SENATE—*Tuesday, May 2, 1995*

(Legislative day of Monday, May 1, 1995)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

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

PRAYER

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

Let us pray:

Almighty God, Creator, Sustainer, and Lord of all, You who have brought light out of darkness and have created us to know You, we praise You for Your guidance. As we begin the work of this Senate today, we acknowledge again our total dependence on You. Revelation of Your truth comes in relationship with You; Your inspiration is given when we are illuminated with Your spirit. Therefore, we prepare for the decisive decisions of this day by opening our minds to the inflow of Your spirit. We confess that we need Your divine intelligence to invade our thinking brains and flood us with Your light in the dimness of our limited understanding.

Gracious Lord, You know what is ahead today for the women and men of this Senate. Crucial issues confront them. Votes will be cast and aspects of the future of our Nation will be shaped by what is decided. And so, we say with the Psalmist, "Show me Your ways, O Lord; teach me Your paths. Lead me in Your truth and teach me, for You are the God of my salvation; on You I wait all the day."—Psalm 25: 4–5. "I delight to do Your will, O my God, and Your law is within my heart."—Psalm 40:8.

We praise You Lord, that when this day comes to an end we will have the deep inner peace of knowing that You heard and answered this prayer for guidance. In the name of Him who is Truth. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. SANTORUM. Mr. President, this morning, the leader time has been reserved, and the Senate will immediately resume consideration of H.R. 956, the product liability bill.

Under the order, there will be 60 minutes of debate equally divided between the two managers, or their designees. At the conclusion of debate, at 11 o'clock, the Senate will begin a series of rollcall votes on, or in relation to, the pending second-degree amendments to the McConnell amendment.

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

Senators should be aware that further rollcall votes can be expected throughout today's session.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 956, the product liability bill, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

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

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

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

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

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

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

(7) Kyl amendment No. 611 (to amendment No. 603) to place a limitation of $500,000 on noneconomic damages that are awarded to compensate a claimant for pain, suffering, emotional distress, and other related injuries.

(8) DeWine amendment No. 612 (to amendment No. 603) to clarify that the provisions of this title do not apply to action involving sexual abuse.

(9) Hatch amendment No. 613 (to amendment No. 603) to permit the Attorney General to award grants for establishing or maintaining alternative dispute resolution mechanisms.

(10) Simon/Wellstone amendment No. 614 (to amendment No. 603) to clarify the preemption of State laws.

(11) Kennedy amendment No. 607 (to amendment No. 603) in the nature of a substitute.

(12) Kennedy amendment No. 615 (to amendment No. 603) to clarify the preemption of State laws.

(13) DeWine (for Dodd) amendment No. 616 (to amendment No. 603) to provide for uniform standards for the awarding of punitive damages.

Mr. GORTON. Mr. President, we are now under a time agreement of 1 hour for the final debate on all of the second-degree amendments to the McConnell amendment on medical malpractice.

Seeing no Senator prepared to debate, I suggest the absence of a quorum and ask unanimous consent that it be charged equally against both sides.

The PRESIDING OFFICER (Mr. SANTORUM). Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROCKEFELLER. I thank the Chair.

Mr. President, as a chief advocate and sponsor and manager of the product liability reform bill, which, as far as I know, is still being debated on the floor, I want to comment on the situation on the floor as I see it now.

From just about every corner of the Senate floor, an amendment of some kind dealing with malpractice—not product liability, but malpractice—has been offered. So much so, in fact, that we now have 12 amendments on malpractice in the pipeline. I am hoping that the Senate will not have to vote on 12 amendments, and I hope indeed some of them can be worked out, dropped, or whatever.

As I also said on Thursday when I last spoke, I share my colleagues' interest in malpractice reform. In fact, I daresay that I more than share my colleagues' interest on this subject. To me, it is part of the problem with our health care system. It is intimately related to cost and psychology and whether doctors' kids or anyone's children want to go into medicine or not. And malpractice reform is something I want very much to do. But I do not want to do it at the risk of killing product liability reform. It is as simple as that.

I think if we were to adopt malpractice reform in conflict, not only would it fail, but so would product liability. So in the interest of bringing malpractice reform into the discussion, everything would lose. We can win

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

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product liability on a clean bill, which Senator GORTON and I want. But we cannot win product liability if there are substantial or unsubstantial amendments attached to it, and malpractice reform is a very substantial amendment. We cannot win both.

As I said, I think at some point Senators have to choose: Do they want product liability reform? Do they want medical malpractice reform? Do they want nothing? Of course, there are many who want nothing.

I just do not see 12 amendments on medical malpractice to a product liability reform bill as the way to produce actual results, results which will be signed into law. It may make a lot of people feel good to offer their own iterations on medical malpractice to this bill. We have had some terrific speeches.

As somebody trying to enact something called a product liability bill for the last 9 years, it just does not make me feel very confident that this is the route to actually enacting either product liability reform or medical malpractice reform.

I repeat, I hope my colleagues understand this: If malpractice reform were to pass, and I do not think it will, if it were to pass and become part of the product liability bill, the product liability bill would lose. It is 100 percent guaranteed it would lose. So we would lose malpractice and we would lose product liability.

I do not understand that. I do not understand that. I think malpractice reform ought to be pursued just the way a bipartisan team of Senators have tried to enact this product liability reform bill. It ought to be done in the same manner—separately. That is, by getting a bill reported out of committee, onto the Senate Calendar, having the majority leader call it up, debating it on its own terms and with the time needed to work out any differences and issues that can be resolved here in the Senate.

Trying to enact malpractice reform by amending a product liability reform bill with enough issues of its own, for Heaven's sakes, just does not make sense to me. Maybe I will be proven wrong. I think the chances of that are almost zero percent. Maybe some kind of consensus will emerge around here on what form of malpractice reform should be attached to the product liability reform bill and we will suddenly have about 70 votes for a bill with both.

That was the original conversation, because of the surge of that nature in the House. People said malpractice will help products. That is what Jim Todd with the American Medical Association said to me and Dick Davidson of the American Hospital Association, and Tom Scully of the Federation of American Health Systems. They all said that to me; it will help.

All of the product liability alliance folks who surged in the House make the same assumption about the Senate. We are just very different. We are a very different body. It will not work here. This talk about getting 70 votes for a bill with both—I am highly skeptical.

As somebody who has worked very hard, as have Senator GORTON and many others here, on trying to enact product liability reform, I want to send a very clear signal to the Senators and to the citizens who also want to see a law enacted to achieve this result, this is no time for loading up this bill—neither now with these malpractice amendments nor after they have been disposed of. After they have been disposed of, there will be a chance for more amendments. Then there will also be not the time to load up the bill.

This is no time for amendment proliferation. This is no time to use this bill to make speeches on other issues to try to satisfy other interests, to try to feel good about writing amendments on other priorities, like malpractice reform.

This is the time to focus on the job at hand, and it is called product liability. We have a large, good group of Senators on both sides of the aisle who are prepared to vote for product liability reform, one of the most contentious issues that we face in any year in which we take this subject up, which is every other year. Up until this time we have lost every single year. We have lost nefariously, we have lost flat out, we have just sort of lost, but we have lost. It has always been close.

The majority of the Senate has always wanted product liability, but we have just fallen short, for one reason or another, of cloture. This year we can get it. This year we can do cloture and we can get a product liability bill which, in turn, will put the opposition in substantial disarray, and then we can move on to other aspects like malpractice reform, securities, that kind of thing, all of which I strongly favor, particularly malpractice.

So, again, this is the time to focus on the job at hand. I think that malpractice reform, in fact, is such a serious subject that it deserves far more attention than it has gotten. It deserves far more debate than it has gotten.

I am not convinced that there are 10 percent of the Senators who will vote on these amendments who understand what malpractice reform is all about. I do not mean that to insult any of my colleagues, but just as I think product liability reform is extremely complicated—particularly for nonlawyers such as myself—malpractice becomes more so because we are dealing with humans in a different way. It is a hard subject that deserves a very serious effort, but not on this bill.

Again, and in concluding, I am more than anxious to take up a bill on malpractice reform. I understand the urgency and the voices of the doctors and the health care institutions in my State of West Virginia and elsewhere. It is not right that it has to take so long to do something about problems with malpractice. It is the No. 1 subject on the minds of physicians, the No. 1 subject on the minds of hospitals. They desperately want it.

It also is not right to pretend that we can act on malpractice reform when trying to enact a serious piece of legislation on a different issue, which is called product liability.

My hope is that we simply will concentrate on product liability, that we will try to keep away amendments, that we will drive this thing through to a conclusion and get one excellent piece of work done.

I thank the Chair. I yield the floor. Mr. President, I suggest the absence of a quorum and ask the time be divided equally between the opponents and the proponents.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GORTON. Mr. President, I yield 6 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, we spent, now, 2 full days debating this underlying medical malpractice amendment and numerous second-degree amendments. I am privileged to be a cosponsor of the underlying first-degree amendment with the Senator from Kentucky, [Mr. MCCONNELL] and the Senator from Kansas [Mrs. KASSEBAUM]. I would like to take a few moments here to put this debate and the amendment in perspective.

Surprisingly, to my knowledge this is the first time the full Senate has engaged in a real debate on medical malpractice reform, even though this issue has been the subject of countless debates in State legislatures throughout America going back to the 1970's, when I was part of the State Legislature of Connecticut. I am pleased the issue and the problem has finally come to this point, and I want to express my admiration to my colleagues on both sides of this issue for the thoughtful remarks they have made over the last days.

We have heard a variety of views expressed, of course, but I am pleased to note there is broad agreement that our present system for compensating patients who have been injured by medical malpractice is ineffective, inefficient, and in many respects unfair The

system promotes the overuse of medical tests and procedures and simply diverts too much money away from victims. I know we have heard a lot of numbers in the past couple of days, but to me the most important one is this: Less than half of the money spent on medical malpractice in this country goes to the victims of malpractice. Less than 50 cents of every dollar that goes into the medical malpractice system in this country goes to those who are injured as a result of malpractice.

So the aim of the amendment is not to protect doctors who are guilty or health professionals who are guilty of negligence that injures patients. Quite the contrary, the aim of the amendment is to make sure that more, rather than less than half a dollar of every dollar that goes into this system, goes to the patients who are injured and not to those, including the attorneys, who are churning, moving the current system.

We can argue about the numbers, obviously, but I hope most of my colleagues will agree that the existing medical malpractice system does contribute to the high cost of health care. The cost of liability insurance has been estimated, the most recent number I could find, at $9 billion in 1992. That is not money that just comes out of the air or is printed by the Government; that is money that comes from everybody who is paying premiums for insurance for health care.

The respected health care consulting firm Lewin-VHI has estimated conservatively the cost of defensive medicine—this is beyond the $9 billion in premiums—but the cost of defensive medicine, which is to say medicine practiced by health professionals not for what they take to be the medical needs of their patients but defensively because they are worried about lawsuits, is $25 billion a year. Again, that is $25 billion coming out of the pockets of everybody who is paying health care costs.

That number may seem to some who look at the big picture of health care spending somehow small. If it does, they have perhaps lost touch with reality, because $25 billion is a lot of money. It is not small in any sense. We can and should do something to reduce that number.

