance Officers Association, President Barry Eccleston
Tax Collectors and Treasurers Association of New Jersey, President Vincent A. Belluscio

NEW MEXICO

City of Farmington, Mayor Thomas C. Taylor
New Mexico Federation of Labor, President George "Jeep" Gilliland
New Mexico Pro-PAC, President Gerry Bradley
Progressive Alliance for Community Empowerment, President Pablo Trujillo
New Mexico Public Interest Research Group, Executive Director Matthew White
San Juan County, Treasurer Sid Martin
State of New Mexico, Attorney General Tom Udall
State Representative Mimi Stewart (Bernadillo)

NEW YORK

AFSCME, District Council 37, Executive Director Stanley Hill
AFSCME, New York State, Political and Legislative Director Edward F. Draves
American Military Retirees Association, National and New York President Thomas E. Burton
Citizen Action of New York
City of Newburgh, Director of Finance/Comptroller Hargovind S. Patel
City of New York, Public Advocate Mark Green
Congregation of Christian Brothers, Eastern American Province, New Rochelle
Interfaith Center on Corporate Responsibility, Executive Director Tim Smith
Long Island Progressive Coalition, Executive Director David Sprintzen
New York Government Finance Officers' Association, President Michael A. Gealto
New York Hotel Trades Council, AFL–CIO, Pensioners Society
New York Public Interest Research Group, Legislative Director Blair Horner
New York State Council of Senior Citizens, Executive Director Maureen H. Campbell
New York Statewide Senior Action Council, Board of Directors President Max Berman
Presbyterian Senior Services, Executive Director Dave Taylor
Sisters of Mary Reparatrix, Bronx
State of New York, State Comptroller H. Carl McCall

NORTH CAROLINA

Raleigh News & Observer editorial opposing S. 240 (May 27, 1995)

NORTH DAKOTA

North Dakota AFL–CIO, President David L. Kamnicz
North Dakota AFSCME, Kevin Riconas
State of North Dakota, Treasurer Kathi Gilmore
State of North Dakota, Securities Commissioner Cal Hoovestol

OHIO

Ashtabula County, Treasurer Robert L. Harvey
City of Barberton, Finance Director Raymond E. Flickinger, Jr.
City of Cleveland, Treasurer Mary Christine Jackman
City of Dublin, Finance Director Marsha I. Grigsby
City of Jackson, Auditor Carl Barnett
City of Lyndhurst, Finance Director Joseph G. Mirtel
City of Mansfield, Finance Director Sandra L. Converse
City of Painesville, Director of Finance James W. Onello
City of Tallmadge, Treasurer Steven C. Brunot
City of Upper Arlington, Finance Director Pete Rose
City of Vandalia, Finance Director Linda Chapman
City of West Carrolton, Finance Director Roberta A. Donaldson
City of Zanesville, Treasurer Walter K. Norris
County Commissioners Association of Ohio, Executive Director Larry L. Long
County Treasurers Association of Ohio, President John Donofrio
Cuyahoga County Board of Commissioners, President Mary O. Boyle
Euclid City Schools, Treasurer Lowell B. Davis
Glenmary Home Missioners, Director Robert Knueven
Greene County, County Auditor Luwanna A. Delaney
Lake County, Treasurer John C. Crocker
Municipal Treasurers Association of the United States and Canada, Ohio Chapter, Chairman Anthony L. Ianiro
Montgomery County Board of Commissioners, President Vicki Pegg
Summit County, Treasurer John A. Donofrio
Village of Edgerton, Clerk-Treasurer Kathleen Whitman
Village of North Kingsville, Clerk-Treasurer Barbara R. Lambert
Village of Richfield, Finance Director Eleanor Lukovics
Dayton Daily News editorial opposing S. 240 (5/10/95)

OREGON

City of Astoria, Finance Director John J. Snyder
City of Coos Bay, Finance Director Gail George
City of Coquille, Recorder/Finance Director Shirley J. Patterson
City of Gresham, Financial and Information Services Manager Axel Bergman
City of Rouge River, City Recorder/Treasurer Leahnette M. York
City of West Lynn, Finance Director Willie Gin
Crook County, Treasurer Mary J. Johnson
Curry County, Treasurer Trudi J. Sthen
Deschutes County, Treasurer Helen Rastovich
Douglas County, Treasurer Joanne L. Motschenbacher
Gray Panthers of Salem, Convener Nate Davis
Jefferson County, Treasurer Bonnie K. Namenuk
Josephine County, Treasurer Jan Elsnasser
Lincoln County, Treasurer Linda Pitzer
Linn County, Treasurer Shannon Willard
Malheur County, Treasurer Janice L. Belnap
Multnomah County, County Auditor Gary Blackmer
Northwest Oregon Labor Council, AFL–CIO, Executive Secretary Ron Fortune
Oregon Public Employees Union/Local 503, President Karla Spence
Oregon State Council of Senior Citizens, Secretary Lois Prince
Oregon State Public Interest Research Group
Oregon Trial Lawyers Association, President A. Michael Adler
Polk County, Treasurer Carolyn Wall

PENNSYLVANIA

City of Philadelphia, Mayor Edward G. Rendell
Commonwealth of Pennsylvania, Securities Commission, Chairman Robert M. Lam
Lehigh County Authority, General Manager Aurel M. Arndt
Pennsylvania State Council of Senior Citizens President David M. Lockhardt
Vincentian Sisters of Charity
Philadelphia Inquirer op-ed opposing S. 240 (June 4, 1995)

SOUTH CAROLINA

Aiken County, Administrator William M. Shepherd
Berkeley County, Supervisor James H. Rozier, Jr.
City of Columbia, Mayor Robert D. Coble
City of Greer, Finance Director Mary P. Greer
City of Mount Pleasant, Cheryll N. Woods-Flowers
City of Sumter, Mayor Stephen M. Creech
City of Union, Mayor T. Burton Williamson, Sr.
Lexington County, Treasurer William O. "Bill" Rowell
State of South Carolina, State Comptroller General Earle A. Morris, Jr.
South Carolina Association of Counties, Executive Director Michael B. Cone

SOUTH DAKOTA

Charles Mix County, Auditor Norman Cihak
Marshall County, Treasurer Nelva Kristofferson
South Dakota AFL–CIO, President Jack Dudley
South Dakota AFSCME, President Paul Aylward
State of South Dakota, Department of Commerce and Regulation, Division of Securities, Director Debra M. Bollinger
Yankton County, Commissioner Kathleen Piper

TENNESSEE

East Tennessee International UAW Retired Workers Council, President James W. Renshaw
Hamilton County, County Executive Claude Ramsey
Tennessee Association of County Executives, Executive Director Fred E. Congdon
Tennessee State Senate Majority Leader Ward Crutchfield

TEXAS

City of Cleburne, Finance Director Greg Wilmore

City of Meadows, Secretary/Treasurer Elaine Herff

UTAH

State of Utah, Division of Securities, Director Mark J. Griffin

City of Bountiful, Treasurer Galen D. Rasmussen

City of Ferron, Treasurer Brenda S. Bingham

City of Ogden, Department of Management Services, Treasury Division, Fiscal Operations Manager J. Norman Burden

VERMONT

AFSCME Council 93, Vermont Coordinator George A. Lovell, Jr.

Central Vermont Council on Aging

City of Burlington, Mayor Peter Clavelle

Council of Vermont Elders

Older Women's League

Southwestern Vermont Council on Aging

State Representative Jerry Kreitzer, Chair, House Government Operations Committee

State Representative Kathleen Keenan, Chair, House Commerce Committee

Teamsters Union Local 597

Vermont Labor Forum

Vermont NEA, President Marlene R. Burke

Vermont Public Interest Research Group

Vermont State Labor Council, AFL–CIO

Vermont Trial Lawyers Association

VIRGINIA

Benedictine Sisters of Virginia, Bristow

City of Falls Church, Treasurer H. Robert Morrison

City of Hopewell, Finance Director Elesteen Hager

City of Roanoke, Finance Director James D. Grisso

City of Suffolk, Finance Director Carroll L. Acors

City of Waynesboro, City Auditor Frank Fletcher

Commonwealth of Virginia, State Corporation Commission, Division of Securities and Retail Franchising, Director Ronald W. Thomas

Henrico County, Finance Director Dennis W. Kerns

Montgomery County Board of Supervisors, County Administrator Betty Thomas

Town of Rocky Mount, Finance Director Don E. Fecher

Town of Warrenton, Mayor J. Willard Lineweaver

Vinginia Association of Counties, General Counsel C. Flippo Hicks

WASHINGTON

Association of Washington Cities, President Judy Boekholder

City of Anacortes, Finance Director George Khtaian

City of Chelais, Finance Director Jo Ann Hakola

City of Spokane, Mayor Jack Geraghty

Clark County, Treasurer Doug Lasher

Cowlitz County, Treasurer Donna Rolfe

King County, County Executive Gary Locke

King County Union Retirees Council, AFL–CIO, President E.G. Kroener

Seattle Community College District, Edward Woodel

Skagit County, Treasurer Judy Menish

Thurston County, Treasurer Michael J. Murphy

State of Washington, Department of Financial Institutions, Securities Administrator Deborah R. Bortner

State of Washington, Department of Retirement Systems, Director Sheryl Wilson

State of Washington, Treasurer Daniel K. Grimm

The Seattle Times editorial opposing S. 240 (May 29, 1995)

Seattle Post-Intelligencer editorial opposing S. 240 (June 2, 1995)

WEST VIRGINIA

City of Bridgeport, Finance Director Keith L. Boggs

State of West Virginia, Treasurer Larrie Bailey

State of West Virginia, Board of Investments, Executive Director H. Craig Slaughter

WISCONSIN

City of Green Bay, Assistant Finance Director Brian C. Ruechel

City of Horicon, Clerk-Treasurer David J. Pasewald

City of Hudson, Clerk-Treasurer Gerald P. Berning

City of Oak Creek, Treasurer Barbara R. Davison

City of Oshkosh, Finance Director Edward A. Nokes

Holy Cross Sisters, Merrill

Milwaukee County, Treasurer Thomas W. Meaux

School Sisters of St. Francis, Milwaukee

Sisters of the Divine Savior, Milwaukee

Sisters of the Sorrowful Mother, Brown Deer

Town of Delavan, Treasurer Dorothy Fladten

Village of Greendale, Clerk-Treasurer Dianne S. Robertson

Wisconsin State Council of Senior Citizens, President Charlie Williams

WYOMING

Wyoming Association of Municipal Clerks and Treasurers, President Kathleen Whitney.

Mrs. BOXER. Mr. President, my amendment takes a very conservative approach to what I think could be a terrible, unintended consequence of this bill.

Many times when we pass legislation with the best of intentions, with the best of minds, we come up short and we find out that in fact we hurt people instead of helping them. Since I know that every one of us is here to help people, every one of us is here to protect investors, every one of us is here to show that we are fair, reasonable and that we are just, I think the amendment I am offering ought to be accepted by the other side. I hope it will be.

It simply asks the SEC to report to us in 180 days as to whether senior citizens and qualified retirement plans need more protection than that which is called for under S. 240.

All I am doing in this amendment is ensuring that the most vulnerable targets of securities fraud, the elderly, are not going to be even more vulnerable as a result of this bill, S. 240. Frankly, I am afraid that they will be. This is not just my opinion; many senior groups oppose this bill in its current form. They want us to amend it. They are very concerned about the impact of this bill on their retirement plan, on their ability to not become a burden to their families.

This bill's entire focus is to make it more difficult to bring a class action lawsuit involving fraud. That is its purpose. I understand it. We want to make sure there are no frivolous lawsuits filed. We do not like these strike suits. We want to get rid of them. But I am concerned that, if the proconsumer amendments continue to be beaten back in this Senate as they were in committee and the first one which was here in the Senate, clearly the ones who will be hurt the most are the ones who are the clearest targets for crooks.

I want to share with my colleagues a couple of articles that appeared in the recent press showing that senior citizens are, in fact, the target of crooks. I am going to show you a couple of articles. Here we have an article from the AARP Bulletin, a publication of the American Association of Retired Persons.

"Targeting the Vulnerable."

"Stock Schemes a New Peril."

I am going to read it.

To Earl Bonsey of Dover, Maine, it sounded almost too good to be true. As it turned out, it was. The 69-year-old retired carpenter thought he was investing $15,000 in a safe, high-yield mutual fund. Instead, he got a high-risk junk bond fund and lost a third of his money.

Thousands of older Americans now find themselves in similar situations, and the problem is worsening, experts say. "Although there are no firm statistics, we know that countless numbers of older persons are being bilked out of millions of dollars every year—dollars that often represent the savings of a lifetime."

Here is an article from the New York Times just last month.

"If the Hair is Grey, Con Artists See Green." "The Elderly Are Prime Targets."

I am going to read just a portion of this.

Finding victims is simple. Older people are fairly easy to contact, either through zip codes or mailing lists. Sometimes they are taken for a ride by a parent or friend, whether it is young people who turn up on their doorsteps offering to carry groceries, or middle-aged people . . . in church groups. Even trusted local business people can turn into predators. The elderly "just like the Marcus Welby view of the world, believe that people in business are basically honest," says Philip Feigin, Colorado's Communities Commissioner and President of the North American Securities Administrators Association which tracks investor fraud.

And I might add that that organization, the North American Securities Administrators Association, opposes S. 240. This is what he says:

So many times when we track a scam the investors who call us are absolutely furious that we broke it up. Of course, any investment made at any age can go sour, but if you blow it when you are 30, you have 35 years to make it up before you retire. If you blow it at 65, you may have to go back to work for the rest of your life.

Now, my God, the last thing we want to do here is send people back to work

at age 65 and 70 when they have lost their life savings or part of their life savings. That is just what happened in the Keating case, so let us be careful with what we do here.

Now, the next chart shows the Keating scam in all its beauty. It is a draft; it is actually used here as a salesman's training course where they showed their scam artists how to go after the elderly and it just shows how they look at the elderly: "Edna Snidlip, 1 Geriatric Way, Retiredville, CA."

That is the person they put up as the target here, and they are trying to get her to write a $20,000 check, and that is how they refer to her. And I think more important than that is the next chart which shows what Keating said to his staff.

Capitalize On This.

And always remember the weak, meek and ignorant are always good targets.

It is unbelievable what goes on with certain bad apples in this country, who would target the elderly and call them the "weak, meek and ignorant." That is why senior citizens oppose this bill, and they are going to remember what we do with this bill. To me, that is the most extraordinary thing. This is the way they talk about our grandmas and grandpas—"the weak, meek and ignorant." They are going to target them, and they are going to get them into some scheme. And then, if we do not strengthen this bill, they are not going to be able to recover. And so Senator SARBANES is offering some amendments, I will be offering some amendments, Senator SHELBY, Senator BRYAN, and others. I hope we will get some support.

Let me give you some of the stories of the senior citizens who were hoodwinked by Charles Keating, and let us be clear. The laws we are amending in S. 240 are the very laws that were used by these seniors to go after Keating and his cohorts.

Last week, Senator BRYAN was questioned by the chairman of the committee, who said: How does this have anything to do with the Keating people? It is very clear. We have the pleadings of the people who were hoodwinked by Keating, collected under these very laws. So when you change it—and by the way, there were forward-looking statements put out by Charles Keating which I will show later in the debate.

When you change the laws, you make it harder for these people, whether it is on the proportionate liability or the safe harbor or the pleading requirements or any of the other things that we change by S. 240. That is why. SEC has problems with this. The SEC has many problems with many of the provisions—with the safe harbor provision, with the lead plaintiff provision—and we are trying to fix this bill so that it is, indeed, a good bill and what it winds up doing is making sure we protect the good business people, not the bad ones. I wish to protect the good business people of California, of which there are many, most. But there are some who are not. And I used to be a stockbroker, and I can tell you this from that experience. People are very nervous when they give you their money to invest. It is a sacred trust. And to call these people "weak, meek and ignorant" does not deserve to be rewarded by legislation that makes it easier for these crooks.

We should be careful. These seniors are warning us not to go too far. The seniors who were bilked by Keating showed up here in Washington, DC, to stand with some of us. Here is one of their stories. Barbara Marks of Burbank, CA. Here is what she says.

I have my home. I have my car, but I have no savings. I invested my savings but Charles Keating swindled it from me. I lost $25,000 in American Continental Corporation bonds I bought at Keating's Lincoln Savings. I've received about 50 percent back from class action lawsuits. It's made things much more difficult. I hate having no money,

she says.

I live check to check. If I didn't have any pension and Social Security, I'd be on skid row. If a check doesn't show up, I have nothing. Everything I do I have to pay on time. If my battery goes, I have to pay. I cannot go to the bank and draw out money if I don't have food or coffee. I have to wait until the next check. Last week I had no money for 3 days.

This is a woman who was swindled out of her money. Why would we want to do anything to make it harder for her to recover, or others like her? I ask that question. Now, I know my friends on the other side and my friends on this side who support S. 240 say I am wrong on this point. I say do not listen to me. Listen to the hundreds and hundreds of people and organizations and consumer groups that absolutely oppose S. 240 in strong form. Join with me in this amendment so that we can have a study done by the SEC to tell us if we have gone too far and we are hurting seniors. Let us see what else she says.

As an older person you want to think people are honest. I thought everything was protected and everything was on the up and up. I thought my investment was insured. People should be able to collect the money taken from them from all who are responsible,

she says.

This goes to Senator SARBANE's amendment.

We should benefit from those who benefit from taking from us. The money belongs to us. The Senate shouldn't take away our rights.

I ask unanimous consent to have printed in the RECORD the statement of Ms. Jeri Mellen and Ms. Joy Delfosse, both of Nevada, Don and Judy Maxfield of Arizona, John and Ethel Rabkin, Granada Hills, CA, and Evangeline Ivy of Glendale, CA.

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

PEOPLE WHO WERE SWINDLED BY CHARLES KEATING AND WHO OPPOSE S. 240 WASHINGTON, D.C. VISIT, JUNE 13, 14, 1995

NEVADA

1. Ms. Jeri Mellon, Henderson, NV.

Jeri Melon lost $40,000 in American Continental Corp. (ACC) bonds, which she purchased at Lincoln Savings & Loan in Sherman Oaks, California in the last 1980's.

She says, "The bank had set aside a desk near the front of the bank so that you were seen coming and going. The individual selling the bonds was always a well-dressed, young college graduate. He was charismatic, charming, good-looking, attentive, and very well versed in his approach to clients.

"The tellers advised you to put your money in the bonds rather than a CD. Lincoln Savings was insured, so I felt that if the bank was endorsing these bonds, they would have to be insured."

2. Ms. Joy Delfosse, Henderson, Nevada.

Joy Delfosse lost $21,000 in ACC bonds that she purchased at Lincoln Savings & Loan in Sherman Oaks, Ca. She had been a customer of Lincoln Savings since 1969; and when a CD of hers came due, the Lincoln tellers she trusted convinced her to put her money into ACC bonds.

ARIZONA

1. Don and Judy Maxfield,

Don and Judy Maxfield lost $21,000 in ACC bonds, when they were living in Lakewood, CA. in the 1980's. They purchased the bonds at their local Lincoln Savings bank in the Lakewood Mall. when their CD's came due, Lincoln tellers persuaded them to put their money into ACC bonds. At the time, the Maxfields were looking forward to retirement and felt the bonds were an attractive investment, since they were being sold by Lincoln Savings.

CALIFORNIA

1. Sam and Ethel Rabkin, Granada Hills, CA.

Sam and Ethel Rabkin lost $100,000 in ACC bonds, which they purchased at the Lincoln Savings & Loan where they banked at Granada Hills, CA. They said, "Lincoln was a family bank with all the tellers knowing you by your first name and they made you feel part of the family."

2. Evangeline (Van) Ivy, Glendale, CA.

Evangeline (Van) Ivy and her husband lost $100,000 in ACC bonds, which they brought at the Lincoln Savings & Loan in their town of Glendale CA. They were regular customers of the Lincoln Savings in Glendale; they purchased their bonds when their CDs came due, based on information from Lincoln sales people that the bonds were safe.

Mrs. BOXER. Sam and Ethel Rafkin lost $100,000 in junk bonds. They said:

Lincoln was a family bank with all the tellers knowing you by your first name and they made you feel part of the family.

Sure, they did. But in the back rooms they laughed at them and called them the "weak, meek and ignorant."

We better be careful when we change our securities laws that we do not as an unintended consequence—I do not think anyone, of course, intends to do that—reward that kind of crook. We know Charles Keating targeted the elderly. We know many others target the elderly. I showed you some of those articles. Charles Keating ran afoul of the

securities laws. The securities laws that this bill will change will be changed deeply and adversely: 18,000 of the 23,000 people who bought Charles Keating's junk bonds were elderly—well, we know why; they targeted the elderly; junk bonds that did not drop 10, 20, or 30 percent in value but junk bonds that became 100 percent worthless; 18,000 people swindled. That is a small city. Make no mistake, the elderly are the target, and that is why my amendment is such a good amendment, because it simply says to the SEC: Take a look at what the Senate has done and the House has done with S. 240 and let us know in 180 days. Should we take some actions to make sure that senior citizens are better protected?

Mr. President, have I used up the 20 minutes at this time?

The PRESIDING OFFICER. The Senator has used 16 minutes.

Mrs. BOXER. I say we better make sure we know what we are doing. We better make sure that at the end of the day, as the proponents of S. 240 celebrate their victory, it is not a short lived victory, because I will tell you, Mr. President, there is no wrath like the wrath of the elderly. There is no wrath like the wrath of people who took their hard-earned retirement money and invested it, only to turn around and find out they were swindled. And that wrath will come down on those people who changed the laws in such a way that good people like this could not invest.

Let me give you another unintended consequence, and it is something that my friend, CHRIS DODD, has said over and over and over again, and he is right on this particular point. We have to make sure that people are interested in making investments in this Nation. We want to make sure they feel good about it, they feel protected. Or what will happen? Money will dry up. They will buy a Government bond. Why would they not? At least they know it is protected by the FDIC and that the full faith and credit of the Treasury stands behind it.

But we want people to invest in the business world. We want the capital to flow to innovation, to new technology so that jobs are created. So what I am saying is, as an unintended consequence of this bill, we better be careful that we do not go so much to one side because we do not want frivolous lawsuits that we, in fact, make people afraid that the protections are not there, that they will never collect if they are swindled and, therefore, they refuse to invest their money in the private sector. And they might very well.

I will tell you, I would have a lot of pause. I know a lot about this rewrite of securities laws, and I am very concerned.

Investment schemes that target the elderly are not the exception; they are the rule. The Senate Committee on Aging held hearings 2 years ago on elderly and retirement investor fraud. The assistant commissioner from my State securities regulators testified. Let me quote from his testimony:

> If I were conducting a seminar on investment fraud techniques for aspiring con artists, lesson one would be: Target the elderly and the retired.

So we have proof from people who are out there that the elderly, senior citizens, and retirement plans are the focus of some of these bad appeals, these swindlers, these crooks, these corrupt people who have no heart at all. I used to call them hard-hearted. I do not think they have a heart. How do you have a heart when you take a grandma's money, a widow? She has $20,000. You imply that it is safe, as I read to you before the case of that elderly person. How do you take that money and lose it knowing all along that is what was going to happen and then even claim to have a heart?

No. 1, target the elderly and the retired.

The State securities regulators announced what they described as an alarming surge in investment schemes targeting IRA's.

The PRESIDING OFFICER. The Senator has used 20 minutes.

Mrs. BOXER. Mr. President, I yield myself 5 minutes. They reported that tens of thousands of unwary Americans already have invested hundreds of millions of dollars of their savings for old age through IRA's and other tax-deferred savings.

So we know who the targets are. And the Boxer amendment simply says to the SEC, "Help us out a little. After S. 240 is the law of the land, take a special look, from the standpoint of our seniors and retirement plans, and let us know if there is something we should do to strengthen the law."

I would be surprised if people fight us on this amendment. If they do, I will listen to their arguments, but it is hard for me to understand why we would not want to have this information.

Mr. President, today I took an early morning walk around the Capitol on the west front, and I do not know if you have ever seen the statue of John Garfield. It was put up there by his Army buddies.

For the first time, I decided to take a look at it. It is surrounded by five classical sculptures, and one of them is a man who is holding a tablet, and the tablet has three words on it: Law, justice, prosperity. Those three words—law, justice, prosperity.

I thought to myself, how interesting that I happened to look at that this morning. Law, justice, and prosperity. What we are trying to do here is to make sure in S. 240 that our companies can be prosperous by protecting them from frivolous lawsuits. Law, justice, prosperity. But, on the other hand, there is a balance. Are we going to go too far and take prosperity away from our seniors or, shall I say, survival away from our seniors? So, law, justice and prosperity. We are dealing with those words today. We do not want to protect the bad guys; we want to help the good guys, and we certainly do not want to hurt the senior citizens and those who are saving diligently for their retirement.

I know lawyer bashing is the latest thing of the nineties. We bash everything in the nineties, but particularly we bash lawyers, and I am against lawyers who file frivolous lawsuits. I will do whatever I can to stop that.

But let us be clear, we are doing a lot more here. We are going very far, as this Congress has done on a number of issues, we are going too far. We are going to hurt our grandmas and grandpas and average, decent people who deserve to be protected and they do not deserve to have a law that protects them literally torn apart—torn apart—so that they can be sitting targets: "the weak, the meek and the ignorant with no laws to help them." That is wrong.

We are changing many rules about securities laws in S. 240. The least we can do—the least we can do—is require that the SEC come back to us in 180 days telling us what they believe the impact of these changes are on senior citizens and retirement plans. I hope my colleagues on both sides of the aisle can support the Boxer amendment.

I retain the remainder of my time, Mr. President. I yield the floor at this time.

I suggest the absence of a quorum and ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The 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. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, I was listening to the concern my colleague from California raised that senior citizens might be particularly vulnerable to unscrupulous predators who prey on them because of their lack of sophistication and, in many cases, take advantage of an established fiduciary relationship to defraud senior citizens of their savings.

I agree with my colleague that, in the case of Charles Keating and his bank, it is hard to imagine that a large and reputable institution, insured by the Federal Deposit Insurance Corporation, would engage in the kind of reprehensible activities which defraud depositors and investors of hundreds of millions of dollars. People often think

that banks have the Federal Government's stamp of approval and that they are therefore protected from these kinds of fraudulent practices, because of the various supervisory agencies—the Federal Reserve, the Office of the Comptroller—which review these banks. However, I reject the Senator's contention that S. 240 would open the door to this kind of activity. Fraud is not countenanced by this bill. Indeed, deliberate or intentional misstatements do not receive the safe harbor or any other protections. In fact, those who make intentional misstatements can be held liable, potentially, for all of the damages, even damages beyond those which they are found to be directly responsible. Further, the Securities and Exchange Commission is empowered under this legislation to bring suits that before now they did not have the authority to bring.

This legislation's purpose is to control the race to the courthouse by greedy, avaricious lawyers, who look not to the benefit of innocent investors or the elderly who have been defrauded, but look only to enrich themselves. They have become legal holdup artists. Ninety-three percent of these cases are settled because it costs less for defendants to settle them than the millions of dollars they cost to try. The lawyers win their settlements by alleging fraud; they do not prove fraud.

It is about time that we say we are not going to allow the American judicial system to be used in this manner; to allow lawyers to pirate profits from companies who have done nothing wrong, whose only mistake is that they are in business and that they are subject to the marketplace fluctuations. It is about time that we stood up to the lawyers who have made filing these cases a business. These lawyers are not concerned with the interests of the investors who have been abused.

I do not want to see people's rights to seek redress limited. However, this bill does not do that. Later, I intend to refer to a statement by Mr. Levitt, in which he is highly complimentary of many of the provisions of S. 240. Also I intend to point to a comparison between our bill and the bill that was passed in the House of Representatives.

I have not heard anybody point out that this bill does stop these attorneys from racing to the courthouse, and prohibits them from hiring plaintiffs so that the people with real financial interests are represented. These attorneys would rather file suit on behalf of a person who owns 10 shares of stock and who the lawyer selects than have to consider the interests of the defrauded investor. S. 240 stops this abusive behavior and it should be complimented for that. S. 240 would also legislate that if you are an accountant, and you discover fraud, you have an obligation to bring that up to the board of directors. However, S. 240 goes further than that; it requires that your obligation does not end with the board of directors. If the board of directors does not act, you have to go one step further, and report the fraud to the SEC. These provisions protect the senior citizens.

I am tired of hearing this nonsense that this legislation will just open up the doors to take advantage of people. People are being taken advantage of, this legislation tries to put a stop to that. Where do you think those senior citizens invest their money? They invest in pension funds that account for 25 percent of all the moneys invested. However, I did not hear my colleagues say, you have done a good thing by giving to these pension funds the authority to pick their lawyers and control their litigation. While I share my colleagues' concern that senior citizens not be hurt, I think it is unfair, that it is beyond the pale, to say that this bill protects fraud. I have heard that statement a half dozen times from my colleagues. But this bill does not protect fraud. I ask my colleagues to show me where in this legislation we protect fraud. Any intentional misstatement and you can be held liable. There is no safe harbor for fraud. It is neither right nor accurate to say that we protect fraud in this bill, and I resent the fact that my colleagues continue to make these statements.

For several weeks, my colleague has been talking about offering amendments to help protect senior citizens. I have yet to see those amendments. This is the first amendment that has been introduced. It calls for a study. I believe that it is reasonable, and I am prepared, under certain circumstances, to accept this amendment. But I do not think it is unreasonable for me to ask what other amendments are going to be offered so that they are not just sprung on us. I hope that my colleagues are willing to share their amendments so that we can see if we might be able to accept them. I would like to be able to do that, but I certainly cannot accept amendments blindly.

I yield the floor.

Mrs. BOXER. Mr. President, how much time do I have left?

The PRESIDING OFFICER. Twenty minutes.

Mrs. BOXER. Before I yield to my good friend from Alabama, I want to respond to my friend from New York. My friend from New York, the chairman of the committee, worked very hard on S. 240. He simply has a different view of the consequences. You know, if it all was exactly the way my friend said it was, everyone would be supporting S. 240. But I have already put into the RECORD the names of hundreds of people from Alabama to Wyoming, people who are there to look out for the people, who have said S. 240 goes too far.

I already mentioned the Congress of California Seniors. Listen to what they said, and they are smart people:

DEAR SENATOR BOXER: In behalf of the Congress of California Seniors, I want to reiterate our strong opposition to S. 240 as it emerged from the Senate on May 25. This bill threatens the retirement savings of every Californian.

My friend can pound the podium all he wants. He is effective when he does that. But so can I.

Listen:

This bill threatens the retirement savings of every Californian. It is one of the most anti-senior citizen pieces of legislation to be considered by the Congress in recent years.

That is such strong talk from the Congress of California Seniors.

So I just have to say there is a legitimate disagreement here. I am very hopeful that my friend, the chairman, will accept my amendment, because I think that is the minimum we can do. I hope that he will. But we can all pound the table and get upset because we see the bill differently, which is what the legislative process is about. I hope my friend will not take it personally that I see it in a different way than he does.

At this time, I yield 10 minutes to my friend from Alabama, Senator HEFLIN.

Mr. HEFLIN. Mr. President, I rise in support of the Boxer amendment which basically is to require a study as to the effect of securities litigation on senior citizens and to then come forward with ideas on how basically they might be protected in the event there are disadvantages that arise relative to the matters that are involved in securities litigation.

I also rise in opposition to the bill. This bill has been called a reform bill. I think that is really a misnomer. It has been called by some—and they go, I think, a little too far—the Crooks and Swindlers Protection Act. However, the bill which proclaims to curb frivolous lawsuits would essentially put at a substantial disadvantage and penalize the victims of securities fraud and give protection to corporate wrongdoers and their aiders and abettors.

This bill has many opponents, including the very people who are responsible for investor protection and overseeing capital formation in the States, the North American Securities Administrators Association. Also the Association for Retired People, AARP; the U.S. Conference of Mayors, and the Government Finance Officers Association number among those that are opposed to S. 240.

All oppose the bill for good reason, as noted by the Raleigh News Observer, "The bill is bad news for investors private and public and it would tie victims in legal knots while immunizing white-collar crooks against having to pay for their misdeeds."

The sponsors of this bill claim, with very little supporting evidence, that

there is a litigation explosion in the securities class action arena. The studies regarding the number of these types of cases do not reflect anything close to an explosion. In fact, they prove that the level of actual cases has remained constant for the past 20 years. In 1993 alone there were only 140 companies sued; there are over 20,000 companies registered with the Securities and Exchange Commission. This small number of companies sued, only 140, hardly amounts to a litigation explosion.

The proponents of the bill also claim that most of the cases which were filed are frivolous and that companies feel that they must settle the cases to avoid protracted litigation expenses. Well, if we were to base this reform bill only on what companies believe are frivolous suits, we would believe that the charges filed against the accountants, lawyers, and brokers involved in the Charles Keating, Lincoln Savings fraud case were frivolous. Although they claimed the charges were frivolous, they settled for ten's of millions of dollars with investors who had lost considerably.

There probably are cases in which companies have been wrongly sued for stock price decreases not due to fraud or based on actions for which they should not be held accountable. Predominately this is not the case. In fact, according to a study performed by the University of California for 3 years ending in 1990, only 20 companies were hauled into court of the 589 companies whose stocks dropped more than 20 percent in 5 days around the time of a disappointing earnings report. In many of those 20 cases, executives were telling the public that everything looks great, while bailing out of the company and selling their own stock.

The amendments offered by Senators BRYAN and SARBANES will go far to achieve a balance between protecting the rights of defrauded investors and providing protection from frivolous lawsuits to honest companies. These amendments include language which was part of the original version of S. 240. I believe that the cosponsors of the original version of S. 240 will agree that the bill as reported out of the Banking Committee steeply tilts the playing fields against investors. Without these amendments, I cannot support this legislation which will strip the rights of defrauded investors.

The amendments are supported by the Securities Regulators Association, Government Finance Officers Association, and many others. Acceptance of them could resolve many concerns of these organizations. One amendment would allow the SEC to fashion through its rulemaking an effective safe harbor for forward-looking statements. The SEC and others are concerned that the safe harbor in the bill makes it possible for defendants to avoid liability for false statements. Another amendment would extend the statute of limitations to allow investors enough time to file a securities fraud suit. Currently the bill provides for a time period which is widely regarded as too short.

Other amendments which greatly improve this bill involve the ability to pursue accountants, brokers, and other professionals who may have aided in a securities fraud and the apportionment of damages to those secondary violators. One amendment would return to prviate parties the ability to pursue aiders and abetters in securities fraud suits. This amendment is supported by State securities regulators as well as by the SEC. Both of these enforcement agencies have limited resources available and realize the need for private actions to pursue aiders and abetters. The other amendment would allow the innocent victim to be compensated rather than penalized due to the bankruptcy of the primary violator. This amendment would simply restore joint and several liability so that the equities are in favor of the innocent investor.

It seems odd that now we are moving to reform securities litigation with a result that would protect those who may create investor scams. If any reform needs to be addressed, based on the current actions on Wall Street, it should come in the form of greater investor protection, not making it easier for corporations and stockbrokers to mislead investors. There is currently a recent frenzy of mergers and takeovers. According to the New York Times securities regulators are opening investigations into insider trading at a rate not seen since the 1980's. Unfortunately, I believe that if this bill were to become law, many of its provisions would soon be tested to the detriment of investors.

Our financial markets do not run on money, they run on public confidence. The stock market is trading at all-time highs and companies are earning record profits. This is greatly due to the confidence that investors have in the marketplace. This confidence will be drastically altered if investors come to believe that not only are they at risk of being defrauded, but that they have no recourse to fight back against those who defraud them.

I urge my fellow Senators to support all the amendments offered to put investor protection back into this bill. If these amendments are not adopted I will find it difficult to vote for a bill which supports those involved in fraud while tearing down long-standing protection in our securities law.

In closing I would like to quote from a letter I received from Mr. Joe Borg, the director of the Alabama Securities Commission. In his letter, Mr. Borg considers the question of whether this bill would achieve a balance between protecting investors and granting relief to honest companies and professionals. He concludes that "the bill would tilt the balance too far in favor of corporate interest and would have the effect of depriving many defrauded investors of the ability to recover their losses." He further states that "I agree there is room for constructive improvement of the Federal securities process. However, S. 240 as reported by the Banking Committee goes beyond the stated goal of curbing frivolous lawsuits and instead would in practical effect, eradicate most private actions under the Federal securities laws."

Mr. President, I ask unanimous consent that the full letter be printed in the RECORD at the conclusion of my remarks.

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

ALABAMA SECURITIES COMMISSION,
Montgomery, AL, June 19, 1995.

Via facsimile: 202-224-3149.
Attn: Winston Lett.
Hon. HOWELL HEFLIN, U.S. Senate, Washington, DC.
Re: S. 240, the "Private Securities Litigation Reform Act".

DEAR SENATOR HEFLIN: I understand that the Senate may consider as early as this week S. 240, the "Private Securities Litigation Reform Act." In my capacity as the Director of the Alabama Securities Commission, I am writing today to express my serious concerns with S. 240 as it was reported out of the Senate Banking Committee. As you know, the Alabama Securities Commission is responsible for investor protection and for overseeing the capital formation process in Alabama.

In evaluating the variety of securities litigation reform measures that have been introduced in the 104th Congress, I applied one test: Does the bill achieve a balance between protecting the rights of defrauded investors and provide relief to honest companies and professionals who may find themselves the target of a frivolous lawsuit?

Regrettably, S. 240, as it was reported by the Senate Banking Committee, does not achieve this balance. Instead, the bill would tilt the balance too far in favor of corporate interests and would have the effect of depriving many defrauded investors of the ability to recover their losses.

It is my understanding that pro-investor amendments will be offered at the time S. 240 is considered on the Senate floor. Among the amendments expected to be offered are the following: Extending the statute of limitations for civil securities fraud actions; fully restoring liability for aiding and abetting securities fraud; narrowing the scope of a safe harbor for forward looking statements so that the Securities and Exchange Commission (SEC), which has the necessary expertise, is directed to engage in rulemaking to develop a reasonable and effective safe harbor without giving corporate executives free rein to make misleading statements; and modifying the severe limitations on joint and several liability so that innocent defrauded investors have a chance to fully recover their losses.

The Securities and Exchange Commission, the North American Securities Administrators Association (the organization representing the 50 state securities regulators of which I am a member), and others generally

have expressed concerns over the bill's treatment of these issues. The amendments expected to be offered on the floor (as discussed above) respond to those concerns and are deserving of your support. Please vote in favor of these amendments when they are offered on the floor.

If these amendments are offered and rejected, I respectfully encourage you to vote against S. 240 on final passage.

I want to emphasize that I agree there is room for constructive improvement of the federal securities litigation process. However, S. 240 as reported by the Banking Committee goes beyond the stated goal of curbing frivolous lawsuits and instead would, in practical effect, eradicate most all private actions under the federal securities laws.

In closing, I want to stress that our financial markets do not run on money; they run on public confidence. It is my view that the confidence that investors have in the marketplace will be dramatically altered if they come to believe that not only are they at risk of being defrauded, but that they have no recourse to fight back against those who have defrauded them. I urge you to support balanced and targeted reform measures and to reject S. 240 if it does not incorporate the amendments discussed above.

You may reach me at 334-242-2984 should you have any questions or need additional information.

Sincerely,

JOSEPH P. BORG,
Director.

Mr. HEFLIN. Mr. President, I yield my remaining time to the distinguished Senator from California, Senator BOXER.

Mrs. BOXER. Mr. President, I reserve the balance of my time.

The PRESIDING OFFICER. The Senator from California will have 8 minutes, with 36 minutes on the other side.

Mr. D'AMATO. I would like to take a moment to state, as I indicated to the Senator from California, that we certainly would like to review her amendment. While I might have difficulty with the language used in the amendment, I do not have a problem asking the Securities and Exchange Commission to look at the impact this legislation would have, particularly as it relates to senior citizens.

Certainly, I think that is reasonable. I say that in the spirit of cooperation I hope that we can iron out our differences. I would also like to point out, Mr. President, that I have a statement from the Chairman of the Securities and Exchange Commission, who indicates that he, as a businessman, finds there is a need for a stronger safe harbor.

I quote from Chairman Levitt:

The current rules have largely been a failure and I share the disappointment of issuers that the rules have been ineffective in affording protection for forward-looking statements.

He goes on to say:

. . . I know all too well the punishing costs of meritless lawsuits—costs that are ultimately paid by investors. Particularly galling are the frivolous lawsuits that ignore the fact that a projection is inherently uncertain even when made reasonably and in good faith.

That is the Chairman of the Securities and Exchange Commission who my colleagues like to quote so often.

My colleagues would have us believe that all is well with the securities industry. All is not well. All is not well when you have a band of lawyers who literally hire the people they represent, race to the courthouse to file the suit and allege fraud, and are then selected as lead counsel.

The statement that we are protecting fraud, gets the hackles up on this Senator. Not only are we not protecting fraudulent conduct, but we are making sure that people are held liable for intentionally making a misstatement. Again, I say there is no safe harbor anyplace for fraud. There were other legislative proposals that would have brought such a safe harbor, but not this bill. It is a disservice to this legislation to say it protects fraud. There is neither intent nor language in this bill nor is there any way to interpret this bill to say that fraudulent conduct is protected under S. 240.

The cost of these abusive cases is incalculable. It has cost business the ability to communicate and to give the information to people to which they are entitled. This inability is particularly troublesome to the small startup business in the high-technology area. It has a chilling impact on these firms and it is wrong.

The fact is that there were 1.3 billion dollars' worth of settlements, settlements in 1993-94, that is 93 percent of the cases filed. No one can afford to stand up and defend themselves in these cases. Do we really believe out of all 300 cases that were brought, every one of them engaged in fraudulent conduct? That is absurd. Those cases were not tried; they were settled. What we are attempting to do in S. 240 is to seek balance; to demonstrate that those who truly commit fraud will not be let off the hook, but by the same token, we will not expose an entire class of people who are associated with the securities business to meritless suits. That is what this legislation does, and it does strike a balance.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise to speak today in support of S. 240, the Private Securities Litigation Reform Act of 1995, and against the proposed amendment.

S. 240 is a moderate and carefully balanced compromise bill that permits investors in securities to continue to file and win legitimate lawsuits. However, the bill does something that is much needed at this time: It gives issuers of securities the ability to quickly dismiss meritless and abusive lawsuits.

The current system of securities litigation is clearly broken. Why? Because it makes millionaires out of attorneys who repeatedly file frivolous lawsuits. As a matter of fact, securities litigation costs American industry $2.4 billion a year, one-third of this amount being paid to plaintiffs' attorneys. This results in companies being forced to lay off workers and consumers paying higher prices for goods and services.

The bottom line is that the current system of securities litigation does not benefit investors or consumers: It benefits a handful of attorneys.

Here is how this perverse system of securities litigation currently works: There are a handful of plaintiff law firms in this country today that specialize in filing securities class action lawsuits. This is shown by the fact that seven plaintiff law firms in this country receive 63 percent of the legal fees generated by securities class action cases. That is seven law firms receiving 63 percent of all of these legal fees.

These law firms monitor the stock prices of businesses with computers every day. When a corporation stock price suffers a major drop, the plaintiff's law firm immediately files a lawsuit. Indeed, some 20 percent—or one out of five—of these securities lawsuits are filed within 48 hours of a major drop in the stock price.

The reason these law firms are able to file their lawsuits so quickly is that they sue on behalf of professional plaintiffs. These professional plaintiffs actually receive a fee, in many cases, for permitting themselves to be named in the lawsuit. The Securities Subcommittee found that there were some plaintiffs who had as many as 14 securities action lawsuits filed on their behalf.

These law firms justify the filing of these lawsuits by generally alleging that the drop in the stock price was caused by the corporation or its management acting fraudulently or recklessly. The lawsuits seek the corporation to pay to its shareholders damages in the amount of the difference between the stock price before and after the stock's drop in value.

Even if the lawsuit is meritless, the corporation is forced to settle, even if it is meritless, even if it does not make sense? Why? First, litigating a lawsuit is costly—even if your only goal is to get the lawsuit dismissed for failing to state a cause of action. This is because it is very difficult to dismiss such lawsuits, and defense expenses for complex securities class action lawsuits can total between $20,000 and $100,000 a month.

Second, the depositions and extensive document review associated with these

lawsuits are so time consuming that they disrupt the management of the business. On average, companies that are sued devote as much as 1,000 management and employee hours per case per suit.

The end result is that it is worthwhile for a business to settle even a frivolous securities litigation lawsuit because there is rarely, if ever, any cheap way of dismissing it.

Opponents to securities litigation reform are going to tell you that notwithstanding all of the foregoing, investors still benefit from the current system of securities litigation. But I submit that the current system actually harms investors.

The first problem, as was stated by former SEC Commissioner Carter Beese, is that the current system encourages, and I quote Mr. Beese, ". . . counsel to settle for amounts that are too low for fees that are too high." The plaintiffs in a securities class action have a conflict of interest with their lawyers. The lawyers' incentive is for an uncomplicated settlement and avoidance of a trial. This is because the difficulty and time-consuming work for the plaintiffs' attorneys comes at the trial phase. If it can be avoided by a settlement, the lawyers still get their percentage for relatively little effort. Thus, the lawyer-driven nature of these lawsuits tends to shortchange investors who have truly been defrauded and would benefit from litigating the lawsuit to conclusion.

The second problem is that in securities class action lawsuits, when a corporation makes a settlement payment to a class of shareholders, the shareholders who still own the corporation's stock are not really getting any tangible benefit in return. If the settlement amount is coming from the corporation's money, then it is no more than a type of quasi-dividend, with a law firm taking on average a 33-percent cut for giving the shareholder the privilege of having the quasi-dividend occur.

This will generally cause the corporation's stock price to drop, which indeed nullifies the benefit of the settlement. If the settlement amount comes from the corporation's directors and officers liabilities insurance, the corporation will be faced with partly paying it back through a staggeringly high premium the very next year. Either way, an investor who continues to own a share of stock in a sued corporation does not gain much from settlement of the lawsuit.

The third and final problem is that investors can no longer get useful forward-looking information about corporations. As former SEC Commissioner Carter Beese testified before the Securities Subcommittee:

> Companies go out of their way to disclose every conceivable bit of innocuous information, but very little useful forward-looking information. At the same time, legions of lawyers scrub required filings to ensure that disclosures are as milquetoast as possible, so as to provide no grist for the litigation mill.

With all of these problems we have with our current system of securities litigation, the moderate relief offered by S. 240 is necessary to protect investors, to protect consumers, and to protect jobs.

I urge all of my colleagues to vote against amendments which weaken the very carefully balanced aspect of S. 240 and to vote for S. 240's final passage.

I thank the Chair. I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. BOXER. Mr. President, do I have 8 minutes remaining? Is that accurate?

The PRESIDING OFFICER. That is correct.

Mrs. BOXER. I will not take but 2 minutes of my time.

My friend from New York is going to yield back his time so we can get to a very important amendment by the Senator from Nevada.

I am very pleased that the chairman has indicated to me, although he has not said it definitively, that he may well be supporting my amendment.

I think that we have pointed out by virtue of charts and some very serious examples that I do not think I need to repeat because they are very, very difficult here in this Chamber where senior citizens have been the target of fraud.

I believe, because we are changing so many aspects of the law in this bill, that the SEC ought to take a look at what we have done and all the amendments that we have incorporated or turned down should this bill become the law of the land, and then tell us whether or not senior citizens are as well protected as they should be.

So I think that this amendment should have broad support. It will give me some comfort to know that in 180 days, we will have a report from the SEC which has expressed reservations about this bill.

I ask unanimous consent to have printed in the RECORD at this time some of the comments they have made regarding many aspects of this bill. They have questions about a lot of areas, including the safe harbor, which is the basic provision of the bill, proportionate liability, appointment of lead plaintiff, aiding and abetting, and damages.