Taxpayers and health care consumers bear the financial burden of those costs. I say taxpayers because we are paying for it in Medicare and Medicaid and every other Government-supported health care program. Tens of billions of dollars every year is not a trivial amount of money to taxpayers and consumers in this country.

The underlying amendment we will vote on today will begin to address the inefficiencies and perverse effects of our current malpractice system by directing a greater proportion of malpractice awards to victims, by discouraging frivolous lawsuits, and by enhancing programs that are aimed at improving the quality of medical practice, which is what this is all about.

The amendment will also improve consumer information, a key part of preventing malpractice, by establishing an advisory panel to improve quality assurance programs and consumer information. The panel will also look at ways to strengthen the national practitioner data bank. My colleague, Senator WELLSTONE, has offered an amendment that would open the data bank without this review. I respectfully suggest that his amendment goes too far too quickly, though I am sympathetic to the goal.

I believe the underlying amendment sponsored by Senators MCCONNELL, KASSEBAUM, and myself will lead us appropriately down the path but will do it with some also appropriate caution.

Mr. President, the underlying amendment is not new. It is not radical. It is a very moderate proposal which contains provisions from health care reform bills reported out of committees during the last Congress with the exception of the statute of limitations (a 2-year time limit that does not include a statute of repose) and a cap on punitive damages which is identical to the cap in the underlying product liability bill. Every provision in the pending first-degree amendment was contained either in President Clinton's health care reform proposal, the bill reported out of the Senate Labor Committee, or the bill reported out of the Senate Finance Committee last year.

I agree with my colleagues who have argued that medical liability reform is only a small part of health care reform. But it is a substantial and important beginning. As both Democrats and Republicans concluded last year, malpractice reform is an important part of health care reform. Today we have an opportunity to take a modest and reasonable proconsumer step forward on this problem.

I thank the Chair. I thank my colleagues, and I urge them to vote for the underlying amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GORTON. Mr. President, I yield 5 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, the opponents of this medical malpractice amendment have wildly attacked it. But, this amendment is very reasonable and moderate reform. In fact, if you compare it to some of the proposals from last year's health care debate, you will see many familiar provisions.

For example, the original Clinton Health Security Act contained a cap on attorney contingent fees, collateral source reform, periodic payment of damages, and mandatory alternative dispute resolution. The medical malpractice provisions reported from the Finance Committee contained joint and several liability reform, a cap on noneconomic damages, and mandatory alternative dispute resolution with modified loser-pays for those who go onto court and do not improve upon the ADR decision. By omitting the cap on pain and suffering, this amendment does not go as far as the Finance Committee's proposals which were reported out of the committee, on a bipartisan basis.

During last year's health care debate, some argued for the Canadian single-payer system. Canada's single-payer system also includes some very strict rules on malpractice cases. While Canada's doctors do not pay malpractice insurance premiums, they pay a membership fee to the Canadian Medical Protective Association. In the United States, doctors and hospitals buy malpractice insurance, costing tens of thousands of dollars annually. And, according to the Medical Liability Monitor, more than half of all doctors have experienced 9- to 15-percent increases in their malpractice premiums in each of 1993 and 1994.

In Canada, noneconomic damages are capped at $240,000. The McConnell-Lieberman-Kassebaum amendment does not cap noneconomic damages, although Senator KYL has an amendment pending to add a cap of $500,000.

In Canada, contingency fees are illegal in some parts of the country and uncommon in the rest of the country. Our amendment sets a limit on attorney contingent fees, to ensure that most of the award goes to the injured party.

In Canada, a plaintiff who loses, risks having to pay the defendant's legal fees. This amendment contains no loser-pays provision.

So, Mr. President, in comparing this amendment to last year's efforts on medical malpractice, as well as to Canada's law, we have very moderate reform proposed here.

And, those who support product liability reform should support medical malpractice reform. Enacting the underlying bill on its own will, in my judgment, make the legal system more complex. What will happen in a case where the injured party alleges malpractice over certain drug treatment? It product liability reform is enacted, the drug company will fall under the new law, but there will have to be a separate lawsuit regarding the conduct of the doctor or hospital. Such a result would be ridiculous.

The opponents assert that we are somehow trying to shield negligent doctors and hospitals. Nothing could be further from the truth. No one loses the right to sue under this amendment. An injured party will be fully compensated for his or her injuries. Negligent doctors and hospitals will be

held accountable for the injuries they cause.

In addition, this amendment takes important steps in the direction of assuring quality care for all patients.

While protecting the rights of the injured to get compensation for their injuries, this amendment also gives the American people relief from the tort tax. We know the litigation tax adds thousands of dollars annually to the household budgets of all American families. It adds extra costs to the delivery of a baby, as well as to the cost of a heart pacemaker.

Relief from the tort tax and an end to the lawsuit gamble are the goals of our effort. We know that most of the money spent in the litigation system does not go to the injured victims; they get only 43 cents of every dollar spent in the liability system. The legal system is akin to the casinos of Las Vegas and Atlantic City. Sometimes you win big, but most times the house—that is the system, made up of lawyers and related court costs, is the biggest winner.

The only opponents we have in this legal reform fight are the trial lawyers. They have the biggest stake in maintaining the status quo. The injured people they represent will be treated better under this amendment. They will get more compensation for their injuries. So, if you are for the victims, you should vote for this amendment. I urge my colleagues to adopt the McConnell-Lieberman-Kassebaum amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ROCKEFELLER. Mr. President, I yield 7 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 7 minutes.

Mrs. BOXER. Mr. President, I thank the Senator for yielding because I know he and I do not agree on this issue. So it must be in some ways a painful thing for him to yield to me. So I want to say to my friend, Senator ROCKEFELLER, I thank him very much for yielding me this time.

Mr. President, what are we doing here in the Senate today? We are voting, beginning to vote, to change a legal system that, while not perfect, is adjudged to be the best in the world. We are not tinkering around the edges. We are not dealing with frivolous lawsuits. We are in essence, if you follow the Contract With America, taking away the rights of average citizens to get justice in the courtroom. And what I find most remarkable about this in this Republican Congress is that this is the same Republican Congress that says let the States decide most matters, they are closer to the people. But in this case, the U.S. Senate and the House of Representatives, well, we are going to substitute our judgment for that of a local jury, a local judge, who knows the community, who is of, by, and from the community. I do not think we should be able to prejudge what a damage award should be, whether it is in a medical malpractice case or whether it is in a product liability case, the underlying bill.

Let me give you an example. Most Americans were stunned to hear that a physician in Florida in treating a gentleman actually cut off the wrong leg of that man. It meant that they had to then cut off the other leg and the man lost both legs.

In the debate on this subject of capping the damages and what people could receive in medical malpractice cases, a Republican Congressman—who happens to be a doctor—took to the floor of the House. He has served there for many years. And this Congressman was asked by another colleague, a Democratic colleague, "What do you think about the fact that a physician cut off the wrong leg of a victim, and now this gentleman has no legs at all?" He can never hope to have anything like a normal life. And this Republican doctor-Congressman said mistakes happen. These things happen. And then he was asked, what is it worth, the fact that a man has no legs and can never have the semblance of an ordinary life again? And he said, mistakes will happen.

Well, he does not know what it is worth.

These things happen.

The fact is we do not know, but a jury and a judge together will make that decision in accordance with State law. But, no, we are going to destroy all of this.

Now, the story which all America shared, unfortunately, is not that isolated. Although we know we have the best doctors in the world, the most healing doctors in the world, this is not isolated. It is a very small percent. Of all tort cases filed, only 7 percent are medical malpractice. But we are going to take the iron fist of the Senate and say we know best what a future victim should be awarded.

Now, let me tell you about a couple of cases. You also probably read about Betsy Lehman, who died after given a massive overdose of a strong chemotherapy drug. That story was publicized by the Boston Globe. Are we to tell the family of this young woman what the damages should be to that family? I think not.

How about Grand Rapids, MI? The wrong breast of a 69-year-old cancer patient was negligently cut off during a mastectomy. In Denver, CO, an anesthesiologist fell asleep during a routine operation on an 8-year-old boy. The child died, and we are going to tell the people in Colorado what that family should be awarded. I think there is something misguided going on here.

I have to believe there is some special interests that are involved here because the interests of the American people are not being served because we are all potential victims. We are all potential victims.

At the New England Medical Center, two skin cancer patients died when a highly toxic drug called Cisplatin was given to them at three times the recommended dosage. In California, my great State, Harry Jordan went into the hospital to have a diseased kidney removed. Instead, the surgeons removed his healthy kidney, and he remained on dialysis for the rest of his life. He died last month, and we are going to tell the jury and the judge what to do in this kind of case.

We could go on with examples. The fact is we have the safest products in the world, and we have the best physicians in the world. I have to believe that our system of justice, although not perfect, has played a role in this. And I say often to myself—and this has to do with the underlying bill on product safety—how many of us remember engines exploding in cars?

The PRESIDING OFFICER. The time of the Senator from California has expired.

Mrs. BOXER. I ask for 1 more minute, if I might.

The PRESIDING OFFICER. The Senator from Washington controls the time.

Mr. GORTON. I will yield a minute to the Senator.

Mrs. BOXER. I thank the Senator so much. I say to my friends, I know these are arguments they do not enjoy hearing, and I therefore appreciate the generosity.

We all remember engines of cars exploding, company executives saying, "Well, we figured we would have a few explosions. We write it off as a cost of doing business." This Senate wants to limit the punitive damages to those future companies that would act in such a despicable fashion. Most of our companies are good and most of them care, but the bad apples should know they will be hit with punitive damages, not just a slap on the wrist. Should this Republican contract pass, the most change will occur in the boardroom—not in the courtroom, in the boardroom—as people are getting ready to put new products on the market saying, well, we do not have to worry; the Senate, the Republican contract saved us from being hit with a meaningful punitive damages suit.

So in closing, Mr. President, I wish to again thank my colleagues. I will be supporting some of these amendments that are coming before us because they will make the bill a little better. I will be opposing others. But nothing that we do here by way of amendment convinces me that we are on the right path.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Washington has 6 minutes remaining.

Mr. GORTON. Mr. President, among other things, the distinguished Senator from California spoke about special interests. I find that remarkable in light of an article which appeared a couple of weeks ago in the Wall Street Journal, and a followup report on campaign contributions to congressional candidates which shows that the largest single special interest involved in campaigns for Congress is the American Trial Lawyers Association and its members. In their contributions, they outdo the Fortune 500; they outdo organized labor; they outdo, multiplied by 4 or 5 times, oil and gas lobbyists' contributions. They are, by a significant margin, the No. 1 special interest from the point of view of contributions to political campaigns in the United States.

Now, Mr. President, I do not normally argue this point of view. I am inclined to think that most of these lobbying organizations support the people who are already on their sides. But to attack the legislation as being special interest legislation, when the opponents are supported by the largest of all of the special interests, seems to me somewhat paradoxical.

Mrs. BOXER. Will the Senator yield? Will the Senator yield to me on that point?

Mr. GORTON. This is particularly true——

Mrs. BOXER. Will the Senator yield to me on that point?

Mr. GORTON. No, not right now.

Mrs. BOXER. I will wait, thanks.

Mr. GORTON. This is particularly true, Mr. President, when we reflect on the fact that it is that special interest which is the greatest beneficiary of the present system as, of all of the money that goes into medical malpractice, only 40 percent gets to the victims and 60 percent goes to the transactions costs; that is to say, the attorneys, the expert witnesses, the insurance adjusters and the like who involve themselves in the question.

The greatest amount of money by far goes not to victims but to transaction costs.

In my view, that is the great scandal of the present system, whether we are dealing with medical malpractice or with product liability. The costs of the system outside of the compensation provided for any of the parties is so overwhelmingly on one side that I think it would be those who speak about victims and victims' rights who would be most in favor of a dramatic and drastic reform of the present system, most in favor of it, to create a system in which the transaction costs, the lawyer's fees were dramatically less, and a much greater percentage went to those who were victims.

I will be perfectly happy to yield to the Senator from California for a question.

Mrs. BOXER. I thank the Senator very much.

Is the Senator aware that well over 100 organizations, including some from his State, oppose this underlying bill very, very strongly? Because I think what the Senator is doing in his remarks is leading people to believe that there is one group that is opposed to it.

I read into the RECORD a number of groups the last time. Every single consumer organization you can name, both State based and nationally based: citizen action groups, public interest law people, Coalition of Silicon Survivors, and Colorado DES Action. The DES sons also oppose certain liability reforms.

What I wish to point out to my friend is I really respect his right to disagree——

Mr. GORTON. I understand the question now.

Mrs. BOXER. I ask unanimous consent to put this list of people who oppose this bill into the RECORD at this time, and I thank my friend for yielding.

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

STATE BASED ORGANIZATIONS OPPOSED TO "LEGAL REFORM" IN THE SENATE (S. 565)

Alabama Citizen Action.
Alaska PIRG.
Arizona Consumers Council.
Arizona Citizen Action.
Consumer Federation of California.
California Citizen Action.
Center for Public Interest Law at the University of San Diego.
California Motor Voters.
California Crime Victims Legal Clinic.
California Public Interest Research Group (CALPIRG).
Fair Housing Council of San Gabriel Valley.
Colorado Coalition for Accountability & Justice.
Colorado Steelworkers Union Local 2102.
Coalition of Silicon Survivors.
Colorado DES Action.
Denver UAW.
Colorado ACLU.
Denver Gray Panthers.
Colorado Public Interest Research Group (CoPIRG).
Colorado Clean Water Action.
Colorado Senior Lobby.
Connecticut Citizen Action Group.
ConnPIRG (Connecticut Public Interest Research Group).
Delaware Coalition for Accountability and Justice.
Delaware AARP.
Delaware Council of Senior Citizens.
Delaware AFL-CIO.
Delaware Federation of Women's Clubs.
Delaware Women and Wellness.
Delaware Breast Cancer Coalition.
Building Trades Council of Delaware.
UAW Local 1183—Delaware.
Delaware Sierra Club.
Delaware Audubon Society.
Save the Wetlands and Bays—Delaware.
Florida Consumer Action Network.
Florida PIRG.
Florida Consumer Fraud Watch.
Georgia Citizen Action.
Georgia Consumer Center.
Citizen Advocacy Center of Illinois.
Chicago & Central States ACTWU.
Idaho Citizens Action Network.
Idaho Consumer Affairs, Inc.
Illinois Public Action.
Illinois Council Against Handgun Violence.
Illinois PIRG.
Citizens Action Coalition of Indiana.
Iowa Citizen Action Network.
Iowa UAW.
Iowa State Council of Senior Citizens.
Kentucky Citizen Action.
Louisiana Citizen Action.
Maine People's Alliance.
Maryland Citizen Action.
Maryland State Teachers Association.
Maryland Coalition for Accountability & Justice.
Planned Parenthood of Maryland.
Law Foundation of Prince George's County.
Maryland PIRG.
Maryland Sierra Club.
Teamsters Joint Council No. 62.
UFCW Local 400.
White Lung Association & National Asbestos Victims.
Sexual Assault/Domestic Violence Center, Inc.
IBEW Local 24.
Maryland Clean Water Action.
Maryland Employment Lawyers Association.
Health Education Resource Organization (H.E.R.O.).
Environmental Action Foundation.
Massachusetts Jobs with Justice.
Massachusetts Consumer Association.
Massachusetts Citizen Action.
MassPIRG (Massachusetts Public Interest Research Group).
Michigan Consumer Federation.
Michigan Citizen Action.
Public Interest Research Group in Michigan (PIRGIM).
Minnesota COACT.
Minnesotans for Safe Foods.
Missouri Citizen Action.
Missouri PIRG.
Montana PIRG.
Nebraska Citizen Action.
Nebraska Coalition for Accountability & Justice.
Nebraska Farmers Union.
Nebraska Women's Political Network.
Nebraska National Organization for Women.
United Rubber Workers of America, Local 286.
Communications Workers of America, Local 7470.
Nebraska Head Injury Association.
Nebraska Center for Rural Affairs.
New Hampshire Citizen Action.
New Jersey Citizen Action.
White Lung Association of New Jersey.
New Jersey Tenants Organization.
Consumers League of New Jersey.
Cornucopia Network of New Jersey.
New Jersey DES Action.
NJPIRG (New Jersey Public Interest Research Group).
New Jersey Environmental Federation.
New Mexico Citizen Action.
Citizen Action of New York.
Essex West Hudson Labor Council.
Uniformed Firefighters Association of Greater New York.
Empire State Consumer Association.
New York Consumer Assembly.
Niagara Consumer Association.
North Carolina Citizen Action.
North Carolina Consumers Council.
North Dakota Coalition for Accountability & Justice.
North Dakota Public Employees Association.

North Dakota DES Action.
North Dakota Clean Water Action.
Dakota Center for Independent Living.
North Dakota Breast Implant Coalition.
North Dakota Progressive Coalition.
Laborer's International Union, Local 580.
Boilermaker's Local 647.
Ironworkers Local 793.
United Transportation Union.
Sierra Club, Agassiz Basin Group.
Plumbers & Pipefitters Local 338.
United Church of Christ.
Teamsters Local 116.
Teamsters Local 123.
Plumbers & Pipefitters, Local 795.
Workers Against Inhumane Treatment.
Ohio Citizen Action.
Ohio Consumer League.
Ohio PIRG.
Oregon Fair Share.
Oregon Consumer League.
Oregon State Public Interest Research Group (OSPIRG).
Pennsylvania Citizens Consumer Council.
Pennsylvania Institute for Community Services.
Victims Against Lethal Valves (V.A.L.V.).
Citizen Action of Pennsylvania.
Pennsylvania DES Action.
Pennsylvania AFL–CIO.
SmokeFree Pennsylvania.
PennPIRG (Pennsylvania Public Interest Research Group).
South Dakota Coalition for Accountability & Justice.
South Dakota AFSCME.
East River Group Sierra Club.
Black Hills Group Sierra Club.
South Dakota State University.
IBEW, Local 426.
South Dakota DES Action.
South Dakota Peace & Justice Center.
Native American Women's Health & Education Center.
Native American Women's Reproductive Rights Coalition.
South Dakota AFL–CIO.
UFCW Local 304A.
Yankton Sioux Tribe.
South Dakota Coalition Against Domestic Violence.
South Dakota Advocacy Network.
South Dakota United Transportation Union.
South Dakota United Paperworkers International Union.
Tennessee Citizen Action.
Texas Citizen Action.
Texas Alliance for Human Needs.
Texas Public Citizen.
Defenders of the Rights of Texans.
Vermont PIRG.
Virginia National Organization for Women.
Virginia Citizen Action.
Virginia Citizens Consumer Council.
Washington Citizen Action.
WASHPIRG (Washington Public Interest Research Group).
West Virginia Citizen Action Group.
Wisconsin Consumers League.
Wisconsin PIRG.
Wisconsin Citizen Action.
Center for Public Representation, Inc.

ORGANIZATIONS OPPOSED TO "LEGAL REFORM" IN THE SENATE (S. 565)

(95 as of April 24, 1995)

Action on Smoking & Health.
AIDS Action Council.
Alliance Against Intoxicated Motorists.
Alliance for Justice.
American Association of Retired People (AARP).
American Bar Association.
American Coalition for Abuse Awareness.
American Council on Consumer Awareness.
American Fed. of Labor/Congress of Industrial Organizations (AFL–CIO).
American Public Health Association.
Americans for Democratic Action.
Americans for Non-Smokers' Rights.
Arab American Anti-Discrimination Committee.
Association of Trial Lawyers of America.
Center for Public Interest Research.
Business and Professional Women.
Center for Women's Policy Studies.
Children NOW.
Citizen Action.
Citizen Advocacy Center.
Citizens Clearinghouse for Hazardous Waste.
Clean Water Action.
Coalition for Consumer Rights.
Coalition of Labor Union Women.
Coalition to Stop Gun Violence.
Command Trust Network.
Committee for Children.
Conference of Chief Justices.
Consumer Action.
Consumer Federation of America.
Consumers for Civil Justice.
Consumer Protection Association.
Consumers Union.
Democratic Processes Center.
DES Action USA.
Families Advocating Injury Reduction (FAIR).
Federation of Organizations for Professional Women.
Fund for a Feminist Majority.
Gray Panthers.
Handgun Control Inc.
Help Us Regain the Children (HURT).
Hollywood Women's Political Committee.
Intl. Assn. of Machinists & Aerospace Workers (IAM).
Intl. Brotherhood of Teamsters.
Intl. Ladies Garment Workers Union.
Intl. Longshoremen's & Warehousemen Union.
Institute for Injury Reduction.
Lambda Legal Defense & Education Fund.
Latino Civil Rights Task Force.
Mothers Against Sexual Abuse.
Motor Voters.
NAACP (Natl. Assn. for the Advancement of Colored People).
Natl. Asbestos Victims Legal Action Organizing Committee.
Natl. Association of School Psychologists.
Natl. Breast Implant Coalition.
Natl. Conference of State Legislatures.
Natl. Consumers League.
Natl. Council of Jewish Women.
Natl. Council of Senior Citizens.
Natl. Fair Housing Coalition.
Natl. Family Farm Coalition.
Natl. Farmers Union.
Natl. Gay & Lesbian Task Force.
Natl. Head Injury Foundation.
Natl. Hispanic Council on Aging.
Natl. Minority AIDS Council.
Natl. Organization on Disability.
Natl. Rainbow Coalition.
Natl. Women's Health Network.
Natl. Women's Law Center.
Native American Rights Fund.
Network for Environmental & Economic Responsibility.
NOW Legal Defense & Education Fund.
Nuclear Information and Resource Service.
People's Medical Society.
Prevention First.
Public Citizen.
Public Voice for Food & Health Policy.
Purple Ribbon Project.
Safety Attorney Federation.
Southern Christian Leadership Conference.
STOP (Safe Tables Our Priority).
The Sierra Club.
Third Generation Network.
Trauma Foundation.
UAW (United Automobile, Aerospace & Agric. Imp. Workers of America).
U.S. Public Interest Research Group.
USWA (United Steelworkers of America).
Violence Policy Center.
Voices for Victims Inc.
Women Against Gun Violence.
Women's Institute for Freedom of the Press.
Women's Legal Defense Fund.
YWCA (Young Women's Christian Association).
Youth ALIVE.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from Washington.