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

RESPONSE TO OMB REQUEST FOR VIEWS OF THE SECURITIES AND EXCHANGE COMMISSION REGARDING S. 240

The Securities and Exchange Commission submitted testimony on S. 240, as introduced by Senators Domenici and Dodd, on April 6, 1995.[1] As noted in the testimony, the Commission supported many of the provisions of S. 240 as introduced. The Commission views S. 240 as ordered reported on May 25, 1995 by the Committee on Banking, Housing, and Urban Affairs as a significant improvement over its counterpart in the House, H.R. 1058. However, the Commission has significant concerns regarding certain provisions of S. 240 as reported, and also believes that the legislation should address certain additional issues not included in S. 240.

Provisions of S. 240 endorsed by the Commission—The Commission supports, or does not oppose, the following measures:

Class Action Reform Provisions: Except as discussed below, the Commission supports, or does not oppose, the measures set forth in Section 101, "Elimination of Certain Abusive Practices," and Section 102, "Securities Class Action Reform."

Requirements for Securities Fraud Actions: The Commission supports, or does not oppose, the measures set forth in Section 104, "Requirements for Securities Fraud Actions," and Section 106, "Written Interrogatories."

RICO: The Commission supports the provision of Section 107, eliminating the overlap between private remedies under RICO and the Federal securities laws.

Contribution and Settlement Discharge: The Commission supports those provisions of Section 202 that provide for a right or proportionate contribution among defendants, and for the reduction of a judgment upon a settlement by an amount equal to the greater of the settling defendant's percentage of responsibility or the amount of the settlement.

Fraud Detection and Disclosure: The Commission supports Section 301,"Fraud Detection and Disclosure."

Limitation on Rescission under Section 12(2): The Commission does not oppose the amendment offered by Senator Bennett that would allow a defendant to avoid rescission under Section 12(2) of the Securities Act and reduce the damages upon proof that part of the plaintiff's loss was the result of factors unrelated to the fraud.

Provisions that should be included in S. 240—The Commission has recommended that Congress adopt the following measures, which are not included in S. 240:

Statute of Limitations: The Commission recommends extending the statute of limitations for private securities fraud actions to five years after a violation occurs. Although S. 240 as originally introduced addressed this issue, the provision was deleted from the reported bill.

Aiding and Abetting in Private Actions: The Commission has recommended restoring liability for aiding and abetting in private actions. As discussed below, Section 108 of S. 240 only provides authority for the Commission to bring actions based on aiding and abetting under the Exchange Act, and limits such actions to persons who act knowingly.

Recklessness: The Commission has recommended that Congress expressly provide that recklessness is sufficient for liability under Section 10(b), and codify the definition of recklessness which was enunciated by the Seventh Circuit in the Sundstrand case.[2] S.

Footnotes at the end of article.

240 provides that defendants are proportionately liable unless they commit "knowing securities fraud," which necessarily implies that there is liability for reckless conduct, but does not expressly provide that recklessness is sufficient.

Provisions of S. 240 that the Commission does not support—The Commission opposes the following measures as currently set forth in S. 240:

Safe Harbor Scienter Standard: Section 105 creates a safe harbor for forward-looking statements. The Commission believes that the complex task of fashioning an effective safe harbor for forward-looking statements would be better addressed through Commission rulemaking pursuant to express statutory authority. The safe harbor in S. 240 contains important exclusions, not present in H.R. 1058, that address some areas of particular concern. However, the measure might make it possible for some defendants to avoid liability for certain false statements.

We believe that the safe harbor scienter standard would be better if modified to include the following exclusions.

(c) Exclusions—The exclusion from liability under subsection (a) with respect to a "forward—looking statement" that is materially false or misleading is not available: (i) for a natural person, if such person made such statement knowing that such statement was materially false or misleading when made; or (ii) for an issuer, if such statement was made by or with the approval of an executive officer (as defined by the Commission) of that issuer, if such executive officer made, or approved the making of, such statement knowing that such statement was materially false or misleading when made.[3]

Provisions of S. 240 that cause concern or that need clarification—The following provisions raise concerns or need clarification and may require some adjustment in order to achieve the desired effect:

Proportionate Liability: Section 202 generally limits the application of joint and several liability to defendants determined to have committed knowing securities fraud. Other defendants would be proportionately liable; except that, if a defendant's share of the damages were uncollectible, each proportionately liable defendant would be liable for a proportionate share of the uncollectible amount, up to an additional amount equal to 50% of his own share.

The Commission has recommended that Congress first enact other reform measures before adopting any form of proportionate liability under which the burden of uncollectible damages owned by an insolvent defendant must be borne by the defrauded investor, rather than by solvent co-defendants who violated the federal securities laws. If Congress determines to adopt a system of proportionate liability, such as that provided in S. 240, the Commission has recommended that it not include issuers (who should remain liable for all damages suffered) and that it be limited to fraud-on-the-market cases, rather than applying also to cases of direct, considered reliance.

Damages: Section 201 limits a plaintiff's damages to the difference between the price paid by the plaintiff and the value of the security during the 90-day period following correction of the misstatement or omission. This provision should be limited to fraud-on-the-market cases. In other cases, this measure of damages may be wholly inappropriate. In addition, the 90 day period should be shortened since losses attributable to fraudulent statements may be offset by price rises that are unrelated to the fraudulent activity.

Aiding and Abetting in Commission Actions: Section 108 clarifies the availability in Commission actions under the Exchange Act of liability for "knowingly" aiding and abetting. This provision should also cover reckless aiding and abetting and should be extended to the Securities Act, and the Investment Company Act.

Appointment of Lead Plaintiff in Class Action: One provision of Section 102 requires the court generally to appoint as lead plaintiff the class member that has the largest financial interest in case. While this approach has merit, it may create additional litigation concerning the qualifications of the lead plaintiff, particularly when the class member with the greatest financial interest in the litigation has ties to management or interests that may be different from other class members. The Commission believes that there should be greater clarification as to how this concept will work in practice.

FOOTNOTES

[1] Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning Litigation Reform Proposals, Before the Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs, United States Senate (April 6, 1995).

[2] In *Sundstrand Corporation v. Sun Chemical Corporation*, 553 F.2d 1033, 1045 (7th Cir.), *cert denied*, 434 U.S. 875 (1977), the court used the following definition of recklessness: "a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents 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."

[3] If the scienter standard is modified as suggested, the Commission would support the safe harbor in S. 240. If, however, the scienter standard is not so modified, the Commission believes that the definition of forward-looking statement in the safe harbor should be further narrowed, although Commissioner Wallman believes that certain forward-looking elements of the financial statements should receive safe harbor protection, such as stock option valuation disclosures.

Mrs. BOXER. Mr. President, the SEC has questions about this bill.

I look at the Boxer amendment as a way to say OK, in 180 days, let us have a written report from the SEC to tell us if in fact this bill puts a greater burden on our seniors, takes away some of their privileges and their rights.

Mr. President, I am going to retain the remainder of my time, although I will not use it unless some of my colleagues make some comments that I feel I must respond to. So I will reserve the remainder of my time only to be used in case that does occur.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I intended to yield back our time because I believe that we will accept the Senator's amendment as it relates to the study of the SEC. That will be my recommendation. Having said that, I know Senator DODD, who is a cosponsor of this amendment, would like to speak to it so I yield such time as he will need.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I thank the Chair. Let me thank my colleague from New York. Let me just say to my very good friend—and those words are used lightly around here; when I speak of my colleague from California, they are meant as more than just a collegial gratuity—my very good friend from California has offered a good amendment. My intention is to support it because none of us, as I said the other day, Mr. President, can say with absolute certainty every time we change the law what the implications will be. We think over 4 years and more than 4,000 pages of congressional hearings and testimony, having put together what we think is a balanced bill here, we know what the implications will be.

We made strong efforts in this legislation to try and protect those who are truly defrauded, and hence proportionate liability does not apply in those cases. We try and take care of smaller investors with a net worth of $200,000 or less, so that they are protected as well.

I would like to say to my colleagues I am absolutely 100 percent certain that there will not be some implications here for smaller investors and seniors. I think the amendment covers seniors and smaller investors.

Mrs. BOXER. Seniors and retirees.

Mr. DODD. Looking at this makes some sense. I think they would have done it anyway but requiring it here in the law is not a bad provision to have. If I may point out to my colleague—and I do not know whether she is interested in doing it—I do not know what the timeframe on the study is.

Mrs. BOXER. It is 180 days.

Mr. DODD. It is 180 days from passage. I might suggest that not only you do it then, but it may be done every 6 months for a space of 2 or 3 years because I would suggest that in just 6 months you may not get a picture. It may not be an adequate picture. You may need a bit longer time to get at various increments along the way as to what the implications are. Sometimes in 180 days you may not see any indication and you may get a false reading as to whether or not we have done something here that has a negative implication.

So the Senator may want to modify the amendment to require it at various stages along the way here so we do get snap shots taken at various milestones over the next several years. So I appreciate the comments of my colleague from New York that this is an amendment we ought to accept, and I would concur in that conclusion and thank my colleague from California for offering the amendment.

Let me if I can just briefly, Mr. President, also address, while I have the floor, the amendment raised by our colleague from Maryland. Let me first of all point out here when we set a net worth figure of $200,000 or less, we did it with the understanding that the average median net worth of people in this country is quite a bit less. We had

two different studies, I would say to my colleagues. One study done by the Census Bureau in 1993 has the median net worth of all people in this country at $37,587. Another study done by the Federal Reserve has the median net worth—this is a 1992 study—at $52,200 a year. So when Senator D'AMATO, myself, and Senator DOMENICI set a net worth of $200,000 or less a year, we are going extensively beyond the median net worth of families in this country. Depending on which study, either the Census Bureau or the Federal Reserve at $37,000 or $52,000, our figure at 200,000 goes well beyond the median income of people in this country, to try and protect the smaller investor. In fact, it goes four times beyond the median net worth.

I do not know the percentage of families, but I suspect it is in the top 5 percent or so, maybe less, who would have net worth in excess of $200,000 a year.

So we made a significant effort here to not only just protect smaller investors. Now, maybe the people who live in Washington and those of us who serve in Government with our incomes being what they are fail to recognize that most people in this country have net worth substantially less than what people in Washington, DC, might accept as a reasonable net worth.

At any rate, we set it at that level, and anyone who has a net worth less than that and has a loss of 10 percent of their net worth, obviously, is protected by the joint and several and not proportionate liability.

Now, with regard to the 10-percent figure, let me suggest that if we were to eliminate that, you are in effect eliminating proportionate liability because, as I said, it is such a high level that you basically exempt almost everybody in the country except for maybe 5 percent of the population. So you really have not done anything in terms of trying to inject proportionate liability into the process, which is what the goal of S. 240 is, to apply proportionate liability where you do not have the kind of intentional fraud and you have people who are not that wealthy.

Now, why did we do that? Why proportionate liability? Is this some gratuitous favor to try and bail out some people here who would otherwise be held fully accountable?

It is not that at all, Mr. President. I would say the core, central issue here, aside from one of simple fairness, where someone who is marginally, marginally involved gets saddled with the full load of paying up all of these costs—and as we have pointed out over and over again over the last several days of debate—it is not that we are getting litigated results. It is not litigated results; 93 to 98 percent of these cases are settled. Why are they settled? They are settled because your company lawyer says, "Let me tell you something, Mr. CEO, or Ms. Chief Executive Officer, or Mr. Chief Financial Officer, or Ms. Chief Financial Officer. You run the risk here of losing everything. If you go to trial on this, you lose everything." You have a choice of settling or losing everything. And they opt to say, "Look, we will settle." That is what they do in 93 to 98 percent of the cases. They settle.

Now, you say, well what is so terrible about all of that? I would draw my colleagues' attention to an article in today's Wall Street Journal, which is entitled "Big Accounting Firms Weed Out Risky Clients." The article points out the problem, and my colleagues ought to come to appreciate why there is a sense of urgency about trying to deal with this problem. Lee Berton, the author of the article, points out that the large accounting firms—and the large accounting firms, particularly in this country, are like the Good Housekeeping seal of approval for a firm—are abandoning these clients.

They are not picking them up, and there is a real economic danger, I think, in this country to have that trend line continue.

I quote from the article:

> Big accounting firms say they have begun dropping risky audit clients to lower their risk of lawsuits for allegedly faulty audits. New companies, which have a particularly high chance of failure, are affected most, because almost nothing triggers lawsuits against accountants faster than company failures.
>
> . . . Peat Marwick, the fourth-biggest U.S. accounting firm, is currently dropping 50 to 100 audit clients annually, up from only zero only 20 years ago. . .. "When a client we audit goes bust . . . it costs a bundle in court if we're sued by investors, whether we win or lose the case."
>
> . . . Mr. Lambert says that legal costs were "staggering" for a lawsuit filed in a Federal court in Texas, alleging a faulty review of a bank's books by Peat [Marwick]. The bank was taken over by the Federal Government in 1992 after big losses. The jury ruled in Peat's favor in 1993.

So you had a lawsuit that did not end up going anywhere—actually, it went to trial in this particular case, and the decision was for Peat Marwick. Then listen to what happens.

> The jury ruled in Peat's favor in 1993, but the firm had to spend $7 million to defend itself.

The contract to handle the account that got them involved in the lawsuit was $15,000. That was the contract, but the lawsuit cost them $7 million, even though they won in the end. The intelligent business decision here is to say, "Look, stay away from these firms, these new technologies that are emerging where there is a lot of volatility in them, don't go near them."

The net effect of all this is we are losing the benefit of having the top accounting firms in this country get in where they can make a huge difference in these firms, but because of the fear of expending amounts vastly in excess of what the contracts are worth to them, they stay away.

Arthur Andersen "has either dropped or declined to audit over 100 companies" in the past 2 years.

I ask unanimous consent that this article be printed in the RECORD.

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

[From the Wall Street Journal, June 26, 1995]

BIG ACCOUNTING FIRMS WEED OUT RISKY CLIENTS

(By Lee Berton)

If you have a big-name auditor, hold on tight. It's getting tougher to find—and keep—prestigious outside auditors to certify annual financial statements.

Big accounting firms say they have begun dropping risky audit clients to lower their risk of lawsuits for allegedly faulty audits. New companies, which have a particularly high chance of failure, are affected most, because almost nothing triggers lawsuits against accountants faster than company failures.

But established companies are getting the ax too. KPMG Peat Marwick, the fourth-biggest U.S. accounting firm, is currently dropping 50 to 100 audit clients annually, up from only zero to 20 five years ago, says Robert W. Lambert, the firm's new director of risk management. "When a client we audit goes bust," he says, "it costs us a bundle in court if we're sued by investors, whether we win or lose the case."

Mr. Lambert says that legal costs were "staggering" for a lawsuit filed in a federal court in Texas alleging a faulty review of a bank's books by Peat. The bank was taken over by the federal government in 1992 after big losses. The jury ruled in Peat's favor in 1993, but the firm had to spend $7 million to defend itself "even though the fee for the job was only $15,000," Mr. Lambert says. "We just can't afford to take on risky audit clients anymore."

Lawrence Weinbach, managing partner of Arthur Andersen & Co., another leading accounting firm, says his organization has either dropped or declined to audit more than 100 companies over the past two years. "When a company has a risky profile and its stock price is volatile, we're just not going to jump in and do the audit and invite a lawsuit," says Mr. Weinbach.

Audit clients dropped by the Big Six are often furious because investors tend to feel safest with companies audited by the biggest accounting firms. A Big Six opinion is "like the Good Housekeeping Seal of Approval on Wall Street," maintains Chriss Street, chairman and chief executive of Comprehensive Care Corp., a Newport Beach Calif., medical-rehabilitation center operator that Andersen recently dropped.

But the accounting firms say they have no choice. Litigation settlement costs of the Big Six accounting firms now exceed $1 billion a year. The firms say that even after insurance reimbursement, these costs equal 12% of their annual audit and accounting revenue.

No risky client can pay us enough money to defend ourselves after the client develops problems," asserts J. Michael Cook, chairman of Deloitte & Touche, the third biggest U.S. accounting firm. "We must reduce our legal risks to remain viable."

And he and other heads of Big Six firms say that if Congress doesn't pass pending legislation reducing accountants' litigation exposure, the firms will turn down even more audit clients.

The biggest legal drain on accounting firms involves settling lawsuits brought by disgruntled investors against the auditors of collapsed companies. These suits usually accuse the auditors of professional negligence in failing to warn the public of the problems of a troubled client company.

To protect his firm against these costs, Mr. Cook says, Deloitte has begun weeding out audit clients with potential problems and refusing to handle the audits of companies making initial public offerings, or IPOs, because so many of them fail. And all of his competitors among the Big Six are doing likewise. The portion of all IPOs audited by these prestigious firms declined to 75% last year from 84% in 1992, according to Emerson's Audit Change Report, a trade publication.

Andersen's Mr. Weinbach says his firm uses new computer software to measure the litigation risk of an audit client. The software looks at the company's financial health, industry performance, stock fluctuations and financial controls among other information. Other firms have begun asking clients to agree to arbitration or mediation rather than filing lawsuits in case of disputes over fees or performance.

Andersen now asks tax and consulting clients to sign indemnification clauses that require the client to pay Andersen's court costs if the accounting firm is sued by a third party. For instance, litigation might arise if a real-estate buyer got into a dispute over a project's performance or price with the seller and Andersen had provided a financial projection for the project. "If the client doesn't agree to indemnify us, we generally won't do the work," says Mr. Weinbach.

BDO Seidman, the ninth-biggest U.S. accounting firm, two years ago began asking clients of five U.S. offices to agree to arbitrate disputes over fees and service quality rather than go to court. And Ernst & Young, the second biggest U.S. accounting firm, says that later this year it will begin asking clients to agree to resolve disputes with it through arbitration or mediation rather than by court suits. Philip Laskawy, Ernst's chairman, says this shift will save Ernst and its clients "millions of dollars in legal fees."

The accounting firms are swinging hardest at companies that have actually experienced financial trouble. For instance, Mr. Street of Comprehensive Care is irate that his company recently got a terse letter from Andersen saying the company no longer meets Andersen's audit profile and should seek another auditor.

Andersen had been Comprehensive's auditor for three years for an annual fee of $125,000. But in the past two years, Andersen has "qualified" the company's annual report, questing whether Comprehensive could continue as a "going concern." The company has reported losses in each of its past five years, totaling close to $100 million.

Mr. Street, who was brought into Comprehensive about a year ago, says that Andersen gave no warning that it planned to drop the company. "We were caught completely off guard and were in the midst of restructuring and recapitalizing the company with Andersen's help," he says. "We feel that Andersen abandoned us when we most needed them."

Andersen won't comment specifically on why it dropped Comprehensive as an audit client. But it says that "in the current litigious business environment, accounting firms are forced to assess risks associated with current and future clients." It adds: "Comprehensive's historic performance speaks for itself."

Mr. DODD. Mr. President, it goes to the very heart of why we put this bill together. We saw the trend lines where we are losing the expertise and ability. One of the provisions, by the way, we put in this bill is to require these accounting firms, if everything else is adopted, to seek out a report when they discover problems of fraud. That has not been a requirement in the law in the past, to actually serve as a quasi-governmental agency, if you will.

Obviously, the Federal Government cannot go around and audit every firm in the country to determine whether it is doing its job or not. But having these accounting firms do it, requiring them to report when they discover any kind of wrongdoing, I think, is going to enhance tremendously our ability to pursue those firms where you have the intentional fraud, but also cause these firms to be far more careful about how they do their business.

So if we adopt the Sarbanes amendment by eliminating the 10 percent, in effect, it is just the median income of $200,000, you have just destroyed the whole purpose of proportionate liability. It goes right to the heart of what this Wall Street article points out today—the fact you are seeing these firms leave these audits, audits that serve all of us and also serve the investor.

That investor making the decision about where to put those hard-earned dollars is going to be less inclined to invest in these firms that may be, in the overwhelming number of cases, highly deserving of that investment, because they do not have that "Good Housekeeping seal of approval." The investor would probably shy away from it. Everybody loses in that kind of situation.

We are trying to help solve that problem by the provisions we have included in S. 240. Is it perfect? Is it guaranteed success? Absolutely not. I would be the first one to tell you, no guarantees here. We think it will go to the heart of the problem, maybe help us solve it. But as the Senator from California has offered with her amendment to take a good look and see what the implications of this are, I think, makes good sense, is sound judgment.

For those reasons, I support her amendment. But I oppose the amendment offered by our colleague from Maryland. I would rather there be an amendment offered eliminating proportionate liability, just striking all proportionate liability because that is the net effect of the amendment.

If you just have a net worth of $200,000, you have only 5 percent of your investors at that, so it is really gone, in effect. It seems to me when median net worth is either $37,000 or $52,000—we have set it at $200,000—it is really going, to a large extent, beyond what many have suggested we ought to do here. But I thought, and the Senator from New York did, that by setting that higher bar, as well as including the 10-percent loss, that what we were trying to protect against with this provision is the total economic devastation of someone. Again, obviously, if you eliminate that 10 percent, you lose that altogether.

So with that, Mr. President, I urge, with all due respect to my friend and colleague from Maryland, rejection of his amendment, that we accept the amendment by the Senator from California, and I gather next we will be talking about an amendment which I support, which is the amendment being offered by the Senator from Nevada dealing with the statute of limitations.

With that, Mr. President, I will be happy to yield the floor.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mrs. BOXER. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, at a later time, I will ask the Senator from California to consider whether she really wants to vote on this amendment, because we are willing to accept it. Having said that, I want to commend my colleague, the prime sponsor of this legislation, Senator DODD, for very eloquently and very cogently stating the incredible burden that has been placed on the fine accounting firms of America.

I might refer those who are interested to the report of the committee. I quote:

> Accounting firms particularly have been hard hit by securities litigation. The six largest firms face $10 billion worth of 10b-5 claims. Their gross audit-related litigation costs amounted to $783 million in 1992—more than 14 percent of their audit revenues for that year. Former SEC Commissioner Sommer, who heads the Public Oversight Board, the independent body that oversees the accounting profession's self-regulatory efforts, testified that, in view of "some recent judgments and the amounts being sought in pending cases, it is not beyond the pale to believe, and some responsible people do believe—that one or more major [accounting] firms may ultimately be bankrupted."

But the problem goes beyond just bankruptcy. The accounting firms are being priced out of the marketplace. They cannot afford, as Senator DODD indicated, to give their services to clients due to the great exposure they face, through no fault of their own, to being brought in to suits because they are the deep pockets, particularly where there is a small firm or small company as the primary defendant.

That small firm then, or many small firms, are being deprived of having the best accounting firms; the American public are being deprived of having the

audit capacity and functions of our best; and, third, the accounting profession is placed unnecessarily under a great, great strain.

It is just simply intolerable and unfair. Part of this bill is crafted to eliminate that unfairness. It will eliminate the situation where people have no choice but to surrender to these lawsuits—something that happens in 93 percent of these suits. They cannot afford to go to trial and I do not think that is what the capital system should be about.

AMENDMENT NO. 1472

Mr. McCONNELL. Mr. President, the doctrine of joint liability permits an injured plaintiff to collect the full judgment from any defendant found liable for any part of the injury. It means that no matter how remotely connected a defendant is to the events leading to plaintiff's injury, a defendant could be required to satisfy the entire judgment.

The result is that lawyers for the plaintiffs add a whole host of defendants to a lawsuit in an effort to ensure the plaintiff can get the full judgment paid. With joint liability, it doesn't matter if you had anything to do with the events leading up to the plaintiff's injury. Instead, the chances of your getting sued depend upon how deep your pockets are. The deeper the pocket, the more likely to be sued.

I'll illustrate with a negligence case: if a drunk driver injures an individual on someone else's property, the property owner will be joined in the lawsuit. It happened to the Cincinnati Symphony Orchestra, only it wasn't even the property owner. The accident happened near one of the orchestra's performance facilities. And the orchestra, a nonprofit entity, was needlessly dragged into a $13 million lawsuit and put at risk for the judgment.

Nonprofit organizations, municipalities and small businesses can be hardest hit by joint liability. Although we don't think of these defendants as wealthy or rich, they are usually adequately insured, which also makes them good candidates to be deep pockets. New York City spends more on personal injury awards and settlements—$270 million—than it spends on funding public libraries.

In securities litigation, accountants, bankers, and insurers are targets of abusive suits because of their deep pockets. One Big Eight accounting firm, Laventhol & Horwath, went bankrupt because the cost of fighting these suits became too prohibitive. The consequence of dragging these professional firms into these kinds of lawsuits is obvious: it becomes increasingly difficult for new businesses to get advice from business professionals. And, it gets harder to find people to serve on corporate boards due to the fear of lawsuits.

This litigation explosion burdens the economy, retarding economic growth. It is essentially a tax imposed on every American. And every potential defendant has to take account, in the prices they set, for the possibility of being dragged into a lawsuit.

During the product liability debate, I received a letter from the Institute for the National Black Business Council, an association of minority business owners. Mr. Lou Collier, the president of the council, wrote in support of expanding the product liability bill. Without an expansion of the joint and several liability reform, Mr. Collier states, "Millions of small businesses—restaurants, gas station owners, hair stylists, nearly every small business you can think of, would still face the threat of bankruptcy. That includes most African-American firms." The latest census data shows that 49 percent of all black-owned firms are service firms, and Mr. Collier, on behalf of minority small business owners, asked us to improve the climate for small business, "Small business owners and entrepreneurs have to overcome staggering odds to build a successful company. They shouldn't have to face a legal system where one frivolous lawsuit can force them to close their doors."

The same arguments ring true in the context of securities litigation. This amendment must be defeated because restoring joint liability means little improvement in the litigation climate.

Injured plaintiffs will still recover their full economic loss. But for the subjective noneconomic loss, each defendant would be responsible only for his or her proportionate share of harm caused.

This bill is fair and consistent with principles of individual responsibility. It will put an end to the gamble taken by the trial bar when they join everyone in sight of an alleged harm. I urge that the amendment be rejected.

AMENDMENT NO. 1469

The PRESIDING OFFICER. The pending business is the Bryan amendment No. 1469.

Mr. BRYAN. Mr. President, am I correctly informed? I believe we have a time agreement of 1½ hours equally divided. Am I correct, I inquire of the Chair?

The PRESIDING OFFICER. The Senator is correct.

Mr. BRYAN. Since I am the advocate of the amendment, may the Senator from Nevada presume that he controls 45 minutes of the time that is allotted to those who are in support of the amendment?

The PRESIDING OFFICER. That is correct.

Mr. BRYAN. I yield myself 15 minutes at this point, Mr. President.

My colleagues will recall that we began the debate on this amendment last Friday shortly before we recessed for the weekend. I want to make just a couple of points in general about this. There are a number of things that have divided us as we have debated S. 240, but there are some things in which the prime sponsor of this legislation, Senator DODD, and I are in agreement, and I acknowledge, as he has previously indicated on the floor, Senator DODD, as the prime sponsor of S. 240, is in support of the amendment, which I will describe in a moment.

But first let me give a little bit of background. My colleagues will recall in 1991 the Supreme Court of the United States decided the Lampf case, as it was called—and the Lampf case, in effect, imposed a statute of limitations which is a bar to securities litigation 1 year from the point that the plaintiff discovers the fraud and in no event more than 3 years in the actual occurrence of the fraud.

Now, that came as quite a shock and surprise to those that are in the securities business, because the accepted interpretation prior to that had been that you looked to the statute of limitations in the State in which the action originated. Immediately, as a result of that, because the Court's decision was retroactive; that is, there were a number of cases pending, as well as prospective; that is, to place a bar on any actions to be filed in the future, a number of us came to the floor, and the Senate Banking Committee at that time unanimously reported out the 2-to-5-year statute of limitations proposal—2 years from the date of discovery of the fraud, in no event beyond 5 years. That is what this amendment does. Under the current print, 1-to-3 is the statute of limitations timing. Under the Bryan amendment, it could be 2 to 5 years. This is what the Banking Committee, in 1991, had unanimously agreed should go forward.

Moreover, I think it is important for my colleagues—and there are approximately 50 of them who have signed onto this legislation—S. 240, as introduced, contains the 2-year/5-year statute of limitations. So this amendment, somewhat of an anomaly, does not change the original language of S. 240 but seeks to restore to the bill the language which was originally in the bill at the time it was introduced and language, at least by implication, that 50 of our colleagues, as cosponsors of the legislation, have supported.

So this is not something that comes as after the fact—2-to-5 years.

Why is the 2-to-5 years important? I realize that people are not literally hanging over the edges of their seats in the galleries as we discuss what appears to be a very abstract legal issue. First, let me say that it has absolutely nothing about frivolous lawsuits—not one thing. We are talking about a lawsuit which, by definition, is meritorious but cannot be filed under the current law if indeed it is after the 1-year point in which the plaintiff discovers the fraud, or in no event beyond 3 years.

So this does not have a thing to do with frivolous litigation. I understand the concern of my colleagues and I share it. We ought to act against frivolous lawsuits, and there are provisions in S. 240 that deal with rule 11 and some other provisions that I think are meritorious. So no one who is approaching this amendment ought to be misled that somehow a vote against this amendment protects the innocent from frivolous litigation. This simply gives you the right to get into the courthouse door. Without this amendment, you are saying 1 year, 3 years, and you are barred.

Now, who supports the amendment? Well, first, let me indicate to my colleagues that the Chairman of the Securities and Exchange Commission has repeatedly testified in favor of extending the statute of limitations. Most recently, on April 6, 1995, Chairman Levitt testified before the subcommittee that:

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

So the present Chairman of the Securities and Exchange Commission says that it is important to protect innocent investors who have been defrauded from those who are inherently clever enough to conceal it to provide for a longer statute of limitations. Then he went on by way of explanation to say that even with all of the resources that are available to the SEC, the staff that is available with the expertise that they have, with all of the kind of background information they have as to what is happening in the marketplace generally, that it takes approximately 2.25 years to complete an investigation. Now, that is beyond the period of time that the 1-to-3 year statute would provide. This is not partisan, this is not a Democratic chairman and the Republican SEC under President Bush who felt differently. The former chairman, the last Republican chairman was Richard Breeden. He had this to say about the proposed 2-to-5 year statute, and specifically about the unfairness and the limiting ability of a 2-year statute:

Had a 3-year statute of limitations been in effect and had it been applied to the SEC, approximately one-half of the cases against Drexel Burnham, a large part of the case of Equity Funding, one of the largest frauds in the history of the United States, and the entire case against E.F. Hutton for check kiting would have been barred from the courthouse.

Again, these were meritorious cases. The recovery would have been prevented because the statute of limitations would have constituted a bar. In that period of the 1980's where we have talked about Charles Keating and we talked about Ivan Boesky, another name has had prominence and that is Michael Milken. Here is what the sentencing judge had to say to him with respect to the complexity of securities matters and their difficulty:

You may have committed only subtle crimes—

This was being addressed to Mr. Milken at the time of sentencing.

. . . not because you were not disposed to any criminal behavior but because you were willing to commit only crimes that were unlikely to be detected. We see often in this court individuals who would be unwilling to rob a bank, but who readily cash Social Security checks that are not theirs when checks come to them in the mail because they are not likely to be caught in doing so . . . You also committed crimes that are hard to detect, and crimes that are hard to detect warrant greater punishment in order to be effective in deterring others from committing them.

These are crimes that are very hard to detect and are particularly very difficult to detect when we are talking about small plaintiffs who do not have the resources available to them that the Securities and Exchange Commission, the North American Association of Securities Dealers and others might have.

In the Lampf case itself, which was a very narrowly divided case, 5–4, one of the dissenting Justices, Justice Kennedy, had this to say:

Concealment is inherent in most securities fraud cases. The most extensive and corrupt schemes may not be discovered within the time allowed for bringing an express cause of action under the 1934 act. Ponzi schemes, for example, can maintain the illusion of a profit-making enterprise for years, and sophisticated investors may not be able to discover the fraud until long after its perpetration. The practicalities of litigation, indeed the simple facts of business life, are such that the rule adopted today—

Referring to the majority of the court that adopted the more limiting 1 and 3 year statute of limitations.

will "thwart the legislative purpose of creating an effective remedy" for victims of securities fraud. By adopting a 3-year period of repose, the Court makes a section 10(b) action all but a dead letter for injured investors who by no conceivable standard of fairness or practicality can be expected to file a suit within 3 years after the violation occurred.

In its brief before the Supreme Court, the SEC pointed out the difficulty that the shorter limitation period "would deprive many defrauded investors of a satisfactory opportunity to vindicate their rights." Here is what the SEC, in the brief, went on to say:

Especially in complex cases, plaintiffs often "do not discover the fraud until long after its perpetration." Violations involving financial fraud, for instance, often go undetected until the enterprise fails, an event that may occur years after the violation. Moreover, as the securities markets have grown in size and complexity, frauds have become increasingly difficult to discover.

An example of that, Mr. President, is the municipal bond. They are particularly susceptible to concealment. In a typical municipal bond offering, 2 to 3 years of interest payable to the bondholder is placed in an escrow account, so the bondholders can have no inkling anything has gone awry until they do not receive an interest payment—oftentimes many years after the closing of the offering. The average timespan between issue date in municipal bonds and the date of default in repayment is approximately 4.5 years.

Limited partnerships have the same susceptibility. Again, as the North American Securities Administrators Association—and some of my colleagues may not have had the opportunity to interface with them; these are the securities administrators of the 50 States, who are charged with enforcement of securities law at the State level—as they have testified, limited partnerships in which investors have poured more than $150 billion since 1980—

. . . often run for as many as 7 to 10 years. Customer account statements—a primary means of detecting fraud or misconduct—reflect only the original purchase price of the partnership, not the current market value. Therefore, it may only be at the expiration of the partnership that an investor uncovers misconduct or wrongdoing. Under Lampf, [the 1- to 3-year statute decided in that case] that investor would be precluded from seeking redress in the courts, for no reason other than the decision to purchase a long-term investment. Holders of zero coupon bonds will face similar difficulties in uncovering fraud in the short period of time allowed under Lampf.

The point, I think, that is to be made here is that we have talked a great deal about balance. Every provision that I can see that is contained in S. 240 is designed to provide additional protection for securities underwriters. Aiders and abetters are not included. Safe harbor statements are made more generous.

The wealthiest investor, in effect, becomes the chief of the last, and one can go on and on. Of all of the provisions contained in this legislation, in its original form, only the extension of the statute of limitations could be fairly said to benefit the innocent investor.

For those of my colleagues who are truly seeking balance as they approach this legislation, and who support and will vote for the final version of S. 240, this is really your only opportunity at this stage to provide that kind of balance by extending the statute of limitations.

Here is what Mark Griffin, who is the head of the Utah Securities Division, had to say in testimony before the Banking Committee. He said the current period for filing fraud actions is "unduly short." Going on, he said:

. . . [it] is the experience of State securities regulators that victims of investment fraud often have no way of knowing, nor reason to suspect for what may be many years, the truth about the mishandling or abuse of their investments.

That comes from the security administrator in the State of Utah.

Mr. President, in looking at what States have done, the testimony is that 60 percent of the jurisdictions have longer statutes, and "13 States recognize the concept of equitable tolling, in which the limitations period starts running only after the fraud is discovered."

Among those States are Alabama, Arizona, Kansas, Massachusetts, New Jersey, Washington, and Wisconsin. Many other States have longer statutes, as well, including California, Pennsylvania, my own state of Nevada, Michigan, Ohio, Florida, Texas, Illinois, and New York.

It seems to me that in an era in which we believe that not all wisdom resides in the banks of the Potomac, looking at the experiences at the State level could be particularly instructive as we process this statute of limitations amendment.

The effect of the shortened statute of limitations is simply devastating, and has absolutely nothing, Mr. President, to do with frivolous lawsuits.

For example, had the Lampf rule been in effect, investor cases with respect to such notorious fraud as Lincoln Savings and Loan, Washington Public Power Supply System, Executive Life Insurance, Home-Stake Production Co., and Crazy Eddie would have been barred.

Mr. President, I yield myself an additional 10 minutes.

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

Mr. BRYAN. Mr. President, I thank the Chair for keeping me cognizant of the time.

In fact, Charles Keating attempted to have his case dismissed on Lampf grounds, and that was the genesis of our effort to keep those cases alive. The Congress responded by making sure that the Court's decision did not have a retroactive effect on those cases that were pending. According to a study released by the House Subcommittee on Telecommunications and Finance in 1991 after the Lampf decision, over $5 billion in pending fraud claims were dismissed or threatened with dismissal based on the shortened statute of limitations.

This amendment tracks the exact formula that is urged upon us by the SEC, an extension that would allow cases to be filed up to 5 years after violation has occurred, provided they are brought within 2 years after discovery of the violation.

As I pointed out at the outset, S. 240 in its original form contained an extension of the statute of limitations. I commend my colleague and good friend, the distinguished senior Senator from Connecticut, who has taken a lead on this case. He has long supported the longer statute of limitations. I commend his effort.

I might say that in previous Congresses, subsequent to the Lampf decision, efforts to make changes in the securities litigation system have all recognized the wisdom of the longer statute of limitations of 2 to 5 years.

I note it is somewhat anomalous—we have the situation in which the amendment on the floor is designed to restore what the introducer of the bill must surely have intended, because they cast it in the identical language that we are seeking to place back into the bill.

In addition to the securities regulators at the national level and the State level, this amendment enjoys the support of the Consumer Federation of America, the Public Citizen, the Council of Institutional Investors, the United Shareholders Association, the Bond Investors Association, the U.S. Conference of Mayors, the Government Finance Officers Association, and the National Association of County Treasurers and Finance Officers, to list but a few.

So for my colleagues who may have some motivation in saying "Look, the lawyers are responsible for all of the ills in America and have done terrible things with respect to the securities litigation," they have an opportunity to support other provisions in the law.

Please, in the interest of striking back at these securities lawyers, do not deprive, do not undermine the right of innocent investors to simply present their case, to simply present their case; simply give them the key to get into the courthouse door. And all these other provisions that are included with respect to lawyer sanctions, which I happen to agree with if it is a frivolous case, then they can come into place and operate to serve as a bar to the frivolous case.

This is a case that deprives the innocent investor with a meritorious cause of action from ever having his or her case presented because of the cleverness of the wrongdoer, the defrauder. We ought not, it seems to me, as a matter of public policy, say, "Look, we ought to provide the benefits in our society to those who are clever enough to conceal their wrongdoing and perpetrate frauds before the victims find out."

I do not think any Member of the Senate can defend that kind of a public policy.

I note the distinguished majority leader is on the floor and may seek recognition. I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time on the pending amendment?

The Senator from New York.

Mr. D'AMATO. Mr. President, let me point out that one of the finest, most skilled, and eloquent lawyers, when it comes to interpretation of the law, is my friend, the Senator from Nevada. I find myself at a distinct disadvantage when having to take any position that is contrary to one that he is expounding on. Such is the case here. I do not pretend to be his equal.

However, I will attempt to explain a concern to my colleagues regarding the extension of the statute of limitations. That concern is that if we extend the statute of limitations we will open the door to more mischief.

At first, I was ambivalent on this particular question, as to whether the statute of limitations should be 1 and 3 years or 2 and 5; I considered extending the time as is done in some of the State statutes. My friend and colleague explained how this came about, how we had, actually, no statutory law until the Supreme Court in its Lampf decision in 1991 said: the 1-year and 3-year statute of limitations is rooted in common law and should be the uniform limit.

Some said that this statute would preclude meritorious suits. Indeed, there may be some curtailment of individual investor suits, However, having said that, this statute of limitations will not preclude suits being brought under longer State statutes, nor will it preclude the Securities and Exchange Commission from bringing suits in cases of fraud, where the SEC has no statute of limitations.

There are examples of the SEC bringing suits, after the statute of limitations has expired; suits in which large settlements have been recovered. In one rather recent case, the Prudential case, there the settlement was $660 million. The SEC has recovered notable settlements in some other large cases—the Drexel-Burnham-Lambert case brought $400 million in disgorgement. Again, the statute of limitations is not a bar for the SEC.

So, while the statute of limitations may be a bar to some individuals are aggrieved, if there is a serious case there is no doubt in my mind, nor, I think, in anybody's mind, that the Securities and Exchange Commission will bring a suit. My staff has reviewed some of the historical debate on the general question of how long the statute of limitations should be.

Back in 1934, when this issue was first debated in the context of the need for a fraud statute, Senator Kean made a statement on what he felt was the reason we should limit the filing of suits to within 1 year from the actual time of discovery. I quote from Senator Kean:

> If a man buys something today and discovers tomorrow that some mistake has been made and perhaps he has grounds to sue because of fraud, under the terms of the bill he must bring the suit within 1 year. But suppose he thinks perhaps the bonds I have bought will go up. I will not bring suit until I find out about that. If the bonds go down, then I will have the option of suing these people and trying to recover. If the bonds go up, then I will not sue because I can get a profit on them.

Mr. President, I suggest to you that by extending the statute of limitations, what we do is open the door for

those people who wait and see if anything comes out over time. It becomes much easier to create a lawsuit and to force a settlement if we allow a longer period of time for something, anything, to be discovered. This extended statute of limitations opens the door to the kinds of litigation we see now, but these enterprising entrepreneurial lawyers will have a longer period of time in which to bring their claim. Certainly this Senator does not want to protect anyone who has been involved in fraud. Again, if there has been an egregious fraud, there is no doubt in this Senator's mind that the Securities and Exchange Commission will do the business of the people, which they have done in the past.

But businesses are entitled to some certainty that they will not be sued. I think my friend, Senator DODD, quite aptly stated his argument as it relates to the inventive, creative entrepreneurial petitioner of the law. I believe my friend called them buccaneering barristers. I think extending the statute of limitations just gives them a longer period of time to practice their craft of filing suits without merit.

If there is a legitimate fraud, even if it is discovered and 10 years down the road and it has brought harm, then as far as I am concerned I want the situation to be rectified. I know that there is a body who can do that; that is, the Securities and Exchange Commission.

Let me say again this is an area where I think reasonable people can have some differences. I, myself, have gone back and forth on this issue. It was only when I was convinced that there was the opportunity to close down some of the people who are not practicing law as they should, who are more interested in creating situations where they force settlement, and at the same time we would not leave that door open for defrauded people to be further victimized, that I decided on the statute of limitations in this legislation.

That is why I will be forced to oppose my colleague's amendment, as thoughtfully and as articulately as he has presented it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. Mr. President, I yield time to the distinguished senior Senator from Connecticut, after which I hope to be able to respond to the debate of my good friend, the distinguished chairman.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, will the Senator from Nevada yield to me 5 minutes?

Mr. BRYAN. I do.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I rise to support this amendment by my colleague from Nevada.

Like my good friend from New York, I understand the arguments on the other side. I suppose one might say in this debate what is magical about 1 and 3 or 2 and 5? I presume that if we made it 2 and 5, there would be those who would say it ought to be 3 and 7, or 4 and 8. You could run the string out. Then there are some who think you should not have any statute of limitations, I say to the distinguished Presiding Officer. So you are never going to satisfy everybody with some of these provisions.

Senator DOMENICI and I originally offered this bill back several years ago, and we included an extension of the statute of limitations here to 2 and 5 years on the theory that it contributed to the balance of the legislation. It is a crucial part of the balance between investor's and defendant's rights, plaintiff's and defendant's rights. Our colleague from Nevada has promptly pointed out the legislative or legal history of this.

The Supreme Court decision in Lampf versus Gilbertson established the limits of 3 years after fraud occurred, or 1 year after it was discovered. It is simply too little time, in my view, to ensure that investors have the necessary time to bring an action. Justice Anthony Kennedy, in his dissent in the Lampf decision said, and I think it is worth noting: "Concealment is inherent in most of the securities fraud cases." And it is tough fraud to find, I point out to the Chair.

> The most extensive and corrupt schemes may not be discovered within the time allowed. Ponzi schemes, for example, can maintain the illusion of a profit-making enterprise for years, and sophisticated investors may not be able to discover the fraud until long after its perpetration.

The SEC and the Council of Institutional Investors support extending the statute of limitations, and, frankly, I am concerned that unlike S. 240, this amendment does not contain language that requires an investor to use reasonable diligence.

This is the one point on which I have some disagreement with on the amendment offered by my colleague from Nevada. Even though we disagree on this point, I still intend to support the amendment. I think requiring reasonable diligence on the part of investors is not asking too much. There has to be some burdens and responsibilities people assume when they engage in this activity. In our original bill that included an extension of the statute of limitations, we required reasonable diligence on the part of the investor. That reasonable diligence is no longer included in the amendment being offered by the distinguished Senator from Nevada. The reason I say that is because I think it ought to be a distinction made between the lazy investor and the diligent investor. We make no distinction with this amendment; that is, the current standard in most private actions under our securities laws.

Frankly, I am concerned that the unintended impact of this amendment, should it be adopted, will be to grant more time in effect to investors who know nothing about their investments or care nothing about them and those who exercise reasonable care.

I think we ought to be trying to inject responsibility on the part of everybody involved in these activities. While this is a significant departure from the original Domenici-Dodd language on the statute of limitations, as I mentioned a moment ago, I will not oppose the amendment on that basis alone.

So when this amendment is considered and voted on, I will cast a vote for it for the reasons I have identified. I think in this day and age of technology, being what it is with the sophistication that is out there, it is an awful lot to expect even a knowledgeable investor to be able to pick up on some of these activities, as they might have even a few short years ago, in the absence of high technology.

So trying to keep pace with that high technology, providing a bit more time here, is not an unreasonable request in my view.

For that reason, I commend the Senator from Nevada for his comment. I urge my colleagues to support it.

I yield the floor.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, may I inquire how much time do I have under my control?

The PRESIDING OFFICER. The Senator controls 20 minutes and 4 seconds.

Mr. BRYAN. I thank the Chair. I yield myself 7 minutes.

The able distinguished chairman of the Banking Committee, who is my friend, raised two objections as I understand the thrust of his argument. I must just say as an aside, it makes me very, very nervous when the able chairman lavishes great praise upon a more junior member of the committee because no one is more sophisticated than the distinguished chairman in making his point. He speaks in the idiomatic language of the street and people understand where he is coming from, and he speaks with clarity that every lawyer in America can only hope to equal. So I am quite concerned when I receive this praise.

He made two points. One, he said that by extending the statute of limitations as we propose to do in this amendment we would thereby increase the amount of litigation.

Let me just suggest that the experience shows quite to the contrary. My colleagues will note that I have had a chart prepared tracing the experience of the past 20 years, from 1974 to 1993. As my colleagues will note, that represents a fairly level activity. In fact,

the most number of cases filed in any one year was 315. Last year was 290. And as you will note, the statute of limitations case was not cited until 1991. Prior to that, the longer statute of limitations existed. There were actually in many years fewer cases than had been filed since the statute of limitations result.

So may I say, with all due respect, I think the experience is contrary to his assertion that more cases would be filed. In point of fact, I think an argument can be made that the shorter statute of limitations may encourage haste in filing such actions which is clearly contrary to the purpose that he and I think all of our colleagues have in terms of trying to discourage such litigation.

Second, he makes the point that the SEC is available, and he is quite correct, but I think it is important to point out that when the SEC brings an action, it brings an action to impose a fine, penalty or sanction, but it does not—I think this is a very important distinction—seek to recover money that investors have lost. So it is a philosophically different role. One is akin to a prosecutorial agency in which sanctions, fine and imprisonment may result. The purpose of the individual filing is to recover his or her loss.

Even if one thought the SEC might do an adequate job, the testimony by Mr. Breeden, the former chairman, was that it would require another 800 to 900 people serving in that office to offset the inability of private causes of action to be brought under S. 240 as constituted, and in the committee report on this particular bill it indicates that the cost of providing those additional resources to the SEC would be another $250 million over the previous 5 years.