Mr. GORTON. Mr. President, yes, the Senator from Washington is quite aware of that list of organizations. Of course, there are all kinds of organizations that are on both sides of this case. The point made by the Senator from Washington was that overwhelmingly of these special interests, the largest single special interest in the United States, when one measures that influence by the amount of money put into the political system, is ATLA, the trial lawyers.

This is not surprising, given the fact that they are the principal beneficiaries to a considerably larger degree than the very victims whom they claim to be representing. That is the point from the perspective of organizations. The biggest special interest, the richest special interest, the special interest that gives the greatest amount of money leads the opposition to this view and contributes to many of the other organizations which are opposed to it.

But that does not, as this Senator said, necessarily mean that they are wrong or that the other side is right. When, however, we have a system which hurts innovation, destroys American competitiveness in some industries, and gives 60 percent of all the money in the system to those who game the system rather than victims, there is something wrong, and that something ought to be corrected.

PREEMPTION IN THE MCCONNELL-LIEBERMAN-KASSEBAUM AMENDMENT

Mrs. KASSEBAUM. Mr. President, last week I spoke in favor of the pending amendment on medical liability and addressed, very briefly, the issue of Federal preemption.

I want to take a few moments this morning to explain more fully my reasons for supporting a limited Federal preemption of State medical liability laws and to urge my colleagues to reject both the Simon and the Kennedy preemption amendments to the underlying McConnell-Kassebaum-Lieberman amendment.

Mr. President, the Federal Government has a significant stake in reforming the health care liability system

both because of the effect of the system on interstate commerce and because of the enormous amount spent by the Federal Government on health care.

Last Thursday, I spoke of the need to achieve some degree of uniformity and certainty in the system. Without greater predictability, insurance rates will continue to reflect the potential for unlimited exposure to risk. And these higher insurance rates will continue to be passed along to the American consumer.

THE PRIVATE SECTOR DESERVES TO BENEFIT FROM THE SAME TYPE OF PROTECTIONS THAT THE FEDERAL GOVERNMENT HAS AFFORDED ITSELF

The Federal Government already has taken significant steps to limit its own exposure for costs associated with health care liability. For example, damages resulting from health claims disputes and redress in claims dispute cases are limited for Federal employees receiving health coverage under the Federal Employees Health Benefit Act [FEHBA], and for Medicare beneficiaries. There are no punitive or extra-contractual damages allowed under FEHBA or Medicare. *See Hayes* v. *Prudential Ins. Co.*, 819 F.2d 921 (9th Cir. 1987); *Homewood Professional Care Ctr., Ltd.* v. *Heckler*, 764 F.2d 1242 (7th Cir. 1985).

Moreover, responding to an outcry from Federal Community Health Centers about skyrocketing malpractice insurance premiums, Congress in 1992 limited the exposure of centers and their providers to malpractice claims by placing them under the Federal Tort Claims Act and taking steps that go well beyond the reforms in this legislation. In addition to having judgments paid from a Federal fund, that act: (1) allows liability to be determined by a judge rather than a jury (28 U.S.C. 2402); (2) contains a 2-year statute of limitations that is more restrictive than the one contained in this legislation (28 U.S.C. 2401); (3) prohibits the awarding of punitive damages (28 U.S.C. 2674); (4) places a cap on lawyers' contingency fees of 25 percent of a litigated claim and 20 percent of a settlement (28 U.S.C. 2678); disallows prejudgment interest (28 U.S.C. 2674), and requires claimants to exhaust administrative remedies before proceeding to court (28 U.S.C. 2675).

Mr. President, I believe that the private sector is entitled to the same type of protections that the Federal Government has extended to its own health providers.

AS THE LARGEST SINGLE PAYER OF HEALTH CARE SERVICES, THE FEDERAL GOVERNMENT HAS A COMPELLING INTEREST IN HEALTH CARE LIABILITY REFORM

While the Federal Government has limited its exposure to health care liability claims in certain instances, large gaps remain. In particular, liability for health care professionals and providers who treat Medicaid and Medicare patients remain subject to uneven and sometimes insufficient State medical liability reforms. One-third of total health care spending in this country is paid by the Federal Government. According to the Congressional Budget Office, Federal spending for Medicare will reach $177 billion in fiscal year 1995, while Medicaid grants to States will total $96 billion.

Therefore, I believe that there is a direct, compelling Federal interest in reforming the Nation's outmoded medical liability system.

FEDERAL LEGISLATION IS NECESSARY BECAUSE OF THE INCREASINGLY INTERSTATE CHARACTER OF HEALTH CARE DELIVERY

Moreover, some degree of uniformity is essential because health care markets are becoming increasingly regional, if not national. Telemedicine, by its very nature, is designed to overcome barriers to the delivery of medicine, including long distances, geographic limitations, and political borders. Some of the finest medical facilities in the United States—such as the Mayo Clinic in Minnesota, Stanford University in California, Barnes Hospital in Missouri, the Cleveland Clinic in Ohio, and the Dartmouth Medical Center in New Hampshire—treat patients from across the Nation, and around the world.

While I do not believe there is a need for absolute uniformity in all aspects of the health care system, I do believe that some minimum level of medical liability reforms are necessary to the continued development of a cost-effective private health care system. This is particularly true where, as under this legislation, insurers and other third party payers may be sued as defendants in health care liability actions.

As health care providers continue to consolidate and form integrated networks of care in response to market forces, economic pressure, and emerging treatment patterns, the number of individuals who receive health care services in one State while having them financed by entities in another will continue to increase.

While health care services generally are delivered locally, this does not necessarily mean that health care is delivered within State borders. To the contrary: more than 40 percent of Americans live in cities and counties that border on State lines; in 26 States, more than half of the population lives in cities and counties that border on State lines, and over 50 percent of the population in 26 States lives in border cities and counties. In these areas, it is even more likely that a patient will live or work in one State, receive health care services in another, and have his or her bills paid by a third-party payer in another State. A recent analysis of health services purchased across State borders found, for example: First, that Vermont and New Hampshire residents visit an out-of-State physician nearly one-quarter of the time; second, that Wyoming residents visit out-of-State doctors over one-third of the time, and third, that nearly 40 percent of the patients admitted to Delaware hospitals travel from out of the State.

FEDERAL LEGISLATION IS NECESSARY BECAUSE OF STATE CONSTITUTIONAL IMPEDIMENTS

Some have argued that this legislation is an unnecessary intrusion into an area of the law that traditionally has been the domain of the States. I would like to point out, however, that many of the opponents of Federal medical liability reform are, at the same time, aggressively challenging State tort reform efforts by arguing that the reforms are unconstitutional under State constitutions. As a result, many States have been frustrated in their efforts to pass meaningful tort reform. For example: First, statutes of limitations in health care liability actions have been held to violate State constitutions in Arizona; second, limits on punitive damage awards in health care liability actions have been held unconstitutional in Alabama, and third, periodic payment schedules for damage awards in health care liability actions have been held to violate State constitutions in Arizona, New Hampshire, and Ohio.

PREEMPTION PROVISIONS IN THE MCCONNELL-LIEBERMAN-KASSEBAUM AMENDMENT

Mr. President, the preemption provisions contained in the McConnell-Lieberman-Kassebaum amendment are designed to give both the States and the courts clear guidance as to the scope of the reforms contained in the legislation.

The amendment does not preempt State laws that: First, place greater restrictions on the amount of or standards for awarding noneconomic or punitive damages; second, place greater limitations on the awarding of attorneys fees for awards in excess of $150,000; third, permit a lower threshold for the periodic payment of future damages; fourth, establish a shorter period of time during which a health care liability action may be initiated or a more restrictive rule with respect to the time at which the period of limitations begins to run, or fifth, implement collateral source rule reform that either permits the introduction of evidence of collateral source benefits or provides for the mandatory offset of such benefits from damage awards.

The amendment also states specifically that it should not be construed to preempt any State law which: First, permits State officials to commence health care liability actions; second, permits provider-based dispute resolution; third, places a limit on total damages awarded in a health care liability action; fourth, places a maximum limit on the time in which such an action may be initiated, or fifth, provides for defenses in addition to those contained in the act.

Last week and again yesterday, some of my colleagues argued that the so-called one-sided preemption provisions contained in the McConnell amendment were both novel and, somehow, unfair. I believe these arguments are without merit.

For the record, I would like to make clear that the characterization that all of the preemption provisions in the legislation are "one-sided" is simply incorrect. Two examples are instructive. First, the preemption provisions allow State collateral source reform measures to differ widely from the provisions contained in the legislation. States not only have the flexibility under the McConnell-Lieberman-Kassebaum amendment to adopt evidentiary collateral source rules and mandatory offset rules that permit introduction of collateral source benefits after trial, but may, in fact, adopt a whole range of collateral source rule reforms that are more favorable to claimants than those contained in the amendment. Second, the amendment makes clear that State laws limiting attorneys fees for awards of $150,000 or less may be both more restrictive than the 33⅓ percent set forth in the legislation and less restrictive.

In support of the preemption provisions contained in the McConnell-Lieberman-Kassebaum amendment, I would like to note further the long history of this Congress in setting minimum Federal standards and allowing the States significant flexibility beyond those standards. See, e.g., Clean Air Act Amendments of 1990, Pub. L. 101-549; Safe Drinking Water Act, Pub. L. 93-523; Civil Rights Act of 1964, Pub. L. 88-352; Americans With Disabilities Act, Pub. L. 101-336.

Moreover, nearly every health care reform bill introduced last Congress—including President Clinton's "Health Security Act"—contained this type of Federal preemption for medical liability reforms. See, e.g., President Clinton's Health Security Act, H.R. 3600; Senator DOLE and Senator PACKWOOD's health care reform bill, S. 2374; Senator CHAFEE's Health Equity Access Reform Today Act, S. 1770; Representative Cooper's Managed Competition Act, H.R. 3222; the House Republican leadership plan, H.R. 3080; the bipartisan mainstream coalition health bill, and the House bipartisan health reform bill.

Another recent and relevant example of liability reform legislation containing the type of Federal preemption language included in the McConnell-Lieberman-Kassebaum amendment is S. 1458, the General Aviation Revitalization Act of 1994. That legislation provided in part that no civil action for damages arising out of an accident involving a general aviation aircraft could be brought against the manufacturer of the aircraft or the manufacturer of any component part of the aircraft, if the accident occurred more than 18 years after the date of the aircraft's delivery or the component part's installation. S. 1458, which passed the Senate on March 16, 1994 by a vote of 91 to 8, preempts State law only to the extent that such law permitted civil actions to be commenced after 18 years. See Public Law 103-298.

I believe that the underlying amendment is loyal to this tradition.

In conclusion, Mr. President, I would like to point out that many of those who oppose the preemption principles embodied in this legislation have repeatedly and enthusiastically embraced those principles in other legislative contexts.

For example, S. 7, the Family Health Insurance Protection Act, provides a clear example of one-sided preemption.