Let me say that I think, like most of us, we gain considerable insight over the years as we have served, and I was pleased to have my friend's support and his leadership in 1991 when we sought to do the very thing we are seeking to do in the Chamber this afternoon, and that is to extend the statute of limitations from 1 to 3 to 2 to 5. And I wish to give my friend an opportunity to engage me in a colloquy if he chooses to do so. But may I respectfully say I think the Senator from New York was absolutely right in 1991, as we sought to process the corrective legislation in the aftermath of the Lampf case by supporting then a 2- to 5-year statute of limitations, and I hesitate to say he has not grown in wisdom over the intervening years but I think that he clearly was more correct then than he is now.

I would be happy to engage my colleague in any conversation he might care to in terms of this debate. I just do not see that there is any reason today, of course, not to go for the 2- to 5-year statute of limitations. The same circumstances exist, it seems to me, and I want to give my good friend a chance to share with me the benefit of his additional wisdom.

Mr. D'AMATO. I appreciate the opportunity to engage my friend in dialog in the spirit of the Senate. As I said, I was ambivalent on this issue. I have had numerous constituents and groups who have come to me and said: Senator, we are very much concerned that leaving the door open, particularly extending the statute of limitations to 5 years, will just create added exposure to these suits. We cannot extend the statute of limitations, unfortunately, because of those individuals who do not and have not practiced law with the same spirit and enlightenment of my colleague from Nevada.

I understand he has joined with us and voted with us on a number of matters, which some might consider procedural but are awfully important, aimed at reducing the abuses in this system; the race to the courthouse, the buying of people to put oneself in a position to bring these suits, and the plaintiffs for hire who let their names be used for bonuses.

When my colleague says to me he wants to stop this abuse, I know that to be the case. But those in the industries, in the emerging companies say, "You know, if you keep that door open, there is just a stronger likelihood that there will be that inventive lawsuit later on that holds them harmless."

I feel I must be supportive of those companies and that theory. We must not abandon these firms. Let me say once again, even if there has been fraud and it is discovered only 5 years or 6 years after the statute of limitations has expired the Securities and Exchange Commission can bring suit.

Nor have we placed a disproportionate burden on the SEC. They have repeatedly said that they do not want to be in the position where they have to be the eyes and ears for all, that, there is a proper place for individuals and their lawyers to bring these class action cases.

I think that by limiting private rights of action to 1 and 3 years and yet having no limit, no statute of limitations for the Securities and Exchange Commission, that we strike a proper balance. It was in that spirit that I came to this decision.

Second, it was also in that spirit that I could put together a majority——

Mr. BRYAN. May I interrupt my friend?

Mr. D'AMATO. To pass out this bill. I want to be candid.

Mr. BRYAN. And I appreciate that. The concern that I have is that we are engaging in this discussion and the time may run out.

Mr. D'AMATO. I yield to my friend any time that he may need.

Mr. BRYAN. Will the Senator be willing to take part of his time to engage in the colloquy?

Mr. D'AMATO. Oh, yes. I ask unanimous consent that the last 5 minutes be charged to myself.

Mr. BRYAN. I thank the Senator.

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

Mr. D'AMATO. I finished my statement, and I will be glad to yield to my friend any additional time. How much time remains, might I inquire of the Chair?

The PRESIDING OFFICER. The Senator from New York has 31 minutes 40 seconds remaining and the Senator from Nevada has 17½ minutes remaining with the exchange of time conceding 5 minutes.

Mr. BRYAN. I think we are going to be fine. Let me say, I appreciate his fairness. He did not have to do that, and I think that speaks well for him. I did not want to cut him off. I did not want to be precluded from making final comments. If the Senator has concluded, I would like to make a response and yield the floor back to him.

Mr. D'AMATO. I had completed my observations how we find ourselves in this position. And there is that necessity, in any attempt to craft legislation—I have to say that my colleague is offering amendments because he is not happy with all the provisions of this bill and wants to make it better, to enhance the bill—to put together a package that can build a coalition, and this was a major concern to quite a few Senators on my side, a very, very big concern.

I can see their point. If I had my druthers, I might say what is wrong with 2 and 5, but I heard from many groups, and numerous associations, who were quite persuasive as to why this would be a retreat.

One last observation. In this legislation we are attempting to reduce the exposure to unfair suits; it sends a very different message if we extend the statute of limitations. How can we say this cuts down on frivolous suits when people think "My gosh, you are broadening the time to bring them."

The Supreme Court has said 1 year and 3 years is sufficient, and now we have amendments to extend it to 2 and 5. We cannot support that. I must tell you there are a number of my colleagues who felt very, very strongly, that 1 year and 3 years was the right statute of limitations and that is why, given the fact I knew we had the support of the SEC, I supported this position. I share that with my friend and colleague.

Mr. BRYAN. I thank the distinguished chairman. I ask unanimous consent to yield 2 additional minutes to myself.

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

Mr. BRYAN. Let me say, I appreciate the explanation the chairman has given. It is a matter of balance. Again, I respond with great respect that the

role of the SEC is not to recover those losses, and that is something that greatly troubles me, that individuals who have lost money, who are totally innocent, although the SEC would not be precluded from bringing an action, that action is not to recover money for them but simply to impose the appropriate fine, penalty, sanction, that may exist for the violation.

Second, I, too, was exposed to the arguments made by those who reach a different conclusion than I do that the shorter statute of limitations protects them from some lawsuits.

On the other hand, I must say that in balancing, I found the arguments of the securities regulators—the SEC, the States securities, the State and local government finance officials—who all argued that the 2 to 5 was necessary. We all put into the scales of justice our individual component parts, and I would just respectfully say, engaging my good friend in colloquy, that ultimately that is what persuaded me on the longer statute.

Mr. SARBANES. Will the Senator yield?

Mr. BRYAN. I will be pleased to yield.

Mr. SARBANES. I would like to ask the Senator, as I understand it, not only the SEC but the FDIC and State securities regulators all joined the SEC in seeking to, in effect, overturn the Lampf decision and go to the 2-and-5-year standard for the statute of limitations; is that correct?

Mr. BRYAN. That is correct. The distinguished ranking member from Maryland is correct. They all uniformly support that position.

Mr. SARBANES. And, in fact, I have a quote from SEC Chairman Breeden. This was in 1991. This is the Republican Chairman of the Securities and Exchange Commission, in which he said:

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

He then went on to point 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.

Will the Senator yield me just 3 minutes?

Mr. BRYAN. I will be pleased to yield to the distinguished ranking member such time as he needs.

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER (Mr. D'AMATO). The Senator from Nevada has 14½ minutes; the Senator from Minnesota has 30 minutes 27 seconds.

Mr. SARBANES. I will defer and let the Senator from Minnesota proceed before we use the time on this side.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I rise in opposition to the amendment offered by the Senator from Nevada. In Lampf versus Gilbertson, the U.S. Supreme Court established the period of time in which attorneys may file claims under the implied right of action found in 10b-5, and that was 1 year after the plaintiff knew of the alleged violation and 3 years after the alleged violation occurred.

While critics of this legislation have seized upon the statute of limitations as a wedge to defeat this important reform measure, they have failed to present a convincing case of why this period should be extended. In the years since the Lampf decision, we have not seen a surge in the number of actions dismissed because of the limitation period. Instead, the evidence points to just the opposite conclusion. Since the Lampf decision, we have witnessed an increase in the number of complex claims filed within days, even hours, after a movement in the market.

Plaintiffs with meritorious claims have more than enough time to file their claims, but, unfortunately, so do strike suit attorneys. There are a number of reasons, however, why the current statute of limitations should be preserved. For example, a longer period of limitations makes it more difficult for innocent defendants to defend themselves in court. As a result, strike suit attorneys will have an easier time forcing these defendants into exorbitant settlements.

These settlements, by the way, rarely benefit any real injured class of investors. They simply go to enrich an attorney and, worse, the result of these settlements are higher prices for consumers, lost jobs for workers, and a weaker economy. In other words, consumers lose, it is the workers who lose, victims of real valid securities fraud actions lose—everyone loses, again, except for the attorneys.

S. 240 is designed to reverse this trend, to weed out the frivolous litigation that robs consumers of their hard-earned dollars, to make it easier for innocent parties to defend themselves against meritless charges, to free our economy from the litigation bonanza that has made us less competitive in the global marketplace.

If the Senate adopts this amendment, it will do the opposite, and we will do a major disservice to the people we represent.

Again, for these reasons, I urge my colleagues to reject this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Will the Senator from Minnesota yield for a question?

Mr. GRAMS. Yes.

Mr. SARBANES. The chart that the Senator from Nevada put up back there indicates that there was no major number of lawsuits filed subsequent to the Lampf decision. I do not know where, in fact, the highest figure preceded the Lampf decision. As I understand it, that was 315, and since then, it is now 290. On what basis does the Senator make the assertion that following the Lampf decision there was an upsurge in the number of cases filed?

Mr. GRAMS. Well, I hate to differ, but the statistics, according to some of the research that we have done, do not correspond with the statistics that the Senator from Nevada has produced. So we still maintain that the 1 and 3——

Mr. SARBANES. These figures, as I understand it, are from the Administrative Office of the U.S. Courts. What figures is the Senator using? What are they, and where do they come from?

Mr. GRAMS. I was talking with my staff, and that is according to the SEC and, I guess, also the Judicial Conference begs to differ with the numbers that the Senator from Nevada presented. I also wanted to comment on what the Senator from Connecticut had mentioned in talking about the new technologies and the speed with which things are done and the complexity of the programs.

That also gives an advantage to those who are able to find fault, or to find fraud, or to find these problems and have a real advantage then in trying to file these claims within a year or within the 3 years. So the technology has probably worked in favor of those, as well as against them. And this timetable, if I am not mistaken, was adopted in 1934, and has served those years since. That would also provide adequate time. The main thing is that it would weed out the frivolous lawsuits and, as the Senator from New York pointed out, even if these time periods elapse and real fraud is found, they can still be rectified in the courts.

Mr. SARBANES. How would they be rectified in the courts if the statute of limitations had run? That is the whole problem. See, the people who file a——

Mr. GRAMS. The SEC would be able to bring the suits.

Mr. SARBANES. The people who file the frivolous suits, by the Senator's own statement, would file them within the 1-year period. He was just complaining about that, and he said subsequent to Lampf, the numbers jumped because they were doing exactly that. Our numbers do not show that.

In fact, the SEC used these numbers when they testified before the committee in 1993. But the frivolous suits, the persons that are doing these things with a cookie-cutter, they can file them within the 1-year period. The people that are going to be blocked out by the 1 and 3 requirement are people who really have reasonable claims and do not find out about them. By definition, there is a lot of deception that goes on here, and a lot of people with meritorious claims are going to be blocked out by the failure to adopt this 2 and 5-year amendment, which I think is a very constructive proposal.

Mr. GRAMS. I wanted to make one note, that all these what we would consider frivolous lawsuits are not filed within hours, but some wait 3 to 5 years, requiring businesses to produce even more records, which would make it even more expensive to debate or fight this in court.

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

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Maryland has 14 minutes 15 seconds, and the Senator from Minnesota 23 minutes.

Mr. SARBANES. Is this colloquy on the time of the Senator from Minnesota?

The PRESIDING OFFICER. Yes. Who yields time?

Mr. GRAMS. I will yield to the Senator from Nevada for a question.

Mr. BRYAN. If I might inquire of my good friend. The Senator from Minnesota made the point that a 2-year statute of limitations will help investors and disadvantage lawyers. If that were the case, I would argue on behalf of his position. But if in his State of Minnesota, or in my State of Nevada, an innocent victim of fraud, because of the cleverness of the perpetrator of the fraud, does not discover that fraud until after 3 years from the date of its occurrence, would not the Senator agree that, in that situation, the investor recovers not at all? The SEC can bring an action, but it is not brought to recover on behalf of the investor. The investor may be penalized civilly or criminally, but the recovery is not on behalf of the investor. I would be interested in the Senator's response.

Mr. GRAMS. Sometimes all the cleverness is not on behalf of the defendant but on behalf of the plaintiff who is bringing the suit. This is basically the attorney. So I believe that with the speed and technology, this always can be a debate or an argument of who benefits most from that. But I do believe that in the far majority of the cases, the plaintiff has adequate time, and in the serious cases where real fraud has been perpetrated by such a company, would always have an opportunity, if I am not mistaken, for the SEC to bring legal action.

Mr. SARBANES. If the Senator will yield on that point, the SEC can bring action against the bad actor to punish the bad actor, but that action would not recover the damages for the innocent investor. I ask the Senator from Nevada, is that not correct?

Mr. BRYAN. That is the point.

Mr. SARBANES. For the private party to recover the damages, the private party must bring this suit. So your private party would be left, in effect, holding the bag.

Mr. GRAMS. I was just advised that the plaintiff can recover from the disgorgement fund if this were the case.

Mr. BRYAN. If the Senator might answer one other question about frivolous litigation——

The PRESIDING OFFICER. Does the Senator yield on his time?

Mr. GRAMS. Yes.

Mr. BRYAN. If I might engage in a continuing dialog, we all agree—and there is no disagreement—with respect to taking the appropriate action against the frivolous lawsuits, as I have commended the chairman of the Banking Committee. There are provisions in there that I agree with, as do the Senator from Minnesota and the Senator from Maryland, with respect to the sanction provisions under rule 11. But I must say—and I ask the Senator this—when you have the SEC, the Securities and Exchange Commission, the State Securities Administrators, the North American Association of Securities Administrators, you have the State Government Finance Officers, the local government finance officers, all of whom advocate the 2- and 5-year statute, is it the Senator's view that they are advocating that on behalf of the Nation's trial lawyers as opposed to the public? Unless there is a conspiracy I am not aware of, I would be interested in the Senator's response.

Mr. GRAMS. I think as you noted in your colloquy, there have been arguments on both sides. And in weighing the differences in those two arguments, you might agree with the group that you have just mentioned. But I also agreed with some of the others and agree that the 1 and 3 still provides adequate protection.

Mr. BRYAN. I respect the response of the Senator. I yield the floor, reserving the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. What is the time situation?

The PRESIDING OFFICER. The Senator from Nevada has 14 minutes 15 seconds.

Mr. SARBANES. Will the Senator yield 4 minutes?

Mr. BRYAN. The Senator from Nevada will be happy to yield 4 minutes.

Mr. SARBANES. I thank the Senator.

Mr. President, first of all, I want to have printed in the RECORD a letter from the American Bar Association expressing its opposition to S. 240, and stating:

> In its present form the ABA opposes S. 240 since many of the provisions of the legislation would dramatically reduce the protection now afforded shareholders who are defrauded. The ABA agrees that some adjustments to existing procedures and securities class actions are warranted.

They are making a very important point. I say to my distinguished colleagues, I hear the assertions, the people proposing the amendments want no changes made. That is not the case.

From the very first in this debate, we agreed to the proposition that some changes needed to be made. The question now is, what changes, how far? We are trying to cut back on the excesses.

Here is a letter—and many others I have quoted take exactly the same position—which concludes by saying, urging us:

> . . . to amend many of the proposals in S. 240. Instead of accomplishing the laudable purposes that the proponents assert, the legislation in its present form will have a fundamental negative effect upon private enforcement of the securities law which is an essential and effective ingredient to maintaining the integrity of our markets.

Mr. President, I ask unanimous consent that the full text of the letter be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. SARBANES. Mr. President, I very strongly support the amendment offered by the Senator from Nevada. I think it is important to restore some balance to this bill.

The statute of limitations governs a period of time that an investor has to bring a securities fraud lawsuit. If it is not brought within that period of time, it cannot be brought at all, no matter how valid the claim is.

So, it is very important to understand the impact the statute of limitations will have upon all suits. It is being portrayed here as impacting only frivolous suits. It will, in fact, impact all suits, including meritorious suits.

For over 40 years, the courts held that the statute of limitations for security fraud actions is the State statute of limitations determined by analogous State law. While these statutes varied, they afforded securities fraud victims sufficient time, generally speaking, to discover fraud and to file suits. More than 60 percent of the States had statutes of limitations longer than what has now been provided in the Lampf case and that is in this bill.

That was a 5-to-4 decision, that the lawsuit must be brought within a year after learning of the fraud, and in no event, more than 3 years after it takes place, even if you do not know about it —even if you do not know about it.

There are two standards. One, you know; how soon must you bring your suit? The other is, you do not know about it; how many years must transpire before you are closed out? If you find out about it 7 years later, even under the old statute of limitations, well, it is too long. Now that is being cut from 5 to 3 years.

The time period in this bill is shorter than the statute of limitations for private security actions under the law of 31 of the 50 States. Security law experts say the statute of limitations imposed by the Supreme Court is too short. It does not provide investors with enough time to discover a fraud and then to file a lawsuit.

I quoted earlier a quote from Chairman Breeden, in which he said that it could "well mean that by the time investors discover they have a case, they are already barred from the courthouse."

As my distinguished colleague from Nevada has pointed out, not only the SEC but State securities administrators and the FDIC have all agreed that the shorter period as reflected in this legislation does not allow individual investors adequate time to discover and pursue violations of securities law. In fact, the State securities regulators said about the shorter statute of limitations, that it:

. . . effectively forecloses any means of recovery for defrauded investors whose only mistake may be to not discover a concealed fraud.

We are talking about people who are the victims of fraud. Their only mistake is they have not discovered this concealed fraud.

I want to commend Senator BRYAN for offering this amendment. It is a matter he has pursued before. In fact, it was without opposition, adopted as an amendment to a banking bill in 1991. Many here thought it was important. In fact, this bill, as initially introduced by Senator DOMENICI and Senator DODD, contained this provision. In fact, it was put right in the title:

To amend the Securities and Exchange Act of 1934 to establish a filing deadline.

Obviously, it was regarded as an important matter, since it was put front and center.

As I indicated, the objective, independent parties have all testified that the 2 and 5 years is the standard that we ought to have. The Government Finance Officers Association wrote:

Wrongdoers would be let off the hook by a shorter statute of limitations.

Mr. President, I very strongly support this.

Let me close with this observation: Extending the statute of limitations has nothing to do with frivolous cases. It will allow individual investors more time to bring legitimate cases, time they need, because fraud artists often conceal their fraud. The experts in this area, the securities regulators, know more than anyone about bringing securities fraud cases. They have been supportive of the proposition being offered by my distinguished colleague from Nevada.

I very much hope my colleagues will support this amendment. I yield the floor.

EXHIBIT 1

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
Washington, DC, June 26, 1995.

Hon. CHRISTOPHER J. DODD,
Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR DODD: I write on behalf of the American Bar Association concerning legislation entitled Reform of Private Securities Litigation—S. 240—presently before the United States Senate. In its present form the ABA opposes S. 240 since many of the provisions of the legislation would dramatically reduce the protection now afforded shareholders who are defrauded.

The ABA agrees that some adjustments to existing procedure in securities class actions are warranted. Legislative amendments which require full disclosure of settlement terms, promote finality in settlements and encourage voluntary and non-binding ADR foster those goals without sacrificing the integrity of our markets and the interests of public investors. Accordingly, we support provisions of S. 240 which contain such reforms.

The ABA's concerns are directed to those provisions in proposed legislation which would, in effect, eviscerate the remedy which makes the capital market in the United States the envy of the world. In particular, we oppose the "Loser Pays" provisions, the change in the long-standing principle of joint and several liability, and the expanded "safe-harbor" which will not protect even fraudulent forward looking statements. In addition, we oppose the mandating of heightened requirements for pleading scienter, and mandatory stay of discovery when a motion to dismiss is filed, the limitations on discovery even after a complaint has been sustained, and the limitation to a single amendment to a complaint in a securities class action.

The legislation detailed above, if enacted, would not simply, as proponents assert, prevent frivolous litigation. It would dramatically undermine the ability of public shareholders who have been injured through violations of the federal securities laws to achieve redress. In our view, the federal class action for securities fraud remains a vital and necessary component of the federal regulatory scheme. Moreover, the present trend in the case law to eliminate frivolous claims and to ensure adherence to relatively stringent pleading and proof requirements, calls into question the need for many of the provisions of S. 240.

At a minimum, any proposed changes to Federal Rules of Civil Procedure should follow the Rules Enabling Act in which Congress specified such changes will go to the Judicial Conference of the United States which receives input from the public, the bench and the bar. The need for this review by the Judicial Conference is particularly compelling given the provisions of the legislation which seek to have different pleading, proof and discovery rules for federal securities fraud cases, a dramatic departure from the uniform approach to all claims taken by the Federal Rules of Civil Procedure ever since their enactment in 1937.

The reasons for our objections to particular provisions of S. 240 are detailed below:

MODIFIED "LOSER PAYS" UNDER RULE 11

The requirements of Section 103 (a) and (b) requires the court (i) to make specific findings on compliance by all parties and all attorneys with regard to each requirement of Rule 11(b) and (ii) mandating sanctions for any violations. The court is also directed to presume that the appropriate sanction is reasonable attorneys' fees and expenses of the opposing party. Although this presumption may be rebutted by evidence that such sanctions would impose an undue burden on the violator, we agree with Chairman Levitt of the SEC that this section "may have the unintended effect of imposing a 'Loser Pays' scheme".

The in terrorem effect of such a change in the law will largely close the Federal courts to securities class actions including the most meritorious of cases because the vast majority of litigants are unable to run the risk of being forced to pay for the other side's fees. The merits of litigation are rarely, if ever, clear at the outset and what is one side's clearly meritorious case is often the other side's frivolous litigation. Thus, in the absence of assurances from counsel, which counsel will be unable to provide, all but the very wealthy likely will be prevented from bringing a securities action in Federal court and no one likely will ever bring a class action.

If any "Loser Pays" provision is enacted, securities class actions in the federal courts will largely become a thing of the past, and private securities litigation in general may all but disappear, except for disputes between wealthy adversaries. The resulting loss in accountability, investor confidence, and the proper functioning of our capital markets would be wholly against the public interest. A major deterrent to corporate wrongdoing would be lost. This cannot be the desire of Congress and we urge you to reject these proposals.

EXCESSIVE SAFE HARBOR FOR FORWARD LOOKING STATEMENTS

S. 240, in Section 105, adopts a sweeping exemption from fraud liability for forward looking statements by including a scienter standard which, in the words of Chairman Levitt of the SEC, "may be so high as to preclude all but the most obvious frauds." S. 240 should be amended to assure that there is no safe harbor for a forward looking statement that is materially false or misleading.

ENDING OF JOINT AND SEVERAL LIABILITY

The ABA strongly supports the existing joint and several liability principles of today's laws. As SEC Chairman Levitt stated, "[t]he Commission has consistently opposed proportionate liability, because [u]nder the existing system of joint and several liability, the solvent defendants [in cases where one of the wrongdoers in insolvent] must bear the share of the bankrupt defendants. Under a system of strict proportionate liability, the defrauded investors would be required to absorb the loss." As he elaborated: "although the traditional doctrine of joint and several liability may cause defendants 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. Joint and several liability is based on the equitable principle that, as between defrauded investors and defendants who are found to have knowingly or recklessly participated in a fraud, the risk of loss should fall on the latter. The goal of ensuring that defrauded investors are fully compensated for their losses, in other words, overrides any distinction based on the relative culpability of the defendants. . . .

S. 240 should therefore be amended to restore the joint and several liability princples.

PLEADING AND DISCOVERY, AND LIMITATIONS ON AMENDED PLEADINGS AND DISCOVERY

S. 240 mandates a number of procedural requirements none of which have serious merit and all of which represent a violation of the procedures established by the Rules Enabling Act. Simply put, the cumbersome nature of these proposals and their unintended consequences demonstrate anew why the far more thoughtful process established by Congress in the Rules Enabling Act ought to be followed here.

Rule 23 contains ample safeguards today to assure that named plaintiffs adequately represent the class and their lawyers pursue the

cases vigorously. The new pleading and discovery proposals of S. 240 are troublesome in that for the first time under the Federal Rules special requirements are established for a particular class of cases. Moreover, the proposals contradict the present Rule 9(b) of the Federal Rules of Civil Procedure. Given the evidence that courts are already enforcing heightened pleading requirements today, the proposal is not only mischievous but unnecessary. The last thing Congress should be endorsing is the dismissal of meritorious cases at the pleading state. The pleading standards in S. 240 require a plaintiff to plead the "state of mind" of each defendant, which is impossible to do prior to any discovery.

Finally, the limitations on the ability of plaintiffs to amend their pleadings and to pursue discovery while undoubtedly having the effect of preventing frivolous claims from going forward, also has the pernicious effect of barring claims with substantial merit. It is only through significant discovery and repleading that these important claims get adjudicated, an unlikely result if these proposals are adopted.

In sum, the American Bar Association urges you to amend many of the proposals in S. 240. Instead of accomplishing the laudable purposes that their proponents assert, the legislation in its present form will have a fundamental negative effect upon private enforcement of the securities law, which is an essential and effective ingredient to maintaining the integrity of our markets.

Sincerely,

ROBERT D. EVANS.

Mr. D'AMATO. Mr. President, the question before us, on the statute of limitations, is an interesting one.

I think we really have to ask whether or not you really cannot discover a fraud in the 3 years?

Now, there have been some Ponzi schemes and other schemes that have gone on and worked for a long time. There have been some fraudulent investment practices at large, very well respected, institutions, where it has taken a period of time for people to bring them to the bar. In those cases, I suggest that it has been the SEC who has brought these cases. They have done it because people have broken the law, people have committed fraud. They have not filed specious, frivolous suits.

That does not mean every time they bring a suit, the are right; but more often than not, they are. Indeed, where people have defrauded investors and have made profits unfairly, the SEC has been quite successful in gaining penalties and fines, and in some cases disgorgement of those ill-gotten gains. Again I state that the SEC is not precluded by the statute of limitations. In the Prudential case the SEC got $660 million in disgorgement. The wonderful thing is that when the SEC recovers in a case those moneys go to the people who have been victimized. It is not a case where they recover pennies on the dollar.

If we look at most of the successful cases that have not been brought by the SEC, the cases brought by the private sector bar, they literally recover pennies, pennies on the dollar of lost investment. As a matter of fact, there have been a series of articles that after these cases have been settled—most of these cases end in settlements being made—the people who the lawyers settle on behalf of get literally nothing, in some cases box tops, or the ability to receive even more products that they do not want. They say, "What was this? What did I gain from this suit?" But, the lawyers got millions and millions of dollars.

We are really here making a statement, saying, we will put into law what the Supreme Court, in its wisdom, feels is right. Of course we have a right to disagree, but they said 3 years is plenty of time in which to discover that fraud; 1 year after the time of discovery and I agree.

Let me raise a question. Why should it take 2 years to bring a lawsuit after the time of discovery?

Mr. SARBANES. Will the Senator yield?

Mr. D'AMATO. Why, after 1 year upon discovery, can you not bring a suit?

Mr. SARBANES. Will the Senator yield on that point?

Mr. D'AMATO. I am happy to yield. But on my colleague's time, because we are pretty much even now. I have done that deliberately, evened it up.

Mr. BRYAN. I yield such time as the Senator needs.

Mr. SARBANES. As I understand it, the Senator from Nevada said it takes the SEC 2.2 years from the time they start working on it to bring the case. So if it takes the SEC 2.2 years, I do not think it is unreasonable that a private party ought to have 2 years.

The SEC cannot recover. The disgorgement which the Senator made reference to is only for illegal gains that a party realizes. Then you can force them to disgorge it. They may not have illegal gains, or the disgorgement may not be enough to pay the private parties. The private party suit goes against the wrongdoer with respect to all of their assets. The disgorgement only gets at some bonanza which they have hit upon which you force them to give back and then you can allocate that out. That does not begin to cover the problem of the plaintiff recovering.

But, in any event, on the particular point, the SEC takes 2.2 years. I do not think it is unreasonable to give private parties 2 years to bring their suit.

Mr. D'AMATO. If I might, the point is, if after the discovery of a fraud it takes more than a year to bring that case I think we are just really holding captive and in bondage, so to speak, a small business entrepreneur who is the possible plaintiff of a suit. Also, I think that the SEC does not take 2.2 years to bring that case; but I believe to finish that case; not to just investigate that case.

Let me suggest that, extending the statute of limitations makes it possible to hold this sword of alleged fraud over someone; I have found it or someone will find it. Instead of bringing a case within a year they dangle it over the company for 18 months, 2 years, attempting to get a settlement, then maybe file the papers just before that 2 years is up—I do not think we want to do that. How is that advancing the cause of justice?

If there is wrongdoing this Senator wants to see the people who have undertaken that wrongdoing punished. I want to see their illegal profits given back. And again, there is a procedure whereby those who have gotten ill-gotten gains who have profited by defrauding others can be brought to justice by the Securities and Exchange Commission. And the SEC has used that authority. They have done it in the case of Prudential, and, I daresay, that in other cases where outrageous practices have taken place they will continue to bring suit.

Mr. President, what we are seeking here is a balance. I think to basically double the statute of limitations will not bring about the kind of balance we are looking for. I think it would be a mistake.

Again, this Senator has been willing to look at this question carefully but I think the overwhelming body of opinion in the business community, in the legal community, and in the Congress, is that 3 years is a sufficient period of time given the fact that the SEC has authority to bring suit.

By the way, there may be cases that the SEC should not undertake, which it does, but there is the difference. I have some trust in them. I do not have any trust in the entrepreneurial spirit of a handful of lawyers who have managed to hold captive, to a certain extent, legitimate business activities in this country. When the accountants of this country are placed in the position that some of them may go out of business because of the incredible liability that they face in practicing their profession as a result of these type lawsuits, then it is time to say, "Enough is enough. We have to change this."

That is what we are attempting to do with this legislation, and that is why the 1 and 3 years statute of limitations is the provision we used. I recognize reasonable people may disagree, but I hope I have been able to lay out the methodology and the motive, for why we have chosen what we think is a fair balance. One year from the time the fraud is discovered, 3 years from the time the fraud has been committed; I think that is very, very reasonable.

I yield the floor.

Mr. BRYAN. May I inquire of the Chair, how much time remains?

The PRESIDING OFFICER. The Senator from Nevada has 4 minutes and 45 seconds remaining. The Senator from

New York has 12 minutes and 7 seconds remaining.

Mr. BRYAN. Mr. President, it is my understanding that a motion will be made shortly to seek unanimous consent, to which I have no objection, to have the rollcall begin at 5:30. If in fact the Senator from Nevada is correctly informed of that, I inquire of the distinguished chairman of the Banking Committee whether he would be agreeable to providing a little additional time for us to engage in discussion?

Mr. D'AMATO. May I ask if my colleague might like an additional 15 minutes or half-hour equally divided?

Mr. BRYAN. That I would think would be fair. If we do not need it all, we can yield it back.

Mr. D'AMATO. Mr. President, I ask unanimous consent we be given an additional 30 minutes to debate, 15 minutes on each side.

The PRESIDING OFFICER. There is about 15 minutes remaining in the debate.

Mr. D'AMATO. I am asking an additional 15 minutes and extend the time for voting an additional half-hour.

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

The Senator from Nevada.

Mr. SARBANES. Mr. President, will the Senator yield for just a moment?

Mr. BRYAN. The Senator from Nevada will be happy to yield.

Mr. SARBANES. Will the Chair indicate the parliamentary situation for us now?

The PRESIDING OFFICER. Will the Senator repeat the question, please?

Mr. SARBANES. Will the Chair repeat the parliamentary situation now?

The PRESIDING OFFICER. There was just consent given for an additional 30 minutes of debate.

Mr. SARBANES. Equally divided?

The PRESIDING OFFICER. Equally divided, 15 minutes for each side.

Mr. D'AMATO. That would bring us to 5:45.

Mr. SARBANES. Then when would the vote occur?

Mr. D'AMATO. At 5:45.

The PRESIDING OFFICER. Right, under the time that was just consented to, it would be at 5:45.

Mr. SARBANES. As I understood the request, it was to move the vote to 5:30 and have half an hour equally divided. The vote is now scheduled for 5:15, is that correct?

The PRESIDING OFFICER. The request was for an additional 30 minutes of debate time and there was 15 minutes remaining on the clock between the two sides, so that would now give 45 minutes debate remaining, equally divided between both sides.

Mr. SARBANES. That was not my understanding.

Mr. BRYAN. Mr. President, if I might?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. If I misspoke myself I apologize.

What I was seeking to do was to get a combined 30, which was the time that, as I understood it, the vote was to occur, and the use of additional time. I am not trying to preclude my friend from New York from exercising the full amount of his time.

Mr. D'AMATO. Mr. President, might I ask that the two votes that are scheduled after the Bryan vote be limited to 10 minutes each?

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

Mr. SARBANES. When will the first vote occur under this request?

The PRESIDING OFFICER. According to the unanimous-consent agreement, it would be at 5:45.

Mr. SARBANES. The subsequent two votes would be 10 minutes each; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. The time between now and 5:45 will be divided equally?

The PRESIDING OFFICER. The additional time is divided equally. The Senator from Nevada would now have 16 minutes and 57 seconds; the Senator from New York would have 28 minutes and 1 second. But the additional 30 minutes was equally divided between the two sides.

Mr. BRYAN. Mr. President, again, I think I created some confusion. I apologize. It was my intent to get additional time but to begin our voting at 5:30. The reason I say that to my friend from New York is to try to accommodate him. I intend to offer several amendments this evening. I think the sooner that we get to those probably the better off we are.

So somehow the state of the Record might reflect that whatever time the Senator needs, I would like a little bit more time, and start voting at 5:30. It is not my intent by some parliamentary artifice to reduce or limit his time. But I need a little bit more time. That is why I was requesting that be done in that fashion.

Mr. SARBANES. Mr. President, I think maybe we can work this out if we begin the vote at 5:45, and divide the time between now and then equally and make the two votes after the first vote 10-minute votes.

Mr. D'AMATO. I have no objection.

The PRESIDING OFFICER (Mr. ABRAHAM). Is there objection? But the time is still not divided equally with the 45 minutes remaining.

Mr. D'AMATO. Let me ask that the time from this time on be divided equally; that both sides start off with the same time, and we commence our first vote at 5:45.

Mr. SARBANES. And then the subsequent two votes will be 10-minute votes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I think this has been an interesting and a constructive debate.

Let me just say that this is an issue that I know is dry as dust, but I think it is important to point out that across the country there is some understanding that we are not just talking about legalisms, and what we are about to do will have a serious impact on millions and millions of Americans.

I invite my colleagues' attention to a number of editorial responses from across the United States, from a broad number of newspapers, not regionally focused, not philosophically on one side, but I think a broad spectrum. They raise very, very legitimate concerns about S. 240 in its present print.

The Miami Herald, "License to Steal"; the Bergen County Record, "Protection for Con Artists"; the News & Observer, "Safe Harbor for Fraud"; the New York Times, "Protection for Corporate Fraud"; Jonesboro Sun, "Bad Measure"; the Denver Post, "Senate Bill Would Give Free Ride to Securities Fraud"; the Seattle Post-Intelligencer, "Securities Bill Hurts Investors"; the Napa Valley Register, "Securities Fraud Bill is a Fraud"; the Palm Beach Post, "One Big Stock Swindle"; North Sioux City Times, "Your Money At Risk"; the Seattle Times, "Congress is Wrong to Limit Investor Suits"; Dayton Daily News, "Securities 'Reform' Bill Backwards"; St. Louis Post-Dispatch, "Don't Protect Securities Fraud"; Contra Costa Times, "Shielding Securities Fraud"; Los Angeles Times, "This Isn't Reform—It's a Steamroller"; and, again, the Palm Beach Post, "Making the Nation Safe for Fraud."

So the notion that somehow this is an argument that only involves those who are involved as securities lawyers I think can misstate the scope and the concern of this provision.

Let me say that if you look at the history of what has occurred since the last case in 1991, that issue was brought before the Congress. At that time, my good friend, the distinguished chairman of the Banking Committee, was a cosponsor with me in trying to extend the statute of limitations from 1 to 3 years, as that court decided the case, to 2 to 5. The distinguished Senator from Connecticut was a supporter of that change, as well. He continues to support the 2-to-5-year statute of limitations.

His very able cosponsor, the distinguished senior Senator from New Mexico, Senator DOMENICI, also expressed his support in 1991. The only concern the Senator had was that he felt that the statute of limitations issue ought not to be considered in an isolated

sense. This is what he had to say on the floor of the U.S. Senate on November 19, 1991.

First, I am not opposed to the extension or retroactivity if we are able to attach some amendments that address the issues of attorney fees, who pays the cost for these various lawsuits which are going to be extended, all of which is done in S. 240.

So we have those people who have been over the years most actively involved at one time or another, all of whom supported S. 240 with a 2-to-5-year statute of limitations.

Those who know the circumstances best, those who investigate fraud at the State level and at the Federal level, the North American Securities Administrators Association and the Securities and Exchange Commission, all say that one fact that is central to securities fraud is the cleverness of the defrauders in concealing their fraud. They have from time to time pointed out the Ponzi scheme, in which you do not know until at the very end that you have been a victim of a fraud; or municipal bond fraud, which has front loaded an escrow account in which payments are made for several years so the unwary investor is totally unaware that he or she has been defrauded. You have limited partnerships, in which those frauds are not detected for years, and the SEC itself saying that to conduct an investigation takes an average of 2.25 years.

That strikes me as a very persuasive argument for a 2-to-5-year statute of limitations.

In addition, you have the State financial officers and local government financial officers. Now, I am not unmindful of the fact that accountants and securities underwriters and others do not like the longer statute of limitations, and they are obviously entitled to make their point. But I do not think it would shock anybody on the floor to suggest that their positions are tinged with self-interest.

Who speaks for the public? The Congress of the United States ought to speak for the public. And those who represent the public interest in both Republican and Democratic administrations, the Chairmen of the SEC, each have expressed their support for a 2- to 5-year statute of limitations. State securities administrators, many of whom, I suspect, probably most, are appointed by Governors directly representing the people of their respective States, have also spoken in behalf of the 2- to 5-year statute of limitations. State financial officers, many of whom are directly elected by the people, others of whom may be appointed by the Chief Executive of the respective States, again representing the public interest, have expressed their support. And the same thing is true with local government financial officers.

Mr. SARBANES. Will the Senator yield on that very point?

Mr. BRYAN. The Senator would be happy to yield.

Mr. SARBANES. In just yesterday's New York Times an article appeared written by Mark Griffin, the director of the Utah Securities Division. He is a board member of the North American Securities Administrators Association, which comprises the 50 States' securities regulators. In fact, he is the chairman of the Securities Litigation Reform Task Force and testified in front of our committee, and I think, in fairness, all members of the committee would agree that he was a very rational, thoughtful witness. Now, he in this article, in which he takes a very strong position, says, "The securities litigation bill is reform in name only." But on this very point that the Senator is now arguing, having addressed other provisions of the bill that he thought were deficient, he said, and I quote him:

> Perhaps the clearest sign, however, that the bill's proponents have sold middle class investors down the river is their refusal to lengthen the time in which consumers can bring cases to court. The current rule derives from a 1991 Supreme Court decision that created a statute of limitations for Federal securities law cases of 1 year from discovery of a misdeed or 3 years from the commission of the act in question. This represented a serious reduction in the time available for such lawsuits since Federal courts previously had relied on State standards for statute of limitations. Currently 31 States permit longer than the 1 and 3 standard for the filing of State securities cases.

And then he closes this discussion on this very point with this question:

> What possible case can the backers of this bill make for keeping the time limit as short as possible so that future swindlers who cover their tracks carefully will get off the hook for good?

Mr. President, this is not a party to the issue. This is not someone who has a vested economic interest on one side or another of this. This is a State director of the State securities division.

I thank the Senator for yielding.

Mr. BRYAN. I think the Senator makes a very compelling point, and I think he speaks on behalf of the Nation's security regulators at the State level. And that view is shared by his counterpart at the Federal level.

I would yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I think we just have a fundamental difference of opinion. There are those people who advocate extending the period of time to 5 years to detect fraud. To them I say, look at the sophistication to study markets and to review documents that we have today. Given the ability to learn more about a company, more about its activities, given all of the information that is available, I think that extending the statute of limitations gives this group of hawks—that is a kind word; more descriptive would be "vultures"—who look at every turn to seize an opportunity to bring suit, not on behalf of the poor or the downtrodden but on behalf of themselves, too much time and opportunity to find something with which to bring a frivolous suit. There is a page in the Committee report on S. 240 which quotes a lawyer who talks about his clientele. He is one of those lawyers who brings these meritless suits, and he describes it.

I do not pretend, nor do I suggest at all, all lawyers operate in this manner, because they do not. That would be wrong. That would be a disservice. But a sufficient number operate in this way in this particular area. I have asked if we could get some figures on this. It would be very interesting to ascertain, for example, in the second circuit, where one law firm in particular brings all these suits, how many of the plaintiffs are the same. I mean, they are the same people and they own almost no stock whatsoever—sometimes as little as 10 shares each. They just get shares in every company. And if stock in that company goes up or down—even if it goes up—then they sue. They say: You did not tell us; you withheld information from us; and we should have known; and I am injured. They sue, and they get paid. They get paid for loaning their names. These lawyers, these same lawyers pay these individuals. This one lawyer said—I do not want to give the wrong name:

"I have the greatest practice of law in the world," this one lawyer said. He acknowledges once telling a meeting of corporate directors—imagine telling this to a group of corporate directors—"I have the greatest law practice in the world." And why? Why? Senator BOXER talks about the aged, the sick, the infirm, the poor investors, here is what he thinks about them. Here is what he thinks about them; he said, "I have no clients."

He is operating for himself. He is just looking to make money, pile it up. Here it is on page 6 of the committee report, which has been submitted, "Report of the Committee of Banking, Housing and Urban Affairs," I knew it was here because I did read it. The comment by one plaintiff's lawyer:

> I have the greatest practice in the world. I have no clients.

"William T. Barrett, 'I have no clients,' Forbes, October 11, 1993." The fellow's name was Bill Barrett. Mr. Barrett was a partner in the law firm that brings most of these suits perhaps even more than anybody else. And he is proud of that. He is proud of that.

I do not think that is something to be proud about. If you want to say I recover on behalf of the little guy, and I take on those who have inveigled them and swindled them, I understand that.

But when you brag: I have the greatest practice of law in the world—"I have no clients"—that is a heck of an admission.

I do not want to give Mr. Barrett and those who practice with that kind of attitude an additional period of time to chum up the waters, to try to create situations, to try to look for that which does not exist. I will support them if they are bring cases that involve fraud absolutely, that involve deliberately giving misinformation, absolutely, but I will not support the creation of specious lawsuits, lawsuits that are not well grounded and only designed to shake down—shake down—businesses, shake down insurers, shake down people, to make them pay.

That is wrong, and we have got to stop it. The fact is we are paying billions of dollars out and consumers are paying because we have allowed this practice to continue, and it has become a very sophisticated art form. Look at the record. Just look at the record. Ninety-three percent of those cases are settled, and they are not settled because anybody was going to prove fraud. They are settled because a small company or even a large successful company cannot afford to carry that litigation on for many years; litigation that costs them millions of dollars. Even if they win, they lose.

You heard my friend, Senator DODD, bring up the case where the accounting firm was sued and won, they won the lawsuit. It cost them $6 million to win. They were only paid on the initial contract $15,000. That probably epitomizes the worst of what takes place, but it takes place too often.

Open the door longer? No, I do not see what benefit that would hold. And I really have a difficult time understanding, and I do not refer to my colleagues, those in the media who say we are trying to give a license to people to commit fraud. Why do they not wake up? They could not operate under the same standards that business does. They are given a shield. We are simply saying, in this legislation, that you ought to be able, if you discover the fraud within a year, to bring the suit. Why would you need 2 years?

Now, it is true that at the Securities and Exchange Commission, once they have completed all their depositions; they go through very thoroughly; takes 2-plus years to bring suit.

But in 2.2 years their suit is absolutely totally ready, they have laid the cupboard bare and have made all their discoveries, they use the power of their office to bring suit where there is fraud and they can recover for the investors. So, indeed, it may take them 2 years to completion. We are not saying somebody has to complete their lawsuit in 2 years, but certainly, they should be able to start it within 1 year if they believe a fraud has really taken place. Extending it to 2 years just goes beyond the realm of reason.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. Mr. President, may I inquire how much time remains?

The PRESIDING OFFICER. On your side, 11 minutes 30 seconds, and Senator D'AMATO has 12 minutes 56 seconds.

Mr. BRYAN. I yield as much time as the Senator from Maryland desires.

Mr. SARBANES. If the Senator will just yield me 3 minutes.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I want to again commend the Senator from Nevada for offering this amendment. It is a very important amendment. This is an issue he has dealt with over the years with a great deal of attention and understanding and thought.

The distinguished Senator from Nevada is, of course, a former Governor of that State, and prior to that the attorney general of the State of Nevada, and before that a member of the Nevada Legislature on the judiciary committee. So he has had experience in dealing with these issues, and I am sure out of his tenure as attorney general can appreciate what small investors come up against when they are confronted with these fraud situations.

This provision to extend the statute of limitations does not reach the kind of horror examples that people on the proponents of this legislation are asserting.

This statute of limitations issue affects meritorious suits as well as frivolous suits. There are other ways in the bill that we are trying to do away with the frivolous suits, to which the Senator from New York was just making reference. And, in fact, many of us trying to amend this bill have indicated that we support many of the provisions aimed at dealing with the frivolous suits. But we have to draw the line when the provisions are carried to excess, when you have overreaching and, in effect, you are negatively going to impact upon the small investor who has been bilked, who has been taken gross advantage of.

This statute of limitations we previously dealt with here with relatively little controversy. As a matter of fact, most people, when we previously considered it, were supportive of the 2- to 5-year period, which is what the standard has been for 40 years under the securities laws, for 40 years.

The 1- to 3-year standard that is now in this bill is shorter than what applies in over 60 percent of the States. If you know about the fraud, you ought to be able to bring a suit within a year. The SEC takes over 2 years to bring a suit once it knows about it. So I think it is unfair to expect the private party to meet a higher standard than you expect the Securities and Exchange Commission to meet with all the expertise and with all the resources that it has.

The 3 years, in effect, says if you perpetrate a fraud and no one finds out about it and 3 years go by, you are scot-free.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SARBANES. Will the Senator yield me 1 more minute?

Mr. BRYAN. I will be pleased to.

Mr. SARBANES. What that says is if you do a fraud, you are a fast operator, you perpetrate a fraud, and you manage to conceal it for 3 years, that under this statute, you are then scot-free. What the distinguished Senator from Nevada is saying is that period at least ought to be 5 years.

Some say why should it not even be longer and some States, in fact, have a longer period. The argument for having a statute of limitations generally speaking in the law is that at some point you want to have finality, you want to bring things to an end, you do not want to have always open the prospects of a lawsuit. So you try to have a reasonable statute of limitations. The one we have always used in this area now for more than four decades has been 5 years in terms of the period that could run in which you could then find out about the fraud.

Now it is proposed to cut that back to 3 years. So if the fast operator can conceal and deceive his fraud for a 3-year period, then he escapes, he comes out scot-free.

I say to my colleagues, I suggest to you this is a very meritorious amendment, and I very much hope the Members will support it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. How much time remains?

The PRESIDING OFFICER. Twelve minutes fifty-six seconds.

Mr. D'AMATO. I yield the Senator 5 minutes.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 1472

Mr. BENNETT. Mr. President, I appreciate the opportunity to come—and I understand there will be stacked votes—and talk on several amendments, one that was the subject of debate earlier. I asked my distinguished chairman if I could make a quick comment on it, and he agreed that might be appropriate.

There is an article in today's Wall Street Journal that I think has bearing on the debate, today's news today, if you will, which says: "Big Accounting Firms Weed Out Risky Clients."

If you have a big-name auditor, hold on tight. It's getting a lot tougher to find—and keep—prestigious outside auditors to certify annual financial statements.

The statement that I think is appropriate in this article, to this debate, referring to a partner at Peat Marwick, is where he talks about:

When a client we audit goes bust . . . it costs us a bundle in court if we're sued by investors, whether we win or lose the case.

Mr. Lambert says that legal costs are "staggering" for a lawsuit filed in a Federal court in Texas alleging a faulty review of a bank's books by Peat. The bank was taken over by the Federal Government in 1992 after big losses. The jury ruled in Peat's favor in 1993, but the firm had to spend $7 million to defend itself even though the fee for the job was $15,000. Mr. Lambert says, "We just can't afford to take on risky audit clients anymore."

That is what will happen if we do not pass this legislation, Mr. President. People are going to be denied access to accountants, who will not run the risk of a $7 million legal fee, even when they are exonerated, for a $15,000 auditing fee. They will simply not be available, and the end that we are all seeking in this legislation, which is to protect investors, will be frustrated if the amendment dealing with the joint and several liability is adopted.

Mr. SARBANES. Will the Senator yield on that point?

Mr. BENNETT. I will be happy to.

Mr. SARBANES. The other day, we rejected the amendment that would have restored joint and several. So the bill now has proportionate liability in it. The only thing the amendment offered earlier addresses is a provision in the bill that would still keep joint and several for small investors.

So if you had a small investor with a net worth of under $200,000—and that figure is retained—we would drop out of it the requirement that that small investor had to lose at least 10 percent of his net worth, namely $20,000. So if he lost $15,000 or $5,000, he could be held whole instead of the participant in the fraud escaping the burden.

Mr. BENNETT. Mr. President, we are talking about strike suits on behalf of professional plaintiffs, and a professional plaintiff could easily fit within the category of the Senator's amendment.

Mr. DODD. Will my colleague yield?

Mr. BENNETT. I will be happy to yield.

Mr. DODD. My colleague from Maryland was not here when I expressed my remarks. I will say to the Senator from Utah, I submitted that article for the RECORD.

Mr. BENNETT. I apologize.

Mr. DODD. If you go to the Census Bureau and Federal Reserve study on what the median net worth is in this country, you get two different numbers. The Census Bureau says the median net worth is $37,000. The Federal Reserve said in 1992 it is $52,000.

When you set the standard at $200,000 of net worth, which we do, basically, you are including about 95 percent of the people in this country. Only a small percentage is left that have a net worth in excess of $200,000. So if you then do not have some of the standard here, then de facto—not de jure, but de facto—you have eliminated proportionate liability.

Mr. SARBANES. I ask the Senator from Connecticut, what is the net worth of the median investor?

Mr. DODD. I do not have that statistic.

Mr. SARBANES. I know, but you are——

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. BENNETT. I think my time has probably expired. I thank my colleague from Connecticut. I apologize that I was not listening to him when that was put into the RECORD. I will not ask that it be printed in the RECORD.

Mr. D'AMATO. I yield another 2 minutes to the Senator from Utah.

AMENDMENT NO. 1469

Mr. BENNETT. The amendment before us is on the statute of limitations. We have heard all of these arguments. I do not want to repeat them over and over again. Simply, from my business experience, I tell you the impact of the statute of limitations which is hanging over business. If you have a statute of limitations that is 5 years, you have to keep all your records for 5 years; you have to be concerned about what is going to happen to you in 5 years, even though you know nothing has gone wrong, and you get yourself into that circumstance.

If there were time, I could describe circumstances where the lawyers wait until the last moment before the expiration of the statute, no matter when it is, in order to panic the situation. It becomes a device, if you will, that plays into the hands of the people that are seeking to do the kinds of things we are talking about here.

I believe 3 years is long enough. I believe that it is a salutary thing to say to the lawyers, if you suspect there is fraud, get on with it quickly and do not play the game of playing it out those extra 2 years and hoping in that extra 2-year period that people will be a little sloppy in recordkeeping and you will be able to create greater uncertainty than you would if you acted in a timely fashion. Memories fade after 3 years, legal suits become much more difficult to pursue after 3 years. I think the 3 years that are in the bill are appropriate. For that reason, I am opposing the amendment. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. The Senator from North Carolina would like 3 minutes.

I yield to the Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, I want to address some of the amendments that have been discussed on the Senate floor today. First, I oppose extending the statute of limitations for securities private rights of action. I think the current 3-year statute is quite adequate. The Securities and Exchange Commission Act of 1934 put this into law. That was 60 years ago. It has been unchanged ever since.

Certainly, in this age of computers, fax machines, and the rapid communications that we have, particularly in the financial community, I do not see the need to extend the statute that has been more than adequate for 60-plus years.

Mr. President, there is little evidence that a longer period is needed. Three years from the discovery of a securities fraud violation is adequate.

The problem has not been a longer period—the problem has been that class action suits are now filed literally within hours of a stock price dropping. I cannot understand why anyone would think that a longer period is justified with the current practices that we are dealing with.

I am also concerned that by extending the statute to 5 years, we make it harder for firms to defend themselves against lawsuits that are totally baseless to begin with.

Companies will have to search business records that have not been used for years. They will have to interview employees whose recollections are hazy. Moreover, they will have to track down employees that probably no longer work for the firm and probably are on the other side of the country. All of this is to defend themselves against a possible claim for 5 years. Business records and recollections get hazy, and 5 years gets to be a long time.

In my home State of North Carolina, we have a 2-year statute of limitations, and to my recollection, no one has ever suggested that it needed to be changed.

With respect to Mr. SARBANES' amendment, I think the Senate has covered this ground already. On Friday, the Senate defeated Mr. SHELBY's amendment by a large margin.

Mr. President, S. 240 already has an extremely balanced and reasonable proportionate liability section. First, it requires that in the case where other defendants are insolvent, every other defendant must pay an additional 50 percent of the losses he caused to help pay the plaintiffs.

Also, the bill takes care of small investors. It covers those with a financial net worth of under $200,000.

Mr. President, this covers 90 percent of the families in the United States. There is no need to go further, as Senator SARBANES is suggesting. Yes, there are many victims and some victims who are not made whole. But there are very few. If, however, we do not leave this provision alone, there will be many victims on the other side of the equation, those companies that are sued simply because they have deep pockets.

These companies are often forced into settling because large lawsuits loom and it is cheaper to settle. They, too, are victims of a flawed legal system and untrustworthy lawyers. This

needs to be changed. S. 240 changes this, and that is why I am opposed to the Sarbanes amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. I yield to the Senator from Connecticut.

Mr. DODD. I will take 1 minute. Again, for the purpose of debate and discussion here, my colleagues will not be surprised. The original bill we put in, of course, did include a statute of limitations very much along the lines being offered by the Senator from Nevada. I support this amendment. There is one major difference here between this amendment and what was originally proposed, and that is the requirement of reasonable diligence on the part of the investor to determine whether or not there has been any fraud. Reasonable diligence is not included in this amendment. I regret that because I think there is a difference between the investor who must bear a responsibility to keep an eye out for what is going on and the one that does not pay any attention whatsoever. The absence of that language is not so fatal that I oppose the amendment. There is a difference between the original language and the language here. So you treat both investors alike and people who engage in this activity bear a responsibility to watch out for themselves in many ways, which is not included in the amendment.

I think that technology being what it is, the world having changed to the point where you can actually have pretty sophisticated operations today, makes it difficult for the average investor to be aware of what is going on. I support the language Senator DOMENICI and I originally had in the bill and, for that reason, I support this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. How much time is remaining?

The PRESIDING OFFICER. Two minutes two seconds, and Senator BRYAN has 4 minutes 44 seconds.

Mr. BRYAN. Thank you very much, Mr. President. This has been an interesting discussion. Because the time is running out, let me be brief on several points. For my colleagues who are concerned about the abuses that lawyers visit upon the system, let me suggest that this amendment is not at issue. The able chairman and the sponsor of the bill have crafted a number of provisions—prohibition of referral fees to brokers, prohibition on attorney's fees paid from SEC disgorgement funds, and several others.

Let nobody be misled that this bill or debate is about whether you favor reforms in the litigation system as it deals with attorney abuse. We have dealt with that issue. I find myself a bit confused. The distinguished Senator from Utah is arguing against my amendment and he says if the statute of limitations is extended, those lawyers who file suits will wait until the last minute. He has extensive experience in business, and I greatly respect him. The distinguished Senator from North Carolina, also experienced in business, tells us that the problem is that lawyers file instantaneously when the stock prices go down. I must say, I do not think it can be both ways.

The basic problem here is one of concealment. The very nature of these frauds that are perpetrated upon the investment public involve the concealment of fraud through any artifice or device possible, and although there is much new technology out in the market, the technology changes are not a response to the basic cleverness of those who perpetrate these frauds in keeping their frauds from the victim.

The North American Association of Securities Administrators and the SEC point out to a number of those cases—municipal bond frauds, limited partnership, to cite just two.

Mr. President, I think it also needs to be made note of those who have looked at this over the years, as Senator D'AMATO, Senator DOMENICI, and Senator DODD have all at one point taken the position the statute of limitations ought to be extended from 2 to 5 years.

I recognize there are those that have a vested financial interest who want to preclude suits from being filed. I understood that. That ought not to dictate policy response.

Those who have the public interest and the public trust at issue as to their only responsibility, the SEC, State Securities Association, the State Financial Officers, Local Government Financial Officers, all are together. All of the regulators agreed that in the interest of fairness, the statute of limitations ought to be extended from 2 to 5 years. That represents both a national perspective, a State perspective, and a local government perspective.

Unless we subscribe to a conspiracy in history, all cannot be in league with trial lawyers. They have reached the conclusion, as I have, based upon the compelling evidence before us, concealment is the problem, and 2 to 5 years is a reasonable time to provide an opportunity for plaintiffs to file.

Mr. D'AMATO. Mr. President, this is admittedly incomplete, but let me just share some statistics from one law firm in New York between 1990 and 1992. One plaintiff was a plaintiff in 14 cases—14. The second plaintiff was in 10; the third fellow, 7; another fellow, 7; another fellow, 7. I will not mention the names of these plaintiffs, because I want to be respectful and not embarrass them. But, I should mention their names, because I am sure these plaintiffs are not legitimately aggrieved. It is incredible. I would like to find out how many shares they owned in each of these firms—I bet not more than one owns more than 10 shares. These plaintiffs buy shares in multiple companies so the firm can be designated lead counsel, and then the plaintiffs get paid a bonus.

That is the kind of practice we have had taking place. I do not think we should keep this door open for 5 years for these lawyers to find supposed frauds so they can bring these kinds of cases. That is why I have to oppose this amendment.

Do I want to hurt those who truly have been hurt? Absolutely not. When I see one plaintiff in 14 cases in 3 years, and another plaintiff in 10, and 1, 2, 3, 4, 5, 6 others who have been involved in a multiplicity of cases during this same period, I say it is time to change things.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada has 1 minute and 18 seconds remaining.

Mr. BRYAN. I think this perhaps has been discussed fully. I want to acknowledge the leadership the ranking member, Senator SARBANES, provided in viewing this legislation. I thank him very much for his leadership; and the courtesy of the chairman of the committee. Although we find ourselves in disagreement, his courtesy is much appreciated.

Mr. D'AMATO. 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. I move to table.

The PRESIDING OFFICER (Mr. BROWN). The question is on agreeing to the motion to table the amendment numbered 1469, offered by the Senator from Nevada [Mr. BRYAN].

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] and the Senator from Pennsylvania [Mr. SANTORUM] are necessarily absent.

Mr. FORD. I announce that the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from New York [Mr. MOYNIHAN], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Illinois [Ms. MOSELEY-BRAUN] would vote "aye."

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

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

The result was announced—yeas 52, nays 41, as follows:

[Rollcall Vote No. 283 Leg.]

YEAS—52

Abraham	Faircloth	Mack
Ashcroft	Feinstein	McConnell
Baucus	Frist	Murray
Bennett	Gorton	Nickles
Brown	Grams	Packwood
Bumpers	Grassley	Pressler
Burns	Gregg	Pryor
Campbell	Hatch	Robb
Chafee	Hatfield	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Coverdell	Inhofe	Stevens
Craig	Jeffords	Thomas
D'Amato	Kassebaum	Thompson
DeWine	Kempthorne	Thurmond
Dole	Kyl	Warner
Domenici	Lott	
Exon	Lugar	

NAYS—41

Akaka	Ford	Levin
Biden	Glenn	Lieberman
Bingaman	Graham	McCain
Boxer	Harkin	Mikulski
Bradley	Heflin	Murkowski
Breaux	Hollings	Nunn
Bryan	Inouye	Reid
Byrd	Johnston	Rockefeller
Cohen	Kennedy	Roth
Conrad	Kerrey	Sarbanes
Daschle	Kerry	Shelby
Dodd	Kohl	Specter
Dorgan	Lautenberg	Wellstone
Feingold	Leahy	

ANSWERED "PRESENT"—1

Bond

NOT VOTING—6

Gramm	Moynihan	Santorum
Moseley-Braun	Pell	Simon

So the motion to table the amendment (No. 1469) was agreed to.

AMENDMENT NO. 1472

The PRESIDING OFFICER. The question now occurs on the Amendment 1472 offered by the Senator from Maryland, Mr. SARBANES. Is there a request for the yeas and nays?

Mr. D'AMATO. 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.

Mrs. BOXER. Mr. President, parliamentary inquiry? It was my understanding that the author of the amendment had the option to take a minute of time before the vote was taken. I understand that it was part of the unanimous consent agreement. I want to make sure that I am correct on that, because I would like that opportunity with my amendment. I was not certain whether the Senator from Maryland waived that right or what the parliamentary situation was.

The PRESIDING OFFICER. The Senator is correct. That time is available if Senators wish to take it. It certainly would be available to the Senator from California when her amendment is considered.

The question is on agreeing to the amendment of the Senator from Maryland. On this question, the yeas and nays have been ordered.

Mr. BYRD. Mr. President, the explanation of the amendment was included in the order. I ask that the explanation be given.

The PRESIDING OFFICER. The agreement called for an explanation, and the explanation is requested. The Senator from Maryland is recognized.

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

This amendment takes a provision that is in the bill that departs from proportionate liability. The bill says that in a situation in which you have a small investor, with a net worth of less than $200,000, and if that small investor loses over 10 percent of his net worth—in other words, $20,000—then you will in effect hold them harmless, all the defendants will continue to be jointly and severally liable. I leave the $200,000 net worth provision but eliminate the 10 percent requirement as to the amount of loss, so if someone has a net worth of $200,000 and loses $5,000, they still would be protected. The notion of this is to try to protect small investors, and I am very frank to tell you I think they ought to be protected.

Under the other provision in the bill, they provide—

Mr. CONRAD. May we have order, Mr. President, so we can hear.

Mr. SARBANES. That in an instance of proportionate liability——

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, this amendment is really another attempt to knock out one of the most meaningful provisions of S. 240 and double the amount that defendants would have to pay if there was an insolvent codefendant. The basis upon which we attempt to give some relief is to say, yes, for some small investors, if they have under $200,000 and a 10 percent cap. What we are doing here is just knocking it aside. We have to stop people going after people just because they have deep pockets, just because they have lots of money. And so I urge my colleagues to vote no.

The PRESIDING OFFICER. The question now occurs on agreeing to amendment No. 1472 offered by the Senator from Maryland, Mr. SARBANES. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] is necessarily absent.

Mr. FORD. I announce that the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from New York [Mr. MOYNIHAN], the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that the Senator from Rhode Island [Mr. PELL] are absent on official business.

I further announce that, if present and voting, the Senator from Illinois [Ms. MOSELY-BRAUN] and the Senator from Rhode Island [Mr. PELL] would each vote nay.

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

The result was announced—yeas 29, nays 65, as follows:

[Rollcall Vote No. 284 Leg.]

YEAS—29

Akaka	Feingold	Leahy
Biden	Graham	Levin
Boxer	Harkin	McCain
Bradley	Heflin	Rockefeller
Breaux	Hollings	Sarbanes
Bryan	Inouye	Shelby
Cohen	Jeffords	Snowe
Conrad	Kennedy	Thompson
Daschle	Kerrey	Wellstone
Dorgan	Lautenberg	

NAYS—65

Abraham	Feinstein	Mack
Ashcroft	Ford	McConnell
Baucus	Frist	Mikulski
Bennett	Glenn	Murkowski
Bingaman	Gorton	Murray
Brown	Grams	Nickles
Bumpers	Grassley	Nunn
Burns	Gregg	Packwood
Byrd	Hatch	Pressler
Campbell	Hatfield	Pryor
Chafee	Helms	Reid
Coats	Hutchison	Robb
Cochran	Inhofe	Roth
Coverdell	Johnston	Santorum
Craig	Kassebaum	Simpson
D'Amato	Kempthorne	Smith
DeWine	Kerry	Specter
Dodd	Kohl	Stevens
Dole	Kyl	Thomas
Domenici	Lieberman	Thurmond
Exon	Lott	Warner
Faircloth	Lugar	

ANSWERED "PRESENT"—1

Bond

NOT VOTING—5

Gramm	Moynihan	Simon
Moseley-Braun	Pell	

So the amendment (No. 1472) was rejected.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, as I understand it, under the unanimous consent request, the Senator from California now has the opportunity to address the substance of her amendment for 1 minute and the Senator from New York has 1 minute to reply; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. SARBANES. Mr. President, I make the point of order that the Senate is not in order, and I request the Chair to obtain order in the Senate before we go to the explanation of the amendment and the response thereto, out of courtesy to our colleagues.

The PRESIDING OFFICER. The Senator's point is well taken. The Senate will be in order. Members will cease conversation.

The Senator from California is recognized.

AMENDMENT NO. 1473

Mrs. BOXER. I will be less than 1 minute. Mr. President, I say to my friends, S. 240 changes many aspects of our securities laws, and many senior citizen groups have voiced concern.

My amendment simply says if S. 240 becomes law, the Securities and Exchange Commission shall report to the Congress in 180 days as to its impact on senior citizens who are the main targets of securities fraud.

So we are calling on the SEC to come and report to us as to the impact of this legislation on senior citizens.

I yield the floor.

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

Mr. D'AMATO. Mr. President, we have agreed to ask the Securities and Exchange Commission to make this statement. We understand the vulnerability of seniors. We are prepared to accept the amendment without a rollcall vote.

Mrs. BOXER. Mr. President, I ask for a rollcall vote in accordance with the previous order.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The distinguished majority leader is recognized.

ORDER OF PROCEDURE

Mr. DOLE. This is in reference to the remainder of the evening, so it will be important to every Member. I understand we are not able to convince anybody to continue on this evening, except there will be amendments offered and there will be debate this evening, but there will be no more votes after this rollcall vote.

There will be votes starting at 10:30 a.m. tomorrow: Two votes, under the same provision. There will be 2 minutes to explain before each vote, and then following those two votes, I understand there will be another amendment laid down. Senator SARBANES will be recognized to lay down his amendment at about 11:15, I assume. We still very much would like to finish this bill in the early afternoon. There are five amendments, I understand, outstanding.

Mr. D'AMATO. It appears there are five amendments.

Mr. DOLE. Again, there has not been any delay on either side. There has been a lot of good debate all day today. But we would like to complete action on this bill to move to something else, hopefully regulatory reform. There will be no more rollcall votes tonight, but two votes starting at 10:30 a.m.

Mr. ROCKEFELLER. Will the majority leader yield? The Senator was just interested in when the Medicare Select conference report will take place?

Mr. DOLE. I hope that will happen this evening. As I understand, the Senator from West Virginia wanted 20 minutes for debate. We will dispose of that this evening.

Mr. ROCKEFELLER. I thank the majority leader.

VOTE ON AMENDMENT NO. 1473

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 1473 offered by the Senator from California, Mrs. BOXER. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BOND (when his name was called). Present.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM] is necessarily absent.

Mr. FORD. I announce that the Senator from Illinois [Ms. MOSELEY-BRAUN], the Senator from New York [Mr. MOYNIHAN], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] and the Senator from Illinois [Ms. MOSELEY-BRAUN] would each vote "aye."

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

The result was announced—yeas 93, nays 1, as follows:

[Rollcall Vote No. 285 Leg.]

YEAS—93

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

NAYS—1

Faircloth

ANSWERED "PRESENT"—1

Bond

NOT VOTING—5

Gramm	Moynihan	Simon
Moseley-Braun	Pell	

So the amendment (No. 1473) was agreed to.

Mrs. BOXER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I am very pleased to offer my enthusiastic support to the Private Securities Litigation Reform Act of 1995.

I was an original cosponsor of S. 240, and have been deeply interested in remedying the current abuses in the securities litigation system—particularly those abuses that have arisen from the misuse of class action lawsuits to prosecute securities fraud. Companies in Utah as well as across the country are being adversely affected by unfair lawsuits brought under the current system.

This is only one area of the law in which litigation abuse has become rampant, and I commend the many cosponsors of this bill—who number over 50—for their recognition that it is time to address some of the significant litigation abuses in this country.

In particular, I would like to commend and thank Senators DODD and DOMENICI for their longstanding leadership on this issue. They have once again worked long and hard to come up with an excellent bill, which so many of us have been able to support wholeheartedly. I also want to thank Senator D'AMATO for his support of securities litigation reform and for his key role in developing the fine version of the bill reported out of the Banking Committee that we are considering here on the floor today.

This bill seeks to make securities litigation more fair by curbing the abusive litigation practices that have been employed by a small number of plaintiffs' lawyers in securities litigation class action lawsuits. The hallmark of this small group has been the so-called strike suit. In such suits, attorneys typically file a securities fraud lawsuit against a company as soon as possible after the company's stock drops in price—often regardless of whether there has been any fraud on the part of the company.

In the complaint, those attorneys accuse the company of securities fraud, either in issuing the stock or in other company statements, and seek to obtain damages to make up for the stock price drop—a drop that is in fact typically caused by nothing more than natural market forces.

Here is one example. In a case—or I should say cases—filed in New York this past year, Philip Morris had announced that it was reducing the price of Marlboro cigarettes by 40 cents per pack. [*In re Philip Morris Securities Litigation*, 1995 U.S. Dist. LEXIS 92 (S.D.N.Y. Jan. 6, 1995).] Shortly thereafter, the company's price per share lost nearly 24 percent of its value. That is not so surprising in a reactive market that could easily have interpreted

such action as leading to a loss in profits, at least in the short term.

What was surprising was the reaction of lawyers. Within just 2 business days, 10 securities litigation lawsuits involve 34 law firms were filed against Philip Morris. That kind of litigiousness on such short notice is absolutely astounding. Unfortunately, that kind of action has become commonplace and is plaguing our finest companies, be they large corporations or smaller businesses.

It is so widespread that a 1992 National Law Journal article reported that of 46 stock fraud cases studied, 12 were filed within 1 day and another 30 within 1 week of the publication of unfavorable news about the defendant company. [Source: Milt Policzer, "They've Cornered the Market," National Law Journal, April 27, 1992.]

In 1990, when L.A. Gear, the sportswear and sneaker manufacturer, announced lower than expected earnings, one law firm filed 15 lawsuits just three days after the announcement. [Source: William Lash, "Securities Law Reform: Too Little, Too Late" (Center for the Study of American Business, Washington University, May 1995).]

Particularly hard hit by strike suits have been high technology computer companies. A Stanford University law professor who conducted a study of shareholder class actions filed in the early 1980's, most involving high tech firms, found that every single company that experienced a market loss in stock price of at least $20 million was sued. Every single company. [See Janet Cooper Alexander, "Do the Merits Matter? A Study of Settlements in Securities Class Actions," 43 Stan. L. Rev. 497 (1991).] That is mindboggling. These are some of the most successful American companies in recent decades, and they are being besieged with lawsuits. Why could this be?

The answer is found in the securities litigation system. In her study, the Stanford professor—Professor Janet Cooper Alexander—concluded that, due to the pressures of the litigation system, companies were being sued for reasons that had little or nothing to do with the presence of any real underlying securities fraud and that companies were being forced into settlements that had nothing to do with the merits of the case. That is not how the legal system is supposed to work, and that is now how the securities laws were meant to be used.

Although the securities laws were designed to punish and prevent fraud and abuse in the securities market, they are currently being abused by certain attorneys who seek to make a profit from simple stock losses. But the securities laws were not designed to insure against stock loss. Far from it. The securities laws were designed to protect American investors from fraud.

When most of our major high-technology firms have been the target of a securities fraud class action lawsuit, and when hundreds of millions of dollars are spent each year on the litigation costs relating to such suits, a number of which show no evidence of wrongdoing whatsoever on the part of the defendant, I think we have to take a long hard look at this and ask ourselves—is corporate fraud really so widespread that it exists in every single firm in America? Or is this system encouraging litigation when there is no evidence of any wrongdoing whatsoever on the part of the defendant?

I think the answer is clear. I think the reason these suits yield so many costly settlements has to do with the high costs to companies of defending against these suits. Due to the threat of exorbitant legal fees that would be required to defend against such strike suits, companies will settle securities lawsuits even when those suits are entirely meritless. The plaintiffs' attorneys then collect a hefty portion of that settlement through their contingent fees.

While accurate statistics are not available on the breakdown of attorneys fees, because this information is often not public, the Banking Committee has heard testimony that plaintiffs in these types of lawsuits typically receive only 14 cents for every dollar of damages while the attorneys collect 39 percent of the settlement. Other studies have suggested even lower recoveries by the shareholders.

This area of legal abuse is truly the work of a few attorneys. It has been widely reported—both in congressional testimony and in cases and articles—that only a small number of law firms are involved in these abusive strike suits. Often, the firms use the same professional plaintiffs in multiple suits. Some will pay referral fees to get plaintiffs. Typically, these firms will rush to the courthouse to try to be the firm that files suit first.

One problem is that, under current law, that firm will often be designated the lead class counsel and will be able to receive a larger share of the settlement. Clearly, with so many suits being filed on such short notice, the law firms involved cannot possible have thoroughly considered the possible existence of fraud. Instead, these firms are simply reacting to the skewed incentives in the current system that reward them for filing a lawsuit first.

These few, rapacious law firms have made this kind of abusive litigation their specialty. They are the ones who have taken advantage of the system and harmed our businesses and our economy. Let us all be perfectly clear in our understanding that the only group this bill harms is that small group of specialized lawyers.

Their actions come at a very high cost. Companies pay needless litigation, settlement, and insurance costs with money that could be going to create jobs or to further research and development. Testimony before the Banking Committee demonstrated again and again how much excessive securities litigation costs companies, who must then pass those costs on.

Let me just mention one example. Testimony was received about a Silicon Valley corporation named Adept Technology. Adept Technology is the only U.S. robotics corporation and it employs over 275 people. They were contemplating an initial public offering of shares, or what is commonly referred to as going public. They were advised, however, that due to the threat of litigation if they went public, they would have to carry a liability insurance policy of $5 million in coverage which would cost upwards of $450,000 per year. They were advised that they had to bear that cost, because, as a high-technology company going public, they would undoubtedly be sued for securities fraud within a year or two of going public. The upshot of securities litigation lawsuit abuse is that Adept must pay a litigation tax in order to be a publicly traded company. The money spent this way could easily pay for five or six engineers who might be creating new products and helping keep American business competitive.

By limiting the access of some firms to the capital market—for example, those that decide they cannot afford to go public—the current system damages our economy and stunts its ability to grow. The irony is that, while securities litigation laws were designed to safeguard investors, in reality the current system ends up hurting investors. It harms those investors who could have invested successfully in those companies, had they gone public, and it hurts those investors who could have earned more profits on their shares, had those companies been more profitable. In this system, whose intent was to protect investors, the sad fact is that investors end up getting hurt while certain lawyers rake in exorbitant fees.

Another cost this abusive system imposes is in the perverse incentives created when companies decide to disclose less information about their companies simply for fear that they will inevitably be sued on the basis of the information. That goes completely against the grain of the securities laws—all of which were designed to encourage openness and full information in our securities markets.

These costs must be addressed. We need to eliminate abuses in the system, so that we can efficiently preserve the core values of the American stock market—honesty, integrity, openness, and the free exchange of information. Those values are what gives the American stock market its respect, both here and abroad.

This act is an attempt to do just that. It represents the culmination of a

bipartisan effort that has evolved over several Congresses. I believe this bill balances several competing interests. There can be no question that it ensures that the class action device will remain available for those shareholders who have been the victims of securities fraud. It also improves on that class action device so that injured investors—not a small group of greedy lawyers—can control the litigation and have a greater share of any settlement.

The bill does this in a number of ways.

First, the bill contains a number of reforms of securities litigation class actions that are designed to increase participation of the real shareholder plaintiffs and decrease the control of attorneys. For example, the court will select the most adequate plaintiff who will then direct litigation decisions. Securities lawsuits have often been brought and controlled by a relatively small group of lawyers whose incentives are frequently at odds with those of the plaintiffs and with the goals of the securities laws. This provision would ensure that litigation decisions are truly in the best interests of the shareholders and are not merely in the best interest of the law firm that won the race to the counthouse door.

Where the parties enter into a class action settlement agreement, the bill requires the disclosure of settlement terms to class members so that plaintiffs know what they are getting and the attorneys fees involved.

The bill increases pleading requirements so that a potential violation must be clearly laid out in a complaint. In securities actions involving misleading statements or omissions, plaintiffs will have to specify each allegedly misleading statement or omission and why it is misleading. Where a defendant's state of mind must be proven, plaintiffs must plead specific facts supporting that state of mind.

Those provisions make sense. They do not require a plaintiff to prove the entire case at the pleading stage. Instead, they merely require that that case be set out and that all the allegations be supported by sufficient allegations of fact.

The bill also provides for a stay of discovery during the pendency of any motion to dismiss, unless the court finds that particularized discovery is necessary to preserve evidence or prevent undue prejudice. This reduces one of the highest litigation costs that have been used to badger defendants into settling. This way, some of the merits of the case can be considered by the court before the defendant can be forced to settle through the threat of mounting unpayable legal bills.

Another problem the bill addresses is the problem of predictive of so-called forward-looking statements. Some companies have faced damaging lawsuits merely on the basis of vague but optimistic projections that they would do well even though it was clear that the prediction was somewhat speculative and future-orented. The bill does so by establishing what has been referred to as a safe harbor to protect issuers and others from liability under the securities laws for forward-looking statements.

This provision has been mischaracterized by opponents of this legislation. It should be clearly understood, however, that intentionally misleading statements would never be covered by the safe harbor provision. In addition, a number of other exceptions apply to insure that investors can be protected adequately from fraud. In this way, the bill does not permit companies to misrepresent their future performance or intentions knowingly. It simply permits them to suggest what they predict their future will entail without being subject to harassing lawsuits when, for one reason or another, reality differs from their suggestions.

The bill also reforms joints and several liability in private securities lawsuits. Often, accounting firms and others involved in issuing securities have been held liable and ultimately responsible for fraud that was at best the primary responsibility of the issuing company. This provision is carefully structured to be fair, and to ensure that injured investors are protected to the greatest extent possible. As a general rule, liability would be several only, in proportion to a defendant's responsibility for wrongdoing.

Significantly, in cases involving knowing fraud, defendants would remain jointly and severally liable. That is something that opponents of this bill seem to have missed entirely. Where any defendant engages in knowing fraud, that defendant can be liable for the investors' entire loss. This bill does not give any leeway to knowing wrongdoers.

In addition, the bill also employs certain modifications to the joint and several rule where one defendant's share may be uncollectible. Those are designed to fairly balance the responsibilities and needs of plaintiffs and defendants. Thus, it helps improve a shareholder's ability to gain full recovery, for instance, where the defendant company has gone bankrupt. In those cases, the other defendants' contributions will be stepped up.

While this bill will grant some relief to accountants and others who have been unfairly held jointly and severally liable, at the same time the bill seeks to ensure that accountants take responsibility for detecting fraud. The bill requires accountants to put in place procedures to detect securities fraud. Then, if the accountant discovers or suspects fraud, the accountant must inform management. If management fails to act accordingly, the accountant must then notify the SEC concerning the suspected fraud.

In another provision designed to balance the need to ensure that true fraud does not go unpunished, the SEC is given authority to prosecute those who aid and abet securities fraud. By giving this authority to the SEC, it will not be misused by some of the securities lawyers who have misused so many other provisions of the securities laws.

As one final point, I emphasize that the pervasive litigation abuses in securities class action lawsuits are not the only litigation misuses plaguing our civil justice system. In other areas of the law, reform is needed just as desperately.

I was very proud to see the Senate pass product liability reform in May, and I look forward to the passage of securities litigation reform. I only note that these two areas of legal reform are only the tip of the iceberg. Americans have been subject to all sorts of litigation abuses that are imposing unjustifiable costs on our economy, our businesses, and our workers.

Those costs are passed on throughout the Nation and they cause harm whenever a company, a school, or a volunteer organization must defend against outrageous legal claims. That occurs whether the lawsuits are securities litigation lawsuits, product liability actions, or garden variety fraud, breach of contract, or other types of civil lawsuits.

I hope to have the Senate consider the problem of the multiple imposition of punitive damages for the same act or course of conduct. While it is not my intent to offer to this legislation amendments that pertain to other, broader civil justice reforms, I see this bill as one step in a progression of more extensive reforms to improve our litigation system. I am pleased to see the support for this bill, and I look to my colleagues for continuing efforts against litigation abuse.

Again, I thank Senators DOMENICI, DODD, and D'AMATO for their leadership and commend them for their efforts.

Mrs. MURRAY. Mr. President, I rise today in support of S. 240—the Private Securities Litigation Reform Act.

Mr. President, Americans need to be assured that their investment are secure—that our money has been invested in good faith.

And, if an American investor has been the victim of fraud—no matter how big or little—how rich or poor—they should get equal treatment under the law.

Guilty parties must be held accountable.

Mr. President, I am not rich. I know that investments are risky. There is no guarantee that you will make money in the stock market, or the bond market, or on any investment.

I learned a long time ago—from my parents—that you should not invest money you cannot afford to lose. So, now as a parent myself, I am very conservative in my investments.

I believe in personal responsibility.

But, Mr. President, there is an appropriate Federal role in this process, as well. We cannot abdicate our responsibility to protect the American people.

And, Mr. President, we in Congress have a unique role in promoting investor confidence.

We have a duty to encourage critical investments—it is needed for capital formation—it is needed for economic growth and job creation.

This is especially true in my home State of Washington—where many consumers invest in small high-technology companies.

For Washington State and for the entire country—we must be vigilant to ensure proper protection for investors.

That is why I am a big supporter of the work of the Securities and Exchange Commission: Chairman Arthur Levitt and his staff do a great job in exposing fraud and protecting even the smallest of investors.

Section 105 of this bill gives the SEC new authority to sue for damages from securities fraud—so that victims of fraud will recover more of their losses.

Right now, Americans—who have been defrauded—have been getting only pennies on the dollar for their losses. Victims of fraud deserve better; they deserve more. This bill will help change that.

Mr. President, that is why this bill is so critical. It returns some common sense to our legal system.

I have been pleased to work with my good friend from Connecticut, Senator DODD, on this legislation. He has provided real leadership on this issue together with the distinguished chairman of the Budget Committee, Senator DOMENICI.

This bill is the best of bipartisan cooperation—it passed the Banking Committee by a vote of 11 to 4, with the majority of Democrats, voting in favor of this much needed reform.

I have heard from so many people in my home State of Washington on this issue. Many have told me the present system operates at the expense of the investors it was intended to protect—everyday, hard-working Americans.

We have all heard the stores of court cases which diminish investments. They inhibit job creation. They slow economic growth.

How many times do small business people settle suits out of court just to make them go away?

And, as I said, how many times do small investors—who have actually been the victims of fraud—only receive pennies on the dollar of their investment?

This bill returns power and benefits to the little guy. Sections 101 and 102 of the D'Amato substitute are critical in this regard.

This reform will provide a mechanism for real plaintiffs—instead of a few lawyers—to take charge of the cases.

That way, the interest of plaintiffs are taken into account.

And, investors are the ones who lose money when fraud occurs—they have a right to have more of a say in steering the course of litigation.

Right now, small investors lose out—we all lose out—because company resources are wasted on settling suits, instead of inventing new products.

Biotech companies waste their resources on settling nuisance lawsuits instead of finding the cure for AIDS and breast cancer.

High-technology companies waste their time and resources on legal fees—instead of giving us a cutting technological edge that will bring us into the 21st century.

I have heard from many of these companies in my home State. Companies such as these—new, growing, forward-looking—are a point of civic pride in the Pacific Northwest. They reflect the high-technology, high-wage economy of the future.

I have real letters from real people expressing the importance of this bill. I ask unanimous consent that these letters be printed in the RECORD.

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

THE NORTHERN GROUP,
Seattle, WA, June 1, 1995.

Senator PATTY MURRAY,
U.S. Senate, Washington, DC.

DEAR SENATOR MURRAY: I would like to voice my strong support for Senate Bill 240. This long overdue legislation is critical to the continued success of our nation's entrepreneurial underpinnings.

It is unfortunate that our judicial system has allowed a small group of unscrupulous attorneys to create such havoc among the community of public companies, particularly given the evidence that shows the lawyers as primary beneficiaries.

Enough! S. 240 deserves your full support.

Sincerely,

GLENN KALNASY,
President.

IMRE CORP.,
Seattle, WA, June 7, 1995.

Re Senate Bill 240.

Hon. PATTY MURRAY,
U.S. Senator, Washington, DC.

DEAR SENATOR MURRAY: We urge you to continue to support SB 240, a bill which would reduce the ability of parties to bring groundless stockholder suits. IMRE Corporation is a small, publicly held, biomedical company which is seeking to develop therapeutic products to treat patients with certain immunologically mediated conditions such as rheumatoid arthritis and difficulties with kidney transplants. Given the investor environment for biotechnology companies, wide fluctuations in a company's stock price can occur because of rumors, perceptions, and other factors outside the control of the company.

While there are circumstances in which shareholder suits should be brought to protect investors, many stockholder suits which are filed are based solely on a sudden drop in stock price which may have nothing to do with information that was or was not disseminated to the public by the company. Groundless shareholder suits consume vital corporate resources that should be used for more productive purposes such as research and development.

If we can be of any assistance in answering questions that you or your staff may have about this subject matter, please call me at (206) 298-9400.

Sincerely yours,

EDWARD M. YOSHIDA, ESQ.,
Director, Legal Affairs.

WASHINGTON NATURAL GAS,
Seattle, WA, May 25, 1995.

Hon. PATTY MURRAY,
Senate Russell Building, Washington, DC.

DEAR SENATOR MURRAY: I am writing to urge your support of S. 240, the Private Securities Litigation Reform Act of 1995. This legislation, designed to curb abusive securities suits, is very important to Washington Energy Company (WECO). We believe that it is time to restore balance and fairness to the securities litigation system.

The number of shareholder suits have escalated dramatically in recent years. Many are unsubstantiated, however, companies are forced to address them in protracted and extremely costly processes. In addition, these suits may produce indirect expenses, such as insurance costs and stock price fluctuations. As you may know, Washington Energy Company currently is involved with a shareholder suit. While the court dismissed the claim as one without merit, we've been forced to commit considerable resources. These costs will continue to climb as the decision has been appealed.

S. 240 seeks to establish disincentives against filing frivolous suits. It encourages voluntary disclosures, transfers control of suits from lawyers to investors, and enhances ways to address bona fide shareholder claims.

The Senate Budget Committee soon will be considering the "Chairman's Mark" which reflects a good compromise. Your support would be greatly appreciated.

Sincerely,

WILLIAM J. WORTLEY,
Vice President Public Affairs.

KEY TECHNOLOGY, INC.,
Walla Walla, WA, June 5, 1995.

Re S. 240, The Securities Litigation Reform Act.

Hon. PATTY MURRAY,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR MURRAY: I am writing to express my support for the provisions in the Private Securities Litigation Reform Act (S. 240). This reform will benefit the growth of companies, like Key Technology, that provide jobs and economic expansion in our local communities. In addition, the proposed reform will provide protection for those who have invested these companies.

It is important that we work to provide a more fair basis on which to establish the degree of liability for defendants, to provide a safe harbor for statements by a company regarding future economic performance, and to put an end to litigation suits filed without any substantial evidence.

I am pleased to see that you are a co-sponsor of S. 240 and encourage your continued support of this needed reform. Thank you for taking a leadership position on this important issue.

Sincerely,

TOM MADSEN,
President.

WHIRLPOOL CORP.,
Benton Harbor, MI, May 24, 1995.

Hon. PATTY MURRAY,
U.S. Senate, Washington, DC.

DEAR SENATOR MURRAY: As a company with a constituent facility in Redmond, I am writing to request your support of the Securities Litigation Reform Act. Senate Banking Committee Chairman D'Amato's substitute for S. 240 is scheduled to be marked up in the Senate Banking Committee on Thursday, May 25, 1995.

We especially request your support for a "safe harbor" which would correct the "chilling effect" on voluntary disclosure of information to investors by providing companies with protection from investor lawsuits based upon forward-looking information. Disclosures that would be protected by a safe harbor provision are predictive statements on business trends, possible price movements and other market factors which investors want and expect companies, such as Whirlpool, to provide.

Unfortunately, the threat of private securities litigation, should these predictions not be realized, is causing many companies to hesitate before sharing such information. A strong safe harbor provision will help correct the chilling effect on disclosure and will force American businesses to redirect their focus away from baseless lawsuits. In turn, this will allow us to redirect scarce resources toward competing more effectively in the global market place.

Thank you for your consideration of this important issue. Please support the Securities Litigation Reform Act with a safe harbor provision as it is considered in future Committee and Floor action.

Very truly yours,

ROBERT KENAGY,
Associate General Counsel.

DARWIN MOLECULAR CORP.
Bothell, WA, June 6, 1995.

Hon. PATTY MURRAY,
U.S. Senate, Washington, DC.

DEAR SENATOR MURRAY: I am writing on behalf of Darwin Molecular, a start-up biotechnology company based in Bothell. It has come to our attention that the U.S. Senate is contemplating SB 240, a bill that would dramatically reduce the ability of lawyers to file meritless stockholder lawsuits. I am writing to encourage your continued support for this bill.

As you well know, high technology business and especially biotechnology companies face many uncertainties on the road to produce development. This is an industry whose potential may continue to be in jeopardy because of the inherent difficulty of balancing out the financial opportunities and obligations against truly innovative scientific and medical productivity. It is difficult enough to raise sufficient funding to do useful and beneficial research without the additional burdens imposed by other types of "risks" often from individuals who may be looking to enhance their own situations. New companies in particular are vulnerable to these risks.

Reform legislation in this area would be extremely beneficial not only to assist companies but most importantly to provide a more productive marketplace for the ultimate beneficiary, the consumer.

We thank you for your support of this bill.

DIANE ISONAKA,
Director, Scientific and Business Development.

CONDUCTIVE RUBBER TECHNOLOGY, INC.,
Bothell, WA, June 6, 1995.

Hon. PATTY MURRAY,
U.S. Senator, Washington, DC.

DEAR SENATOR MURRAY: As the President of a small, high-tech company in Bothell, Washington, I am concerned about the S. 240 legislation drafted to curb the extravagant number of meritless lawsuits filed against high tech companies. As it now stands, the bill has been altered from its original intent and purpose and no longer provides the "safe harbor" provision for forward-looking and predictive statements by companies.

S. 240 is a modest, reasonable and balanced piece of legislation which assured the right of private action as a deterrent to fraud. The high-tech community has acted very responsibly in their desire to provide access for truly defrauded investors to sue for recovery. The U.S. House of Representatives has already passed Securities Litigation Reform Legislation by a veto-proof majority of 325 to 99.

I am asking you to support the original intent and purpose of S. 240 by cosponsoring the bill and further to add your vote to strengthening amendments for safe harbor, without which reform will be meaningless for the high-tech community.

Please give your unqualified support to this important bill. I look forward to the successful passage of S. 240 as soon as possible.

Best regards,

R.B. LAWRENCE,
President.

LEASE CRUTCHER LEWIS, CONTRACTORS,
Seattle, WA, June 8, 1995.

Hon. PATTY MURRAY,
U.S. Senate, Washington, DC.

DEAR SENATOR MURRAY: I understand that the U.S. Senate is considering a bill (SB 240) which would reduce frivolous stockholder lawsuits. As both a small investor and an employee of a company that provides services to high technology companies, I strongly encourage your support of such legislation.

High-tech companies, particularly high risk biomedical companies, are susceptible to what amounts to extortion by attorneys bringing meritless lawsuits. By nature, their stock values fluctuate widely, and almost any sharp drop can trigger a stockholder suit.

Officers of high-tech companies have become so fearful of stockholder suits that disclosure of information of any type can be a risky proposition. Such an intimidating business atmosphere stifles the entrepreneurial spirit found in most young high-tech enterprises.

Unscrupulous attorneys have stunted the growth of high-tech companies, have cost the small investor money, and have made themselves rich in the process. Again, I strongly encourage your support of SB 240, as such legislation is a positive step in limiting stockholder suits to only those cases which have merit.

Respectfully,

MARK JOHNSON,
Division Manager, Biomedical Projects.

EAGLE HARDWARE & GARDEN,
June 2, 1995.

Hon. PATTY MURRAY,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR MURRAY: I want to express our thanks and appreciation for your vote for Senate Bill 240. It is very important for businesses and employees in the state of Washington.

Eagle Hardware & Garden, Inc. had a basically unfounded class action suit filed against the company by Steve Berman. It was a frivolous suit and the insurance company will settle the case, but we know these suits can damage a fledging company and affect the price of the stock for all shareholders.

Again, your vote for Senate Bill 240 is greatly appreciated.

Very truly yours,

DAVID J. HEERENSPERGER.

HI-REL LABORATORIES,
Spokane, WA, June 2, 1995.

To: Senator Slade Gorton, Senator Patty Murray.

DEAR SENATORS: I would like to take a moment and thank each of you for being cosponsors for S. 240.

As you know, we need strong laws to protect the rights of the people, However, business needs support on many laws which cause great harm.

We urge you to continue to support this bill and hope that you will work hard to convince others that this bill as written, needs to be passed and not a watered down version.

Hi-Rel Laboratories, Inc, and the American Electronics Association will always stand behind a person who in fact has a legitimate suit against a company, but to have the suits for no reason other than to be able to settle a suit on an un-earned basis just to make sure the defense lawyers have income, borders on fraud.

Thank you again for the support.

Respectfully,

JOHN LEVEL,
VP Gen. Manager.

Mrs. MURRAY. I want to read just a portion of another letter I received. It is from Michael Darling, who wrote:

Digital Systems International settled two securities cases in 1993 for payments of cash and stock valued at $7.5 million, not including litigation expenses. The costs of the litigation forced the company to lay off 30 workers—and to ask those remaining to accept pay cuts.

Mr. President, I have also heard from the opponents of the legislation. I have listened carefully to every argument against the bill. I have worked to make this legislation good for all the parties involved.

In fact, I have studied this issue for more than 2 years with members of both sides of the aisle—in a strong bipartisan fashion—to make this bill work for the American people.

As we debate this bill, there are ads running in the papers and inflammatory attack ads being broadcast by both sides in this debate. Given the lengthy debate we have had on this bill, I find these campaigns very disturbing.

Let me say to these groups, Mr. President, they are not serving anyone's purpose but their own.

They are not helping craft legislation that works for America—they are slugging it out trying to seek advantage.

I stand here on the floor today and say clearly to both sides of this issue—

Keep things in perspective. Use some common sense. Stop attacking and start cooperating.

Mr. President, I have seen some unfortunate—and inaccurate—statements made about this bill. Many have referred to an editorial from a Seattle newspaper which overlooked some of the bill's most important provisions.

First, their editorial states that high-profile, meritorious cases of securities fraud could not be brought once S. 240 becomes law.

That is simply not true. The SEC can always fight fraud, and they do so with vigor and clear purpose.

This point is made quite clearly in the committee report:

None of the provisions in S. 240 affects the SEC's ability to bring enforcement actions.

Second, the editorial stated the bill contains a loser-pays provision.

Again, this is untrue. S. 240 does not contain any fee-shifting provisions.

It merely modifies rule 11 of the Federal Rule of Civilian Procedure. And, rule 11 does not sanction anyone just for losing their case.