Section 1011 provides that State laws will not be preempted only if they: First, contain preexisting condition waiting periods that are "less than those" established in S 7; second, limit variations in premium rates "beyond the variations permitted" in S. 7, and third, expand the size of the small group market to include groups "in excess of" the size set forth in the legislation.

Section 1012 of that legislation contains even more expansive one-sided preemption provisions. It states that: "Nothing in this Act shall be construed as prohibiting States from enacting [any] health care reform measures that exceed the measures established under this Act, including reforms that expand access to health care services—for example, higher taxes—control health care costs, and so forth, institute tighter premium caps or cost controls, and enhance the quality of care.

Mr. President, as I said earlier, I do not believe there is a need for absolute uniformity in this area. But I do believe it is important to set some very clear minimum Federal standards that all States must meet.

The standards in the McConnell-Lieberman-Kassebaum amendment are only a floor. The amendment does not preempt States from going further with medical malpractice reforms they may decide are necessary. I think this is the best way to balance the need for some State flexibility with the need for greater certainty and predictability in the system.

MEDICAL MALPRACTICE REFORM

Mr. PELL. Mr. President, I wish to make a few observations regarding the effort sponsored by Senator MCCONNELL to add comprehensive medical malpractice reform to the product liability legislation currently pending before us.

I was much torn about the McConnell amendment because I support medical malpractice reform and believe the time has come to profoundly change the current system. Yet, in the end, I decided to vote against the McConnell amendment.

I did so because I was deeply concerned that adding this desirable but controversial reform effort to the pending legislation would gravely endanger the cause of product liability reform, a cause I have supported for many years. After many years of frustration I have real hope that we will achieve product liability reform in this Congress and I wanted to avoid any action which would endanger that hope. I would add that I was persuaded in this regard by the sponsor of the product liability reform effort, Senator ROCKEFELLER.

However, I look forward to the opportunity to fully address medical malpractice reform later in this Congress when the issues can be aired fully and not be encumbered by the desire to achieve progress in other areas of legal system reform. While I do not support all the provisions of the McConnell amendment, I do support its thrust and would welcome the opportunity to debate the issue strictly on its own merits.

MEDICAL MALPRACTICE REFORM

Mr. ROTH. Mr. President, I have always been a staunch supporter of our Federal system of government, which has as its most fundamental principle the idea that matters of governance ought to be left as much as possible to the States. Traditionally, one such matter left to the States has been the administration of medical malpractice law.

By virtue of its overwhelming financial stake in the Nation's health care, however, the Federal Government has a unique and compelling interest in the delivery of care, and this interest leads me to support the McConnell amendment on medical malpractice reform. The McConnell amendment reforms medical malpractice law by creating certain minimum standards, such as a cap on punitive damages, that will apply nationwide. It permits States, however, to pass more thorough-going reforms if they wish to do so.

The Federal Government is the largest purchaser of health care, and it finances 32 percent of the Nation's health care spending through the Medicare and Medicaid programs, federally qualified community health centers, the veterans health care, military health care, Indian health care, and many other programs. In fact, the Federal Government spent $280.6 billion in 1993 purchasing health care services—more than for any other service.

Projections of the growth of health care expenditures continue to escalate, and the Federal Government's role in paying for these services will also continue to grow—unless we begin to take steps to control the rate of growth. In the meantime, we should be working on increasing access to health care coverage. Savings achieved through medical malpractice reform will not only save the taxpayers of America significant amounts, it will help expand access to care.

Based on the experience with federally qualified community health centers, the evidence is good that the McConnell amendment will lead to cost savings and expanded access to care. Currently, more than 500 of these community and migrant health centers receive Federal funding. These centers provide essential primary care for about 6 million people living in areas where there are few physicians or other health care providers. In fact, we have three such important centers in Delaware—the Henrietta Johnson Community Health Center in Southbridge, the West Side Community Health Center in Wilmington, and the DelMarVa Rural Ministries in Kent County. In October 1992, Congress enacted a type of medical malpractice reform for federally supported community health centers by extending the Federal Tort Claims Act [FTCA] to cover these centers. A Government Accounting Office report estimates that for calendar years 1993 through 1995, a total of $54.8 million was saved by bringing the community health centers within the reach of the FTCA.

It is clear to me that medical malpractice reform is needed in order to control the Federal Government's enormous share of our national health care costs and, thus, to ensure broad access to quality care. The Physician Payment Review Commission, which is charged with advising Congress regarding Medicare policy, has advised in its latest report that Federal medical malpractice reform should be enacted. The report states that "the medical liability system does not adequately prevent medical injuries or compensate injured patients. There is concern that the current functioning of this system promotes the practice of defensive medicine and may impede efforts to improve the cost effectiveness of care." Last year, these problems led me to vote in favor of medical malpractice reform when the Senate Finance Committee considered it during its deliberations on health care reform. Because the problems are with us still, this year I support the McConnell amendment.

The PRESIDING OFFICER. The Senator's time has expired.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. GORTON. Mr. President, I ask unanimous consent that, following the conclusion of the first rollcall vote, all remaining consecutive rollcall votes be limited to 10 minutes.

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

Mr. GORTON. I now ask for regular order.

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AMENDMENT NO. 604

The PRESIDING OFFICER. Regular order provides for the Thomas amendment to recur as the pending amendment.

Mr. ROCKEFELLER. Mr. President, I move to table the Thomas amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. GORTON. Mr. President, for the information of all Senators, there is a potential for as many as 12 back-to-back votes, beginning now. All Senators are urged to remain on the floor during this voting sequence.

I ask unanimous consent that, notwithstanding the consent for the recess at 12:30, the Senate stand in recess immediately following the disposition of the McConnell amendment.

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

VOTE ON MOTION TO TABLE AMENDMENT NO. 604

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia [Mr. ROCKEFELLER] to table the amendment of the Senator from Wyoming [Mr. THOMAS].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 39, nays 61, as follows:

[Rollcall Vote No. 137 Leg.]

YEAS—39

Akaka	Glenn	Moseley-Braun
Biden	Gorton	Moynihan
Bingaman	Harkin	Murray
Boxer	Heflin	Packwood
Bradley	Hollings	Pell
Breaux	Inouye	Robb
Bumpers	Jeffords	Rockefeller
Cohen	Kassebaum	Sarbanes
D'Amato	Kennedy	Simon
Daschle	Kerry	Snowe
DeWine	Kohl	Specter
Dodd	Lautenberg	Thompson
Feingold	Levin	Wellstone

NAYS—61

Abraham	Feinstein	Mack
Ashcroft	Ford	McCain
Baucus	Frist	McConnell
Bennett	Graham	Mikulski
Bond	Gramm	Murkowski
Brown	Grams	Nickles
Bryan	Grassley	Nunn
Burns	Gregg	Pressler
Byrd	Hatch	Pryor
Campbell	Hatfield	Reid
Chafee	Helms	Roth
Coats	Hutchison	Santorum
Cochran	Inhofe	Shelby
Conrad	Johnston	Simpson
Coverdell	Kempthorne	Smith
Craig	Kerrey	Stevens
Dole	Kyl	Thomas
Domenici	Leahy	Thurmond
Dorgan	Lieberman	Warner
Exon	Lott	
Faircloth	Lugar	

So the motion to lay on the table the amendment (No. 604) was rejected.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 604) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

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

VOTE ON MOTION TO TABLE AMENDMENT NO. 605

The PRESIDING OFFICER. The question occurs on amendment numbered 605.

Mr. GORTON. Mr. President, I move to table the Wellstone amendment and ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 69, nays 31, as follows:

[Rollcall Vote No. 138 Leg.]

YEAS—69

Abraham	Ford	Lott
Ashcroft	Frist	Lugar
Baucus	Glenn	McCain
Bennett	Gorton	McConnell
Biden	Graham	Moynihan
Breaux	Gramm	Murkowski
Brown	Grams	Nickles
Bumpers	Grassley	Nunn
Burns	Gregg	Packwood
Campbell	Hatch	Pressler
Chafee	Hatfield	Pryor
Coats	Heflin	Rockefeller
Cochran	Helms	Roth
Cohen	Hutchison	Santorum
Coverdell	Inhofe	Shelby
Craig	Jeffords	Simpson
D'Amato	Johnston	Smith
DeWine	Kassebaum	Specter
Dodd	Kempthorne	Stevens
Dole	Kohl	Thomas
Domenici	Kyl	Thompson
Faircloth	Leahy	Thurmond
Feinstein	Lieberman	Warner

NAYS—31

Akaka	Feingold	Moseley-Braun
Bingaman	Harkin	Murray
Bond	Hollings	Pell
Boxer	Inouye	Reid
Bradley	Kennedy	Robb
Bryan	Kerrey	Sarbanes
Byrd	Kerry	Simon
Conrad	Lautenberg	Snowe
Daschle	Levin	Wellstone
Dorgan	Mack	
Exon	Mikulski	

So the motion to lay on the table the amendment (No. 605) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 608

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Maine.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Maine. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 61, nays 39, as follows:

[Rollcall Vote No. 139 Leg.]

YEAS—61

Abraham	Gorton	McConnell
Bennett	Grams	Mikulski
Bond	Grassley	Moseley-Braun
Brown	Gregg	Murkowski
Burns	Hatch	Nickles
Campbell	Hatfield	Nunn
Chafee	Helms	Pressler
Coats	Hutchison	Robb
Cochran	Inhofe	Roth
Cohen	Jeffords	Santorum
Conrad	Kassebaum	Shelby
Coverdell	Kempthorne	Simpson
Craig	Kerrey	Snowe
D'Amato	Kohl	Specter
Daschle	Kyl	Stevens
DeWine	Lautenberg	Thomas
Dole	Levin	Thompson
Domenici	Lieberman	Thurmond
Faircloth	Lott	Warner
Feinstein	Mack	
Frist	McCain	

NAYS—39

Akaka	Exon	Leahy
Ashcroft	Feingold	Lugar
Baucus	Ford	Moynihan
Biden	Glenn	Murray
Bingaman	Graham	Packwood
Boxer	Gramm	Pell
Bradley	Harkin	Pryor
Breaux	Heflin	Reid
Bryan	Hollings	Rockefeller
Bumpers	Inouye	Sarbanes
Byrd	Johnston	Simon
Dodd	Kennedy	Smith
Dorgan	Kerry	Wellstone

So the amendment (No. 608) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 609

The PRESIDING OFFICER. The question now occurs on agreeing to amendment No. 609 by the Senator from Arizona [Mr. KYL].

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I move to table the pending amendment and 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.

VOTE ON MOTION TO TABLE AMENDMENT NO. 609

The PRESIDING OFFICER (Mr. KEMPTHORNE). The question is on agreeing to the motion to table the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 65, nays 35, as follows:

[Rollcall Vote No. 140 Leg.]