This provision actually favors the small investor. S. 240 states that the sanction does not apply if it will cause undue financial hardship on the sanctioned party.

Mr. President, this editorial has been challenged aggressively by public officials, business people, and many constituents in my State. I now ask unanimous consent to have printed in the RECORD a series of letters-to-the-editor to Washington newspapers on this issue.

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

[From Seattle Post-Intelligencer, June 19, 1995]

EDITORIAL ON FRAUD LAW SHOWS HOMEWORK WASN'T DONE

(By John Level)

Your June 2 editorial regarding Sens. Patty Murray and Slade Gorton was certainly not good reporting. Both senators became co-sponsors of S. 240 because the bill is long overdue. If you had done your homework, you would have found the following information.

High-growth companies have become targets of abusive securities litigation. There are about 300 lawsuits filed in each of the past few years. Ninety-three percent are settled before they go to court with settlements that amount to $8.6 million or a $2.4 billion a year industry.

The only reason that these cases are settled out of court is that it is cheaper in the long run. The trail lawyers are the only big winners in these suits. In many cases, over 60 percent of the settlement goes to the legal system.

Nearly seven out of 10 investors surveyed by Public Opinion Strategies for the National Investor Relations Institute say they want the bill passed. The only people who do not want the bill passed are the lawyers, people who make a living from lawsuits and some people who have not read the bill or even seen it. I suspect that is the case with you.

Your editorial was written without a full understanding of the bill, and your remarks about Murray are fully uncalled for. A retraction should be made to her. While I don't agree with Murray all of the time, she certainly made a good decision in supporting this bill and it appears that she "read" it.

[From Seattle Times, June 7, 1995]

INVESTORS RETAIN RIGHT TO SUE

(By Scott G. Hallquist)

The misleading information printed by The Times concerning securities litigation reform has been a disservice to Times readers. In both an editorial published May 29 and a news article published May 31, Times writers incorrectly suggested that the proposed legislation will strip investors of their right to sue companies for fraud. This is simply not true.

The legislation to be considered by the Senate represents a negotiated compromise that preserves an investor's right to sue, while implementing reforms intended to curb lawsuits that are filed without reasonable basis.

By providing a safe harbor for forward-looking company forecasts made in good faith, the legislation is expected to improve the quality of information companies can make available to investors.

Most troubling to me was a personal attack upon the integrity of Sen. Patty Murray by a local attorney who specializes in securities litigation. Unlike her accuser, I do not believe that Sen. Murray can be "bought off" and applaud her courage for voting in favor of this legislation.

In our securities markets, the ability of individual investors to sue for damages for fraud by securities issuers does provide an important incentive for companies to provide accurate and timely information to investors. In approving the legislation now being considered by Congress, Sen. Murray and other members of Congress balanced the need to preserve redress for investors in fraud cases, against the need for public companies to be able to discuss future performance without the fear that unanticipated developments will invariably result in costly and protracted litigation.

Growing public companies are primary engines of job creation and economic growth in our state. Appropriately balanced legislation such as the securities litigation reform bill supported by Sen. Murray is a reasonable step that need not be feared by individual or public investors.

[From Seattle Times, June 19, 1995]

REFORM MEASURE DOESN'T LIMIT LIABILITY OF ACCOUNTING FIRMS

(By John A. Moga)

Your May 29 editorial and your May 31 news report on congressional efforts to repair a securities litigation system that is drowning investors and businesses in a sea of unmerited lawsuits included a number of disturbing factual errors.

Your report that legislation (S. 240) introduced in the Senate by Republican Sen. Pete Domenici would relieve accounting firms of liability is simply not true. Rather, the bill establishes a system of proportionate liability that would base liability on a defendant's degree of responsibility for any plaintiff damages. In cases of "knowing fraud" where the defendant was guilty of deliberate misconduct, the defendant would remain liable for the total amount of damages assessed by the court. By the way, this provision applies to all defendants—not just accounting firms as you suggest.

The report also erroneously says that the bill eliminates the "fraud on the market" provision of current law. This, too, is untrue. S. 240 retains fraud on the market—which enables shareholders to recover even when they are unaware of the erroneous statement—an important provision for investors.

Finally, I was distressed by the flat assertion in your editorial that the proposed reform measures strip investors and government of their right to sue. Neither the Senate bill nor a measure passed by the House earlier this year does any such thing. I believe you should re-visit this issue and make sure you have all the facts right. Your readers deserve it.

LAWYERS THE ONLY ONES TO REAP BENEFITS

(By Austin L. Wolff)

Your editorial in defense of the current class-action securities law is very wrong. You have not looked at the real issue. Stockholder class-action suits enrich the lawyers at the expense of the stockholders and the consumer.

Most suits against small public companies are never proved but instead settle out of court because, regardless of right or wrong, it is cheaper to pay than to defend. A word that would describe this type of settlement is "blackmail." Carol Bartz, president of Autodesk, a CADD software company, explained it this way at President Clinton's business conference. A lawyer, using the name of a couple of shareholders, instigated a class-action suit. Autodesk's lawyers reviewed the claim and concluded that the company was not in the wrong but advised the company to pay $10 million because it would cost $100 million to defend. That is called a "negotiated" settlement.

In a recent stockholder case against Egghead, the Issaquah-based software retailer, I personally heard the judge approve a similarly arrived-at settlement that paid the suing lawyer about $700,000, which computes out at the rate of $700 per "billable" hour. That is almost 200 times minimum wage.

The two stockholders in whose name the suit was brought had lost a total of less than $1,200. The managers who were running the company at that time paid nothing because they were covered by a company guaranty. The total cost to the company, and thus to the rest of the stockholders, was in the order of $3 million, plus the loss of much management and employee time. Among those stockholders, and thus among those who in essence paid, was my nephew, a minor, whose savings account for college was invested in the company. . . .

The judge implied that settlements like this would encourage more such suits. Woe to small businesses, woe to the investing public.

There are adequate criminal laws regarding fraud that are handled by state and federal agencies; let those agencies prosecute. . . .

[From Seattle Post-Intelligencer, June 16, 1995]

EDITORIAL FAILS TO ACKNOWLEDGE THE NEED TO REFORM EXISTING LAW

(By Dan Grimm)

As state treasurer and a member of the State Investment Board, I read with interest your June 2 editorial on securities litigation reform. The SIB has been involved in costly and protracted litigation involving allegations of securities fraud. (Your editorial noted the SIB's recent recovery of $1 million in the settlement of a securities fraud case. And like some corporations, the SIB has had to deal with hastily drafted lawsuits filed by

attorneys who were out to make a quick buck.

I was disappointed that you failed to acknowledge the need to reform the securities litigation law. The fact is, many organizations representing investors and government entities support legislation designed to deter costly and frivolous litigation while preserving vital investor rights and remedies.

Your editorial correctly pointed our that legislation under consideration by Congress could unduly burden investors and limit their access to the courts. That's why I sent a letter to our Senate delegation urging them to oppose legislation that does not strike an appropriate balance between the concerns of investors and corporations.

I have been in contact with Sen. Patty Murray to share those concerns, and contrary to the assertions of your editorial, she shares the view that securities-reform legislation must protect the rights of investors as well as address the problems of frivolous lawsuits. In fact, Murray was instrumental in making sure that legislation under consideration by Congress will reasonably protect the rights of small and large investors. With her assistance, the draconian "loser pays" provision was tempered in the Banking Committee. I am optimistic that Murray will be successful in her efforts to see that other anti-investor language is moderated or even removed from the bill as it moves through the Senate.

Mrs. MURRAY. Mr. President, this system needs reform. S. 240 will retain the rights of investors to bring suit if they have been the victims of securities fraud.

At the same time, it will clamp down on the abusive suits that prey on investors and small business owners.

It is an honest effort to reduce the excessive costs to investors and our economy. It enjoys bipartisan support.

It is a good compromise.

For those of us concerned about the rights of investors—let me be very clear.

It is absolutely critical to me that businesses and entrepreneurs remain bound to their obligations to maximize the return-on-investment—to seniors and average American families who invest in stocks and bonds.

I will not support a bill which goes further than this in changing the current system.

I will not support a loser pays provision.

I will fight efforts to remove the protections for small investors in the bill.

I will reject any legislation that takes away the SEC's powers to fight fraud.

These are lines I will not cross, and in fact, no Senator should cross.

They set my standards publicly for Senators offering amendments today—and Senators who go into conference with the House.

As it stands now, S. 240 brings rationality and perspective and common sense to the system.

And, I urge its swift adoption.

Mr. LEAHY. Mr. President, I have many questions about S. 240, the so-called Private Securities Litigation Reform Act. This bill is intended to curb frivolous lawsuits by private investors claiming securities fraud. But I fear that this bill would also stifle honest lawsuits. I cannot support a bill that will infringe on the rights of innocent securities fraud victims.

Our Federal securities laws provide enforceable legal rights to the Securities and Exchange Commission (SEC) and private investors. The ability of private investors to enforce their rights is indispensable to enforcing our Federal securities laws. As one former Commissioner of the SEC said:

> Because the Commission does not have adequate resources to detect and prosecute all violations of the federal securities laws, private actions preform a critical role in preserving the integrity of our securities market.

A perfect example of this critical role is the securities fraud case involving Charles Keating, known for his role in the largest savings and loan debacle in U.S. history. After Keating, as president of the Lincoln Savings & Loan of California, sold uninsured bonds in the lobbies of Lincoln branches by making misrepresentations, private investors sued under our Federal securities laws. A class of 23,000 investors recovered $240 million of their $288 million in losses through private securities fraud actions.

I am sure that the vast majority of professionals working in the securities industry strive to provide accurate information and there are some abuses of the private securities litigation system. This legislation would, undoubtedly, curb many of these abuses. For instance, I support the bill's provisions to prohibit lawyers from paying bounties to professional plaintiffs, those who buy a few shares of different stocks so they may bring shareholder suits for a living.

But this bill also overreaches beyond these abuses and penalizes innocent investors. Under S. 240, for example, aiders and abettors cannot be sued in private securities actions, even if they knowingly assist securities fraud. The defendants in the Charles Keating case whose liability depending on aiding and abetting, which included Keating's lawyers, accountants and consultants, paid over $100 million to fraud victims.

In addition, the nonpartisan Congressional Budget Office estimated that enactment of S. 240 would increase costs to the SEC for enforcement actions by $125 million to $250 million over the next 5 years. In these tight budget times, I am very doubtful that Congress will increase the SEC's budget by such a large amount. As a result, enforcement of our securities laws will suffer.

I have heard from many Vermonters, including the commissioner of the Vermont Department of Banking, Insurance and Securities—the State's chief securities regulator—who feel S. 240, as reported by the Senate Banking Committee, would severely limit private actions under securities laws. Vermont institutional investors, such as the Towns of Colchester, Brandon and Stowe, Teamster Union Local 597, the Vermont NEA, AFSCME Council 93, the Vermont State Labor Council and others have also alerted me to their opposition to this bill. Vermont consumer and senior groups including Vermont Public Interest Research Group, Council of Vermont Elders, Older Women's League, Southwestern Vermont Council on Aging and the Central Vermont Council on Aging opposed S. 240. Moreover, the Commissioner of the SEC—the national's chief securities regulator—also has significant concerns about S. 240 as reported.

I believe we are moving too fast on this bill, ignoring the SEC and others concerns. That is why I supported a motion on the Senate floor to refer this bill to the Senate Judiciary Committee, of which I am a member. This legislation would make significant changes to Federal litigation rules and should be carefully reviewed by the Senate Judiciary Committee before the full Senate votes on it. Unfortunately, that motion was defeated.

Thousands of Vermonters and millions of Americans depend on our Federal securities laws to protect their investments, savings and retirements. These laws are just too important to add questionable curbs that may protect companies and individuals who commit fraud at the expense of innocent investors. Unless this bill is significantly amended, I will vote against it.

UNANIMOUS-CONSENT AGREEMENTS

Mr. D'AMATO. Mr. President, I would like to propound a number of unanimous-consent agreements which we have worked out in order to accommodate Members and in order to move the legislative flow.

I ask unanimous consent that Senator BRYAN be recognized to offer an amendment relative to aiding and abetting on which there will be 1 hour for debate to be equally divided in the usual form, and any second-degree amendments may be limited to half that debate time, and must be relevant in the first degree they propose to amend.

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

Mr. D'AMATO. Mr. President, I further ask that following the debate on the Bryan amendment, the amendment be laid aside, and Senator BOXER be recognized to offer an amendment relative to lead plaintiffs, on which there will be 90 minutes for debate equally divided in the usual form, and any second-degree amendment be limited to half the debate time and must be relevant to the first-degree amendment they propose to amend.

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

Mr. D'AMATO. Mr. President, I further ask that at 9:15 on Tuesday, the

Senate resume consideration of S. 240, and that there be time for 30 minutes of debate on the Bryan amendment to be equally divided in the usual form, and following that debate there will be 30 minutes for debate on the Boxer amendment, to be equally divided in the usual form.

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

Mr. D'AMATO. Mr. President, I ask unanimous consent that at the hour of 10:15 on Tuesday, the Senate proceed to vote on or in relation to the Bryan amendment, to be followed immediately by a vote on or in relation to the Boxer amendment, with 2 minutes prior to the second vote for Senator BOXER in the usual form, to set forth an explanation, 1 minute on each side.

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

Mr. D'AMATO. Mr. President, I further ask, following the two stacked votes at 10:15, Senator SARBANES be recognized to offer an amendment relative to safe harbor.

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

Mr. D'AMATO. Mr. President, I ask unanimous consent that Senator ABRAHAM be recognized, and that the time he utilizes be charged against the time that we would be allocated in considering the Bryan amendment.

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

Mr. ABRAHAM. Mr. President, I rise today to express my support for S. 240. This legislation makes a number of important reforms that are designed to prevent abuse in litigation connected with the issuance of securities.

This in turn will improve the investment climate in this country, which will make it easier to start businesses and create jobs.

These changes will be made without, in my judgment, in any way undermining protection for investors against genuine fraud or other misconduct by issuers.

There is one particular set of reforms the bill would make on which I would like to focus. The bill will require courts to sanction attorneys who file frivolous pleadings. This reform will apply when the lawyers file frivolous proceedings on behalf of plaintiffs and on lawyers filing on behalf of defendants. I think it is an extremely sound proposal which should command strong support from Members on both sides of the aisle.

Indeed, as the Presiding Officer will recall, he himself offered a similar provision with regard to the product liability issue some weeks ago, a provision which I supported and which a majority of Senators supported at that time.

Mr. President, under present law, Federal Rules of Civil Procedure No. 11 requires all attorneys to have some factual and legal basis for filing any claim or defense. If attorneys violate this requirement, courts may award sanctions against the violator. Right now, however, the courts are not required to take any action against the violator.

The changes proposed by S. 240 would do three things. First, they would require courts to find, at the end of all securities cases, whether any attorney violated rule 11. Second, the court would then have to impose a sanction if they found a violation. Third, that sanction would presumptively require the attorney in violation to pay the other side's attorney fees, although the court could select another sanction if the attorney shows that the presumptive sanction would impose an undue burden on the sanctioned party.

Two important features of this reform should particularly be known. First, the court would only be obligated to impose a sanction on an attorney who filed a frivolous pleading; that is, a pleading wholly lacking in a legal or factual basis. This reform will in no way kill legitimate litigation.

Second, the sanction is paid by the person signing the frivolous pleading; that is to say the attorney responsible, not by the party the attorney is representing.

The Supreme Court itself has noted the securities litigation has been especially prone to be misused as a tool to extort settlements. It is Congress' responsibility to do something to put an end to this abuse. The rule 11 provisions are one mechanism this legislation puts in place to do just that.

This leaves me, however, with one problem about what we are doing here this week. It is certainly good we are taking serious steps to enact litigation reforms that will address abusive practices in the securities area. Similarly, it was good we took similar steps to enact reforms that address abusive practices in the field of product liability, which we did just a few weeks ago.

I ask, Mr. President, why are we stopping here? Brokerage firms, accountants, and manufacturers, and the people who buy their products or use their services, are far from the only victims of our out-of-control civil justice system.

Our homeowners, farmers, volunteer groups, charitable organizations, small businesses, State and local governments, architects, engineers, doctors and patients, employers and employees, are likewise injured by our civil justice system on a daily basis.

Every day, lawsuits suffering from the same defects as those the sponsors of this litigation have brought up are filed against all of these people.

Indeed, when their plight was brought to the attention of the Senate during the product liability debate, along with several other colleagues, I led an effort to broaden the reforms that bill would have made.

We wanted reforms that would benefit all Americans. A majority of Senators supported many of our broadening proposals, yet the will of that majority was frustrated by opponents of broader reform, who made clear they would filibuster a bill that made civil justice reforms that would benefit all Americans. I considered mounting a similar effort in conjunction with this bill, but sponsors of this legislation were assured that it would suffer a similar fate. Therefore, and with some regret, I yielded to their request not to offer broadening amendments at this time. However, I do not believe the Senate can forever avoid confronting the fact that, while it is making important reforms in specific areas of civil justice, it is refusing to make broad-based reforms that will help small businesses, charities, and other institutions that form the backbone of this country. I, for one, will continue to bring these reforms up, again and again. I will not rest until broad-based reforms to our civil justice system are adopted.

Mr. President, I think it is important that we take the actions we take today to protect the people in the securities industry and people who are shareholders in corporations that are affected by these frivolous lawsuits, just as I think it was appropriate that we take those actions in conjunction with product liability actions. But across America, every day the small business people, the farmers, and the charitable organizations in our communities suffer from frivolous lawsuits brought against them. They suffer when the joint and several liability provisions cause deep pockets to end up paying for damages they had virtually no connection with creating. I think it is time for across-the-board reforms that protect, not just certain areas of civil justice, but all areas.

For those reasons, I intend to come back to this Chamber at a future time to offer some of those types of reforms, and I look forward to working with other Members of the Senate who agree we need them and we need them soon.

I yield the floor.

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

Mr. D'AMATO. Mr. President, I commend my colleague from Michigan because he does have, and has had, a number of proposals that I believe would have strengthened the bill. He has agreed, in order to get legislation that would pass and begin to address some of the shortcomings in the present system, to withhold them—I deeply appreciate that—so we can make some progress. I fully anticipate in the future he will go forward with those legislative initiatives.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

AMENDMENT NO. 1474

(Purpose: To amend provisions relating to liability for aiding or abetting violations)

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 bill clerk read as follows:

The Senator from Nevada [Mr. BRYAN], proposes an amendment numbered 1474.

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 127, strike line 20 and all that follows through page 128, line 15, and insert the following:

SEC. 108. AUTHORITY OF COMMISSION TO PROSECUTE AIDING AND ABETTING.

(a) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following new subsection:

"(n) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of subsections (b) and (d), any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation promulgated under this title, shall be deemed to violate such provision to the same extent as the person to whom such assistance is provided. No person shall be liable under this subsection based on an omission or failure to act unless such omission or failure constituted a breach of a duty owed by such person.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. 78t) is amended—

(1) by adding at the end the following new subsection:

"(e) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of paragraphs (1) and (3) of section 21(d), or an action by a self-regulatory organization, or an express or implied private right of action arising under this title, any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation promulgated under this title, shall be deemed to violate such provision and shall be liable to the same extent as the person to whom such assistance is provided. No person shall be liable under this subsection based on an omission or failure to act unless such omission or failure constituted a breach of a duty owed by such person."; and

(2) by striking the section heading and inserting the following:

"SEC. 20. LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID OR ABET VIOLATIONS.".

(c) INVESTMENT COMPANY ACT OF 1940.—Section 42 of the Investment Company Act of 1940 (15 U.S.C. 80a-41) is amended by adding at the end the following new subsection:

"(f) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of subsections (d) and (e), any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule, regulation, or order promulgated under this title, shall be deemed to violate such provision to the same extent as the person to whom such assistance is provided. No person shall be liable under this subsection based on an omission or failure to act unless such omission or failure constituted a breach of a duty owed by such person.".

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 209(d) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9) is amended—

(1) in subsection (d)—

(A) by striking "or that any person has aided, abetted, counseled, commanded, induced, or procured, is aiding, abetting, counseling, commanding, inducing, or procuring, or is about to aid, abet, counsel, command, induce, or procure such a violation,"; and

(B) by striking "or in aiding, abetting, counseling, commanding, inducing, or procuring any such act or practice"; and

(2) by adding at the end the following new subsection:

"(f) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of subsections (d) and (e), any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule, regulation, or order promulgated under this title, shall be deemed to violate such provision to the same extent as the pension to whom such assistance is provided. No person shall be liable under this subsection based on an omission or failure to act unless such omission or failure constituted a breach of duty owed by such person.".

Mr. BRYAN. Mr. President, I yield myself such time as I may require.

Mr. President, our colleagues will recall, under the unanimous consent agreement propounded by our distinguished chairman, that this is an amendment that deals with restoring aiding and abetting liability. The amendment which I offer is to restore the state of the law as everyone in America believed it to be prior to last year's Supreme Court decision in a case involving Central Bank of Denver versus First Interstate Bank of Denver.

With one stroke of the judicial pen, so to speak, this 5-to-4 decision wiped out private liability for crooked professionals who aid and abet, but who are not defined as primary participants in securities fraud under the provision of the law. What we are talking about are those people who counsel and assist in furtherance of the perpetration of fraud. Some of them are disreputable lawyers—who ought to be disbarred. Others are accountants. Others are professionals who, by virtue of their own affirmative action, have aided and contributed to the securities fraud involved.

Aiding and abetting liability was the primary method through which professional assistors of fraud—these lawyers, accountants and investment banks—have historically been held liable to defrauded investors. In my view, if this decision is allowed to stand without action having been taken by the Congress, it will seriously weaken and erode the effectiveness of our Federal securities laws because it overturns three decades of established precedent in which Federal courts have permitted private investors to sue aiders and abettors of securities fraud.

Every circuit court of appeals to address the issue—11 circuits—has upheld aiding and abetting liability. Investors have long had the right to sue accountants, brokers, bankers and lawyers who, by their actions, have assisted the primary perpetrators of such securities schemes. This right of action has played a critical role in compensating those investors who have been swindled in major financial frauds of recent times. I will comment a bit more on that in just a moment.

The damage caused by the Central Bank decision is immeasurable. Dozens, if not hundreds, of participants in securities frauds have had cases against them dismissed on the basis of the Central Bank decision. An unknown number of other cases against clear wrongdoers have been precluded, based on the Central Bank decision. And the deterrence of securities fraud, which ought to be one of the prime reasons for the law in the first place, has suffered a major blow. The problem is that in immunizing wrongdoers who substantially assist fraud, we clearly give fraudulent behavior a green light.

I cannot think of any argument that could be advanced, as a matter of social or economic justice, in which we ought to reward fraudulent behavior on the part of those who aid and abet a primary perpetrator in a securities fraud to the detriment and loss of literally tens of thousands of innocent investors. Under the Central Bank case, it is simply OK to help others commit securities fraud so long as you are careful not to make any direct statements or direct the wrongdoing.

I know a good bit of animosity is directed to America's lawyers, and I must say that I am not happier than anybody else who has seen in America, speaking generically, a proliferation of a lot of litigation that ought not to be filed. If I might cite an outrageous case in my own State that has nothing to do with the issue currently, but it is the kind of case that just engenders real hostility on the part of the public—and count me on the part of those being hostile. It is a person who, under the workers compensation law in our State, had been denied recovery. Subsequent to that, he drove his automobile into the worker compensation office in the Las Vegas area, nearly killed several people who were working, and then a year or two later had the temerity to file a lawsuit against the SIS, which is the worker compensation system in Nevada, blaming the system for causing his action in doing extensive damage to the building and literally terrifying those employees.

So I am not unmindful of the hostility that has been generated. But this is a case that rewards lawyers. If you are clever enough not to make a direct statement or participate directly in the wrongdoing, then you are home free. You do not go to jail, you go home free. I cannot imagine that is the sort of thing that we want to encourage.

To put this into some historical context, if this decision had been on the books earlier, the substantial recoveries by the victims in the Keating case—which is the Lincoln Savings and Loan case—would have been impossible. As you will recall, in the Lincoln Savings and Loan case, the primary wrongdoer was the nefarious Charles Keating. By the time the class action is filed, Mr. Keating is bankrupt.

There was a judgment entered of about $240 to $262 million in the class action. But about half, a little more than $100 million of recovery for the 23,000 bondholders, would have been denied to these 23,000 bondholders. These are people who are totally innocent, have no culpability at all other than the fact that they relied upon some representations made at the savings and loan which they kind of thought was a local, home-based outfit. Everybody knew each other. Mr. and Mrs. Smith would be greeted every morning. "Have you walked your dog? Your cat?" "How are the grandkids doing?" That sort of thing. But the aiders and abettors responded with more than $100 million of recovery that otherwise would have been denied to these 23,000 bondholders. Had this case, Central Bank, been the law, that $100 million recovery would not have been possible.

These are aiders and abettors, people who have assisted in the fraud. Again, if the scales of justice mean anything, should those who have aided and abetted, in terms of their own conduct, not be held responsible, to respond to damages incurred by their conduct to those who are totally innocent?

That is what this whole issue is all about. Federal District Judge Stanley Sporkin, a former SEC enforcement chief, in his opinion in the Keating case asked critical questions that sum up the theory behind aiding and abetting:

> Where were the professionals when these clearly improper transactions were being consummated? Why didn't any of them speak up or disassociate themselves from the transactions? Where also were the outside accountants and attorneys when these transactions were effectuated?

In a subsequent speech, Judge Sporkin elaborated,

> For this kind of massive, very sophisticated fraud to have occurred, it required the complicity of certain professionals that we all know of—CPAs, lawyers and appraisers. I am suggesting that perhaps these professionals did not discharge their responsibilities to the broader public interest.

The responsibility of corrupt accountants and lawyers for the savings and loan debacle of the 1980's can hardly be overstated. On August 12, 1992, then SEC Chairman Richard Breeden wrote Senator DOMENICI:

> Securities fraud actions against accounting firms that participate in or assist in fraudulent activity by not properly preforming their auditing functions are important to the maintenance of high standards of quality and integrity among public accounting firms.

Parenthetically, I should say I think the public has a right to expect that level of integrity.

Then Chairman Breeden went on to say:

> Investors rely heavily on the accuracy of all of audited financial statements of public companies as do creditors, investment analysts and others. When others fail to adhere to generally accepted accounting principles or generally accepted auditing standards, many innocent parties may suffer. Indeed, inaccuracies in audited financial statements of banks and savings and loans have contributed billions of dollars in investor losses during the past 10 years. Public policy should seek to maintain high expectations of integrity and accuracy in the performance by others and accountants of their tasks.

Mr. President, that is what the Republican Chairman of the SEC had to say about the importance of holding aiders and abettors responsible for their actions.

A number of notable statistics from cases brought by the Federal Government highlight the importance of holding professional assistors liable: In 1990, the RTC banned six of the largest accounting firms—Ernst & Young, Deloitte & Touche, Coopers & Lybrand, Peat Marwick, Arthur Andersen, and Grant Thornton—from receiving thrift reorganization work because they were being sued by the Government for failure to perform their audits of S&L's in a professional manner.

According to the General Accounting Office, when all categories of professionals are considered, Resolution Trust Corp. attorneys suspected wrongdoing on the part of one or more professionals affiliated with over 80 percent of failed thrift institutions. More than 80 percent. There is some indication that professionals were responsible, and attorneys in particular were suspected of wrongdoing.

In one astounding example of the pervasive role of accountants in S&L wrongdoing, a Federal judge stated in 1992 that:

> [The Office of Thrift Supervision] advised the court that approximately one-third of the 690 financial institutions that have failed were audited by Ernst & Young or its predecessor.—*Director of the Office of Thrift Supervision* v. *Ernst & Young*, 786 F. Supp. 46, 52 (D.D.C. 1992).

In a speech before the American Bar Association, Timothy Ryan, former Director of the Office Thrift Supervision, stated:

> The federal agencies have uncovered actionable abuse in a third of the failed thrifts investigated to date. It is clear that many of the unlawful scheme hatched at those failed institutions could not have proceeded without the active assistance of professional service providers, especially lawyers. They have abandoned their ethics for expediency, and sold their good name to satisfy their greed.

Mr. President, the point I seek to make is that unless the law is changed, that kind of conduct, so articulately denounced, will remain unpunished and innocent investors will be unable to recover from lawyers, accountants, and other professionals.

So, Mr. President, the loss of aiding and abetting liability undermines fundamental protections for investors and the securities markets. Many defrauded investors will not recover their losses because, typically, the perpetrator of the fraud is insolvent, in jail, or has fled by the time the case is completed. In addition to wiping out private actions against aiders and abettors, the Central Bank case calls into question the SEC's own enforcement actions against aiders and abettors.

S. 240 fails to restore aiding and abetting liability for private actions. Although it authorizes the SEC to take action against aiders and abettors who knowingly violate the securities laws, it effectively eliminates the ability of the Commission to proceed against reckless professional assistors, which is now permitted by most courts.

This amendment, which was drafted with the technical assistance of the SEC, reverses the Central Bank decision, and restores the status quo ante. It restores the law to the way it was prior to the Central Bank case last year by restoring aiding and abetting authority in individual securities fraud actions and clarifying the SEC's authority to pursue aiders and abettors for reckless and knowing fraud.

The original sponsor of securities litigation reform, Senator DODD, has recognized the importance of aiding and abetting liability and has urged a response to Central Bank. At a May 12, 1994, hearing before this committee, he said:

> In my view, aiding and abetting liability has been critically important in deterring individuals from assisting possible fraudulent acts by others. Until the Supreme Court changed the landscape a few weeks ago, aiding and abetting liability was an important tool in ensuring honesty and high professional standards by individual professionals who facilitate access to the securities markets. In my view, we need to respond to the Supreme Court's decision promptly and I emphasize promptly.

In a February 27, 1995, "Dear Colleague," Senator DODD and Senator DOMENICI reiterated that a reversal of Central Bank should occur "as a part of a comprehensive package to fix our broken securities class action system." In his additional views to the committee report on S. 240, Senator DODD again expressed his concern about the restoration of aiding and abetting liability for private actions.

Even the Supreme Court majority opinion in Central Bank which was based solely on the lack of the actual words "aiding and abetting" in the statute, recognized the need for restoring aiding and abetting liability. In the words of Justice Kennedy:

To be sure, aiding and abetting a wrongdoer ought to be actionable in certain instances. The issue, however, is not whether imposing private liability on aiders and abettors is good policy, but whether aiding and abetting liability is covered by the statute.

The SEC argued strongly in the Supreme Court that "aiding and abetting" liability was critical to enforcement of the Federal securities laws. Since the Court decision, the SEC has repeatedly urged Congress to restore aiding and abetting liability. Most recently, on April 6, 1995, SEC Chairman Arthur Levitt testified before the Subcommittee on Securities that:

Unless another theory of liability can be applied in a particular case, persons who knowingly or recklessly assist the perpetration of a fraud may be insulated from liability to private parties if they act behind the scenes and do not themselves make statements, directly or indirectly, that are relied upon by investors. Because this is conduct that should be deterred, Congress should enact legislation to restore aiding and abetting liability in private actions. Such legislation should also clarify the Commission's ability to use the aiding and abetting theory of liability where it is not expressly provided by statute.

Levitt previously testified that, of 400 pending SEC cases, 80 to 85 rely on aiding and abetting theories of liability.

I must say, Mr. President, as I read the current version of S. 240, even the ability of the SEC to recover for aiding-and-abetting liability seems to be more narrowly confined than those circumstances where there is knowledge or scienter involved.

On May 25, 1995, the day S. 240 was voted out of the Banking Committee, Chairman Levitt again raised the aiding-and-abetting issue, noting that, while some of the SEC's authority had been restored, "a more complete solution is preferable."

The bar association of the city of New York—undoubtedly the leading organization of plaintiff and defense attorney's in the securities field—has taken an extremely strong position on this issue. As Mr. Sheldon Elsen testified in the House,

Let me turn, finally, to lawsuits against lawyers, accountants, underwriters and other professionals. Experience in these cases has shown that securities frauds do not succeed very often without the aid of such professionals, but that it is almost impossible to prove the professionals' involvement . . . The Association feels particularly strongly about this matter, which involves lawyer misconduct. In our view, the primary problem of abuse by lawyers lies in the conduct of securities lawyers involved in fraudulent transactions.

That is a scorching indictment by the most distinguished and knowledgeable and the most sophisticated bar in America dealing with this subject. And it deals with lawyer misconduct. Thus our purpose here simply is to deter lawyer misconduct on the part of the plaintiffs bar, and that we certainly ought to do. If the changes which our able chairman has crafted to rule 11 do, indeed, deal with misconduct in the form of frivolous actions by the plaintiffs bar, why would we not also want to impose liability on lawyers, accountants and others who are helping to assist in the perpetration of this fraud? The policy disconnect, Mr. President, I find difficult to comprehend.

Mr. President, as I have indicated previously, the securities regulators in their respective States also support this proposition. And it seems to me that in light of the indications that we have seen that the amount of securities fraud is estimated to be about $40 billion annually—the SEC has commented recently in an article which I shared with our colleagues on Friday that securities fraud is not something out of the 19th century; it is very much alive, very sophisticated—the sophisticated aiders and abettors, the clever lawyers, the smooth accountants who assist in this fraud behind the scenes, they ought to be brought to the bar of justice, and economic recovery for innocent victims is the way of achieving that economic justice.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank the Chair. I will try not to take a great deal of time on this. I have said privately, Mr. President, I am going to hire the Senator from Nevada as my lawyer if I am ever in need of a lawyer, after the Senator from New York apparently.

I have known the Senator from Nevada for a long time. No one is better in crystallizing an argument and making a thoughtful presentation on a point. Certainly we have seen his incredible ability here over the last several days on a number of amendments that he has offered to this bill.

On this particular issue of aiding and abetting, he has once again displayed those skills which should probably earn him a distinguished reputation as great debater of causes. But we disagree on this amendment. I say that because we agree on aspects of this. The tendency of these debates on amendments is to lose sight of where you agree.

One of the things this bill does do is, of course, extend to the SEC the authority to bring aiding and abetting cases, which was not the case prior to this legislation as a result of Supreme Court decisions so we have strengthened it.

Second, when it comes to the issue of fraud, knowing intentional fraud, we do not change anything in effect. The joint and several provisions apply. People who are knowingly involved in those activities, all can be subject to the maximum financial penalties.

What we are talking about here is a much lower standard and one that would apply, as the amendment indicates, to knowing or reckless behavior. It is a result of that standard and the amendment of the Senator from Nevada that I would take exception, particularly the recklessness standard. The knowing standard, if you could really tighten that up to some degree and actual knowledge, and so forth, I think you might have something that we would like to talk about. But the recklessness standard here is a standard that is so difficult to apply that it in effect would destroy the attempts of this legislation to mitigate against this explosion of unwarranted litigation in the area of securities.

Let me just, if I can, Mr. President, as a matter of background point out that until the Central Bank of Denver case was decided last year, many circuit courts recognized aiding-and-abetting liability.

I want to come back to that point in a minute because one of the points I wish to make here is that it is being implied or suggested if we adopt this amendment, all we are doing is going back and just applying the law as it was prior to the Central Bank of Denver case. I would argue very strenuously here in a moment that, in fact, we are going by and applying a different standard than existed prior to the decision on Central Bank of Denver and, in fact, going further back than I think the courts at least in many cases would like to see us go.

At any rate, that was the situation. Prior to Central Bank of Denver there was a controversy about aiding-and-abetting. In that case, the Supreme Court decided that there was no aiding and abetting liability for private lawsuits involving fraud and that in fact that idea evolved as a result of section 10(b), rule 10b-5. And many can argue, in fact, that probably was the case; that we had not legislatively determined that, this has been more of an evolution of an idea over the years, and so the issue comes back to us if we want to expand it.

The Supreme Court did not believe that section 10(b) intended to cover aiding-and-abetting liability. You can argue about that, but that is how the Court ruled. Providing for aiding and abetting liability under section 10(b) would be contrary to the goal of this legislation.

I remind my colleagues to come back to the central goal of this legislation, and that is to reduce the number of frivolous lawsuits that are being brought under 10(b) and to try and avoid what my colleague from New York, I think, has appropriately described as sort of a hijacking scheme that goes on where you end up with these settlements because if you do not settle, the small percentage of risk that you may end being held accountable causes people to settle for

amounts vastly in excess of their involvement.

The case we talked about earlier today where Peat Marwick in a $15,000 contract to go in and do an audit of some banks books were brought to trial, and it went on for some time. The courts ultimately decided that in that case Peat Marwick was not responsible, did not meet the aiding-and-abetting standard, but the legal fees for Peat Marwick for a $15,000 contract, which is a nothing contract, were in excess of $7 million. That is what it cost that company over a $15,000 contract.

We want to stop that kind of stuff. That should not have to go on, frankly. And that is where the crux of this whole legislation is designed to try and minimize those sorts of problems.

At any rate, the Supreme Court said in the Central Bank of Denver case—and it is highly appropriate that we have as the Presiding Officer this evening the distinguished Senator from Denver—from Colorado. I apologize—in that case litigation under rule 10b-5 presents a danger of vexatiousness—it is a mouthful, that word, "vexatiousness"—different in degree and kind and would require secondary actors to expend large sums even for pretrial defense and the negotiation of settlement.

That is exactly what happened to Peat Marwick—a $15,000 contract, a $7 million legal fee. Peat Marwick, it was painful to them. They probably passed that cost on to a lot of other clients out there, so it is not as if somehow the company just absorbed it, as bad it was for them, but there is where you get the economic ripple effect as a result of a lawsuit where again the allegation is that they were marginally involved, aiding and abetting on a $15,000 contract. The Court said no, they were not ultimately but not before that company spent $7 million to defend against a $15,000 contract.

The Supreme Court did not consider whether the SEC was able to bring cases for aiding and abetting, and the committee print, as I mentioned a moment ago, restores aiding and abetting liability for the Securities and Exchange Commission. Allowing the SEC to bring cases against aiders and abetters strikes, we think, a balance. It allows the SEC to punish bad actors without opening the door to a flood of unnecessary litigation.

So, Mr. President, that is the reason that we reluctantly oppose the amendment of our colleague, because it does change the standard.

Now, let me come back to the point I made earlier, because the suggestion that all we are doing is making whole the situation prior to the Supreme Court's decision on the Central Bank of Denver case is just not borne out.

Let me point out that prior to the Central Bank of Denver the courts across the country adopted different types of scienter, standards, for the aiding-and-abetting context. Some courts concluded that, as with the primary violators, recklessness was sufficient.

I would say to my colleague from Nevada he is correct in that. There were courts that did hold the recklessness standard adds enough to net someone under the aiding-and-abetting provisions. Other courts, I would point out just as quickly, Mr. President, held that where the alleged primary violators did not have an independent duty to disclose information to the plaintiff, proof of actual knowledge of the fraud was required. Still other courts adopted what the SEC described to the Supreme Court as the sliding scale approach to aiding and abetting under which the degree of scienter required for aiding-and-abetting liability varied depending upon the nature of the defendant's conduct and the presence or absence of a duty to disclose.

So here we had a lot of different standards being used. Recklessness was one, in some courts. But in many others, it was actual knowledge or sliding scales.

The Seventh Circuit had essentially eliminated aiding-and-abetting claims by requiring proof of all elements of a primary violation of 10b-5 in order to impose liability.

Accordingly, expanding to private suits the provision included in the committee print would not provide any real protection against abusive claims. And that approach, if we adopted this amendment, would actually represent, as I said a moment ago, an expansion of liability, not a return to pre-Central Bank of Denver status quo, because it would overrule those decisions that had set the higher standard. That is, actual knowledge before you can get a minor player in terms of the aiding-and-abetting clause.

Again, my point is—and again I say this with all due respect to the author of the amendment—throughout the amendment it is knowing or reckless, and on the reckless standard, let me, just for the purpose of my colleagues, point out how difficult that standard is to apply. Again, this is citing some work that has been done on the issue. I will footnote them accordingly.

Let me begin with this. The prevailing reckless standard does not limit, as I am sure the case can be made, liability to highly culpable wrongdoers, and that is the suggestion here. Again, the highly culpable wrongdoers are not covered. We get them under this bill, in fact. And this is where the problem comes with recklessness. The vagueness of the recklessness standard is one of the principal reasons that joint and several liability should be modified, and that is what we do in this bill.

In practice, the legal standard does not provide protection against unjustified or abusive claims because juries can and do misapply the standard. Juries today have considerable difficulty in distinguishing innocent mistakes, negligence, and even gross negligence—none of which, by the way, Mr. President, is actionable under rule 10b-5—from recklessness.

So, while to the layman recklessness sounds like something else, recklessness can actually be a minor mistake, a mathematical mistake. In effect, you could get netted under the recklessness standard.

One commentator observed:

> The courts have been less than precise in defining what exactly constitutes a reckless misrepresentation. This imprecision has resulted in ad hoc, if not arbitrary, recklessness, if I may use the word, determinations. The result is that the actual and potential parties to section 10(b) and rule 10b-5 actions cannot predict with any degree of certainty how a trier of fact will characterize alleged conduct and, thus, whether it may serve as the basis of liability.

I am quoting from Johnson, "Liability for Recklessness Representations and Omissions" under section 10(b) of the Securities and Exchange Act of 1934 in the Cincinnati Law Review, 1991.

Let me quote further from Commissioners of the SEC. Commissioner Beese argues:

> Because the standard of recklessness is a vague one and its interpretation by both the court and the jury is difficult to predict accurately, defendants that may not have acted in a reckless fashion cannot be assured of being vindicated at trial.

Former SEC Chairman Breeden observed:

> The problem is that almost anything can be said to be reckless.

He goes on to say:

> It is all too easy to apply 20/20 hindsight to a complex problem and conclude that someone behaved less than perfectly.

The standard of reckless behavior has tended to expand in recent years as courts and even at times the SEC tried to reach out to compensate investor losses. Even the SEC, with all its expertise, has misjudged the standard. In a case arising out of a 1982 bankruptcy of one of an accounting firm's clients, the SEC alleged a violation of rule 10b-5 asserting that the firm had acted recklessly in failing to comply with the professional standards in an audit. A Federal court rejected every claim, including the claim that the firm had acted recklessly. The court found that the SEC's claim "involved complex issues of accounting as to which reasonable accountants could reach different conclusions. It follows that no finding of fraud or recklessness can rationally be made in that case."

That was SEC versus Price Waterhouse, decided in 1992.

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

Mr. DODD. I will be glad to yield.

Mr. SARBANES. Does your bill allow for any private right of action against an aider and abettor?

Mr. DODD. No, it does not.

Mr. SARBANES. Not even knowingly. I have been listening to the Senator very carefully, and he is talking about recklessness.

Mr. DODD. Right.

Mr. SARBANES. My own view is, if you are reckless, you ought to be able to be reached as an aider or abettor. I understand the Senator is opposed to that. The Senator's bill, as I understand it, would not allow a knowing aider and abettor to be reached by a private securities suit; is that correct?

Mr. DODD. Let me say to my colleague, the problem with just the word "knowing" is that it is far too vague a word. I said at the outset of my remarks that if you could apply where you had actual knowing, knowledge of the fraud itself, then you might raise a different standard. I said that at the outset of my remarks.

My problem is your amendment says "knowing or recklessness." I focused my remarks on the recklessness side of this because under the amendment, you could be nabbed under the recklessness standard. Again, as I pointed out, with a series of court decisions——

Mr. SARBANES. The bill does not have a knowing standard in it; is that correct? The bill leaves out aider and abettor altogether in a private action.

Mr. DODD. No. What we have said here is where you have the knowledge, knowing fraud involved here, then obviously the whole question of joint-and-several liability applies. In almost every case an aider and abettor, where you have that kind of knowledge situation, would be snagged. Yes, we do cover that in that situation.

What they are attempting to do with this amendment is to reach a different level. So when you have that fact situation, clearly as we made that case all the way through this debate dealing with proportionate liability, we do not allow proportionate liability to apply. Where you meet that standard of the actual knowledge and intent to defraud, then you get everybody involved.

Mr. SARBANES. The aiding-and-abetting issue is separate from the joint-and-several issue, is it not?

Mr. DODD. De facto they end up not being separate. If this amendment were adopted, that is not the case, because you have a reckless standard here which is a much, much lower threshold than the other ones we require you to meet.

Mr. D'AMATO. Will the Senator yield for a question?

Mr. DODD. I will be glad to yield.

Mr. D'AMATO. If one is tangentially involved, let us say an accountant, and knowingly and intentionally participates in a fraud, is that person, regardless of their portion of liability, held jointly-and-severally liable?

Mr. DODD. Absolutely. Absolutely.

Mr. D'AMATO. So that a person, would be considered as a minor participant, an aider and abettor, as a result of this amendment. We have made very clear, that if they knowingly and intentionally participate in fraud, that defendant can really be held as a primary culprit, so to speak; he or she would be libel for all the damages under the present situation; is that not true?

Mr. DODD. My understanding is that is correct.

Mr. D'AMATO. Of course, as it is clearly stated in the S. 240 the Securities and Exchange Commission, still has the ability to go after those for their intentional wrongdoing.

Mr. DODD. That is there, also. We include that in the bill specifically. As I pointed out a minute ago, everybody said let us go back to Central Bank of Denver. Prior to that case, different standards were being used on the aiding and abetting provisions. Some courts did recklessness. Obviously, if you are an attorney for the plaintiff in that case, of course you are going to allege that. In effect, you have wiped out our efforts in the bill to try and minimize that. So you are back in the negotiation phase again. But up to the 93 or 98 percent of these cases people are settling out of court. That is what every good attorney would advise his clients. They would say, "You are exposed to the whole cost on this. With the reckless standards being so low, my advice is you better settle, because if do you not, that is a pretty low standard." In a sense, you get snagged for the whole amount. We are trying to avoid that.

Mr. SARBANES. You let the knowing aider and abettor go free. How can you justify that? I will argue the recklessness with you, and I understand that is a more complicated issue. But how can you let the knowing aider and abettor go free?

Mr. DODD. It is not a question of letting him go free. I think in the most recent colloquy the Senator from New York and I had, we made it clear that where you have that standard, I think we establish very clearly what the intent of the legislation is.

I say to my colleague, having to face the law firm of Sarbanes and Bryan or Bryan and Sarbanes is difficult under any set of circumstances. But the word "knowing" alone is a rather loose term in terms of what constitutes knowledge. So I say to my colleague from Maryland that if, in fact, it is the desire of the Senator from Nevada and the Senator from Maryland to offer an amendment that truly raises the level of knowledge to a point where legal definitions would apply, I, for one—not speaking for my colleague from New York or others—would entertain such an amendment. That is what you have done. The word "knowing"—you have to be much more definitive.

Mr. SARBANES. If the Senator will yield further, I am trying to point out what you have done with the bill. In other words, what you have done with the bill is let a knowing aider and abettor go free. Now, I cannot, for the life of me, understand how you can possibly justify that. A knowing aider and abettor cannot be reached and held liable when a securities fraud is perpetrated. How can you justify that?

Mr. DODD. That is not what the case is here. You are applying two different standards here. When you have actual knowledge and intent to defraud, again, we do not allow an aider and abettor, in that case, to get off the hook at all. It is a different standard you are applying here.

Mr. SARBANES. I would refer the Senator to pages 131 and 132 of his bill, where they define a knowing securities fraud. "Defendant engages in knowing securities fraud if that defendant, (1), makes a material misrepresentation with actual knowledge that the representation is false * * *. And it also requires other things.

The central—

Mr. DODD. To reclaim my time, that is under the section dealing with proportionate liability. Again, my colleague is fully aware that, obviously, it would only apply it to proportionate liability. When you have the knowledge and intent to defraud, then the joint and several applies.

Mr. SARBANES. Will the Senator repeat that again?

Mr. DODD. We do not apply proportionate liability when you have the knowledge and intent to defraud. You cannot escape and get proportionate liability. Joint and several applies.

Mr. SARBANES. By your own admission, under this bill, an aider and abettor cannot be reached in a private action suit, is that correct?

Mr. DODD. An aider and abettor can be reached through Government action, but not private action, correct. Under the standards you have set here—

Mr. SARBANES. How can you justify that?

Mr. DODD. To go back to the point I am trying to make to my colleague over and over again, under the proportionate liability standard—which is the section we are talking about here—recklessness is such a low standard.

Mr. SARBANES. You are not even reaching the aider and abettor; you only go to recklessness.

Mr. DODD. My colleague from Maryland has a fundamental and inherent objection to proportionate liability.

Mr. SARBANES. I am trying to get over that. I am trying to point out that there are a lot of other problems with this bill.

The PRESIDING OFFICER. The time the Senator has been allocated has expired.

Mr. BRYAN. Mr. President, I would be happy to yield more time. How much time remains?

The PRESIDING OFFICER. There are 11 minutes 27 seconds remaining.

Mr. BRYAN. I yield five more minutes to the Senator.

Mr. SARBANES. What I am trying to point out to my colleague is that there is a joint and several liability problem in this bill. We have tried to deal with that—unsuccessfully. There was a statute of limitations problem in this bill. I think these are large problems. These are what the independent objective groups have been writing to us about.

Now we are addressing the aider and abettor problem. The way you have written the bill, aiders and abettors in a private action go scot-free—whatever the test is. They go scot-free on recklessness and on knowingly. The way you have written the bill —

Mr. DODD. I say to my colleague, if he will yield, the way you have written your amendment, what you are asking us to support is that you would apply that standard of reckless behavior, which is an unfair standard to apply.

Mr. SARBANES. I do not think it is unfair. But I do want to make this point. The question is, who is going to go scot-free? For years, we caught aiders and abettors on recklessness and knowingly, on both of those standards. That was the law.

Mr. DODD. Not in every court, no, no. There were courts that set a much higher standard in this country than that. Actual knowledge was required by many courts in the country prior to the decision by Central Bank of Denver. You are going back and weakening a standard applied in many courts.

Mr. SARBANES. If the Senator will yield, the general prevailing standard on reaching aiders and abettors was, in effect, thrown out in the Denver case.

Mr. DODD. I point out to my colleague—and you may not have been here when I pointed out the cases where the SEC used sliding scales in cases. Other courts used actual damages.

Mr. SARBANES. Fine. I am prepared to concede to the Senator that, in certain jurisdictions, there were sliding scales and all the rest. But you have eliminated all of that.

Mr. DODD. I did not, the Supreme Court eliminated that.

Mr. SARBANES. You do not have a sliding scale encompassing knowing standard. You have knocked it out, and all the aiders and abettors are dancing their way down the street.

Mr. DODD. I did not do it, the Supreme Court did it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BRYAN. I am enjoying this colloquy. If the Senator requires more time, I yield three more minutes.

Mr. SARBANES. The final point is that, obviously, tomorrow we are going to do the so-called safe harbor. I call it pirate's cove because it is being carved out here for all the sharks and barracudas to find sort of a comfort and solace——

Mr. DODD. Including the buccaneer barristers.

Mr. SARBANES. The Senator from Nevada and I have conceded that we want to do some things about frivolous suits. We are trying to get at the extraordinary lengths to which you have gone to immunize from liability and, therefore, throw the burden upon innocent investors. I think the Senator from Nevada put it very well the other day. He said this is a "Trojan horse." It is waving the pennant of frivolous suits, but hidden within the Trojan horse are lots of other things as well. That is exactly the case. That is what we have been trying to, in effect, lay out in the course of this debate.

Mr. DODD. If my colleague will yield on that point, would you not admit that the present situation, in the absence of passing this legislation, is certainly as big a Trojan horse as anything he might describe with this legislation being adopted?

Mr. SARBANES. What I want to do is pass a good piece of legislation. I want to avoid the comment that was at the end of the article that I put in the RECORD the other day about the pendulum swing. And that in the course of swinging the pendulum too far, what you are going to require are some investors to actually be defrauded and not gain any recovery before you will straighten out the law. We ought to straighten it out now and not allow that situation to happen. We tried to address the issue of joint and several liability versus proportionate liability. We had this extension of the statute of limitations, and we are doing aiders an abettors today, and tomorrow we are going to do the "pirate's cove."

The Senator from California has, I think, some very worthwhile amendments to offer as well. This is not a balanced bill. That point needs to be made and needs to be made very clear. This is not a balanced bill. There are certain problems we want to get at, and we ought to do that. This bill overreaches. It is unbalanced. I think we will pay a high price for it.

The PRESIDING OFFICER. The Senator from New York has used all of his time.

Mr. BRYAN. Mr. President, I will yield back the remainder of my time. I want to thank my colleague, Senator SARBANES, for making the point that I think needs to be made here, that if the recovery is premised and predicated upon aider and abettor recovery; whether the conduct is intentional, whether it is knowing, or reckless, no recovery. The only way in which you can attach liability is under an aiding and abetting theory. That is the point he has made.

The Senator from Connecticut quite correctly points out that with respect to others that are primary, then the level of misconduct, whether intentional or knowing, creates the joint and several liability situation, and the reckless conduct which the Senator from Maryland and I agree ought to be included as well.

That is when you get the proportionate liability. There is no question about proportion or joint and several. There is no recovery if the cause of action is based upon aiding and abetting. That is the point he has made so clear.

Mr. SARBANES. The Senator put it very clearly. The point we were trying to make, the aiders and abettors walk scot-free as far as private lawsuits are concerned under this legislation.

Mr. BRYAN. This is my understanding.

Mr. SARBANES. We try to attach liability that way.

Under the different theories of liability, there is an argument over recklessness and knowingly and so forth.

The bill never attaches liability to the aider and abettor; is that correct?

Mr. BRYAN. That is my understanding.

Mr. SARBANES. I understand in many suits that an important part of the recovery, on the part of the innocent investor, is from the aiders and the abettors.

Mr. BRYAN. That is my understanding.

Tomorrow, as we complete the debate, I will have additional data to share with my colleagues. I have never been involved in this area as an attorney representing a class action or defending this, but the issue is quite substantial, and the impact, I think, will astonish some of our colleagues. It is not just an academic discussion among Senators in good faith trying to craft a piece of legislation.

The impact is profound. There must be reasons, when these actions are brought, they are brought under a theory of aiding and abetting. It must be the only way to get into court against some of this misconduct with lawyers, accountants, bankers, and others. We simply wipe them out. "You folks can do whatever you want. You are home free." That is a public policy that, in my view, is indefensible.

Mr. SARBANES. If the Senator will yield for a second, I would like to bring this discussion towards close by saying there is a point where I agree very strongly with the Senator from Connecticut.

At the outset of his statement he gave praise to the very strong statement which the Senator from Nevada had made on this issue. I want to fully associate myself with that judgment. I think he is absolutely right. I urge all my colleagues, and their staffs that are following this issue, to go very carefully through the opening statement which the Senator from Nevada made when he presented his amendment. It was a very powerful statement as to why aiders and abettors ought not to be completely free from liability.

Mr. BRYAN. I notice a number of colleagues are about ready to join the floor with other amendments.

I will simply share one additional statistic in closing and yielding the remainder of my time. Chairman Levitt has stated, of 400 pending SEC cases, 80 to 85 rely on aiding and abetting theories of liability. We are talking about a substantial number.

I yield the floor and yield back the remainder of my time.

Mr. ROCKEFELLER. I ask unanimous consent that the Senator from West Virginia be allowed to speak for 5 minutes as if in morning business.

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

MEDICARE SELECT

Mr. ROCKEFELLER. Mr. President, because I know a lost cause when I see one, I concede that the majority leader is succeeding in passing what is known as the Medicare select legislation tonight. The conference report will pass tonight. Nobody else will comment on it, but I will. I just hope I will not be tempted into saying, "I told you so" a year from now if some troubling signs turn out to be an omen of serious problems.

For some reason, many of my colleagues on the other side of the aisle are adamant about rushing to expand a pilot project limited to 15 states into one for all 50 States. The conference report is an agreement to make this extension, but only for 3 years instead of the 5 years that had been passed by the House. I still think 3 years is too long, but I have assurances from the chairman of the Finance Committee that we will have a hearing or hearings, and a good faith process, to consider whether any changes are warranted.

What is Medicare select? Medicare select is a managed care insurance policy that is sold to senior citizens to fill in the gaps of Medicare coverage, of which there are many. It differs from other MediGap policies because it only pays Medicare's cost sharing amounts if the senior citizen receives his or her medical care from an insurer's selected network of health care providers.

What bothers me is the rush to expand this limited program before an evaluation of this demonstration project, done at the direction of Congress is completed and reviewed in oversight hearings. As the proponents of this push to expand the program know, the independent researchers evaluating the pilots will have their analyses completed by mid-August and a draft final report submitted by October.

Leapfrogging over a careful effort to review a demonstration project, in order to decide if and how to expand the approach, is not the way to do business with Medicare and its beneficiaries. I think it is a mistake. I think it is bad precedent. I have to wonder whether it has to do with special interests eager to see this program quickly expanded. I think it is a mistake to ignore emerging signs that this approach to the marketing of medigap policies may be costing Medicare rather than achieving savings. When the majority of this body has just told senior citizens of America they want to cut Medicare by $270 billion, where is the sense in also extending a program for 3 years that might drain Medicare even more.

Just in recent days, another yellow line started flashing. Based on reports routinely submitted to the Government from the top notch research firms conducting the Medicare select study for HCFA, some startling findings have been reported on how the Medicare select program is operating. They are finding that Medicare select enrollees had significantly higher Medicare costs in comparison to seniors with regular medigap insurance. The Congressional Budget Office agrees that the new study raises serious questions about the operation of the Medicare select program.

On average, Medicare's costs have increased 17½ percent—higher—under Medicare select, which we are expanding to all 50 States. Only one State, Missouri, experienced lower Medicare costs for its Medicare select enrollees. Mr. President, 8 States had higher Medicare costs for its Medicare select. Alabama, 12 percent higher; Arizona, 23 percent; Florida, 8 percent; Indiana, 57 percent higher; almost 6 percent in Kentucky; 7.5 percent in Minnesota; 12 percent higher in Texas; and 14 percent higher in Wisconsin. And so it goes. Researchers believe the bulk of these cost increases were a result of greater hospital costs.

This information was not available to the Congressional Budget Office when it did its cost estimate of the original Medicare select legislation. At that time, CBO was forced to rely on very preliminary research that was done by these same researchers. The information then was limited to case-study information and did not include actual analyses or a comparison of utilization data.

Mr. President, this is why I remain troubled about this legislation, this conference report, which will be passed tonight and then become the law of the land. Serious questions have been raised about the operation of the Medicare select program, yet a conference report is about to be passed that gives the green light to 3 years of taking this program to every single State.

It is maddening that just when there is all the railing about the Medicare trust fund and its solvency, some of my colleagues are so anxious to expand this program with a disregard for its potential drain on the part A trust fund.

There are all kinds of questions to answer before I would be comfortable expanding or extending this program. That is why Congress for this evaluation. That is why I believe we wait for the final report and take 3 hours out of our day in the Finance Committee to hold a hearing on what was learned. Instead, we are seeing this rush to pass a bill.

The independent researchers have a full year of data from 1994 and are currently in the process of analyzing this data. It will take them about a month to complete their analysis of this insurance data. The data cited previously mostly reflects Medicare's cost experience in 1993. While the researchers have already controlled form many variables, they plan to try to better pinpoint the reason for these very significant Medicare cost increases. This additional information—which will be available in only 1 month—would provide Congress with much better information and will tell us if the Medicare cost increases of Select enrollees are a one-time phenomena or a continuing trend. It would also help us figure out the reasons for the higher Medicare costs of beneficiaries enrolled in Medicare select plans. It would provide us with information which would make sure we didn't enact a major new expansion that primarily benefits insurance companies without making sure the Part A trust fund was not going to be drained of funds.

Are sick seniors merely signing up for Medicare select managed care products in record numbers? This would be an unexpected finding since people with serious health care problems normally avoid managed care plans, if they can. Or, are sick seniors somehow being steered into Medicare-select plans by insurance companies and away from risk-based HMO's? In addition to analyzing 1994 utilization data, the research team is also completing work on beneficiary survey which will include beneficiaries' own stated reasons for signing up with the Medicare select plan.

Mr. President, it is not often that legislators are able to have research of this caliber available on a Medicare legislative initiative. Yet, we are choosing to ignore the red flag that these research findings have raised.

According to the Congressional Budget Office, the Medicare Program is currently overpaying HMO's by about 5.7 percent per person because of Medicare's payment methodology which does not take into account the tendency of healthier seniors to sign up with HMO plans. This legislation before us today could—because of the special advantages Medicare select insurers have been granted in obtaining discounts from hospitals—have a similar effect. Insurance companies make money while the Medicare Program loses money.

Mr. President, the legislation before us today is preferable to the House bill that was originally brought to the Senate floor. Instead of extending the Medicare select program to 50 States for 5 years, this legislation expands it to 50 States for 3 years. This is still longer than I would have liked. It is longer than the original Senate bill which was the result of a compromise reached between myself and the majority leader, Senator DOLE, and Senators PACKWOOD and CHAFEE. The legislation will also allow the HHS Secretary to discontinue the program if the Secretary determines that the Medicare select programs is resulting in higher premium costs to beneficiaries or in higher program costs to the Medicare Program.

Mr. President, I look forward to an oversight hearing in the Finance Committee on the Medicare select program which—under a prior agreement with Senators DOLE and PAKCWOOD—will be held once the final evaluation study has been completed. And I am committed to working with the chairman of the Medicare Subcommittee, Senator DOLE, on any legislative modifications that may be necessary based on the committee's oversight hearing, the RTI study, or from the results of a GAO study—that was added to the Senate bill and retained in the conference agreement—that requires a study of the medical underwriting practices of Medigap insurance policies. Again, I hope I will never have to say "I told you so" on behalf of the Medicare Program and the senior citizens who count on us to look before we act.

Mr. President, I yield the floor.

MEDICARE SELECT POLICIES ACT—CONFERENCE REPORT

Mr. CHAFEE. Mr. President, I submit a report of the committee of conference on H.R. 483 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill H.R. 483, a bill to amend title XVIII of the Social Security Act to permit Medicare select policies to be offered in all States, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of June 22, 1995.)

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I ask unanimous consent the conference report be considered and adopted, the motion to reconsider be laid upon the table, and a statement by Senator PACKWOOD be included in the RECORD at the appropriate place.

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

The conference report was agreed to.

Mr. PACKWOOD. Mr. President, I am very pleased with the conference agreement on Medicare select. The agreement is very close to the bill passed by the Senate. The only major change is extending the program 3 years instead of 18 months. This is reasonable extension. It gives States sufficient time to take the necessary legislative or administrative actions to allow Medicare select policies to be sold in their states. It also allows insurers sufficient time to develop products, bring them to market, and accumulate enough experience for a meaningful evaluation of Medicare select policies.

This legislation will allow people in all the States to have access to very popular, lower cost type of Medicare supplemental insurance. Remember, Medicare supplemental insurance is private insurance that people buy with their own money to cover medical expenses not paid for by Medicare. There is no Federal money involved.

Some concerns have been raised about Medicare select. Since Medicare select is a new type of supplemental insurance and the full implications of Medicare select for the Medicare Program are not known, this legislation contains a safety valve. The Secretary of Health and Human Services is to study Medicare select. If the Secretary finds that Medicare select is saving seniors money on supplemental insurance, is not adding additional costs to the Medicare Program, and has not negatively affected quality or access to health care, Medicare select automatically becomes a permanent option after 3 years. If, on the other hand, the Secretary finds serious problems with Medicare select, the program expires June 30, 1998.

This is a very sensible compromise. It protects the Government against unintended consequences while also allowing the program, if successful, to become permanent without having Congress take additional action.

CORRECTION IN THE ENROLLMENT OF H.R. 483

Mr. CHAFEE. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Senate Concurrent Resolution 19, submitted earlier today by Senator PACKWOOD.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 19) to correct the enrollment of the bill H.R. 483.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. CHAFEE. Mr. President, I ask unanimous consent the concurrent resolution be considered and agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution appear at the appropriate place in the RECORD.

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

The concurrent resolution (S. Con. Res. 19) was considered and agreed to as follows:

S. CON. RES. 19

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (H.R. 483) to amend title XVIII of the Social Security Act to permit medicare select policies to be offered in all States, and for other purposes, the Clerk of the House of Representatives shall make the following correction: Amend the title so as to read as follows: "An Act to amend the Omnibus Budget Reconciliation Act of 1990 to permit medicare select policies to be offered in all States.".

Mr. CHAFEE. Mr. President, I thank the manager of the bill very much for permitting us to proceed like this.

Mr. SARBANES. If the Senator will yield, I think his thanks should really be directed to the distinguished Senator from California, who, under the unanimous consent request, was in order to offer her amendment and deferred from doing so in order to allow the Senator to proceed.

Mr. CHAFEE. The Senator from Maryland is absolutely correct. I stand admonished.

I thank the Senator from California for her kindness in letting me proceed as we did. Otherwise, I would have been here, hanging upon every word of her amendment, but that might have taken me past important appointments at home.

So I thank the lovely lady from California. I count it fortunate that she is a member of the Environment and Public Works Committee, where she does distinguished service, and has ever since she has been in the Senate.

Mr. President, I thank the Senator from California, the distinguished Senator from Maryland, and the floor manager of the bill, the honorable Senator from New York.

The PRESIDING OFFICER. The distinguished Senator from California is recognized.

Mrs. BOXER. Mr. President, let me say to my chairman of the Public Works and Environment Committee, if I could get his attention, I greatly appreciate the kind words he said about me. If he votes for my amendment, I will appreciate it even more.

I hope he will do that because, Mr. President, I think I do have a good amendment.

PRIVATE SECURITIES LITIGATION REFORM ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1475

(Purpose: To establish procedures governing the appointment of lead plaintiffs in private securities class actions)

Mrs. BOXER. Mr. President, I send an amendment to the desk on behalf of myself and Senator BINGAMAN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself and Mr. BINGAMAN, proposes an amendment numbered 1475.

Mrs. BOXER. 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 98, strike line 3, and all that follows through page 100, line 22, and insert the following:

"(2) APPOINTMENT OF LEAD PLAINTIFF OR PLAINTIFFS.—Not later than 90 days after the date on which a notice is published under subparagraph (A) or (B) of paragraph (1), the court shall determine whether all named plaintiffs acting on behalf of the purported plaintiff class who have moved the court to be appointed to serve as lead plaintiff under paragraph (1)(A)(ii) have unanimously selected a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class, and—

"(A) if so, shall appoint such named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class; or

"(B) if not, after considering all relevant factors, including, but not limited to financial interest in the relief sought, work done to develop and prosecute the case, the quality of the claim, prior experience representing classes, possible conflicting interests, and exposure to unique defenses, shall select and appoint a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class.

"(3) SELECTION OF LEAD COUNSEL.—The lead plaintiff or plaintiffs appointed under paragraph (2) shall, subject to the approval of the court, select and retain counsel to represent the class.".

On page 102, strike line 3, and all that follows through page 104, line 22, and insert the following:

"(2) APPOINTMENT OF LEAD PLAINTIFF OR PLAINTIFFS.—Not later than 90 days after the date on which a notice is published under subparagraph (A) of (B) of paragraph (1), the court shall determine whether all named plaintiffs acting on behalf of the purported plaintiff class who have moved the court to be appointed to serve as lead plaintiff under paragraph (1)(A)(ii) have unanimously selected a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class, and—

"(A) if so, shall appoint such named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class; or

"(B) if not, after considering all relevant factors, including, but not limited to financial interest in the relief sought, work done to develop and prosecute the case, the quality of the claim, prior experience representing classes, possible conflicting interests, and exposure to unique defenses, shall select and appoint a named plaintiff or plaintiffs to serve as lead plaintiff or plaintiffs of the purported plaintiff class.

"(3) SELECTION OF LEAD COUNSEL.—The lead plaintiff or plaintiffs appointed under paragraph (2) shall, subject to the approval of the court, select and retain counsel to represent the class.".

Mrs. BOXER. Mr. President, let me explain my amendment. My amendment deletes language in the bill which instructs the judge to make the largest investor in a securities class action suit the lead plaintiff in that suit. To me, on its face, as a nonlawyer, this is an amazing proposition. The richest investor gets to be the lead plaintiff.

My amendment is designed to give the little investor, people with IRA's, Keoghs, a 401-K plan, the chance to be the lead plaintiff.

My amendment is simple, reasonable, fair and, I believe, democratic. This bill assumes the wealthiest investor is somehow better suited to represent smaller investors in the suit.

Mr. President, class action securities lawsuits are supposed to protect the average and the small investor—not only the largest investor. Of course we want to protect them as well. But clearly we are concerned about the small investor. In fact, class action lawsuits are the only practical chance that the small investor has to recover if he or she has been defrauded.

Why do I say that? The small investor, let us say, has been defrauded out of $500 or $1,000 or $5,000. That small investor simply cannot afford to bring an individual action against a fraudulent party. It would cost way more than even the $5,000 to do so, maybe even more than the investor's total net worth, just to recover the small investment.

So in practical terms, class actions are the small and average investor's only chance to recover. This bill, S. 240, without my amendment, would deny them control over their own lawsuits. It would put the largest investor in control.

I said my amendment is democratic. I say that because it allows the members of the class to decide who will pick their representative called a "lead plaintiff." The lead plaintiff will then represent the class, control the litigation, and hire lawyers to serve as class legal counsel.

The candidates for lead plaintiff are all named plaintiffs who file motions with the judge saying they want to serve as the lead plaintiff.

My amendment, and the bill, require that notices be placed in a widely circulated national business-oriented publication or wire service, which then gives notice to all the class members that there is a class action. That way, every member of the class has an opportunity to be named the lead plaintiff.

Under my amendment, the court will appoint as lead plaintiff anyone unanimously selected by the named plaintiffs who have filed lawsuits. And that seems to me the way it ought to be. Everybody has an opportunity to decide who will be the lead plaintiff. I think it is fundamentally undemocratic to do it otherwise—to do what this bill does, to prevent the members of the class from picking their lead plaintiff; to require that the largest investor be appointed.

Under my amendment, only if the plaintiffs cannot agree unanimously among themselves on the lead plaintiff would the court decide who the lead plaintiff should be. So, first we have all the plaintiffs decide who they want. If they reach unanimous agreement, it is so done. If they do not, then the judge or the court would decide who the lead plaintiff would be.

Again, the bill without the Boxer amendment requires that the judge appoint the largest investor. Again, my amendment merely says if the plaintiffs at first do not agree, the judge, after considering all relevant factors, shall select the lead plaintiff.

The court, under the Boxer amendment, could very well pick the largest investor. But the court does not have to at that point. So, if everybody agrees on the lead plaintiff, it is done. If they cannot unanimously agree, then the court will select, and they can certainly look at who the largest investor is, but that should not be the only criterion.

My bill requires the court to consider all relevant factors in selecting a lead plaintiff or plaintiffs. These factors include—and they are in my amendment—but are not limited to the following:

First, the financial stake that the lead plaintiff would have in the lawsuit. So we agree with the chairman. Let us take a look at that.

Second, how much work and money he or she has expended on the suit thus far. We think it is important for the judge to see who has made the biggest investment so far.

Third, the quality of that work.

Fourth, the quality of their individual claim.

Fifth, whether they have any potential conflicts.

Sixth, whether the defendants would have any unique defenses to this lead plaintiff—which I will describe later.

So, again I say to my friends, as Senator BRYAN has said, this is not an exciting issue. No one is glued to their TV sets saying, "Gee, we have been looking forward to this all day, Senator BOXER." But clearly a lot is at stake. If you are a small investor and automatically the largest investor is picked, even if that large investor has a conflict of interest—and I will go into that—you are going to really take it in the neck. You are going to be out of luck, and I am going to explain this.

It could be that the defendants are accused of having targeted the elderly. This is not uncommon. I made that point today. I am glad my colleagues agree that senior citizens are the targets here. Would the largest investor be the best plaintiff in a fraud against targeted senior citizens, small investors? Not necessarily. And this is where maybe some people will wake up and will take notice.

Let us look at the Keating case, a case my colleagues on the other side of this issue keep telling us not to bring up. I have news for them, we are going to bring it up because it is on point and it is on target.

Listen to this. Keating was sued by small investors who bought his securities. One of the largest investors eventually became a defendant in the small investor lawsuit. If this bill had become law it would have been clear that the judge should appoint that large investor as the lead plaintiff. Talk about foxes in charge of the chicken coop. Many of the biggest investors in Keating's junk bonds were friends of Keating and associates of Michael Milken, including Executive Life Insurance Co. of California, and a Minneapolis brokerage company called Offerman & Co. These relationships were not public when the lawsuit was filed. Under this bill Offerman & Co. would have been put in charge of the Keating class action. That would have meant that Keating's friends and junk bond cronies would have been in the position to stifle the lawsuit.

I say thank God this bill was not law and the small investors were in charge. They eventually uncovered the hidden relationship. But they never could have uncovered those relationships at the point at which the judge was deciding who the lead plaintiff should be, and he would have had to pick the largest investor.

Here is the thing. The largest investor became a codefendant and eventually paid $55 million to the small investor. If this bill had been the law of the land, the largest investors would have been in control of the suit. They would have been the lead plaintiff in the suit. And I say the Keating case is just an isolated example.

Mr. SARBANES. Will the Senator yield?

Mrs. BOXER. I am happy to yield to my friend.

Mr. SARBANES. Mr. President, this is an extraordinarily important point which the Senator from California is making. In fact, the SEC in commenting on this provision of the bill that is before us said, and I quote them:

> One provision of section 102 requires the court generally to appoint as lead plaintiff the class member that has the largest financial interest in the case.

Exactly the provision the Senator is addressing.

The SEC then says:

> While this approach has merit, it may create additional litigation concerning the qualification of the lead plaintiff, particularly when the class member with the greatest financial interest in the litigation has ties to management, or interest that may be different from other class members.

As I understand it, you permit having the largest financial interest to be a factor to be considered by the judge if all the plaintiffs cannot get together on who the lead plaintiff should be. Then the judge has to pick a lead plaintiff, and the Senator concedes the one factor to be looked at would be financial interest. But the bill as written provides the presumption to the large financial interest plaintiff which carries with it the risk, as the SEC points out, where the lead plaintiff may have ties to management or interest that may be different from other class members.

As the Senator points out, they later found that out in the Keating case. Well, you say they will find it out in the beginning. They cannot find it out in the beginning. In fact, the bill as written denies the discovery in the early stages unless you already have a reasonable basis for doubting the lead plaintiff. This whole thing is structured in such a way that a lead plaintiff who has ties to the defendant, a party that has ties to the defendant, can end up being the lead plaintiff.

Mrs. BOXER. My friend is right on target, and as usual presents the point magnificently. This is a total outrage. It is a total outrage because at the time when the judge will decide who the lead plaintiff could be, they say there is a rebuttable presumption, but it is really irrebuttable because of the high standard that has to be met. It will be the largest investor. And after I yield to my friend from Nevada, I am going to show you another case on point so that we show the Keating case and how it would have worked to have the people who eventually wound up paying the small investors under this bill be the lead plaintiff. There would not even have been a case, if that had been the law. I shudder to think about the miscarriage of justice.

Here we are today. You know one of the reasons I think so. We are making our points here. Obviously, we can tell by the votes that so far we were not carrying the day except my one amendment that requires a report. We are not carrying the day. But, by God, let us make the record and let us be clear on it so that if there is an explosion, and investors get defrauded, and we have another S&L-like scandal on our hands, and people are scared to death to invest and all they do is buy Government bonds, I think some of us can point to this debate and say we tried; we made the record.

Mr. BRYAN. Will the Senator yield?

Mrs. BOXER. I am happy to.

Mr. BRYAN. I want to compliment the Senator. We have heard many times during the course of this debate the word "balance." I think what the Senator has done in revisiting this particular section of the bill represents the essence of balance. As the Senator has pointed out, the Senator's amendment does not preclude the consideration of wealth, if I am reading the Senator's amendment correctly.

Mrs. BOXER. That is correct.

Mr. BRYAN. But it simply indicates that where there is not a unanimous agreement it is simply a factor. Am I correct?

Mrs. BOXER. Exactly.

Mr. BRYAN. Let me say it is my understanding—the Senator can correct me if she has a different view—that the very essence of a class action is to allow individuals who are very small with relatively modest investments to band together, that there is a unity of interest, a commonalty of purpose; can band together, and that same commonalty of interest may or may not exist with respect to a large security underwriting house which may have other dealings with the defendants who may indeed have a little self-dealing. "We will wash your back on this one if you will wash our back on the next one."

Is that the essence of the Senator's concern?

Mrs. BOXER. The Senator from Nevada, the former attorney general of that State, is so right on point here.

If a relatively small investor who, let us say, owns a home and a car, and is retired and has a $50,000 investment, I say to my friend that means so much to that individual. The large investor could be a big brokerage house. We have a brokerage house that is worth $50 billion. They may be the largest investor in this particular company. They may have $1 million. That $1 million is a lot more than $50,000, but to that large company it is nothing. Whereas, the $50,000 to a small investor is virtually everything.

Today I put in the RECORD a story of one of my constituents who was one of the victims of Keating. She lost $20,000. It was the difference between her being dependent or independent. She talked about the pain of knowing she just waited for that Social Security check because they bilked her out of her money; the savings she needed.

So the Senator is so right. This bill, I do not know how to put it, it is so elitist. I do not like that word, but I cannot think of another word. It is not fair, it is elitist. It is looking at a small investor as if they were worth nothing.

I want to give my friends another example. This is a recent example. The Wall Street Journal reported only last month that a large Wall Street investment bank—and I am going to name the bank because it is in the paper; they have a great reputation—Wertheim Schroeder—filed a class action against Avon Products for securities fraud. Wertheim Schroeder filed a

class action against Avon for securities fraud. Wertheim was supposed to represent the interests of the small investor. But the Journal reported that Wertheim tried to get Avon to settle the case by giving Wertheim $50 million to invest. That is no way to benefit the small investor, to settle a lawsuit.

It does not even think about the small investors. This bill would prevent those small investors from discovering the secret deal, because they would have to know about it before they could use subpoenas to find out about it.

So here is the largest investor who has its own agenda, clearly, and that agenda did not benefit the small investors. But under this bill, the small investors could not have found that out and automatically, therefore, the largest investor would have been the lead plaintiff.

We talked about the rebuttable presumption so I will not go into that. It really is simply not there, because my friend, the Senator from Maryland, explained the bill precludes the small investor from being able to subpoena or discover a large investor's hidden conflict.

In other words, if you cannot read about it in the newspapers, forget it. Only if the conflict is obvious would the small investor be able to prove it, and it is just very unfair. In other words, the rules are stacked against the small guy and the rules are in favor of the large guy. Now I have shown you two examples, the Keating case and this other Avon case, and I am sure there are many more.

In other words, if the large investor can hide its conflict of interest, it is home free, it is going to be the lead plaintiff. Small investors will not be able to uncover the conflict. My God, I know we want to stop frivolous lawsuits, we all do, but I do not know anyone who would say that the suit against Charles Keating was frivolous, but we are standing on the floor of the Senate, a few of us, trying to show you that it would have totally changed the outcome of that case, and we have to be very, very careful.

Mr. President, I see nothing in the record which supports the thesis that the largest investor is more honest or more trustworthy. In fact, history suggests there are reasons to believe that the opposite is true, and I showed you a few of those.

In response to my friend from Nevada, I pointed out that a $50,000 investment from an individual's IRA sometimes is worth much more than a huge investment by a huge company.

I want to make another point——

Mr. BRYAN. Will the Senator yield for one more question? I know the hour is late.

Mrs. BOXER. Yes, I will be happy to yield.

Mr. BRYAN. I compliment the Senator for her fine work. As I am reading the print before us, I am almost offended with the language "the most adequate plaintiff." Somehow if you have $10,000 in this investment and that is all you have, somehow you are less adequate to be the lead plaintiff in the action.

My question really deals with the origin of this. I sat in on as many of the hearings as I could. The chairman was extremely fair in posting notice and giving us opportunity to present our arguments and to make the point, but I do not recall this being in the original bill. I do not recall any testimony offered in behalf of this measure. I do not recall any discussion or debate about this at all. Perhaps the distinguished Senator from California can enlighten me further on that.

Mrs. BOXER. My friend is right on target again. The language about lead plaintiff was added only 4 days before the committee markup, weeks after the last hearing. I see nothing in the committee records that supports giving the large investor virtual control over class actions. This was added 4 days before markup, and it is very meaningful. I have one more point and then I am going to yield to my friend from Maryland, but I want him to listen carefully to this as well. We believe on our reading, and we have put a lot of legal minds to work on this, that the bill makes it possible for the largest plaintiff to sneak into a class action and become the lead plaintiff without going through any of the requirements that all the other investors have to go through.

A large investor can hijack a small investor's case. Listen to this. It is our understanding that large investors do not even have to file a lawsuit in order to take control of the suit. A large investor only has to sit back and wait to see if a small investor files a suit, see if the suit has merit and then pounce on it. The small investor will have invested his or her scarce time and money investigating the case and filing it.

At that point, this bill permits the largest investor to take over without even having to file the lawsuit. He does not even have to be a party to the lawsuit. It means the largest investor does not have to run the risk of rule 11 sanctions of filing a frivolous complaint, sanctions that small investors who bring the original complaint are subject to by this bill, which a lot of us support.

But the largest investor is scot-free. This forces the small investor to take the risk but rewards the big investor. It is to me extraordinary. The bill permits a large investor to control the class action and the rights of small investors without having to describe in a sworn certification filed with the court how the largest investor came to buy the securities that made it the largest investor. Small investors who file a lawsuit have to include a sworn certification describing how they purchased the security. That is good. But why should the largest investor not have to do that?

Let me bring that home. This means that the largest investor would not have to disclose even a sweetheart deal with the defendant that might have resulted in his buying the securities, a sweetheart deal that should disqualify the largest investor from being the lead plaintiff.

This type of sweetheart deal was very common in the eighties when Michael Milken gave preferential shares of junk bonds to his insider friends. Like Ivan Boesky—I am bringing up names from the past, not because I want to try people again. They went through a lot of pain. I am trying to make a point, if we do not learn from the eighties, what are we doing here? So this bill would put Ivan Boesky in charge of a class-action lawsuit. How well do you think Ivan Boesky would have represented small investors? It would have put Boesky in a position to take over lawsuits against Michael Milken.

Mr. SARBANES. Will the Senator yield on that point?

Mrs. BOXER. Yes.

Mr. SARBANES. I do not think the Senator from California ought to express reluctance or apologize for bringing these names out of the past in order to remind people what has occurred in this area and the tremendous damage and harm that was done to thousands of innocent investors. And we are running the risk here—I thought the Senator was absolutely right earlier when she said, we are, in effect, writing some history here, making a record so that down the road we can look back and say, it was at that point that a decision was made that led to these terrible consequences.

One of the articles in U.S. News & World Report was headed "Will Congress Condone Fraud?" and then the article ends by saying:

> The pendulum had swung too far toward the lawyers, and now it is swinging too far the other way. Unfortunately, some major investor frauds may have to take place before it again moves back toward the center.

And we are trying to prevent that here and now. We do not want those major investor frauds to take place, and it is our contention that many of the provisions that we are trying to change will make it possible for that to happen. That is why I think that the points the Senator from California is making are so extremely important. Things of these measures have consequences, and the consequences may be very harmful and detrimental. Her reference back to earlier abusers is very much on point in underscoring that fact.

Mrs. BOXER. I want to thank my friend, the ranking member of the committee, and my friend from Nevada.

But it is painful to bring back these issues. To me, it is extraordinary that we are giving insiders, real insiders who may have had a sweetheart deal with a company, the chance to be the lead plaintiff.

That is really hard to swallow. And I think the Boxer amendment is very fair. It basically says let us have fairness and justice to this section of the bill. We do not discriminate against the largest investor or the smallest investor. We say let all the plaintiffs get together and unanimously pick their lead plaintiff. If they cannot agree, let us have the judge take a look at it. Let us have him or her take into account who the largest investor is. Let us have him or her take into account the legal work that has been done and then we will have him or her choose who the lead plaintiff will be.

So, Mr. President, I truly hope that this debate has been enlightening to any of those who have listened to it. Let us not turn the clock back to the 1980's. Let us not get into a situation where small investors are so scared that they start putting their dollar bills under the mattress. We want the moneys out there. We want them to invest their moneys for economic growth. But let us not skew the system so much against them they feel they do not have enough protection.

I reserve whatever time I have remaining. I will yield the floor at this time.

The PRESIDING OFFICER. The Senator reserves the remainder of her time. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I find it interesting that we talk about preserving the system to help the little people. Let me tell you something. What is actually taking place is the small investors are being used, and they are not representatives of any class. The only class they are representatives of is the greed and avarice of the attorneys who are milking the system and are spending the millions of dollars they make from the settlements right now. The lawyers are financing the public interest groups, which are lobbying to keep this system. It is the lawyers protection act to enrich themselves. That is what this amendment is.

Let us look at the lead plaintiffs, the big law firms in New York and California that are manufacturing most of these cases. Who do they have? Steven Cooperman was named in 14 cases between 1990 and 1993. Is he the little guy who got bilked out of $10,000? How many shares does he own in how many companies? He is a hired gun. And who is he going to select to be his lawyer? I will tell you what he has done 14 times; 14 times he has decided between 1990 and 1993 to take the same firm. Sheldon Shore, 10 times, same firm. Mr. Shore, do you think he really represents the working people? I bet he did not even know there was a suit until he got a call because his name is in a computer and that stock dropped 6 points, and then he gets right on in there and he brings a suit.

Now, that is not what the legal system is supposed to be about. Do you want to go through them again? Rodney Shields, seven; David Steinberg, seven; William Steiner, six; Ronald Kassover, five. We are talking about just a small handful of people who have been involved in suits multiple times in 3 years. It is a racket. It is not the little homeowner. It is not the pensioner investing for his retirement.

So what do we try to do? We try to say let us stop the race to the courthouse by a bunch of quick scam artists. Let us see to it that the people who have a real stake, if there are some shenanigans going on, let us see to it that the small investor with a real stake is given control over the suit. This legislation protects the small investor by creating a rebuttable presumption that the person who has the largest financial stake should lead the case.

And who do you think we are talking about? You think we are talking about an investment banking firm? A securities firm? No.

My colleagues say they have knowledge of securities areas, in fact some of them have worked in securities. If you worked in the securities area, do you know that 51 percent of all of the funds that are invested are by institutional investors? And guess what? Half of that, $5.5 billion is in pension funds—pension funds. Those are the little guys. They have every nickel and dime they have earned for their retirement in there, and I think those pension fund managers, the institutional investors should be consulted when lawsuits are brought. And if they have a position in a company and they have invested hundreds of millions and they represent tens of thousands, hundreds of thousands of small investors, I want them to lead the case and I do not want Mr. Cooperman and the other guys over there picking the class.

You better believe I wish to change it. I am sick and tired of having a system that rips off the American people so a handful of lawyers can get rich. They do not give two hoots and a holler about the small investor. Let us stop them from taking over the lawsuits. Do not come in here telling us that with this legislation we are trying to protect the fat cats. I want a system where if there is an institutional investor, and they have got some losses, that they have an opportunity to come to the Court, and by a rebuttable presumption they have an opportunity to be picked as lead counsel.

Now, let me ask you, the only time that you have all the plaintiffs line up and agree on the lawyer is when these seven or eight plaintiffs race in to the courtroom at the same time—and they all say to the judge: Guess what, we all want the same law firm. Is that fairness? S. 240 creates a rebuttable presumption that the Court should look at the size of the financial interest, by the way, all the other standards under the Federal code of procedures. They still have to meet any challenges, but the lawyer who represents the pension fund should at least be given that presumption that they are the best counsel to keep the interests of the small investor.

And by the way, if everyone agrees—and it would seem to me that all the small investors would want to be represented by somebody who would have a stake in the case. I want true plaintiffs, and if it is that person who has lost their life savings of $25,000, they are certainly going to want that pension manager who has a real stake on behalf of tens of thousands of similar people to be there to be supervising, to be watching.

I look at this legislation, and I see that the amendment that is crafted talks more about the lawyers—the plaintiffs counsel. It says the judge should consider the work done to develop and prosecute the case. We are talking about 90 days in which this has been filed when the judge is going to have to make a decision. I would like to know what work is done by a plaintiff within 90 days.

The judge should also consider the quality of the claim, prior experience representing the classes and possible conflicting interest. This is the lawyers protection amendment. This is not a class action amendment. This is not an amendment designed to see to it that the little guy is really represented. This is to continue the same kind of charade as exists now. And as well-intentioned as my colleague might be—and I believe she is very well intentioned—I believe that what this amendment will do is just allow another way for the entrepenurial lawyer to get around the door and race to the courthouse to stake his claim and keep control of the case—not on behalf of the truly aggrieved but on behalf of the fat law firms who want to get fatter. There are only a handful of these firms, but that handful has been a plague, that handful has kept the securities industry from doing what it does best, which is to provide capital for jobs, provide creativity, let firms experiment, let them go forward, let them do what they can do best without being unduly harassed.

For those who break the law, for those who commit fraud, we have kept a strong SEC presence at every turn. We have provided that those who truly commit fraud will have no way out, whether it be through the so-called aiding and abetting, although, if you knowingly commit, you are not an

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aider and abettor, you are a perpetrator under this act and will be held liable.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I listened very carefully to my chairman, and I have to tell you I did not hear him give me any reasons to be against this amendment. He said this amendment protects lawyers. Well, I have news. If I wanted to do that, I would have just struck this whole section which other colleagues had wanted to do, but I did not do that. I said yes, I think my chairman has a point. We ought to look at the largest investor, and we have put it in here very clearly so the judge can consider the larger investor.

So I really take exception to the fact that this is keeping business as usual. We are not keeping business as usual. And my friend does not address the point of the examples that we gave on the Keating case, the examples we gave on the Avon case, where the largest investor happens to be involved in a sweetheart deal which never could have been discovered by the time the attorney was appointed.

Now, I agree with my friend, if you are talking about a pension plan, that is fine; that pension plan would probably be appointed under the Boxer amendment, because if the pension plan comes on board and is one of the plaintiffs and files a suit and holds out and does not agree with the appointment of the lead plaintiff, then the pension plan would go before the judge and, under the Boxer language, no doubt would be selected.

So I have not heard my friend argue against the basic premise of the Boxer amendment, which is this: Just because you are the richest does not make you the best. Just because you are the richest does not mean that it is fair to appoint you as the lead plaintiff. I do not think anything my friend said really attacks the basic premise of the Boxer legislation.

Now, I have to say that my friend talks about this bill as if it is supported by the SEC. I have the latest comments of the SEC. Yes, they support certain parts of the bill, as do I, and as does my ranking member and the Senator from Nevada. But it has a number of problems. And they raise the issue of lead plaintiff, and they say this could have merit but there are some unintended consequences here. And I would say that the Senator from California, the Senator from Maryland, and the Senator from Nevada are raising these unintended consequences. We will continue to do that tomorrow when we have our time, when Senator BINGAMAN has asked me for some time.

Mr. President, again, there are lawyers on both sides of all of these issues. There are lawyers on both sides. So to me, what is important is, who is against this bill? Virtually every consumer organization in America: community colleges, the Association of Retired Persons, the American Bar Association, the American Council on Education, the Association of the Bar of the City of New York, the Association of Jesuit Colleges and Universities, Citizen Action. And I mentioned the consumer's groups: the Consumer Union, Consumers for Civil Justice, Consumer Federation of America, Council of Independent Colleges, the Fraternal Order of Police, International Association of Machinists and Aerospace Workers, Investor's Rights Association of America, Municipal Treasurer's Association of the United States—and Canada, I might add—the National Association of County Treasurers and Officers, the National Association of State Universities and Land Grant Colleges, and National Council of Senior Citizens. I read the letter from the California branch of that group today. They said it is the most antisenior citizen piece of legislation to come before the Congress in years. There is the North American Securities Administrators. And it goes on and on.

So I hope that some of these amendments will be voted up.

Mr. SARBANES. Will the Senator yield?

Mrs. BOXER. I am glad to yield.

Mr. SARBANES. I want to agree with the Senator from California when she said that nothing the Senator from New York said really negates her amendment. I think she is absolutely right. What we just saw was another example of what is taking place in the course of considering this legislation. An amendment was offered, which is focused fairly narrowly in its scope, directed at correcting a flaw in the legislation that is before us. The counter argument that then is made to the amendment is the whole universe. We go right back to the basic argument that, well, something is amiss here and we need to correct it. We have conceded we want to correct some things. But how far should the correction go? If you overcorrect, you are creating another problem.

Now, the problems the Senator from New York referred to when he cited the so-called professional plaintiffs—there are provisions in the bill to get at those. This amendment does not touch those provisions. There is a provision called no bonus to the named plaintiff, which has been going on, which we do not think ought to be happening. The lawyer cannot pay brokers for referring clients. That is in this bill. That is going to be prohibited. No one is seeking to take that provision out. Requiring the plaintiff to file a sworn certificate that he did not buy the stock in order to file the lawsuit, and requiring notice to class members that the lawsuit has been filed, they can ask the judge to take over the suit.

Those are all provisions designed to get at the kind of problem which the Senator from New York cited.

Now, the amendment of the Senator from California addresses a different issue. Those professional plaintiffs can be knocked out by all of those provisions that I am talking about. The question now comes down to whether, when you pick the lead plaintiff, you ought to establish this presumption. And as the Senator says, it is supposedly a rebuttable presumption; but if you read carefully, it amounts to an irrebuttable presumption that it ought to be the wealthiest plaintiff.

I want to commend the Senator for offering this amendment. She does not preclude giving it to the party with the largest financial interest. In fact, it is permitted for the judge to consider that as one of the factors to be weighed. But it is not made the sort of dominant factor. I think it would bring a much greater balance and equity to the problem of selecting the lead plaintiff.

All of the horror stories that were outlined by the Senator from New York are addressed by other provisions that are in the legislation. Those are provisions that we are not seeking to amend in the consideration of this legislation.

Mrs. BOXER. I thank the ranking member again for his support on this. As a matter of fact, I say to my friend and my chairman that we say, first and foremost, the judge should look at the financial interests of the parties. So we, by virtue of listening, at first say absolutely it ought to be looked at. I agree, if it is a pension plan and there are no conflicts and all the rest, that would be fine. We are trying to protect small investors from a situation that actually would have developed in the Keating case and developed in the Avon case, where the largest investor had a clear conflict of interest, and you know that can only lead to injustice. I am putting it mildly.

Again, I make a plea to my colleagues to look at these amendments as they come before us, because I am just concerned that if this moves forward in the condition it is in, we are going to be revisiting it.

I urge my colleagues to be on the side that I think is the appropriate side, which is fairness, justice for individual investors, who may have their whole life, in a way, tied up in these investments.

My friend from New York, in his way—and he is very strong in his beliefs, and I respect that—said it is the fat cats that are being protected in the Boxer amendment. Well, that is laughable. The bill says the richest investor shall be the lead plaintiff. What the Boxer amendment says is, well, maybe sometimes. But there is nothing inherently god-like about the richest person.

I think we should respect those who may not be rich but who are hanging on everything we do—maybe not tonight because maybe they cannot follow the argument—but believe me, if they are unfortunate and they have an experience like the Keating people did, they will be hanging on everything we did.

Mr. SARBANES. I want to say to the Senator that the assertion of making the argument is that the pension funds are going to come forward in order to be the lead plaintiff. The fact of it is that, as the bill is written, there is nothing that assures that the pension funds will come forward. In fact, pension funds have been notorious for hanging back in terms of being the lead plaintiff.