YEAS—65

Abraham	Feinstein	Mikulski
Akaka	Ford	Moynihan
Ashcroft	Frist	Murkowski
Biden	Glenn	Murray
Bingaman	Gorton	Nunn
Boxer	Graham	Packwood
Bradley	Harkin	Pell
Breaux	Hatch	Pressler
Bryan	Heflin	Pryor
Bumpers	Hollings	Reid
Burns	Jeffords	Robb
Campbell	Johnston	Rockefeller
Cochran	Kassebaum	Roth
Cohen	Kennedy	Sarbanes
Conrad	Kerrey	Shelby
D'Amato	Kerry	Snowe
Daschle	Kohl	Specter
DeWine	Lautenberg	Stevens
Dodd	Leahy	Thompson
Dorgan	Levin	Warner
Exon	Lieberman	Wellstone
Feingold	Mack	

NAYS—35

Baucus	Gramm	Lugar
Bennett	Grams	McCain
Bond	Grassley	McConnell
Brown	Gregg	Moseley-Braun
Byrd	Hatfield	Nickles
Chafee	Helms	Santorum
Coats	Hutchison	Simon
Coverdell	Inhofe	Simpson
Craig	Inouye	Smith
Dole	Kempthorne	Thomas
Domenici	Kyl	Thurmond
Faircloth	Lott	

So the motion to table the amendment (No. 609) was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 611

The PRESIDING OFFICER. The question now is on the Kyl amendment No. 611.

Mr. ROCKEFELLER. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 56, nays 44, as follows:

[Rollcall Vote No. 141 Leg.]

YEAS—56

Akaka	Dorgan	Kohl
Biden	Feingold	Lautenberg
Bingaman	Feinstein	Leahy
Bond	Ford	Levin
Boxer	Glenn	Lieberman
Bradley	Gorton	McConnell
Breaux	Graham	Mikulski
Bryan	Harkin	Moseley-Braun
Bumpers	Heflin	Moynihan
Byrd	Hollings	Murray
Cohen	Inouye	Nunn
Conrad	Jeffords	Packwood
D'Amato	Johnston	Pressler
Daschle	Kennedy	Pryor
DeWine	Kerrey	Reid
Dodd	Kerry	Robb
Rockefeller	Simon	Thompson
Sarbanes	Simpson	Wellstone
Shelby	Specter	

NAYS—44

Abraham	Faircloth	Lugar
Ashcroft	Frist	Mack
Baucus	Gramm	McCain
Bennett	Grams	Murkowski
Brown	Grassley	Nickles
Burns	Gregg	Pell
Campbell	Hatch	Roth
Chafee	Hatfield	Santorum
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Coverdell	Inhofe	Stevens
Craig	Kassebaum	Thomas
Dole	Kempthorne	Thurmond
Domenici	Kyl	Warner
Exon	Lott	

So the motion to lay on the table the amendment (No. 611) was agreed to.

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

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 612

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 612, offered by the Senator from Ohio.

Mr. GORTON. Mr. President, this is a noncontroversial amendment.

So the amendment (No. 612) was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 613

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 613, offered by the Senator from Utah.

Mr. GORTON. Mr. President, this is also a noncontroversial amendment.

So the amendment (No. 613) was agreed to.

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

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

The motion to lay on the table was agreed to.

UNANIMOUS-CONSENT REQUEST

Mr. DOLE. Mr. President, I ask unanimous consent we have the next vote and then we recess for the policy luncheons until 2:15, and then come back and complete the additional rollcall votes.

There will be one additional rollcall vote. The remainder of the votes will follow at 2:15.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Mr. President, reserving the right to object, I am going to withdraw my amendment at this point. I do not know if that affects the majority leader's schedule, but I ask unanimous consent to withdraw my amendment.

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

The amendment (No. 616) was withdrawn.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, after consultation with the Democratic leader and a number of people who are conducting hearings, I withdraw the request. We will just go ahead and complete the votes now.

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

AMENDMENT NO. 614

The PRESIDING OFFICER. The question, then, is on agreeing to the Simon amendment (No. 614).

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I move to table the Simon amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO TABLE AMENDMENT NO. 614

The PRESIDING OFFICER. The question occurs on the motion to lay on the table the amendment, No. 614.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced, yeas 51, nays 49, as follows:

[Rollcall Vote No. 142 Leg.]

YEAS—51

Ashcroft	Gorton	Lugar
Bennett	Gramm	Mack
Bond	Grams	McCain
Brown	Grassley	McConnell
Burns	Gregg	Murkowski
Campbell	Hatch	Nickles
Chafee	Hatfield	Pressler
Coats	Helms	Robb
Cochran	Hutchison	Rockefeller
Coverdell	Inhofe	Roth
Craig	Jeffords	Santorum
Dodd	Kassebaum	Smith
Dole	Kempthorne	Snowe
Domenici	Kyl	Stevens
Exon	Lautenberg	Thomas
Faircloth	Lieberman	Thurmond
Frist	Lott	Warner

NAYS—49

Abraham	Cohen	Harkin
Akaka	Conrad	Heflin
Baucus	D'Amato	Hollings
Biden	Daschle	Inouye
Bingaman	DeWine	Johnston
Boxer	Dorgan	Kennedy
Bradley	Feingold	Kerrey
Breaux	Feinstein	Kerry
Bryan	Ford	Kohl
Bumpers	Glenn	Leahy
Byrd	Graham	Levin
Mikulski	Pell	Simpson
Moseley-Braun	Pryor	Specter
Moynihan	Reid	Thompson
Murray	Sarbanes	Wellstone
Nunn	Shelby	
Packwood	Simon	

So the motion to lay on the table the amendment (No. 614) was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 607

The PRESIDING OFFICER. The question now occurs on amendment No. 607 offered by the Senator from Massachusetts [Mr. KENNEDY].

Mr. GORTON. Mr. President, I move to table the Kennedy amendment and ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 607. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 55, nays 45, as follows:

[Rollcall Vote No. 143 Leg.]

YEAS—55

Abraham	Graham	McCain
Ashcroft	Gramm	McConnell
Bennett	Grams	Murkowski
Bond	Grassley	Nickles
Brown	Gregg	Packwood
Burns	Hatch	Pressler
Campbell	Hatfield	Robb
Chafee	Heflin	Rockefeller
Coats	Helms	Roth
Cochran	Hutchison	Santorum
Coverdell	Inhofe	Smith
Craig	Jeffords	Snowe
DeWine	Kassebaum	Stevens
Dole	Kempthorne	Thomas
Domenici	Kyl	Thompson
Exon	Lieberman	Thurmond
Faircloth	Lott	Warner
Frist	Lugar	
Gorton	Mack	

NAYS—45

Akaka	Dorgan	Levin
Baucus	Feingold	Mikulski
Biden	Feinstein	Moseley-Braun
Bingaman	Ford	Moynihan
Boxer	Glenn	Murray
Bradley	Harkin	Nunn
Breaux	Hollings	Pell
Bryan	Inouye	Pryor
Bumpers	Johnston	Reid
Byrd	Kennedy	Sarbanes
Cohen	Kerrey	Shelby
Conrad	Kerry	Simon
D'Amato	Kohl	Simpson
Daschle	Lautenberg	Specter
Dodd	Leahy	Wellstone

So the motion to table the amendment (No. 607) was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 615

The PRESIDING OFFICER. The question is on agreeing to amendment No. 615 offered by the Senator from Massachusetts [Mr. KENNEDY].

The amendment (No. 615) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 603, AS AMENDED

The PRESIDING OFFICER. The pending measure is amendment No. 603, as amended, offered by the Senator from Kentucky [Mr. MCCONNELL].

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

VOTE ON AMENDMENT NO. 603, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to amendment No. 603, as amended.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 144 Leg.]

YEAS—53

Abraham	Frist	Mack
Ashcroft	Gorton	McCain
Bennett	Gramm	McConnell
Bond	Grams	Murkowski
Brown	Grassley	Nickles
Burns	Gregg	Nunn
Campbell	Hatch	Pressler
Chafee	Hatfield	Robb
Coats	Helms	Roth
Cochran	Hutchison	Santorum
Coverdell	Inhofe	Simpson
Craig	Jeffords	Smith
DeWine	Kassebaum	Snowe
Dole	Kempthorne	Stevens
Domenici	Kyl	Thomas
Exon	Lieberman	Thurmond
Faircloth	Lott	Warner
Feinstein	Lugar	

NAYS—47

Akaka	Feingold	Mikulski
Baucus	Ford	Moseley-Braun
Biden	Glenn	Moynihan
Bingaman	Graham	Murray
Boxer	Harkin	Packwood
Bradley	Heflin	Pell
Breaux	Hollings	Pryor
Bryan	Inouye	Reid
Bumpers	Johnston	Rockefeller
Byrd	Kennedy	Sarbanes
Cohen	Kerrey	Shelby
Conrad	Kerry	Simon
D'Amato	Kohl	Specter
Daschle	Lautenberg	Thompson
Dodd	Leahy	Wellstone
Dorgan	Levin	

So the amendment (No. 603), as amended, was agreed to.

CHANGE OF VOTE

Mr. PACKWOOD. Mr. President, on rollcall vote No. 139 I voted "yea." It was my intention to vote "no." Therefore, I ask unanimous consent that I be permitted to change my vote. This will in no way change the outcome of the vote.

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

(The foregoing tally has been changed to reflect the above order.)

CHANGE OF VOTE

Mr. HATFIELD. Mr. President, on rollcall vote No. 137 I voted "yea." It was my intention to vote "no." Therefore, I ask unanimous consent that I be permitted to change my vote. This will in no way change the outcome of the vote.

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

(The foregoing tally has been changed to reflect the above order.)

Mr. HELMS. Mr. President, I ask unanimous consent that I be permitted to proceed very briefly as in the morning business.

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

HAVE THE CUBAN PEOPLE BEEN SOLD DOWN THE RIVER?

Mr. HELMS. Mr. President, at noon today, Attorney General Reno made a formal announcement that has dismayed the Cuban people.

The Attorney General, speaking for the President, announced that effective immediately the Cubans interdicted at sea will be forcibly returned to face the wrath of Fidel Castro.

Mr. President, of course, Mr. Castro has said he will take no punitive action against Cubans forcibly returned to his tyranny. But the Cuban people, many of whom died before firing squads, and others who languished for years as political prisoners in Castro's prisons, learned the hard way the value of Mr. Castro's word.

Mr. President, there has been another sad and tragic moment involving the Clinton administration's dealings with the Cuban people. I am already receiving in my office an endless stream of telephone calls and faxes from Cuban-Americans who feel they have again been betrayed by the administration.

For more than 35 years, Mr. President, the United States has been a safe haven for Cubans fleeing Castro's repressive Communist dictatorship. Last year, Mr. President, the Clinton administration began a reversal of this policy. Cuban Americans now appropriately fear that the administration has joined hands with the Castro regime in an effort having the continuing effect of enslaving the people of Cuba.

Today's announcement, described as the result of secret negotiations between the administration and the Castro regime, is seen as a sign that the United States will now work in partnership with Castro's brutal security apparatus by intercepting and capturing escaping Cuban refugees and turning them over directly to Castro's thugs. How sad it is, Mr. President, that the United States is now viewed as an accomplice in Castro's repression of the Cuban people.

Mr. President, if the United States wants to send naval vessels to surround Cuba, it should not be done to cooperate with the Castro regime. It should be done to blockade and strangle his brutal dictatorship once and for all. This development is another reason why Congress must pass the Cuban Liberty and Democratic Solidarity Act. In the face of this vacillation, the Congress must reaffirm that United States policy is to isolate and replace Fidel Castro, not to keep the Cuban people imprisoned in Castro's tropical gulag.