So when this proposition is put forward in the legislation and it is then asserted or interpreted that this means the pension funds will come forward to be the lead plaintiff, there is no reason to suppose that will be the case. In fact, the lead plaintiff may well be an investor with a great financial interest in the litigation who has ties to management.

Mrs. BOXER. Right.

Mr. SARBANES. As exactly happened in the Keating case, as I understand the Senator from New York, or as other interests that may be different from the broad range of the class members.

So it is very important to understand that. I think the Senator from California, as I understand it, in effect, has said, let all the plaintiffs decide amongst themselves, or, alternatively, let the judge decide; and the judge, in deciding, should consider this list of factors. But it is up to the judge to make the decision. So you do not try to predetermine the outcome, as I think has been done in the legislation before us.

Mrs. BOXER. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from California has 5 minutes 46 seconds.

Mrs. BOXER. I retain that time.

Mr. D'AMATO. Mr. President, the hour is growing late and I do not intend to use all of my time.

Let me first make an observation that the person or entity who has the greatest financial interest, does not necessarily mean rich people. It does not mean that we want a fat cat.

Indeed, if we are talking about someone who is acting as a manager, we are talking about a class of people who, for the most part, are exactly the people who I would presume my colleague from California is interested in protecting, those people who have lost their entire investment portfolio, their 401 K., or their IRA. They are the people who I am concerned about.

Now, this amendment, if passed would knock out one of the most critical provisions of S. 240. We call it the most adequate plaintiff. Who is the most adequate plaintiff for the class? One of the areas of abuse which was pointed out time and time again was the strike suit lawyers who file these class actions by racing to the courthouse to file a complaint and using a whole host of professional plaintiffs to file the lawsuit.

I have to believe that the lawyer will continue to encourage that. Right now, an entrepreneur lawyer can draft a complaint, select one of his many ready prepared plaintiffs, and I have read the list, and race off to the courthouse to file the complaint. Nine out of ten times the first lawyer who arrives at the courthouse with the complaints in hand will be chosen to represent the rest of the class. This is the lucrative race that lawyers stand to make between 30 to 35 percent of multimillion dollar coerced settlements. Do we want to continue that or do we want to stop that practice? Nine out of ten times the so-called named plaintiff has no idea that the suit has been filed. My colleague has not put any provisions in her amendment that will stop that race. We have. We have.

The professional plaintiff has no idea what is in that complaint, never mind pretending that this is the type of lead plaintiff who actually is aggrieved. They are not aggrieved. They have been working in cahoots with a cast of characters who are defrauding the public.

This is not the way our legal system should work. Plaintiffs who have been harmed, or have been defrauded should be able to file lawsuits to recover damages. Professional plaintiffs should not be allowed to clog up this system. S. 240 contains a provision to take care of these pernicious problems. It attempts to allow institutional investors who account for 51 percent of the market and who manage $4.5 trillion of pension funds to serve as lead plaintiffs. Maybe they have not served in this capacity before because they have not had a chance, because they have not been fast enough to race into the courthouse and they only read about the lawsuits after they are filed and lead counsel has been appointed. Make no mistake about it, and it is not the intention of my colleague to bring this about, but this amendment will help perpetuate this system—the race to the courthouse.

By giving institutional investors an opportunity to more fully control and be involved in litigation, the class will have meaningful representation. We will have an institutional representative who represents hundreds of thousands of aggrieved parties control the case instead of someone who is looking for a quick buck and who is not helping the class but is helping himself. The members of the class can only wonder what happened when they get a check for 22 cents in the mail. I will tell you what happened, the lawyer made $8 million and the class got 22 cents. Now, that is not right, but that is what is going on.

Now, what about the selection of a person who has a great financial interest or who represents the class that has the largest financial interest through a pension fund, an institutional investor.

We say there will be a presumption, a rebuttable resumption, and if there is no deficiency, the court will choose the counsel who represents the largest financial interest to lead the class. If they do not meet the standards pursuant to the Federal rules of civil procedure, they will not be able to serve as lead plaintiffs.

There are a number of those provisions. Although the hour is late I will read a few of those Federal procedures.

Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if, first, the class is so numerous that joinder of all members is impractical; second, there are questions of law or fact common to the class; third, the claims of defenses of the representative parties are typical of the claims of defense of the class, and fourth, the representative parties will fairly and adequately protect the interest of the class.

That is called for in law.

The amendment offered today seeks to change the standard for selecting lead plaintiff. This amendment provides for those seeking to serve as lead plaintiff to decide unanimously who should serve as lead plaintiff. If there is no unanimous agreement, the court will pick the lead plaintiff based on certain factors. Those factors have nothing to do with the class. They are incredible.

They talk about how many times you brought class action suits, what the legal work to date has been. It says "financial interest in the relief sought," and after that, it is just a critique of lawyers who have brought these actions.

I cannot understand why we would put these considerations in—for the people to be chosen as the plaintiffs. I say this, because this was probably drafted by LeFrac and Company.

Mrs. BOXER. Will the Senator yield to me?

Mr. D'AMATO. No, I will not. I have listened patiently.

The PRESIDING OFFICER. The Senator from New York has the floor.

Mr. SARBANES. The Senator ought to yield to the author of the amendment.

Mr. D'AMATO. Section (B) is more interested in developing the qualities that one would look for as a lawyer, than the qualities of a good lead plaintiff.

Now, let me say why I say that, and I mentioned it before: (B) after considering all relevant factors including but not limited to financial interest in the

relief sought, the section I am concerned with starts with work done to develop and prosecute the case.

Well, that the plaintiff is not doing. That plaintiff is not developing and prosecuting the case. "The quality of the claim." The plaintiff has not brought this claim; a lawyer brings the claim on behalf of these plaintiffs, it is up to the lawyer to assess the quality of the claim.

"Prior experience"—listen to this—that is why I say I believe this is the lawyer's protection amendment. "Prior experience representing classes." That does not seem to me to be looking out for the small investor. That seems to me to be selecting a lawyer. Why should a small investor interested in representing the defrauded class have prior experience representing classes, unless he is a professional plaintiff. That is why I ask, how did this amendment come about?

I do see some good criteria in this amendment, possible conflicting interest. That is excellent. And, exposure to unique defenses. That is in the legislation. The same thing we have. Also for lead plaintiffs to serve as lead plaintiff of the appointed plaintiff class. I might more adequately suggest it should say pick the lawyer, because in the final analysis, it is the lead plaintiff, it is the plaintiff who is assigned, who picks the lawyer.

That is what I am concerned about. I am concerned about this amendment perpetuating the same scheme. Do I want to protect the little guy? Absolutely. I have told my colleague that if there are ways—and we have cooperated in the past to do this—to give greater protection to those who are aggrieved, I want to do it.

That is one of the reasons we have entered, at my colleagues' behest, the provisions giving the ability to those people who have $200,000 or less and who sustain up to 10 percent, the ability to recover their losses. We do not just shut the door on the little guy.

My colleague mentioned a woman who lost $25,000 and had no recourse, this bill would provide to that person an opportunity to recover those funds.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I find it really incredible that my friend would say that this language is the lawyer protection act when, in fact, three of the six requirements that the judge has to look at are requirements that came from your side of the argument; namely they should look at the financial interests. In other words, whom is the biggest investor? That is my friend's point. We put it in here first. He is telling me that the lawyers whom he names want that in this bill? I tell you "no."

So I cannot understand how my friend could tell me that this section is the lawyers protection act when I put in as the first requirement a very important concept that comes from the opposing side. Maybe my friend wants to sit and talk to me about what he would accept that the judge could look at. If my friend from New York is willing, I would take out some of these, if he finds them objectionable, if he will support me on this. No one wrote this but me. Did I ask for help from my staff? You bet. I am not a lawyer. I have to make sure.

To me it sounds reasonable to think that the quality of the claim is important; that the arguments are laid out well. But if my friend thinks that is not a good thing and he will support me, I will take out those things he finds objectionable in a New York minute. I would do it.

So, tomorrow we finish this argument up. It is getting awfully late. Even I am losing my will to argue at 9 at night. So I would, at this time, be very happy to yield back my time, except if my ranking member wanted to make a few closing remarks, and I look forward to picking this debate up in the morning.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. D'AMATO. Mr. President, might I inquire of time remaining to both parties?

The PRESIDING OFFICER. The Senator from New York retains 27 minutes and 45 seconds. The Senator from California has 3½ minutes remaining of her time.

Mr. D'AMATO. Mr. President, I do not intend to use much of my time. I think I have made my point. I think we both made our points.

I believe as an unintended consequence—because I do believe my friend, the Senator from California, is interested in trying to protect small investors, particularly senior citizens—this amendment would not be a service to them. It would continue the race to the courthouse.

I find particularly difficult to accept that part of the amendment on page 3 starting at line 13, "work done to develop and prosecute the case, the quality of the claim, prior experience representing classes." That is absolutely the kind of language that suggests to me this amendment will continue the race to the courthouse.

If my friends and colleagues find ways to deal with an admitted concern of the Securities and Exchange Commission, who, for the most part is strongly supportive of what we are attempting to do in this bill, but recognizes that there are problems in the system, I will be happy to work with them. I might call to the attention of my colleagues a letter from the SEC, and I believe my distinguished ranking member, Senator SARBANES, has already called this letter to our attention:

> One provision of Section 102 requires the court generally to appoint as lead plaintiff the class member that has the largest financial interest in the case. While this approach has merit, it may create additional litigation concerning the qualifications of the lead plaintiff, particularly when the class member with the greatest financial interest in the litigation has ties to management or interests that may be different from other class members.

I hope in the managers' amendment we might be able to address that concern with some language. That is a concern I think many of us have. It would be good to clarify that all possible conflicts under all cases must be avoided.

We have to be careful because you do not want to unintentionally open the door to a different unintended consequence. Certainly I would have to strongly oppose my friend's legislation as it presently stands, because it would continue, as I see it, the race to the courthouse.

Let me say this, if my colleague from California is prepared to yield her time, I will yield all of my time.

I yield.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I only have 3 minutes left. I want to make a point. This section deals with the plaintiffs. It does not deal with the lawyers. And the way I read it, if there has been a repeat of a plaintiff, the judge can throw out that plaintiff. So, my friend cites a section that deals with plaintiffs, not with lawyers.

His other point about a rush to the courthouse. If he thinks this Senator has a bill that is a rush to the courthouse, we took the language out of his bill. Mr. President, 90 days they have to file in a newspaper of general circulation. It is boilerplate language. It is the same exact timeframe as my friend from New York has. He says I am rushing to the courthouse, then he is rushing to the courthouse.

Again I have to say I know my friend vociferously opposes this. But I have not heard anything that makes me feel he has undermined my basic argument. If he wants to work on language I am happy to work on language.

I yield to my friend from Maryland.

Mr. SARBANES. If the Senator will yield, one of the provisions that the Senator from New York pointed to, that the Senator has listed, prior experience representing classes, could be used by the judge to disqualify plaintiff, not to qualify the plaintiff. The very plaintiffs you have cited who you said have represented—I do not know, seven times or whatever the number was—who were just buying professional plaintiffs.

Mr. D'AMATO. Fourteen.

Mr. SARBANES. All right, fourteen. He could be ruled out by the judge by considering that factor. It says, "after

considering all relevant factors including prior experience representing classes." That could be a negative factor as well as a positive factor. It is up to the judge. That is the very thing you would argue to the judge.

You would say to the judge, "This person should not be the lead plaintiff. He has fourteen instances of doing this. He is just playing a game with you."

And the judge would say, "Oh, yes, you are right. And under the Boxer amendment I am entitled to consider that factor, prior experience representing classes, and considering that factor I am not going to make this person the lead plaintiff."

The Senator from California has in effect taken one of your contentions and put it in her amendment.

Mrs. BOXER. Yes. Yes. The Senator from Maryland is correct. Because this section does not talk about lawyers, it talks about the plaintiffs.

Mr. SARBANES. It does not say positively or negatively. That is for the judge to weigh.

Mr. D'AMATO. Mr. President, if I might?

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

The Senator from California retains 38 seconds.

Mr. D'AMATO. I have to tell you that is one of the most novel, interesting, intriguing arguments I have ever heard.

Mr. SARBANES. It is right there in black and white.

Mr. D'AMATO. I want to salute and take my hat off to my friend from Maryland for putting that twist on. Certainly, it is a stretch to read this as a disqualification. All relevant factors including but not limited to financial interest, work done, prosecution of case, quality of the case, prior experience. I suggest no one could really interpret this literally and say to the judge, "You should disqualify someone, if they have been in on two or three or four of these cases, from being considered as lead plaintiffs, or taking their vote or their determination, because they are professionals and have been doing it for years."

I have to agree with my colleague, could the judge do it? Sure. But I have not seen a judge exercise that kind of right to interpretation. Of course we have not passed this bill. But that certainly is unique and novel as an interpretation. I have to tell my colleague, "I could have some support for this amendment—and maybe we should put this provision in a managers' amendment—if it said we are going to look expressly at the qualifications to see that there are not professionals leading the class."

Of course, how do you really tell? You get into how do you define who "professional plaintiffs" are? There may be some people we classify as gadflies who bring these suits, not because they have been prompted by somebody but because they want to do what is right, to bring the case, maybe they have been aggrieved, maybe they do not have a great financial stake, but they think others have been aggrieved.

It is, I think, stretching—even beyond that limit to which most of us stretch, including this Senator at times—the credibility of this argument, to suggest you are really telling the court to look and see whether or not this person has been involved in multiple suits and therefore should be dropped.

I find that difficult to interpret in that manner. But I do say "It is novel. It shows great dexterity." And it shows, I believe, why we should not even get involved in this.

Mrs. BOXER. In my 38 seconds, Mr. President——

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. In this section the Boxer amendment lists 6 things. They are neither positive nor negative. My friend seems to think financial interest is a relief sought as a positive. I would think it is a negative. I could change it to the number of times the plaintiff has represented a class. I am well meaning here. This section does not relate to lawyers. Even though my friend said it did does not make it so. Just read it. It has to do with who the lead plaintiff is.

If my friend is serious, we could work this out. We could have a good amendment. We could agree to it. We could pass it, and we could I think prevent a real problem from developing out there when we find ourselves in a situation where a co-defendant winds up as a lead plaintiff. I think that would be dangerous.

I yield the floor.

Mr. D'AMATO. Mr. President, I am very serious. If we cannot read this amendment to say financial interest and relief sought should be considered, what are we talking about? If work done to be developed and prosecute the case is considered—I mean you can obviously say, "Well, was there a lot of work done, or was not their work done?" But is that something obviously that should be taken into consideration? The quality of the claim—are we to say it is good quality? These are determinative factors that we will make. Are we using the English language or turning it upside down? Are we back to Alice in Wonderland now? I mean really, maybe the hour is late. But to suggest that by writing "prior experience representing a class", one would really say we are calling upon the judge to limit those people who serve often, if there have been those who have been representing a class over and over and in other suits, that would disqualify them. I think that is rather preposterous. If that is what the intent is, then we will need to spell it out. Maybe we should have spelled this out when we forth this legislation. But certainly, as I see it, it is difficult to believe that is the intent of this particular amendment.

Mr. SARBANES. If the Senator will yield, I mean the way the amendment is written it is absolutely neutral in terms of whether the judge shall consider the factor positively or negatively. It only says these are factors to be looked at, and the judge upon looking at the factor could weigh in a positive way or weigh it in a negative way. I mean I think the Senator has tried very hard to just lay out some items the judge should look at. The Senator tried in arguing against it to read it a certain way. But the amendment does not read a certain way. It is very clear on the face of the amendment.

Mr. D'AMATO. My friend and colleague, as I read it, these are conditions that the court will look at in making a determination. They are going to consider these factors. It says it quite clearly. We could argue about whether or not they should take them into consideration. Reasonable people can disagree.

Mr. SARBANES. Will the Senator say this amendment with respect to considering financial interest in the relief sought—is that a plus or a minus?

Mr. D'AMATO. It is something that has to be considered. Obviously, it would seem to me that we should select someone who had a financial stake. That would be a factor, a positive factor. If something had been done in developing work, that would be a positive factor, and prior experience and exposure to unique defenses would be a positive factor. Why would you otherwise put these in the amendment? Then possible conflicts of interest, we read that as a negative factor, obviously. I think though that we go beyond.

We have had a good debate on this. I am prepared to yield back the balance of my time, and we can take this up tomorrow morning.

Mr. President, I yield the remainder of my time.

MORNING BUSINESS

Mr. D'AMATO. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak therein for up to 5 minutes each.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees and a treaty.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1118. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department's fiscal year 1994 report on environmental compliance and restoration; to the Committee on Commerce, Science and Transportation.

EC–1119. A communication from the Deputy Associate Director for Compliance, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–1120. A communication from the Deputy Associate Director for Compliance, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–1121. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the text of international agreements other than treaties entered into by the United States on April 20, 1995; to the Committee on Foreign Relations.

EC–1122. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Implementations of the Government Managers Accountability Act of 1995 and the Merit Personnel Law"; to the Committee on Governmental Affairs.

EC–1123. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Fiscal Year 1992 Annual Report on Advisory Neighborhood Commissions"; to the Committee on Governmental Affairs.

EC–1124. A communication from the Federal Co-Chairman of the Appalachian Regional Commission, transmitting, pursuant to law, the semiannual report of the Inspector General for the period October 1 through March 31, 1995; to the Committee on Governmental Affairs.

EC–1125. A communication from the Secretary of Defense, transmitting, pursuant to law, the semiannual report of the Inspector General for the period October 1 through March 31, 1995; to the Committee on Governmental Affairs.

EC–1126. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the semiannual report of the Inspector General and the Management Response for the period October 1, 1995 through March 31, 1995; to the Committee on Governmental Affairs.

EC–1127. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-63; to the Committee on Governmental Affairs.

EC–1128. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-64; to the Committee on Governmental Affairs.

EC–1129. A communication from the Inspector General of the Board for International Broadcasting, transmitting, pursuant to law, the semiannual report of the Inspector General for the period October 1, 1994 through March 31, 1995; to the Committee on Governmental Affairs.

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. WARNER:

S. 965. A bill to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the Albert V. Bryan United States Courthouse; to the Committee on Environment and Public Works.

By Mr. SIMPSON:

S. 966. A bill for the relief of Nathan C. Vance, and for other purposes; to the Committee on the Judiciary.

By Mr. LOTT (for himself, Mr. SMITH, Mr. SHELBY, Mr. BINGAMAN, Mr. HELMS, Mr. HOLLINGS, Mr. KEMPTHORNE, Mr. LIEBERMAN, Mr. FAIRCLOTH, Mr. DOLE, Mr. INHOFE, Mr. WARNER, and Mr. MCCAIN):

S. 967. A bill to provide a fair and full opportunity for recognizing with awards of military decorations the meritorious and valorous acts, achievements, and service performed by members of the Army in the Ia Drang Valley (Pleiku) campaign in Vietnam in 1965; to the Committee on Armed Services.

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. Con. Res. 18. A concurrent resolution authorizing the Architect of the Capitol to transfer the catafalque to the Supreme Court for a funeral service; considered and agreed to.

By Mr. PACKWOOD:

S. Con. Res. 19. A concurrent resolution to correct the enrollment of the bill H.R. 483; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WARNER:

S. 965. A bill to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, VA, as the Albert V. Bryan United States Courthouse; to the Committee on Environment and Public Works.

ALBERT V. BRYAN UNITED STATES COURTHOUSE ACT

Mr. WARNER. Mr. President, I introduce legislation to transfer the name of the Albert V. Bryan United States Courthouse to the New Federal Courthouse in Alexandria, VA.

The current Federal courthouse at 200 South Washington Street in Alexandria, Virginia bears the name of one of Virginia's most distinguished jurists, Albert V. Bryan.

My legislation simply ensures that when the new courthouse is opened it shall be known as the Albert V. Bryan United States Courthouse.

Mr. President, the recognition of the many accomplishments and contributions of Judge Bryan to his chosen profession—the law—and to his community is not a new matter for this body.

On October 9, 1986, the Senate passed by unanimous consent S. 2890 to designate the Federal courthouse in Alexandria in honor of Judge Bryan's lifetime of public service. Since 1987, the Alexandria courthouse has carried his name.

Appointed to the U.S. district court in 1947 by President Truman and promoted to the appeals court by President Kennedy in 1961, Judge Bryan developed a record as a legal conservative and a strict constructionist. He was known for his tolerance on the bench, demonstrating reluctance to cut off lawyers in mid argument, and reacting sternly to those who flouted his judicial orders.

Throughout his 37 years on the Federal bench, Judge Bryan was known to be fair, firm, and thorough. His was a low-key personality, his demeanor marked by modesty, politeness and courtliness spiked with a good dose of dry wit. Chief Judge Harrison L. Winter of the Fourth Circuit Court of Appeals once remarked that Judge Bryan represented "old Virginia at its very best."

Judge Bryan's renowned wit was further evidenced in his dislike of pomposity. He worked diligently to ensure that his writings were clean and precise, often laboring lengthily to identify the exact wording he sought. Once, seeking a simple synonym for "gravamen," the essential part of a legal complaint, he rejected such complexities as "quintessence," settling instead on the word "nub."

Born in 1899, Judge Bryan grew up in Alexandria just one block from the courthouse where he would later preside. He attended Alexandria public schools, then distinguished himself at the University of Virginia and, ultimately, its law school. He is said to have taken great pride in having been named rector of the university in later life.

Returning to Alexandria in 1921, he became something of a fixture in the city. He was comfortable riding the bus to his west end home, and he was frequently seen taking lunch in modest, small restaurants near the courthouse.

A conservative on racial issues, Judge Bryan, while a district court

judge, ordered that four black students be enrolled in Arlington's all-white Stratford Junior High School in 1958. The students' admission the following February marked the first day of desegregation in Virginia. He also served on the Federal judicial panel that ordered racial integration for Prince Edward County's public schools. The Prince Edward case later became part of the Supreme Court's historic Brown versus Board of Education decision.

In 1969, Judge Bryan and two additional appeals judges struck down Virginia's tuition grant program—the last vestige of massive resistance to integration. One year later, he gained considerable notice when he rejected an appeal by Yippie leader Jerry Rubin, sending the Vietnam protestor to jail for 30 days for disorderly conduct during a 1967 demonstration at the Pentagon.

Judge Bryan is credited with writing 322 opinions as a circuit judge and an additional 18 opinions while he was a district judge. He was reversed in only four cases—a dramatic record which few could equal.

Judge Bryan's accomplishments are perhaps best summarized by the comments made at the original courthouse dedication in 1987, by Supreme Court Justice Lewis Powell, Jr.

He was indeed an exceptionally able and scholarly judge. Every lawyer who ever argued a case before the fourth circuit court was happy to find Judge Bryan had been assigned to the panel.

Judge Powell also quoted a beautiful tribute to Judge Bryan made by Chief Judge Harrison Winter at the Fourth Circuit Judicial Conference: "Albert Bryan was a man to love, a man to respect, and a man to emulate."

The new Federal courthouse in Alexandria will be located at Courthouse Square South and Jamieson Avenue. My legislation provides that when this facility is completed it shall be known as the Albert F. Bryan Courthouse.

By Mr. SIMPSON:

S. 966. A bill for the relief of Nathan C. Vance, and for other purposes; to the Committee on the Judiciary.

NATE VANCE PRIVATE RELIEF ACT

Mr. SIMPSON. Mr. President, I rise today to offer a bill for private relief of a citizen who has fallen victim both to the 1988 Yellowstone fires and to an insensitive Government bureaucracy.

The tragic Yellowstone "Mink" Forest Fire of 1988 devastated Nathan Vance's outfitting business when it burned through his Teton wilderness camp. The fire destroyed essential outfitting equipment, forcing Nathan Vance to cancel 12 prepaid trips and to forfeit valuable revenue from those trips. Mr. Vance incurred both equipment replacement costs and lost revenue, a deadly combination to a small, seasonal business with a small profit margin even in the best of times. This legislation would compensate him for the equipment losses he suffered—as the Congress had intended when it passed the original legislation following those tragic fires.

That law, Public Law 101-302, authorized the Forest Service to settle certain personal damage claims from the 1988 Yellowstone fires. Mr. Vance mailed his claim on August 19, 1990 to meet the August 23 deadline. Through no fault of his own, it took 5 business days for Nate Vance's letter to travel from Wyoming to Utah—longer than it takes a letter to reach Washington, DC from San Francisco, CA.

The Forest Service officially received the Vance claim less than 24 hours after the deadline. The Forest Service initially seemed unconcerned by the deadline and continued the claim process by asking Mr. Vance to provide a detailed accounting of his lost equipment and revenue.

More than 3 months after the Forest Service received his accounting and appeared ready to pay the claim, Mr. Vance was informed by a Forest Service employee that his claim was invalid because of the missed deadline. Mr. Vance has since attempted to appeal to the Forest Service, but has been met with repeated refusals.

Public Law 101-302 states the "Forest Service is directed to negotiate, compromise, and reach a determination on the original claims." It is clear that the Forest Service failed to negotiate, to compromise, or reach a determination even when directly ordered by law to do so—all based on unusually slow mail service. The tragic combination of a devastating forest fire and Government insensitivity has turned Mr. Vance's life upside down. He is still struggling to pay the additional mortgages on his home and on the business assets he was forced to assume in order to continue his business.

Nate Vance's story is an unnecessary and an unintended inequity. Insensitive Government actions contributed to his hardship through an unreasonable and unresponsive process. We should not allow Government to forget that we are here to "serve" the people, not to impose unfair burdens upon them.

This legislation will allow us to ease part of the unfair burden imposed on Nate Vance by requiring the Secretary to pay Mr. Vance $4,850 which is authorized under section 1304—the judgments, awards, and compromised settlements section—of title 31 of the United States Code. This amount represents his equipment loss and is the amount that would have been approved if the postal service had taken 4 rather than 5 days to deliver his claim from Wyoming to its adjacent neighbor, Utah.

By Mr. LOTT (for himself, Mr. SMITH, Mr. SHELBY, Mr. BINGAMAN, Mr. HELMS, Mr. HOLLINGS, Mr. KEMPTHORNE, Mr. LIEBERMAN, Mr. FAIRCLOTH, Mr. DOLE, Mr. INHOFE, Mr. WARNER, and Mr. MCCAIN):

S. 967. A bill to provide a fair and full opportunity for recognizing with awards of military decorations the meritorious and valorous acts, achievements, and service performed by members of the Army in the Ia Drang Valley (Pleiku) campaign in Vietnam in 1965; to the Committee on Armed Services.

IA DRANG VALLEY MILITARY AWARDS ACT

Mr. LOTT. Mr. President, at 10:48 in the morning on November 14, 1965, 450 men from the 1st Battalion of the 7th Cavalry hit the ground at Landing Zone X-Ray, Ia Drang Valley, Republic of Vietnam. Over the next 96 hours, the fighting men of the 1st Battalion joined by men from the 2nd Battalion of the 7th Cavalry, would engage the enemy—over 2,000 strong. At the conclusion of these 4 days of battle more than 230 Americans were dead and 240 more were wounded.

This engagement marked the first battalion-sized engagement of United States Army personnel with North Vietnamese regulars. It was a hellish battle. Ground was seized. Ground was lost. Positions were overtaken, and counterattacks repulsed. The men who fought on that morning were stronger than the ground on which they fought. Theirs is a story of gallantry, victory, sacrifice—an example of human strength in the face of overwhelming odds and a numerically superior enemy.

But unlike most significant military engagements, this time the military recognition for the numerous acts of bravery, sacrifice and dignified service to the flag of the United States has largely gone unrecognized. It is a wrongful shame which should—and must—be undone, corrected and made right.

Only 25 months before Lt. Col. Harold Moore led his troops into the teeth of battle at Landing Zone X-Ray, then-President Kennedy addressed the students of Amherst College with these words:

> A nation reveals itself not only by the men it produces, but also by the men it honors, the men it remembers.

Just 2 years after the President spoke these words, the fallen Americans of the Ia Drang Valley, Pleiku campaign, and the men who served there in November 1965, discovered a void of silence and inaction from their government. It was a government which failed to heed the words of their President. The Nation's leadership had failed to reveal itself—by remembering the men who served—by honoring the men who sacrificed.

But nations also learn from history, and in learning are reminded. Now is such a time. From the pages of a book

documenting the service of those who sacrificed in the Ia Drang Valley in November of 1965—a book entitled "We Were Soldiers Once . . . And Young"—our Nation is reminded. Through this account we are now able to remember those who fought, who died, who gave and served. Once again, history reminds us of our obligation and responsibility. And as we recognize this responsibility, the nation can go back and correct the failures of the past by honoring those very men who served.

Today, I am introducing legislation directly aimed to honor the men who served, sacrificed, and in many cases died, in the Ia Drang Valley in the Republic of Vietnam in November 1965. Joining me as cosponsors in this effort are Senators SMITH, SHELBY, BINGAMAN, HELMS, HOLLINGS, KEMPTHORNE, LIEBERMAN, FAIRCLOTH, INHOFE, DOLE, WARNER, and MCCAIN.

The bill we collectively introduce today has one singular goal: to ensure that the men who served in the Ia Drang Valley in November 1965 are not forgotten. Over the past 5 years, it has become clear that many who fought, sacrificed and died in the Pleiku campaign in the Ia Drang were not recognized for their deeds. In some instances individuals killed even failed to receive recognition for their sacrifice through the award of Purple Hearts. Our Nation can and should do better.

Under existing law and regulation, the Department of Army refuses all award recommendations submitted after 2 calendar years. It is a restriction callously enforced without regard to the very confluence of circumstances which precluded the assembly of facts in the case of the men who led the first of the 7th into battle in the Ia Drang almost 30 years ago.

After almost continuous fighting for the better part of 4 days, unit commanders lost hundreds of men. Exhausted, they huddled under lanterns each night writing letters to parents and wives explaining the loss of their sons and husbands who died in battle. In many cases the only witnesses to the valor and sacrifice of Americans felled by combat were either dead or severely wounded—neither of which were available to document the acts which justify recognition.

Over the intervening years, former commander in the Ia Drang and now retired Gen. Harold Moore, USA and Joseph Galloway, a UPI war correspondent who was in the Ia Drang in November 1965, conspired to write the history of the men served in the Pleiku campaign. After conducting hundreds of interviews to research their book, they discovered that numerous acts of heroism, sacrifice, and valor went unrecognized. Over the years efforts were made to convince the Department of Army to reconsider these men for military awards. In each instance, these efforts failed.

On July 6, 1994, the Adjutant General of the U.S. Army wrote Brig. Gen. Henry Thorpe, USA, (retired)—himself commander of Delta Company, 2d Battalion, 7th Cavalry in the Ia Drang in November 1965—to say:

> The Department of the Army has rigidly adhered to the rules pertaining to the two-year time limit and the *only recourse available to recognize these soldiers is special legislation by Congress.*" [emphasis added.]

This bill seeks to fulfill the casual advice of the Adjutant General of the Army. While it is unfortunate that legislative action is required to correct an oversight of the past 30 years, it should not be an insurmountable obstacle. The bill we introduce today removes the barricade erected by the Army, not by dictating the award of specific medals to individuals, but by directing the Army to waive the 2-year restriction and consider awards recommendations under existing Army criteria.

Should my colleagues question the wisdom of this legislation, I recommend you read two letters I have received from veterans of Ia Drang Valley, Pleiku campaign. At this point, I request unanimous consent that two letters supporting this bill be inserted in the RECORD. The first letter is from Joseph Galloway and the other is from Jack Smith.

Joseph Galloway was a 23-year-old war correspondent for United Press International when he accompanied elements of the 7th Cavalry into the Ia Drang Valley in November 1965. Thirty years later, his words ring in reverent tones as he describes the sacrifice of men lost, fallen comrades who served yet received no recognition.

Jack Smith was an enlisted specialist in Charlie Company, 2d Battalion, 7th Cavalry. Today, Jack Smith is an accomplished journalist with ABC News. His account is perhaps more personal as the book describes his experiences on the afternoon of November 17, 1965, on a trail to Landing Zone Albany—the extraction point for a tired group of soldiers who had already faced the dangers of battle and were weary from it.

As you read these letters, I urge you to envision the faces of the hundreds of young men who fought, not so much out of fear, but out of duty, honor, and commitment to the men with whom they served. This is a history which deserves recognition. And this legislation deserves passage, so that our Nation can once again reveal itself by the men it honors and the men it remembers.

I urge my colleagues to join me in cosponsoring this legislation and I yield the floor.

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

U.S. NEWS & WORLD REPORT,
Washington, DC, March 30, 1995.

Hon. TRENT LOTT,
U.S. Senate, Washington, DC.

DEAR SENATOR LOTT: This letter is to advise that I fully and completely support the Bill which you are introducing to permit U.S. Army consideration of delayed awards recommendations for some individuals who fought in the Pleiku (Ia Drang) Campaign in the Central Highlands of South Vietnam in October and November, 1965.

I was present on a number of those battlefields as a civilian war correspondent for United Press International, in the campaign which begin with the siege of Plei Me Special Forces Camp on 23 October, 1965, and ended with the tragic clash at Landing Zone Albany, 17–18 November, 1965.

I personally witnessed repeated acts of valor and sacrifice in three days and nights at Landing Zone X-Ray, 14–16 November, 1965, and at that time assumed that such acts would in due course be recognized by the Army by appropriate awards of valor.

It was not until Lt. Gen. (ret.) Hal Moore and I had begun the detailed interviews and research that would lead to publication of our book, "We Were Soldiers Once . . . and Young," that we realized how many men had been completely overlooked, and why.

There is, for instance, the tale of the two Charlie Companies, 1st Battalion and 2nd Battalion, 7th Cavalry. At LZ X-Ray on the terrible morning of 15 November, 1965, Charlie Company 1/7 Cavalry held the line for all of us against a full battalion of the 66th North Vietnamese Army Regiment, reinforced by another battalion of Main Force Viet Cong. The company began that morning with 5 officers and 107 men on its roster. By noon it had no officers and only 49 men left standing. A total of 42 officers and men had died and 20 more had been wounded in two and one-half hours of hand-to-hand combat. Yet they held the line and saved the rest of the battalion.

Two days later, two and a half miles away at LZ Albany, Charlie Company, 2nd Battalion 7th Cavalry began the day with 112 officers and men. By the following morning, 18 November, there were only eight officers and men present and accounted for. All the others were either dead, wounded or missing in action. The battalion had been ambushed in thick jungle and tall elephant grass; the company commanders had all been called to the head of the column and were not with their men. Of all the companies present, Charlie Company 2/7 died on its feet in a desperate charge into the muzzles of the machine guns trying to save the battalion. They died following the bravest of the brave, company executive officer Lt. Don C. Cornett, who died leading them.

Who knows their stories? Who writes their award recommendations in the shock and immediacy of the moment when battalions are being loaded down with replacements and the few surviving officers sit under gasoline lanterns in base camp tents, night after night, writing letters of condolence to the mothers and fathers, wives and children of those men?

Three-hundred-six American soldiers and one U.S. Air Force pilot died in the Pleiku Campaign, in the first major battle of the Vietnam War between U.S. and North Vietnamese Army regulars. Ours was a peacetime Army just getting its war legs under it—an Army without even a proper casualty notification system. The families learned news of their loved one's death from telegrams delivered by taxi drivers, often at 2 or 3 a.m. This was an Army still operating on peacetime awards policies, miserly and damned proud of being miserly when it came time to recognize the soldier in the ranks.

All these things conspired to insure that those men, living and dead, who had fought

the first and bloodiest battle of a 10-year war, would in large measure find that their deeds went unrecognized. And, as for the thanks of a grateful nation, well, we all know how that song went.

What I found in interviewing the survivors, my battlefield comrades, is that these are the most modest of men. They, each of them, seek nothing for themselves. But each will tell you how his closest buddy sacrificed his life to save another man. Or how the skinny young medic from Washington, D.C., tried to shelter the wounded with his body as enemy guns homed in on them. Or how Charles R. (Doc) Lose, the medic of the Lost Platoon (B Company, 1/7 Cavalry) at LZ X-Ray, used up all his bandages, all his morphine and then used c-ration toilet paper and strips torn off his own tee-shirt and somehow kept 13 badly wounded men alive for 26 harrowing hours under direct enemy fire. Only Doc Lose moved on that tiny knoll surrounded by the enemy, moving ceaselessly from man to man, tending his patients. During that time Doc Lose was himself wounded two times.

So many of those who would have stepped forward to recommend awards for the heroic actions they had witnessed were wounded and evacuated to hospitals in the United States. Many others had only a few days left on their term of service in the Army when they emerged from the Ia Drang battles. They were processed out and put on planes bound for home and civilian life, beginning one or two days later.

This legislation seeks no wholesales bemedalling of old soldiers for deeds long forgotten. It simply seeks an opportunity, a window, by which official Army awards channels can legally consider Ia Drang awards recommendations, properly drawn and properly endorsed by witnesses and the officers and non-commissioned officers of the units involved. It is a small opportunity to convey the country's and the Army's thanks and recognition to a few dozen men, living and dead, who did far more than simple duty demanded in the service of the United States.

These men are America's neighbors. They come from virtually every state in the Union. They are quiet and productive citizens. I was proud to stand beside them in the Ia Drang Valley in 1965, and it is a great honor and privilege to stand up for them and the families who lost loved ones in these battles and urge favorable consideration of this legislation.

Sincerely,

JOSEPH L. GALLOWAY,
Senior Writer.

ABC NEWS,
Washington, DC, April 3, 1995.

Hon. TRENT LOTT,
Russell Senate Office Building, Washington DC.

DEAR SENATOR LOTT: As a decorated veteran of the Battle of the Ia Drang Valley, 14–18 November, 1965, in the Republic of Vietnam, I strongly endorse your efforts to reopen the awards process for the men who fought in that major engagement and in the Pleiku Campaign (October-November, 1965) of which it was a part.

It was at the Ia Drang that US soldiers fought their first pitched battle against North Vietnamese regulars. The 1st Cavalry Division (Airmobile) decisively defeated a North Vietnamese division in one of the fiercest clashes of the war. My company, C company, 2d Battalion, 7th Cavalry Regiment, for instance, suffered 93% casualties. I was wounded twice, and am 20% disabled. (I am now a correspondent for ABC News in Washington, till recently on This Week with David Brinkley, and we have met.)

The heroism of many deserving friends and fellow-Cav troopers was overlooked in the aftermath of the battle. Partly because of the terrible losses suffered by some US units and the Army's consequent effort to sanitize the battle for public relations purposes, and partly because in many cases there were simply too few survivors to document the heroism that occurred in a timely fashion.

Even though the Army is now understandably reluctant to re-open the awards process for fear of being overwhelmed by a flood of frivolous claims, I believe the fears are groundless. No one is talking about the wholesale revision of awards, rather a long-overdue chance to allow consideration of delayed award recommendations for acts of heroism that went unreported at the time.

The fighting was so ferocious, the action so important, and the valor of those who fought so exemplary that introducing a bill to do this, as you are doing, is a public service. It is an opportunity to convey the nation's thanks to a few men who answered their country's call and did more than duty demanded, but who afterwards were overlooked.

Yours sincerely,

JACK SMITH,
Correspondent.

ADDITIONAL COSPONSORS

S. 324

At the request of Mr. WARNER, the names of the Senator from Minnesota [Mr. GRAMS] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 324, a bill to amend the Fair Labor Standards Act of 1938 to exclude from the definition of employee firefighters and rescue squad workers who perform volunteer services and to prevent employers from requiring employees who are firefighters or rescue squad workers to perform volunteer services, and to allow an employer not to pay overtime compensation to a firefighter or rescue squad worker who performs volunteer services for the employer, and for other purposes.

S. 483

At the request of Mr. HATCH, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 483, a bill to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes.

S. 582

At the request of Mr. HATFIELD, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 582, a bill to amend title 28, United States Code, to provide that certain voluntary disclosures of violations of Federal laws made pursuant to an environmental audit shall not be subject to discovery or admitted into evidence during a Federal judicial or administrative proceeding, and for other purposes.

S. 585

At the request of Mr. SHELBY, the name of the Senator from Colorado [Mr. BROWN] 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. 594

At the request of Mrs. BOXER, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 594, a bill to provide for the administration of certain Presidio properties at minimal cost to the Federal taxpayer.

S. 678

At the request of Mr. AKAKA, the names of the Senator from South Dakota [Mr. DASCHLE], the Senator from Washington [Mr. GORTON], and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of S. 678, a bill to provide for the coordination and implementation of a national aquaculture policy for the private sector by the Secretary of Agriculture, to establish an aquaculture development and research program, and for other purposes.

S. 684

At the request of Mr. HATFIELD, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 684, a bill to amend the Public Health Service Act to provide for programs of research regarding Parkinson's disease, and for other purposes.

S. 830

At the request of Mr. SPECTER, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 830, a bill to amend title 18, United States Code, with respect to fraud and false statements.

S. 917

At the request of Mr. DOMENICI, the names of the Senator from Kansas [Mr. DOLE], the Senator from Mississippi [Mr. COCHRAN], the Senator from Michigan [Mr. ABRAHAM], the Senator from Texas [Mrs. HUTCHISON], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 917, a bill to facilitate small business involvement in the regulatory development processes of the Environmental Protection Agency and the Occupational Safety and Health Administration, and for other purposes.

S. 959

At the request of Mr. HATCH, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 959, a bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes.

SENATE CONCURRENT RESOLUTION 11

At the request of Ms. SNOWE, the names of the Senator from California [Mrs. FEINSTEIN], the Senator from Illinois [Ms. MOSELEY-BRAUN], and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of Senate Concurrent Resolution 11, a

concurrent resolution supporting a resolution to the longstanding dispute regarding Cyprus.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the names of the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Resolution 103, a resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

SENATE CONCURRENT RESOLUTION 18—AUTHORIZING THE ARCHITECT OF THE CAPITOL TO TRANSFER THE CATAFALQUE

Mr. DOLE (for himself and Mr. DASCHLE) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 18

Resolved by the Senate (the House of Representatives concurring), That the Architect of the Capitol is authorized and directed to transfer to the custody of the Chief Justice of the United States the catafalque which is presently situated in the crypt beneath the rotunda of the Capitol so that the said catafalque may be used in the Supreme Court Building in connection with services to be conducted there for the late Honorable Warren Burger, former Chief Justice of the Supreme Court of the United States.

SENATE CONCURRENT RESOLUTION 19—CORRECTING THE ENROLLMENT OF H.R. 483

Mr. PACKWOOD submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 19

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (H.R. 483) to amend title XVIII of the Social Security Act to permit medicare select policies to be offered in all States, and for other purposes, the Clerk of the House of Representatives shall make the following correction: Amend the title so as to read as follows: "An Act to amend the Omnibus Budget Reconciliation Act of 1990 to permit medicare select policies to be offered in all States.".

AMENDMENTS SUBMITTED

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

SARBANES AMENDMENT NO. 1472

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 line 6, and insert the following:

"(A) NET FINANCIAL WORTH.—Each".

On page 134, strike lines 9 through 15, and insert the following: "that the net financial worth of the".

On page 134, line 23, strike "50 percent" and insert "100 percent".

BOXER (AND GRAHAM) AMENDMENT NO. 1473

Mrs. BOXER (for herself and Mr. GRAHAM) proposed an amendment to the bill, S. 240, supra; as follows:

At the appropriate place, insert the following:

SEC. . STUDY AND REPORT ON PROTECTIONS FOR SENIOR CITIZENS AND QUALIFIED RETIREMENT PLANS.

(A) FINDINGS.—The Congress finds that—

(1) senior citizens and qualified retirement plans are too often the target of securities fraud of the kind evidenced in the Charles Keating, Lincoln Savings & Loan Association, and American Continental Corporation situations;

(2) this Act, in an effort to curb unfounded lawsuits, changes the standards and procedures for securities fraud actions; and

(3) the Securities and Exchange Commission has indicated concern with some provisions of this Act.

(b) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall—

(1) determine whether investors that are senior citizens or qualifed retirement plans require greater protection against securities fraud than is provided in this Act and the amendments made by this Act, and

(2) if so, submit to the Congress a report containing recommendations on protections that the Commission determines to be appropriate to thoroughly protect such investors.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "qualified retirement plan" has the same meaning as in section 4974(c) of the Internal Revenue Code of 1986; and

(2) the term "senior citizen" means an individual who is 62 years of age or older as of the date of the securities transaction at issue.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and public that a hearing has been scheduled before the full Committee on Energy and Natural Resources to review the Secretary of Energy's strategic realignment and downsizing proposal and other alternatives to the existing structure of the Department of Energy.

The hearing will take place Tuesday, July 11, 1995, at 9:30 a.m., in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Karen Hunsicker (202) 224-3543 or Betty Nevitt at (202) 224-0765.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. D'AMATO. Mr. President, I ask unanimous consent that the Committee on Armed Services and its subcommittees be authorized to meet June 26 to mark up the Department of Defense Authorization Act for fiscal year 1996.

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

ADDITIONAL STATEMENTS

IN MEMORY OF THE LATE SENATOR MARGARET CHASE SMITH

• Ms. SNOWE. Mr. President, last Friday I joined with the people of Maine and America in celebrating the life of Senator Margaret Chase Smith, who had a distinguished 32 years of service in Congress on behalf of my home State of Maine.

Senator Smith passed away this Memorial Day at the age of 97. With characteristic modesty, she asked that no funeral be held, and that instead that a memorial service be scheduled at a later date. That service is scheduled to occur this afternoon in Senator Smith's home town of Skowhegan, ME, at the Margaret Chase Smith Library.

During her tenure in Congress, Margaret Chase Smith became known for her independence and her conscience as well as for her legislative accomplishments. In 1953, she identified her creed that guided her both in life and in the Senate.

Her creed is as follows:

My Creed is that public service must be more than doing a job efficiently and honestly. It must be a complete dedication to the people and to the nation with full recognition that every human being is entitled to courtesy and consideration, that constructive criticism is not only to be expected but sought, that smears are not only to be expected but fought, that honor is to be earned but not bought.—MARGARET CHASE SMITH, November 11, 1953.

Senator Smith—always prepared to speak for what is right in society—also identified, in her book "Declaration of Conscience," some of the perils that face our society. I think that, as we mark Senator Smith's passing today, it is appropriate to again consider Margaret Chase Smith's "tribute to the square":

In today's growing, but tragic emphasis on materialism, we find a perversion of the values of things in life as we once knew them. For example, the creed once taught children as they grew up was that the most important thing was not in whether you won or lost the game, but in "how you played the game".

That high level attitude that stresses the moral side no longer predominates in this age of pragmatic materialism that increasingly worships the opposite creed that "the end justifies the means" or in the attitude of get what you can in any way, manner, or means that you can . . .—"A Tribute to the

Square," December 21, 1964, Quoted in Margaret Chase Smith, "Declaration of Conscience."

Now, three decades after Senator Smith wrote those words and four decades after her "Declaration of Conscience" speech, her words ring as true as they did when Margaret Chase Smith first uttered them. We may learn from them even today, as we celebrate Senator Smith's memory, her conscience, and her values.•

THE SOUTHERN CALIFORNIA ATF FIREARMS TRACE STUDY

• Mr. SIMON. Madam President, I would like to draw my colleagues' attention to a recent report released by the southern California field office of the Bureau of Alcohol, Tobacco and Firearms [BATF]. This report details a firearms trace study conducted on firearms found in crime scenes in southern California. The BATF's objective in conducting this study was to help determine the source of crime guns and suggest practices to counter the threat posed by illicit traffic in firearms. The results of the study provide evidence that many firearms used in crimes come from licensed firearms dealers. The results also reveal the problems of interstate trafficking in firearms, and the need for uniform, national firearms regulations.

The report, titled "Sources of Crime guns in Southern California" describes the results of a firearms trace study in which special agents and intelligence analysts reviewed police reports and submitted trace requests for 1,764 guns recovered by selected law enforcement agencies in Los Angeles, Orange, and San Diego Counties between January 1, 1994 and November 10, 1994.

The results of the study raise serious questions about some of the rhetoric used to oppose firearms regulations. Last year, as I worked to tighten licensing requirements for Federal firearms dealers, many who opposed my proposals claimed that licensed gun dealers are not the source of guns used in crimes. This report shows that, at least in southern California, that is just not true. The ATF report outlined six sources of the guns recovered from crime scenes. By far the largest source was licensed gun dealers: Commercial gun dealers accounted for 80 percent of the guns recovered.

According to the study, many significant gun trafficking cases involved at-home dealers who purchased large quantities of firearms from distributors, then resold them without paperwork. Recent legislation, from the Brady law to my gun dealer licensing reforms in last year's crime bill, has begun to address the serious lack of oversight on licensed gun dealers. As a result of my reforms, Federal firearms licenses now require a photograph and fingerprints, dealers are required to comply with State and local laws, and the ATF now has 60 days, instead of 45, to investigate before granting a license. Additional reforms raised the licensing fee from a mere $30 to $200. In fact, several recent cases have led to prosecution and conviction on felony licensing and recordkeeping violations.

The report also shows the problems with interstate trafficking of firearms, and provides yet another argument in favor of national firearms regulations. Many of the guns recovered from crime scenes in southern California were traced to dealers in neighboring States with less stringent regulations: 30 percent of the guns included in the study were traced to dealers in 40 States other than California. Arizona and Nevada comprised 25 percent of the out-of-State purchases.

California is a State with strong gun trafficking laws. All gun transfers, including those involving private parties, must go through a dealer and be approved by the California Department of Justice. Prospective purchasers of handguns and long guns are screened during a 15-day waiting period and approved buyers are perpetually recorded in a computer database. California forbids the possession of certain assault weapons and forbids felons from possessing any type of firearm whatsoever.

By comparison, the laws of surrounding States, such as Nevada and Arizona, are highly permissive. Neither State imposes any restrictions other than the minimum Brady Bill requirements. Long gun sales and private transactions are not regulated and there is no central registry of handgun sales.

I would like to commend the ATF for conducting this important firearms trace study. The results of their report should help to inform the debate on gun control legislation.•

THE LIFE OF GEORGE HENRY WILLIAMS

• Mr. HATFIELD. Mr. President, throughout its colorful history, the State of Oregon has been blessed with the talents of many distinguished leaders. In my readings, I have been struck by the number of these great Oregon citizens who have received little notice from the writers of U.S. history. One such individual is Senator George Henry Williams.

I was reminded of Judge Williams' important role in Oregon history by an article which recently appeared in the Oregon State Bar Bulletin. The article, excerpted from Judge Williams' obituary, was skillfully edited by Julie Hankin of the Bulletin. This excellent piece of history gives us a glimpse into the extraordinary life of a great American and I recommend it to my colleagues.

A contemporary and close friend of Abraham Lincoln, Judge Williams came to Oregon following his appointment as Chief Justice of the Oregon territory in 1853. His ambition, however, was to serve in the U.S. Senate.

Having worked actively as a Free Soil Democrat, he eventually left the party for that of Lincoln and was elected to the U.S. Senate in 1864 on the Republican ticket. There, he quickly earned the respect of his colleagues and, later, the notice of his President, Gen. Ulysses S. Grant. President Grant nominated Williams to serve as his Attorney General. Williams withdrew his name from consideration, however, following a set of intriguing circumstances, all of which are detailed in the article which I will submit for the RECORD following my remarks.

Mr. President, in a city guided all too often by ego, I am always pleased to discover unsung heros, those who sought only to serve their countrymen, not themselves. As noted author Walter Lippman once said: "The final test of a leader is that he leaves behind in other men the conviction and the will to carry on." George Henry Williams was such an inspirational figure.

I ask that the article from the Oregon State Bar Bulletin appear in the RECORD.

[From the Oregon State Bar Bulletin, May 1995]

OREGON'S GENTLE GIANT—THE LIFE OF GEORGE HENRY WILLIAMS: SENATOR, ATTORNEY GENERAL, AND LAWYER

(By C.E.S. Wood)

George Henry Williams was born in a log cabin in New York state in 1823. Both of his grandfathers served in the Continental Army during the Revolutionary war. He studied law, and in 1844, at the age of 21, he was admitted to the bar at Syracuse. Soon afterward he started West to seek his fortunes as a lawyer.

Nationwide there were but a few miles of railroad at the time—none west of Indiana. There were no telegraph lines. Travel was by river, canal and coach. Pittsburgh and St. Louis were the Western frontier. Chicago did not exist. He made his way by the Erie Canal, the Ohio Canal, the Ohio River as far as St. Louis and then up the Mississippi to Fort Madison, Iowa. His wealth was the Statutes of New York and some bank notes of New York state banks.

Unfortunately, while Williams was counting backnotes in Pittsburgh in order to exchange them for western notes, they were snatched from him in a robbery. By virtue of his honest face he procured passage on boats to St. Louis and then Fort Madison.

In 1847, on the admission of Iowa as a state, he was elected a district judge. The same year he first met Abraham Lincoln at a conference in Chicago. Here began a great, lifelong friendship between these two with much background in common—born in poverty in log cabins, growing to the rugged strength and height of giants, athletic and sympathetic to the great masses. Judge Williams would later be selected as one of the escorts of honor and one of the pall bearers at Lincoln's funeral.

As an anti-slavery Democrat, Judge Williams campaigned throughout Iowa for Franklin Pierce and was elected one of the presidential electors on the Democratic ticket. Shortly after Pierce's inauguration in

1853, at the suggestion of his friend, Sen. Stephen A. Douglas, Williams was appointed chief justice of Oregon Territory. He was 30 years old. The appointment was without his knowledge and contrary to his wish.

He had gotten married in 1850 in Iowa to Miss Kate Van Antwerp and found his $1,000 annual salary as an Iowa district judge too small to meet the expenses of married life. He sent in his resignation, with the intention of resuming the practice of law. Lawyers of both Whig and Democrat persuasion begged him to remain on the bench.

In the end, the young and romantic Mrs. Williams decided their fortunes. Oregon was the unknown land of the West, and the excitement of voyaging there appealed to her. The couple fully intended to return to Iowa as soon as Judge Williams' term in Oregon expired.

The young couple made their home in Salem. President Buchanan appointed Judge Williams to a second term, but private practice still tempted him. He resigned, and in 1858 opened an office in Portland in a small frame building on the river bank between Washington and Alder streets.

These were stirring times in Oregon. The admission of the territory into the Union as a state was a vital issue and necessarily involved whether it should come in as a free or as a slave state. One of the desires that induced Williams to leave the bench was not only to add to his income by practicing law, but that he might enter the active arena of politics. His ambition was to be United States senator.

As a Democrat he championed the anti-slavery cause. He became a Free Soil Democrat, elected to the state constitutional convention and appointed chairman of the judiciary committee there. Apparently by the force of argument and eloquence, he greatly aided in having the free constitution adopted by the state.

Judge Williams' strong anti-slavery work in Oregon had antagonized the administration in Washington, with the result that he was not appointed United States senator. Also at the first election he was defeated by the opposition.

Judge Williams had joined in the call for an amalgamation of anti-slavery-war-Democrats with Republicans, to be called the Union Party, and by this transition he entered the Republican party and in 1864 was elected to the United States Senate. His long-held ambition was fulfilled. He entered the Senate at the close of the war and beginning of the reconstruction period. He was the sole author of the Reconstruction Act substantially as it was adopted. He drew the 15th Amendment essentially as it now stands. He was a member of the Joint High Commission, which met in Washington to determine how the disputes between Great Britain and the United States should be settled. He was a leader in the Senate during the impeachment of Andrew Johnson.

The enforcement of his Reconstruction Act also fell to Williams as Grant's attorney general at the expiration of his senatorial term: In all the troubled times following the Civil War, the responsibility of enforcement law and order by civil remedies was on Williams' shoulders. The task included confronting the Ku Klux Klan's lawlessness. Also, he had to decide between two governments in Louisiana, Alabama and Arkansas, conflicts which he resolved in favor of the Republicans in Louisiana, the Democrats in Arkansas and by a compromise in Alabama.

It therefore surprised no one (except Oregonians) that General Grant sent his name to the Senate to be chief justice of the United States. Judge Williams eventually insisted on his name being withdrawn. The causes have been variously stated as political animosity in the East due to his reconstruction work and Republican partisanship; social antagonism to his second wife, then ambitious to be a leader in Washington society; and opposition in Oregon, because in the course of his Washington career, he had necessarily failed to please everyone back home.

As the story goes, he went to see Grant to insist that his name be withdrawn. They drove out behind Grant's favorite pair of trotters, and the president became so absorbed in the discussion that he overdrove the horses and one of them died. In the end, Grant took Williams' suggestion of Morrison R. Waite of Ohio, saying, "Wire him in your own name and ask him if he will take the office of chief justice of the United States." The result is a matter of history.

It seems that Judge Williams only narrowly missed being chief justice, but he used to sum up the whole matter by saying, "I believe I have lived longer and happier than if I had been raised to that exalted office."

He returned to Portland and resumed the practice of law. He was a two-term mayor of the city from 1902–1905. He died in his sleep at home in Portland, April 4, 1910.

WHAT KIND OF MAN WAS HE?

These are the milestones in Williams' life. Taken alone, they are impressive enough. On the other hand, other men have held high office and lived long lives, busy in civic affairs on all levels. Those who knew Judge Williams want to emphasize what manner of man he was.

In all that he did he was filled with common sense and the spirit of justice. As a judge he was calm, impersonal and impartial, sensible, passionless and just. As a lawyer he was forceful, eloquent, sincere and never let justice be obscured by technicalities. Although learned in the law, his ruling trait was plain, good sense. He disliked dissension or contention either in public or private life.

At 87 he was still youthful in mind, belonging to the present and not the past. He was as interested in the problems of the day and as progressive in thought as a man of 25.

He exhibited his own childlike simplicity of character in his fondness for children. One of the last images his partners had of him was of Williams gazing gravely at a 2-year old girl was had toddled into his office from the hallway and stood staring at him.

After a moment's mutual viewing each other in silence, not knowing they were observed, the judge was heard to say solemnly to his small visitor, "Were you looking for a lawyer?" In a few days he was dead, and there passed one of the kindliest and most lovable of men.•

CONTINUE THE OFFSHORE DRILLING BAN

• Mr. BIDEN. Mr. President, I rise today to voice my strong opposition to efforts by some in the House of Representatives to remove the current moratorium on offshore oil and gas drilling on the Outer Continental Shelf. Last Tuesday, the House Interior Appropriations Subcommittee voted to lift this 14-year-old ban without soliciting any input from the coastal states directly affected. The full committee will have an opportunity to reverse this misguided action this week, and I call on them to reinstate this prohibition.

Mr. President, lifting this moratorium is short-sighted and unnecessary, and threatens to litter our coastline with mammoth drilling rigs. This will only increase the likelihood of oil and gas spills and other environmental disasters.

We faced this battle roughly 20 years ago in Delaware when oil and gas interests wanted to drill in the Baltimore Canyon off the coast of the Delmarva Peninsula. This is clearly one instance where Federal law is necessary and effective and we ought to keep the ban.

Mr. President, I am terribly concerned that this move is yet another part of an overall antienvironmental agenda now being advanced. Whether it is the air we breath, the water we drink, or the food we eat, there are increasing attempts to do away with reasonable health and safety protections.

Lifting the ban on offshore drilling—at a time when world oil supply and prices remain stable, and when the Republican budget proposal includes billions in oil sales from the north slope of Alaska—is unnecessary, misguided and just plain wrong.

Just one oil or natural gas spill, similar to the tragic *Valdez* accident, could permanently destroy miles and miles of pristine State beaches and boardwalk. Such an accident could also easily erase the decade of progress made in restoring the fragile ecosystems of the Chesapeake and Delaware Bays.

Due largely to concerns over these environmental risks, the Congress, in 1982, struck a fair balance between the need for expedited exploration and development, and the need to protect coastal environments.

This policy has been effective and has enjoyed bipartisan support. Oil and natural gas extraction in the most abundant areas has continued and even increased, generating tens of billions of Federal revenue, while the sanctity, beauty and safety of our coastlines has been preserved. A fair balance.

Yet now, in total disregard for the interests of coastal states, and "States rights" which is so often invoked and embraced, the House is attempting to upset this balance.

Mr. President, this is a perfect example of the proper role for Government in ensuring the safety of our environment and the health of our citizens. At a bare minimum, coastal states should have the authority to extend the moratorium to the Outer Continental Shelf adjacent to the States' coastline. That is why I have joined with the distinguished Senator from California [Mrs. BOXER] in introducing legislation enabling States to reimpose this needed drilling restriction on their Outer Continental Shelf waters.

Yet, I remain terribly concerned that a more comprehensive approach, covering all of the Outer Continental Shelf,

as we have had in the past, is what is needed.

Mr. President, I intend to fight vigorously to ensure the continued sanctity of our coastal communities and remain committed to the ban on offshore drilling.•

THE 1995 ELLIS ISLAND MEDALS OF HONOR RECIPIENTS

• Mr. PRESSLER. Mr. President, as the former honorary chairman of Ethnic American Day, I have the distinct privilege of entering into the RECORD the names of the individuals who have been awarded the National Ethnic Coalition of Organizations [NECO] 1995 Ellis Island Medal of Honor.

NECO's distinguished board chairman is Mr. William Denis Fugazy. NECO, founded in 1984, is the only organization in the United States of America that celebrates the ethnic diversity of the American population. NECO also serves as a watchdog for ethnic, racial, and religious injustice, and has been a constant voice and vigorous advocate for ethnic unity and pride in America. One of its programs is the Ellis Island Medals of Honor.

Each year since 1986, NECO has recognized America's ethnic diversity by honoring the achievements and contributions of ethnic Americans in all professions, including government, entertainment, business and industry, sports, health care, and communications. NECO's Ellis Island Medals of Honor embody the true spirit of what makes the United States unique among the world's nations.

Many of our country's ethnic groups have no direct connection to Ellis Island. However, NECO rightly views Ellis Island as a landmark and symbol of the shared experiences of all immigrant groups that have landed on our soil. Most have come to our shores because they were the targets of ethnic, racial, and religious hatred, discrimination, stereotyping, and prejudice. Many continued to experience this intolerance in America itself.

NECO strives to eliminate this hatred. Through the Ellis Island Medals of Honor, NECO celebrates ethnic diversity and the great contributions of immigrants to the American experience. Whether they have entered past Lady Liberty in New York Harbor, John F. Kennedy International Airport, or through San Francisco Bay; whether they are native Americans, African-Americans, Asian-Americans, or others who have not entered this country through Ellis Island; NECO's Ellis Island Medals of Honor embrace all ethnic Americans who call this great country home.

Mr. President, I ask to have printed in the RECORD the National Ethnic Coalition of Organizations 1995 Ellis Island Medals of Honor recipients. I extend my congratulations to this very distinguished group of Americans.

The recipients follow:

1995 ELLIS ISLAND MEDALS OF HONOR RECIPIENTS

Dr. Mihran S. Agbabian; Mr. Raul Alarcon, Jr.; Hon. Madeleine Korbel Albright; Mr. George E. Altomare; Mr. Richard T. Anderson; Mr. Marion H. Antonini; Mr. Carlos J. Arboleya; Mr. Robert T. Aspromonte; Mr. Ronald G. Assaf; Mr. Frank Assumma; Mr. William L. Ayers, Jr.; Mr. Alan L. Bain; Dr. Gwendolyn Calvert Baker; Mr. Stephen Bartolin, Jr.; Ms. Barbara W. Bell; Mr. Geza T. Bodnar; Ms. Helen F. Boehm; Mr. Edgar Bronfman, Jr.; Hon. Joseph L. Bruno; Ms. Donna Grucci Butler; Stanley Q. Casey; Hon. Bernadette Castro; Mr. Leon H. Charney; Mr. Muzaffar A. Chishti; Mr. Philip Christopher; Mr. Richard J. Ciecka; Mr. Anthony J. Colavita, Esq.; Hon. Clay Constantinou; Rev. John J. Cremins, Ph.D.; Sr. Camille D'Arienzo; Mr. Vic Damone; Ms. Donna de Varona; Mr. Papken S. Der Torossian; Brig. Gen. Robert C.G. Disney; Ms. Kathleen A. Donovan; Mr. Robert B. Engel; Dr. Anthony S. Fauci, MD; Mr. Arthur V. Verrara; Dr. George S. Ferzli, M.D., F.A.C.S.; Mr. Arnold L. Fisher; Mr. George P. Gabriel; Hon. Charles A. Gargano; Mr. Arie Genger; Ms. Kathie Lee Gifford; Mr. David Giladi; Ms. Bozenna Urbanowicz Gilbride; Mr. James F. Gill; Mr. Sandy Ginsberg; Mr. Michael Goodwin; Mr. Per Hellman; Hon. Alan G. Hevesi.•

INCREASING PARTICIPATION OF UNITED STATES-FLAG VESSELS IN UNITED STATES-JAPAN TRADE

• Mr. COHEN. Mr. President, during the ongoing debate about autos and autoparts, much has been said about how our domestic companies have been denied a chance to compete in Japan on the basis of quality and price. I rise today to describe to my colleagues a similar problem faced by United States companies seeking to enter the trade carrying automobiles between Japan and the United States under the United States flag.

At present, only three United States-flag vessels operate in the United States-Japan trade. I understand the Department of Defense and our trade negotiators are aware of proposals to increase United States-flag participation in this trade, including a significant one to construct a fleet of 10 refrigerated car carriers to carry vehicles from Japan to the United States and produce and other refrigerated products, as well as automobiles, to Japan at commercially competitive rates.

I am particularly interested in this type of proposal because it would lead to the construction of new ships in U.S. shipyards. As my colleagues no doubt appreciate, we must do something to help our shipyards supplement their military work with commercial orders. The president of the American Shipbuilding Association, for example, recently pointed out in a letter to Members of Congress that "[c]onstruction of military sealift ships is critical to the Nation's defense, to sustaining the Navy's shipbuilding base, and to our industry's efforts to supplement declining orders with commercial work." By encouraging the entry of new U.S.-built vessels equipped with national defense features in this trade, Congress and the administration can help preserve rapidly dwindling seafaring manpower and skills, save or create a significant number of jobs in the shipbuilding and supplier industrial base, and assist U.S. shipyards in re-entering the commercial shipbuilding market.

At my request, the Department of Defense recently completed a study of the costs and benefits of an active Ready Reserve Force Program employing privately owned commercial ships equipped with national defense features as an alternative to the currently inactive Ready Reserve Force fleet. The report demonstrates that an active Ready Reserve Force Program, comprised of newly U.S.-built commercial vehicle carriers equipped with national defense features, would have important benefits and would be substantially more cost effective than acquiring and converting existing foreign-built ships. The report noted, however, that securing entry into the commercial market will be a critical element for the success of the program.

In my view, entry of these vessels into the United States-Japan trade would enhance our national security. Equipped with national defense features, such as hoistable strengthened decks, these vessels would be well adapted for carrying both heavy equipment and ammunition. Moreover, a fleet of this size in normal commercial operation in the United States-Japan auto trade would ensure vessels would be available for loading at designated ports of embarkation within the time demands for the Ready Reserve Force contemplated in an emergency.

I therefore urge the Department of Defense and our trade negotiators in ongoing discussions and negotiations to emphasize to the Government of Japan the importance of augmenting American participation in this trade as a means of advancing the mutual defense and security interests of our two nations.•

DR. KERRY BEEBE—OPTOMETRIST OF THE YEAR

Mr. GRAMS. Mr. President, I would like to take this opportunity to recognize an outstanding Minnesotan who has been chosen as the American Optometric Association's 1995 "Optometrist of the Year."

A resident of Brainerd, MI, Dr. Kerry Beebe was selected from more than 27,000 doctors for his significant contributions to the discipline of optometry.

Since 1985, Dr. Beebe has taken an active role in promoting the agenda of Minnesota's Optometric Association's legislative steering committee by spending countless hours lobbying,

fundraising and speaking on issues important to optometry and the patients it serves.

In addition, Dr. Beebe has participated in a number of community service activities including serving as a member of the Brainerd Area Chamber of Commerce, Brainerd Lions Club, Brainerd Jaycees, Ducks Unlimited, and as an advisory board member to the Kingwood Good Samaritan Nursing Home.

In 1992, Minnesota Gov. Arne Carlson appointed Dr. Beebe to the Rural Health Advisory Commission which was established to facilitate the implementation of health care reform on a regional basis. He was also appointed by the Minnesota Commissioner of Health to serve on the universal standard benefit set committee to recommend a benefit set of services.

I would like to quote from Dr. Beebe's hometown paper, the Brainerd Daily Dispatch:

He has to be one of, if not the most patient, understanding and courteous business/non-business persons I have encountered. . . . During all the years I have dealt with Dr. Beebe, he has never failed in his friendly, courteous and patient manner."

Mr. President, I hope that our Senate colleagues will join me in congratulating one of America's outstanding health care providers. Dr. Beebe has made Minnesota proud and today, Dr. Beebe is making America proud.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 104–10

Mr. D'AMATO. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Investment Treaty with Mongolia (Treaty Document No. 104–10), transmitted to the Senate by the President on June 26, 1995; and the treaty considered as having been read the first time; referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and ordered that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the United States of America and Mongolia Concerning the Encouragement and Reciprocal Protection of Investment, with Annex and Protocol, signed at Washington on October 6, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Treaty, with Annex and Protocol.

The bilateral investment Treaty (BIT) with Mongolia will protect U.S. investors and assist Mongolia in its efforts to develop its economy by creating conditions more favorable for U.S. private investment and thus strengthening the development of the private sector.

The Treaty is fully consistent with U.S. policy toward international and domestic investment. A specific tenet of U.S. policy, reflected in this Treaty, is that U.S. investment abroad and foreign investment in the United States should receive national treatment. Under this Treaty, the Parties also agree to international law standards for expropriation and compensation for expropriation; free transfer of funds associated with investments; freedom of investments from performance requirements; fair, equitable, and most-favored-nation treatment; and the investor's or investment's freedom to choose to resolve disputes with the host government through international arbitration.

I recommend that the Senate consider this Treaty as soon as possible, and give its advice and consent to ratification of the Treaty, with Annex and Protocol, at an early date.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 26, 1995.*

EXECUTIVE CALENDAR

EXECUTIVE SESSION

Mr. D'AMATO. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations: Executive calendar nomination numbers 101, 186 through 195, and 205, and the nominations placed on the Secretary's desk in the Foreign Service.

I further ask unanimous consent that the nominations be considered en bloc, the motions to reconsider be laid upon the table en bloc, that any statements relating to the nominations appear at the appropriate place in the RECORD, the President be immediately notified of the Senate's action, and that the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

RAILROAD RETIREMENT BOARD

Virgil M. Speakman, of Ohio, to be a Member of the Railroad Retirement Board, for a term expiring August 28, 1999.

DEPARTMENT OF STATE

Larry C. Napper, of Texas, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of American to Latvia.

R. Grant Smith, of New Jersey, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Tajikistan.

Donald K. Steinberg, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Angola.

Lawrence Palmer Taylor, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Estonia.

Peter Tomsen, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Armenia.

Jenonne R. Walker, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Czech Republic.

Mosina H. Jordan, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Central African Republic.

Lannon Walker, of Maryland, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cote d'Ivoire.

Timothy Michael Carney, of Washington, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Sudan.

James Alan Williams, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during his tenure of service as the Special Coordinator for Cyprus.

CENTRAL INTELLIGENCE

George J. Tenet, of Maryland, to be Deputy Director of Central Intelligence, vice Admiral William O. Studeman.

IN THE FOREIGN SERVICE

Foreign Service nominations beginning Robert A. Kohn, and ending Robert A. Taft, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of March 23, 1995.

Foreign Service nominations beginning Judith A. Futch, and ending Joy Ona Yamamoto, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of May 15, 1995.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDERS FOR TUESDAY, JUNE 27, 1995

Mr. D'AMATO. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:15 a.m. on Tuesday, June 27, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and that the Senate then immediately

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.

Mr. D'AMATO. Mr. President, I now ask unanimous consent that the Senate stand in recess between the hours of 12:30 p.m. and 2:15 p.m. tomorrow for the weekly policy luncheons to meet.

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

PROGRAM

Mr. D'AMATO. For the information of all Senators, the Senate will resume consideration of the securities bill tomorrow at 9:15 a.m. under the previous order. At 9:15 a.m., the Senate will begin a total of 60 minutes of debate on the Bryan amendment, on aiding and abetting, and the Boxer amendment regarding lead plaintiff. At the hour of 10:15 a.m. on Tuesday, there will be two consecutive votes on or in relation to those amendments. It is the intent of the majority leader to complete action on the securities bill at an early hour on Tuesday. The majority leader has also announced that following the securities litigation bill, it will be his intention to begin consideration of the regulatory reform bill.

Mr. President, there would be the usual time reserved in between those 2 votes to explain for 2 minutes, 1 minute on each side, the contents of the amendments.

Mr. SARBANES. Mr. President, will the Senator yield? I understand that following the second of those votes, the Senator from Maryland would then be recognized to offer an amendment relating to the so-called safe harbor, which is one of two amendments I have on that aspect of the bill?

Mr. D'AMATO. That is correct. That has been included in the earlier unanimous-consent request.

Mr. SARBANES. I thank the Senator.

RECESS UNTIL 9:15 A.M. TOMORROW

Mr. D'AMATO. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:08 p.m., recessed until Tuesday, June 27, 1995, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate June 26, 1995:

DEPARTMENT OF ENERGY

DERRICK L. FORRISTER, OF TENNESSEE, TO BE AN ASSISTANT SECRETARY OF ENERGY (CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS), VICE WILLIAM J. TAYLOR III, RESIGNED.

FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE TO THE CLASS STATED, AND FOR THE APPOINTMENT AS CONSULAR OFFICER AND SECRETARY AS INDICATED:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR; AND CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF AGRICULTURE

JOHN H. WYSS, OF TEXAS

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS TWO, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

DAVID J. MURPHY, OF MASSACHUSETTS

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

JANICE A. CORBETT, OF OHIO
MICHAEL P. KEAVENY, OF CALIFORNIA
GREGORY D. LOOSE, OF CALIFORNIA
REBECCA L. MANN, OF FLORIDA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS FOUR, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

DONALD G. NAY, OF COLORADO

DEPARTMENT OF STATE

ANNE MARIE KREMIDAS AGUILERA, OF NEW HAMPSHIRE
JAKE COSMOS ALLER, OF WASHINGTON
MELISSA BUCHANAN ARKLEY, OF TEXAS
BARBARA L. ARMSTRONG, OF GEORGIA
BRIAN DAVID BACHMAN, OF VIRGINIA
CAROLYN R. BARGERON, OF MARYLAND
MARY MONICA BARNICLE, OF ILLINOIS
ERICA J. BARKS, OF VIRGINIA
RUSSELL ALTON BAUM, JR., OF CALIFORNIA
KEITH DERMONT BENNETT, OF WASHINGTON
DONALD SCOTT BOY, OF MASSACHUSETTS
JEREMY BECKLEY BRENNER, OF CONNECTICUT
DAVID KERRY BROWN, OF WASHINGTON
RAVI S. CANDADAI, OF WASHINGTON
LISA G. CONNER, OF CALIFORNIA
DAVID FRANCIS COWHIG, JR., OF VIRGINIA
THEODORE J. CRAIG, OF VIRGINIA
JEFFREY R. DAFLER, OF OHIO
JASON DAVIS, OF ALASKA
GRANT CHRISTIAN DEOYE, OF MARYLAND
BENJAMIN BEARDSLEY DILLE, OF MINNESOTA
JAMES EDWARD DONEGAN, OF NEW YORK
ELIZABETH ANN FRITSCHLE DUFFY, OF MISSOURI
THOMAS M. DUFFY, OF CALIFORNIA
LIISA ECOLA, OF ILLINOIS
ANDREW S.E. ERICKSON, OF CALIFORNIA
SARAH J. ESKANDAR, OF TENNESSEE
OSCAR R. ESTRADA, OF FLORIDA
KATHERINE E. FARRELL, OF INDIANA
TAMARA K. FITZGERALD, OF COLORADO
RECEBBA L. GAGHEN, OF MONTANA
KIRA MARIA GLOVER, OF CALIFORNIA
RUTH W. GODFREY, OF FLORIDA
STEVEN ARTHUR GOODWIN, OF ARIZONA
ELIZABETH PERRY GOURLAY, OF SOUTH CAROLINA
PETER D. HAAS, OF ILLINOIS
MATTHEW T. HARRINGTON, OF GEORGIA
ANDREW B. HAVILAND, OF IOWA
MARGARET DIERDRE HAWTHORNE, OF ILLINOIS
JAMES WILLIAM HERMAN, OF WASHINGTON
LAWRENCE LEE HESS, OF WASHINGTON
DEBRA LENDIEWICZ HEVIA, OF NEW YORK
JACK HINDEN, OF CALIFORNIA
RICHARD HOLTZAPPLE, OF CALIFORNIA
NATALIE ANN JOHNSON, OF ARIZONA
MARION LOUISE JOHNSTON, OF CALIFORNIA
KEITH C. JORDAN, OF OHIO
RICHARD M. KAMINSKI, OF NEVADA
ANNE KATSAS, OF MASSACHUSETTS
JONATHAN STUART KESSLER, OF TEXAS
PAMELA FRANCIS KIEHL, OF PENNSYLVANIA
KARIN MARGARET KING, OF OHIO
JOHN C. KMETZ, OF KANSAS
MICHAEL B. KOPLOVSKY, OF MASSACHUSETTS
SAMUEL DAVID KOTIS, OF NEW YORK
MARNIX ROBERT ANDREW KOUMANS, OF NEW HAMPSHIRE
STEVEN HERBERT KRAFT, OF VIRGINIA
KAMALA SHIRIN LAKHDHIR, OF CONNECTICUT
JOHN M. LIPINSKI, OF PENNSYLVANIA
GAYLE WAGGONER LOPES, OF NEBRASKA
DONALD LU, OF CALIFORNIA
PAMELA J. MANSFIELD, OF ILLINOIS
DUBRAVKA ANA MARIC, OF CONNECTICUT
WILLIAM JOHN MARTIN, OF CALIFORNIA
WILLIAMS SWIFT MARTIN IV, OF THE DISTRICT OF COLUMBIA
JOHN J. MEAKEM III, OF NEW YORK
CARLOS MEDINA, OF NEW YORK
ALEXANDER JACOB MEEROVICH, OF PENNSYLVANIA
MARIO ERNESTO MERIDA, OF COLORADO
JAMES P. MERZ, OF MARYLAND
ANDREW THOMAS MILLER, OF MICHIGAN
KEITH W. MINES, OF COLORADO
GREGG MORROW, OF NEW HAMPSHIRE
EDWARD R. MUNSON, OF UTAH
JOYCE WINCHEL NAMDE, OF CALIFORNIA
ROBERT S. NEEDHAM, OF FLORIDA
STACY R. NICHOLS, OF TENNESSEE
JOSEPH L. NOVAK, OF PENNSYLVANIA
STEPHEN PATRICK O'DOWD, OF VIRGINIA
SANDRA SPRINGER OUDKIRK, OF FLORIDA
NEDRA A. OVERALL, OF CALIFORNIA
SUSAN PAGE, OF WASHINGTON
MARK A. PATRICK, OF NEW MEXICO
MARY CATHERINE PHEE, OF THE DISTRICT OF COLUMBIA
BRAIN HAWTHORNE PHIPPS, OF FLORIDA
THEODORE STUART PIERCE, OF NEW YORK
JEFFREY D. RATHKE, OF PENNSYLVANIA
WHITNEY A. REITZ, OF FLORIDA
TIMOTHY P. ROCHE, OF VIRGINIA
DANIEL A. ROCHMAN, OF NEBRASKA
DANIEL EDMUND ROSS, OF TEXAS
NICOLE D. ROTHSTEIN, OF CALIFORNIA
KRISTINA LUISE SCOTT, OF IOWA
BRIAN K. SELF, OF CALIFORNIA
DOROTHY CAMILLE SHEA, OF OREGON
APAR SINGH SIDHU, OF CALIFORNIA
JOHN CHRISTOPHER STEVENS, OF CALIFORNIA
LEILANI STRAW, OF NEW YORK
MONA K. SUTPHEN, OF TEXAS
LANDON R. TAYLOR, OF VIRGINIA
ALAINA B. TEPLITZ, OF MISSOURI
JAMES PAUL THEIS, OF SOUTH DAKOTA
MICHAEL DAVID THOMAS, OF VIRGINIA
GREGORY DEAN THOME, OF WISCONSIN
SUSAN ASHTON THORNTON, OF TENNESSEE
LESLIE MEREDITH TSOU, OF VIRGINIA
THOMAS L. VAJDA, OF TENNESSEE
CHEVER XENA VOLTMER, OF TEXAS
EVA WEIGOLD-HANSON, OF MINNESOTA
MATTHEW ALAN WEILLER, OF NEW YORK
COLWELL CULLUM WHITNEY, OF THE DISTRICT OF COLUMBIA
DAVID C. WOLFE, OF TEXAS
ANTHONY C. WOODS, OF TEXAS
THOMAS K. YADGERDI, OF FLORIDA
JOSEPH M. YOUNG, OF PENNSYLVANIA
MARTA COSTANZO YOUTH, OF NEW JERSEY

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENTS OF STATE AND COMMERCE AND THE U.S. INFORMATION AGENCY TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

VICKI ADAIR, OF WASHINGTON
STEPHEN E. ALLEY, OF THE DISTRICT OF COLUMBIA
VICTORIA ALVARADO, OF CALIFORNIA
TRAVIS E. ANDERSON, OF VIRGINIA
PATRICIA OLIVARES ATTKISSON, OF VIRGINIA
COURTNEY E. AUSTRIAN, OF THE DISTRICT OF COLUMBIA
BARBARA S. AYCOCK, OF THE DISTRICT OF COLUMBIA
DOUGLAS MICHAEL BELL, OF CALIFORNIA
ROBERT GERALD BENTLEY, OF CALIFORNIA
JERALD S. BOSSE, OF VIRGINIA
BRADLEY D. BOURLAND, OF VIRGINIA
STEVEN FRANK BRAULT, OF WASHINGTON
ERIC SCOTT COHAN, OF VIRGINIA
LUISA M. COLON, OF VIRGINIA
PATRICIA ANN COMELLA, OF MARYLAND
CLAYTON F. CREAMER, OF MARYLAND
THOMAS EDWARD DALEY, OF ILLINOIS
MARK KRISTEN DRAPER, OF WASHINGTON
JEANNE M EBLE, OF MARYLAND
ERIC ALAN FLOHR, OF MARYLAND
DAVID WILLIAM FRANZ, OF ILLINOIS
JUSTIN PAUL FREIDMAN, OF VIRGINIA
STACEY L. FULTON, OF VIRGINIA
SUSAN HERTHUM GARRISON, OF FLORIDA
WILLIAM ROBERT GILL, JR., OF VIRGINIA
CAROLYN B. GLASSMAN, OF ILLINOIS
DAVID L. GOSSACK, OF WASHINGTON
THERESA ANN GRENCIK, OF PENNSYLVANIA
RICHARD SPENCER DADDOW HAWKINS, OF NEW HAMPSHIRE
CATHERINE B. JANYNKA, OF THE MARIANA ISLANDS
RICHARD M. JOHANNSEN, OF ALASKA
ARTURO M. JOHNSON, OF FLORIDA
JOANNE JORIA-HOOPER, OF SOUTH CAROLINA
NATALIE JOSHI, OF VIRGINIA
ERICA JENNIFER JUDGE, OF NEW YORK
JACQUELYN JANET KALHAMMER, OF VIRGINIA
KIMBERLY CHRISTINE KELLY, OF TEXAS
ROBERT C. KERR, OF NEW YORK
FARNAZ KHADEM, OF CALIFORNIA
HELEN D. LEE, OF VIRGINIA
NANCY R. LE ROY, OF THE DISTRICT OF COLUMBIA
GREGORY PAUL MACRIS, OF FLORIDA
ARTHUR H. MARQUARDT, OF MICHIGAN
CHARLES M. MARTIN, OF VIRGINIA
JOEL FOREST MAYBURY, OF CALIFORNIA
SEAN IAN MC CORMACK, OF MAINE
HEATHER D. MC CULLOUGH, OF ARKANSAS
JULIE A. NICKLES, OF FLORIDA
PATRICIA D. NORLAND, OF THE DISTRICT OF COLUMIA
ELIZABETH ANNE NOSEWORTHY, OF DELAWARE
BARRY CLIFTON NUTTER, OF VIRGINIA

WAYNE M. ONDIAK, OF VIRGINIA
PATRICK RAYMOND O'REILLY, OF CONNECTICUT
DALE K. PARMER, JR., OF VIRGINIA
KAY ELIZABETH PAYNE, OF VIRGINIA
TERENCE J. QUINN, OF VIRGINIA
TIMOTHY MEADE RICHARDSON, OF VIRGINIA
EDWINA SAGITTO, OF MISSOURI
MARK ANDREW SHAHEEN, OF MARYLAND
ANN G. SORAGHAN, OF VIRGINIA
RONALD L. SORIANO, OF CONNECTICUT
KAREN K. SQUIRES, OF ILLINOIS
CYNTHIA A. STOCKMAN, OF MARYLAND
JAMES F. SULLIVAN, OF FLORIDA
WILFREDO A. TORRES, OF VIRGINIA
HORACIO ANTONIO URETA, OF FLORIDA
MIGUEL VALLS, JR., OF VIRGINIA
JAVIER C. VILLARREAL, OF VIRGINIA
LESLEY MOORE VESSEN, OF MARYLAND
PHILIP G. WASIELEWSKI, OF VIRGINIA
JOEL D. WILKINSON, OF IDAHO

SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

SEAN D. MURPHY, OF MARYLAND

THE FOLLOWING-NAMED INDIVIDUAL FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED, EFFECTIVE OCTOBER 6, 1991:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

JAMES J. BLYSTONE, OF VIRGINIA

PUBLIC HEALTH SERVICE

THE FOLLOWING CANDIDATES FOR PERSONNEL ACTION IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW AND REGULATIONS:

1. FOR APPOINTMENT

To be assistant surgeon

PATRICA A. BERRY
CHRISTINE CASEY
STEPHANIE E. MARKMAN
MICHAEL E. TOEDT
CATHERINE L. WOODHOUSE

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. GEORGE K. MUELLNER [redacted]

IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. JARED L. BATES [redacted]

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. JOHN A. DUBLA [redacted]

IN THE NAVY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL IN THE U.S. NAVY WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10 UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. DENNIS C. BLAIR [redacted]

IN THE MARINE CORPS

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST OF THE U.S. MARINE CORPS IN THE GRADE INDICATED UNDER SECTION 1370, OF TITLE 10, UNITED STATES CODE:

To be lieutenant general

LT. GEN. ROBERT B. JOHNSTON [redacted]

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION TO THE GRADE INDICATED IN THE RESERVE OF THE U.S. AIR FORCE UNDER SECTION 307 OF TITLE 32, UNITED STATES CODE AND SECTIONS 12203 AND 8363 OF TITLE 10, UNITED STATES CODE:

LINE

To be colonel

JAMES W. AMASON [redacted]
ROBERT W. ANDERSON [redacted]
RONALD J. BATH [redacted]
MICHAEL J. BEBON [redacted]
ROWAN W. BRONSON [redacted]
ROBERT A. BRUCE [redacted]
THOMAS J. BUNTING [redacted]
RICHARD W. BURRIS [redacted]
RALPH J. CLIFFT [redacted]
ROGER E. COMBS [redacted]
WILLIAM J. COPELAND [redacted]
RICHARD CZARNOTA [redacted]
STEVEN J. DALPORTO [redacted]
TIMOTHY T. DEARING [redacted]
JANET S. DREW [redacted]
ALDER J. DUBOIS [redacted]
EDWARD F. FARWELL, JR [redacted]
DENNIS R. GANNON [redacted]
JUAN A. GARCIA [redacted]
HARRY R. GORHAM [redacted]
JOHN R. HADDON [redacted]
PAUL K. HENNESSEY [redacted]
CALVIN J. HOBSON II [redacted]
BARRY M. JOHNSON [redacted]
MICHAEL D. KELLEY [redacted]
JEROLD E. KREIDLER [redacted]
CHARLES T. KRING [redacted]
PHILIP C. LEHMAN [redacted]
CHRISTOPHER A. LOWRY [redacted]
LAWRENCE J. MASTNY [redacted]
RODNEY A. MATHISEN [redacted]
WILLIAM T. MCGLATHERY III [redacted]
FRANCIS M. MEZZATESTA [redacted]
HARLAN R. MICKELSON [redacted]
JOHN E. MOLLOY [redacted]
CHARLES A. MORGAN III [redacted]
DENNIS E. MURRAY [redacted]
ROY H. PANSEY [redacted]
WILLIAM J. PETERS, JR [redacted]
JESSE P. PRITCHETT [redacted]
LAWRENCE W. REEDY [redacted]
JAMES M. REUSS [redacted]
WILLIAM A. RICHMOND III [redacted]
MICHAEL T. RIESS [redacted]
DAVID R. ROBINSON, JR [redacted]
LARRY L. ROWE [redacted]
PHILIP C. SAMMONS [redacted]
JACOB S. SEHER [redacted]
MICHAEL R. SMITH [redacted]
MALCOLM R. SNEDDON [redacted]
MICHAEL S. STEWART [redacted]
PHILIP E. THORNTON [redacted]
ANTHONY M. TOSI [redacted]
SAMUEL A. VOLTZ [redacted]
STEPHEN L. VONDERHEIDE [redacted]

JUDGE ADVOCATE

To be colonel

JOHN E. ANDERSON [redacted]
PETER R. BUCHLER [redacted]
EPIFANIO MORALES, JR [redacted]
AVRUM M. RABIN [redacted]

MEDICAL CORPS

To be colonel

TROY F. BARNETT, JR [redacted]
ALFONSO A. MADARANG [redacted]
SIDNEY J. MORGAN, JR [redacted]
FRED L. PASTERNACK [redacted]

NURSE CORPS

To be colonel

EDITH I. DOMINGUEZ [redacted]
MARY A. EPPS [redacted]
MARIETTA L. LOO [redacted]
CATHY A. NAVIN [redacted]

MEDICAL SERVICE CORPS

To be colonel

FRED T. BROWN, JR., 243-68-7473

BIOMEDICAL SCIENCES CORPS

To be colonel

RONALD D. POWELL [redacted]

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 12203(A), 3370, AND 1552:

ARMY PROMOTION LIST

To be colonel

FRANK M. HUDGINS [redacted]

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 12203(A), 3366, AND 1552:

ARMY PROMOTION LIST

To be lieutenant colonel

FRED S. BENDINGER [redacted]
WILLIAM R. BRADLEY [redacted]
BRUCE S. CRONK [redacted]
SANTIAGO DELAVALLE [redacted]
DANIEL F. DONOHUE [redacted]
WILLIAM B. FERRELL [redacted]
ROY J. FLEISHER [redacted]
PETER C. FULLER [redacted]
ROBERT L. FURU [redacted]
IRA A. GOSS [redacted]
GAYLE B. HAMRICK [redacted]
WILLIAM H. HASKELL [redacted]
JAMES L. HODGE [redacted]
JAMES L. HOLLAND [redacted]
J. W. HOSKINS [redacted]
GARY J. MARENNA [redacted]
JAMES R. SMITH [redacted]
DONALD N. VARTANIAN [redacted]
AMELIA J. WESTON [redacted]
DAVID G. WHITE [redacted]

THE FOLLOWING-NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 12203 AND 3385:

ARMY PROMOTION LIST

To be colonel

ROBERT D. ALLEN [redacted]
ROBERT J. ANGUS, JR [redacted]
GEORGE W. BODDY [redacted]
DANIEL P. COFFEY [redacted]
ARNOLD D. DROKE [redacted]
GEORGE B. FAULHABER, JR [redacted]
JAMES H. LAMBACK [redacted]
JERRY A. MCFARLANE [redacted]
JOHN A. MOORE [redacted]
EDWARD C. O'NEILL [redacted]
GEORGE D. SHULL [redacted]
RAMON Q. SUDO [redacted]
CHRISTOPHER T. WHITTAKER [redacted]
J. DALLAS WINSLOW, JR [redacted]

ARMY NURSE CORPS

To be colonel

HELEN D. PARRISH [redacted]
KRISTINE J. SCHULTZ [redacted]

CHAPLAIN CORPS

To be colonel

JACK D. FERGUSON [redacted]

MEDICAL CORPS

To be colonel

JOHN R. HILLMAN [redacted]
HOWARD S. NUNN, JR [redacted]
CHRISTOPHER T. RORES [redacted]

ARMY PROMOTION LIST

To be lieutenant colonel

ROGER B. ALLISON [redacted]
CHARLES W. AYERS [redacted]
ROBERT K. BALSTER [redacted]
DAVID E. BORNTNEM [redacted]
FRANK J. GRASS [redacted]
JOHN L. GRONSKI [redacted]
ERIC A. HANSON [redacted]
GEORGE W. HARRIS [redacted]
WILLIAM A. HILLING [redacted]
MATTHEW L. KAMBIC [redacted]
KENNETH W. KELNHOFER, JR [redacted]
RALPH L. LEDGERWOOD, JR [redacted]
KENNETH B. MCNEEL [redacted]
DAVID L. PARKER [redacted]
EDWIN I. RIVERA [redacted]
ISABELO RIVERA [redacted]
LARRY E. RYALS [redacted]
STEVEN D. SAUNDERS [redacted]
BRUCE D. SPEAR [redacted]
DAVID H. TUCKER [redacted]
DAVID L. UPDEGRAFF [redacted]
HARLAN M. WALKER II [redacted]
FRANCIS B. WILLIAMS III [redacted]
GREGORY J. ZANETTI [redacted]

ARMY NURSE CORPS

To be lieutenant colonel

JOHN N. SCHANK [redacted]

JUDGE ADVOCATE GENERAL CORPS

To be lieutenant colonel

AUGUSTUS D. AIKENS, JR [redacted]
MARC D. BRIERRE [redacted]

MEDICAL CORPS

To be lieutenant colonel

MICHAEL A. TODD [redacted]

MEDICAL SERVICE CORPS

To be lieutenant colonel

KENNETH F. SELOVER [redacted]

CONFIRMATIONS

Executive nominations confirmed by the Senate June 26, 1995:

RAILROAD RETIREMENT BOARD

VIRGIL M. SPEAKMAN, OF OHIO, TO BE A MEMBER OF THE RAILROAD RETIREMENT BOARD, FOR A TERM EXPIRING AUGUST 28, 1999. (REAPPOINTMENT.)

DEPARTMENT OF STATE

LARRY C. NAPPER, OF TEXAS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO LATVIA.

R. GRANT SMITH, OF NEW JERSEY, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TAJIKISTAN.

DONALD K. STEINBERG, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ANGOLA.

LAWRENCE PALMER TAYLOR, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ESTONIA.

PETER TOMSEN, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ARMENIA.

JENONNE R. WALKER, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE CZECH REPUBLIC.

MOSINA H. JORDAN, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE CENTRAL AFRICAN REPUBLIC.

LANNON WALKER, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF COTE D'IVOIRE.

TIMOTHY MICHAEL CARNEY, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SUDAN.

JAMES ALAN WILLIAMS, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS THE SPECIAL COORDINATOR FOR CYPRUS.

CENTRAL INTELLIGENCE

GEORGE J. TENET, OF MARYLAND, TO BE DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING ROBERT A. KOHN, AND ENDING ROBERT A. TAFT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 23, 1995.

FOREIGN SERVICE NOMINATIONS BEGINNING JUDITH A. FUTCH, AND ENDING JOY ONA YAMAMOTO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 15, 1995.