I ask unanimous consent the full text of the statement issued at noon by the Attorney General, Ms. Reno, be printed in the RECORD at the conclusion of my remarks.

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

STATEMENT OF ATTORNEY GENERAL JANET RENO REGARDING CUBAN MIGRATION

I would like to make an announcement regarding Cuban migration.

It has long been the policy of the United States that Cubans who wish to migrate to the United States should do so by legal means. The U.S. Interests Section in Havana accepts and processes requests for visas, and it also operates an in-country program for those Cubans who seek refugee status for entry into the United States.

Pursuant to this policy, last August I announced that Cubans attempting irregular means of migration to the United States on boats and rafts would not be allowed to enter this country, but rather would be brought to the United States Naval base at Guantanamo Bay, where they would be offered safe haven.

Last September, following negotiations with representatives of the Cuban government, the United States announced that it would increase Cuban migration to the United States to permit 20,000 legal entrants per year. This program, which includes immigrant visas, refugee applications, and a Special Cuban Migration Program designed to broaden the pool of potential entrants, is on target, and we expect to continue legal Cuban migration at this level in the years to come. This year alone, we expect to bring 7,000 Cuban refugees to the United States through our in-country program in Havana.

Following recent diplomatic exchanges with the Cuban government, the United States is now prepared to take another important step towards regularizing Cuban migration between Cuba and the United States.

First, with respect to Guantanamo:

We will continue to bring to the United States those persons who are eligible for special humanitarian parole under the guidelines announced by the President last October and December.

The government of Cuba has agreed to accept all Cuban nationals in Guantanamo who wish to return home, as well as persons who have previously been deported from the United States and persons who would be ineligible for admission to the United States because of criminal record, medical, physical, or mental condition, or commission of acts of violence while at Guantanamo.

All other Cubans in the safe haven will be considered for entry into the United States on a case-by-case basis as "Special Guantanamo Entrants", bearing in mind the impact of paroles on state and local economies and the need for adequate sponsorships. As has been true for all Cubans and Haitians previously paroled into the United States from Guantanamo, sponsorship and resettlement assistance will be obtained prior to entry. The number of these "Special Guantanamo Entrants" admitted to the United States will be credited against the 20,000 annual Cuban migration figure, beginning in September of this year, at the rate of 5,000 per year (regardless of when the Special Guantanamo Entrants are admitted).

Second, with regard to future irregular migration:

Effective immediately, Cuban migrants intercepted at sea attempting to enter the United States, or who enter Guantanamo illegally, will be taken to Cuba, where U.S. consular officers will assist those who wish to apply to come to the United States through already established mechanisms. Cubans must know that the only way to come to the United States is by applying in Cuba.

All returnees will be permitted to apply for refugee status at the U.S. Interests Sections in Havana. Cuba is one of only three countries in the world in which the United States conducts in-country processing for refugees. The Government of Cuba has committed to the Government of the United States that on one will suffer reprisals, lose benefits, or be prejudiced in any manner, either because he or she sought to depart irregularly or because he or she has applied for refugee status at the U.S. Interests Section. The Cuban Government made a similar commitment in the context of the September 1994 agreement, and we are satisfied that it has been honored. Moreover, the Government of Cuba will permit monitoring by U.S. consular officers of the treatment of all returnees.

Migrants intercepted at sea or in Guantanamo will be advised that they will be taken back to Cuba, where U.S. consular officials will meet them at the dock and assist those who wish to apply for refugee admission to the United States at the Interests Section in Havana. They will be told that the Government of Cuba has provided a commitment to the United States Government that they will suffer no adverse consequences or reprisals of any sort, and that U.S. consular officers will monitor their treatment. They will also be told that those persons who seek resettlement in the United States as refugees must use the in-country refugee program.

Measures will be taken to ensure that persons who claim a genuine need for protection which they believe cannot be satisfied by applying at the U.S. Interests Section in Havana will be examined before return.

Cubans who reach the United States through irregular means will be placed in exclusion proceedings, detained, and treated as are all illegal migrants from other countries.

The United States Government reiterates its opposition to the use of violence in connection with departure from Cuba and its determination to prosecute cases of hijacking and alien smuggling.

These new procedures represent another important step towards regularizing migration procedures with Cuba, finding a humanitarian solution to the situation at Guantanamo, and preventing another uncontrolled and dangerous outflow from Cuba.

The United States policy towards Cuba remains the same. We remain committed to the Cuban Democracy Act and its central goal—promoting a peaceful transition to democracy in Cuba. We will continue to enforce the economic embargo to pressure the Cuban regime to reform. We will continue to reach out to the Cuban people through private humanitarian assistance and through the free flow of ideas and information to

strengthen Cuba's fledgling civil society. And we remain ready to respond in carefully calibrated ways to meaningful steps toward political and economic reform in Cuba.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent to proceed for up to 10 minutes as in morning business.

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

THE ATTORNEY GENERAL'S ANNOUNCEMENT ON CUBAN MIGRATION

Mr. GRAHAM. Mr. President, it had not been my intention to speak at this moment but I happened to be on the floor and heard the Senator from North Carolina. I would like, if I could, to put in context what the Attorney General announced at noon today.

The first component of the announcement was that the United States would adopt a new policy relative to those detainees who are currently being held at the naval station at Guantanamo Bay. For some background, in the late summer and early fall of 1994, a large exodus of Cubans commenced from that island and were interdicted by United States Coast Guard and some military vessels. The decision was made by the U.S. Government at that time to establish a safe haven at Guantanamo Naval Station, to which in excess of 30,000 persons who had been interdicted at sea were subsequently taken.

In September 1994, the United States Government, as part of what has been a continuing negotiation with the Cuban Government, held negotiations on the specific and limited and singular topic of immigration. As a result of that, an agreement was reached. Parts of that agreement provided that the United States would provide no less than 20,000 visas per year for Cubans wishing to come legally to the United States, and would do so through a process administered by the United States interest section in Havana. Also, as part of that agreement, the Cuban Government agreed to undertake those steps which would be necessary in order to prevent a continuation or restart of a mass exodus from Cuba.

Over time, the U.S. Government determined that there were three categories of persons at Guantanamo who deserved to be granted parole in the United States, those three being families with children, the elderly, and those who had serious medical problems. Under those three categories of parole, approximately 7,000 to 8,000 persons have been paroled into the United States thus far. There are another 2,000 to 3,000 to be paroled into the United States. That will leave at Guantanamo a population of approximately 15,000, plus or minus, which will be composed largely of single males, older adolescents, and young adults.

Over the past several months, there has been growing concern about what will happen at Guantanamo when we end up with that population. Recently, first privately and increasingly publicly, the representatives of the U.S. military—including General Sheehan, who is the Commander, Atlantic Command, which has responsibility for the U.S. military interests in the Caribbean—indicated that they felt it would be a very serious situation with potential for riots or other major unrest.

I personally have visited Guantanamo twice since it has been a principal safe haven for at one time Haitians, then mixed Haitians and Cubans, and now primarily Cubans. I concur, as a lay person, in what I observed at Guantanamo: It is a very stark environment. Many would think Guantanamo would look like their vision of a Caribbean island. It is not. It is a very formidable, rocky, dry, arid place where cactus is more prominent than palm trees. There is great concern about the potential of having a large number of persons of a young male status, without any hope or expectations for their future, being detained for an extended period under those circumstances.

I might say, this Senate spoke to that issue itself just a few weeks ago when the Department of Defense requested a supplemental appropriation of over $50 million in order to enhance the conditions at Guantanamo—things like putting in permanent showers and bathroom facilities where currently portable facilities are being utilized. The Senate elected not to fund that supplemental appropriation and expressed in its declination to do so the need for the United States to determine what its long-term policy was going to be relative to the detainees at Guantanamo.

So we have had the opportunity as a Senate to speak on this issue, and what we said to the administration was: Come up with a policy of how to deal with this situation before we commit an additional $50 million on top of the $1 million a day we are spending in order to maintain the population which is currently at Guantanamo.

Another part of this very unfortunate situation was the fact that there is great concern in the United States about the increasing number of immigrants. What seemed to be a strategy that would try to maximize the positives and minimize what are inherently going to be negatives in this situation was a policy that said let us take some of those 20,000 visas a year we are committed to offer through the interest section in Havana, and let us shift those to Guantanamo and assign those to those persons who, on a case-by-case basis, can meet the standards of entry to the United States. That has seemed to me for a number of months to be a rational policy, one not without risk or problems, but better than a set of unhappy other alternatives that face the United States.

I am pleased the administration did not wait until we had a riot at Guantanamo in order to act; that the administration essentially took the direction which this Senate had given, to state what our long-term policy was going to be vis-a-vis Guantanamo. That policy will be that over the next 3 years, we will shift visas from the interest section in Havana to Guantanamo, to begin the process of depopulating Guantanamo. Those who meet our standards will receive one of the visas for entry to the United States. Those who do not meet our standards will be sent back to Cuba.

The major concern about that policy was the concern that is referred to as remagnetizing Guantanamo. If you depopulate Guantanamo through this process but in the course of that you create such a strong impetus for people to go to Guantanamo and it refills, then you are back to where you are today.

The Cuban Government has restated its commitment of last September; that is, that it will enforce against mass exodus from the island. The United States, now having said we will not take people to Guantanamo as a safe haven, the policy which the Attorney General announced today is that those persons who are interdicted at sea will be given an on-board screening at sea to determine if they have a legitimate claim of political asylum.

If they have such a legitimate claim for political asylum, they will be given a special processing commensurate with that status and with our history of humanitarian outreach to political asylees and our obligations under international law.

If they do not meet that standard, then they will be returned directly to Cuba. That is a provision of this which causes great concern to many people, including myself. I recognize the long history that the United States has had relative to a special relationship with the people of Cuba. This policy was taken as what was considered to be a necessary backstop to the steps to depopulate Guantanamo without, in the process of depopulating, creating the very impetus that would repopulate it.

Mr. President, I am a cosponsor of the legislation that the Senator from North Carolina has introduced. I was the principal Senate sponsor of the Cuban Democracy Act, which today represents the basis of United States policy toward Cuba. That policy, as the President stated, is unchanged. That policy is one of economic and political isolation of Cuba as the most appropriate United States policy for purposes of closing down the 35-year nightmare which Fidel Castro has represented to the people of Cuba.

It is a policy that says we will outline with specificity and with compassion what our policy will be toward the people of Cuba during this reign of terror of Fidel Castro, and we will stipulate what our policy will be upon Castro's fall, to reintegrate a democratic and free Cuba into the international family of peace-loving nations and eliminate the one blotch that remains on the map of democracies of the Western Hemisphere, which is Cuba.

That was the essence of the Cuban Democracy Act. The legislation which I am cosponsoring with the Senator from North Carolina extends those principles toward the same goal of a rapid, hopefully peaceful transition of Cuba from the tyranny that exists today to a free and democratic government.

The decision the President made today was a difficult one. It represents a selection among a series of difficult choices. I respect the fact he did not wait for a crisis to make the decision. He has made it firmly. He has done what will achieve, I think, the maximum national security benefits to the United States in terms of our military base at Guantanamo.

The U.S. Department of Defense supported this proposition. It will allow Guantanamo to return to its role as an important part of our hemispheric security. It will not serve as a magnet for future buildup and diversion from its military use. It will stop almost $1 million a day of expenditure that we have been making at Guantanamo.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GRAHAM. Mr. President, I ask unanimous consent for an additional 2 minutes.

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

Mr. GRAHAM. Mr. President, there were some difficult decisions that had to be made around that core judgment. The result of the series of decisions will be: First that there will be no increase of total Cuban immigration into the United States, legal Cuban immigration, beyond that to which the United States was already committed.

Second, that immigration will now come from two streams, partially from Havana and partially from those persons who are at Guantanamo.

Third, the American people will be assured that only people from either place—Havana or Guantanamo—who will enter the United States will be those who meet our standards for entry.

Fourth, steps have been taken to demagnetize Guantanamo for further population buildup.

Within that policy, the American principle of recognition of political asylum and provision for those persons who seek freedom to make the case that they are seeking freedom out of the basis of a legitimate fear of political persecution will be maintained. They will be afforded that opportunity. The Attorney General outlined in summary form today what those steps will be.

So, Mr. President, I appreciate the leadership which the President has taken in making a difficult decision. I believe this Senate should appreciate the fact that he has responded to our request for leadership on this matter; that the U.S. Department of Defense will now be able to return its personnel and facilities to their intended purpose of security of the United States; and that we will be able to say that our policy of respecting human rights, and particularly respecting the rights of those claiming political asylum, will be maintained.

They are difficult choices, but in my judgment, choices that had to be made.

The PRESIDING OFFICER. The Senator from North Carolina.

MOTION TO RECONSIDER VOTE ON AMENDMENT NO. 603

Mr. HELMS. Mr. President, was a motion to reconsider the vote on amendment No. 603 made?

The PRESIDING OFFICER. The motion was not made.

Mr. HELMS. I make such a motion and I move to table the motion.

The motion to lay on the table was agreed to.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I ask unanimous consent I may speak for 5 minutes as in morning business.

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

THE NOMINATION OF DR. HENRY FOSTER

Mr. SPECTER. Mr. President, I have sought recognition to urge the Senate to consider the nomination of Dr. Henry Foster to be Surgeon General, to consider that nomination ultimately on the Senate floor. I urge that this be done for two reasons: First, out of basic fairness to Dr. Foster and, second, as an important sign that men and women can place themselves up for nomination for important positions without fear of being, in effect, railroaded out of town without having an opportunity for their positions and their cases and their records to be heard.

This morning, Dr. Foster testified before the Committee on Labor and Human Resources and the preliminary reports are that Dr. Foster has been an impressive witness on his own behalf. After Dr. Foster's name was submitted for the position of Surgeon General, I met with him extensively to discuss his record, after having reviewed his educational record, his record as a practicing physician, the work that he had done against teenage pregnancy, the work he had done for poor people, and the work he had done in a community context.

Let us strip away the facade, Mr. President. What has really occurred on Dr. Foster's nomination is an objection to his having performed abortions, and it seems to me that when Dr. Foster has performed abortions, however many, a medical procedure permitted by the U.S. Constitution, that ought not to be a reason for his disqualification.

Before any other consideration had arisen as to issues about performing hysterectomies or an issue about syphilis in studies of African-Americans or the question about how many abortions he had performed, there was an immediate cry that Dr. Foster was disqualified because he had performed abortions.

I think that is totally inappropriate, that is just wrong, to disqualify a nominee for Surgeon General because that person has performed a medical procedure which is permitted by the U.S. Constitution.

With respect to the issue of how many abortions he had performed and what information had come from the White House—and it appears at one point the White House made a representation of only one abortion; that was not what Dr. Foster had represented—that ought not to be held against him and ought not to be a smokescreen or a red herring for saying that he is disqualified. Whatever Dr. Foster has said about the number of abortions, that ought to be a question for the full Senate to consider. And whatever the contentions are about the performance of hysterectomies or about the syphilis testing on African Americans, that again is a question for consideration by the full Senate.

Now, I know, Mr. President, there have been statements by some that they are going to filibuster the nomination. Well, if they choose to filibuster the nomination, so be it. Let us have it out on the Senate floor. And there are some who say that if the nomination is voted out by committee, and it is not brought to the floor, they are going to tie up the Senate. I do not think we need those kinds of threats for the Senate to consider its business and decide whether Dr. Henry Foster is qualified to be Surgeon General.

It is my hope that the committee will report Dr. Foster to the floor for consideration by the Senate, and that can be done in a variety of ways. It can be done on an affirmative vote by a majority saying he is qualified, it could be done on a vote by the committee saying that he ought to be considered without recommendation, or it can even be done if the committee votes Dr. Foster down, as we have had with nominees. Judge Bork was voted down by the committee but it was voted to the Senate floor. Or Judge

Thomas, later Justice Thomas, was a tie vote in the committee and was voted to the Senate floor.

It seems to me, in fairness to Dr. Foster, he ought to be considered by the full Senate, and in fairness to the system where we are asking people to come to Washington under very difficult circumstances as a matter of precedent somebody ought not to be, in effect, railroaded out of town without having the Senate consider his nomination.

So as this matter is being considered today by the committee, I wanted to make these comments because the core question here, Mr. President, stripped away from all the subterfuge, stripped away from all the smoke, stripped away from all the red herrings is whether Dr. Foster ought to be disqualified for performing abortions, however many, a medical procedure authorized by the U.S. Constitution. I think the Senate ought to face up to that squarely. If the balance of the testimony shows qualification, as I think it will, based upon my examination of the record and my detailed conversations with Dr. Foster in questioning of him, then I think he ought to be confirmed.

I thank the Chair and yield the floor.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until 2:15 p.m.

Thereupon, at 1:41 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KYL).

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business.

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

T. OSCAR TREVINO, JR., 1995 TEXAS SMALL BUSINESS PERSON OF THE YEAR

Mrs. HUTCHISON. Mr. President, I want to recognize the leadership of a small business person in my State who is being honored today by the Small Business Administration as the Small Business Person of the Year in Texas.

Mr. Oscar Trevino, Jr. is president of J.L. Steel, Inc. He is what America is all about, Mr. President. He took a company, J.L. Steel, from $400,000 in revenues in the first year, in 1989, and built that company to over $13 million in revenues last year. It is the fifth fastest growing Hispanic-owned company in the United States.

I am really proud of this Texan. He has really added to the economic vitality of our community in that he now has 140 employees that are working and paying taxes and are good citizens of our State. I am very pleased to honor him today.

Mr. President, I ask unanimous consent that his biography be printed in the RECORD.

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

BIOGRAPHY OF T. OSCAR TREVINO, JR.

It was 1989, and Oscar Trevino was comfortable with his company care and steady paycheck. He and neighbor Jan La Point were chatting on the lawn after dinner, while the kids played out front. It seems that Jan was having trouble expanding her two-year-old company, and Oscar was interested.

Before he realized it, he had worked out a business plan on his computer, and they were in business as J.L. Steel. Oscar borrowed against his retirement account, his credit cards and from family to become 51 percent owner of the firm. From $400,000 in revenues that first year, J.L. Steel has grown to nearly $13.6 million in revenues last year, making it the fifth fastest-growing Hispanic-owned company in the United States, with an annual growth rate of 235 percent.

J.L. Steel installs reinforced steel in highways, bridges and buildings. The firm competes for government and private contracts in Texas, Oklahoma and Louisiana, and satisfies its customers with reliable estimates, quality workmanship and attention to detail in the reams of accompanying paperwork. The firm has called on the SBA twice: in 1992 for a loan guarantee to finance growth and again in 1993, when it was certified as an 8(a) contractor, allowing it to compete for jobs from the federal government.

Oscar himself started out as a laborer, working summers for a major general-contracting firm while he earned a civil engineering degree from Texas A&M. He stayed with the firm after he graduated in 1978, advancing to become project manager by 1989. He hasn't forgotten how difficult it can be for others, and J.L. Steel has an aggressive equal-opportunity policy.

Oscar supports fledgling companies by helping them with marketing, construction practices and subcontracting opportunities. His tireless advocacy work on behalf of minority- and women-owned businesses includes work on various boards and committees, including the Dallas Minority Business Enterprise Advisory Committee and the Disadvantaged Business Enterprise Support Services program of the Texas Engineering Extension Service. He also helped the Association of General Contractors of Texas develop and promote fair and equitable goals, and training and apprenticeship programs for minorities and women.

(The remarks of Mrs. HUTCHISON pertaining to the introduction of S. 743 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. GORTON. Mr. President, having completed work on all of the amendments relating to medical malpractice, the floor of the Senate is now open for other amendments to the product liability legislation. I understand that serious amendments are to be proposed extending the punitive damages provisions of this bill to all litigation and extending the rules related to joint liability to all litigation. At the same time, there are a number of other amendments, both those which would broaden the legislation and those which would narrow it, which is appropriate and is relative to be discussed in connection with this bill.

I do hope at this point, after more than a week of debate, that proponents and opponents to these amendments will be willing to consider adequate, but relatively brief, time agreements, so that we can move the legislation forward. As Members come to the floor to present their amendments, I intend to make that suggestion to them, and we can have first-rate debate and votes and perhaps fewer quorum calls than we have had for some time.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

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

The PRESIDING OFFICER. It is amendment No. 596 to H.R. 956.

AMENDMENT NO. 617

(Purpose: To provide for certain limitations on punitive damages, and for other purposes)

Mr. DOLE. 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 Kansas [Mr. DOLE], for himself, Mr. EXON, Mr. HATCH, Mr. MCCONNELL, Mr. ABRAHAM, Mr. KYL, Mr. THOMAS, Mrs. HUTCHISON, and Mr. GRAMM, proposes an amendment numbered 617.

Mr. DOLE. 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 19, strike line 12 through line 5 on page 21, and insert the following:

SEC. 107. PUNITIVE DAMAGES IN CIVIL ACTIONS.

(a) FINDINGS.—The Congress finds that—

(1) punitive damages are imposed pursuant to vague, subjective, and often retrospective standards of liability, and these standards vary from State to State;

(2) the magnitude and unpredictability of punitive damage awards in civil actions have increased dramatically over the last 40 years, unreasonably inflating the cost of settling litigation, and discouraging socially useful and productive activity;

(3) excessive, arbitrary, and unpredictable punitive damage awards impair and burden commerce, imposing unreasonable and unjustified costs on consumers, taxpayers, governmental entities, large and small businesses, volunteer organizations, and nonprofit entities;

(4) products and services originating in a State with reasonable punitive damage provisions are still subject to excessive punitive damage awards because claimants have an economic incentive to bring suit in States in which punitive damage awards are arbitrary and inadequately controlled;

(5) because of the national scope of the problems created by excessive, arbitrary, and unpredictable punitive damage awards, it is not possible for the several States to enact laws that fully and effectively respond to the national economic and constitutional problems created by punitive damages; and

(6) the Supreme Court of the United States has recognized that punitive damages can produce grossly excessive, wholly unreasonable, and often arbitrary punishment, and therefore raise serious constitutional due process concerns.

(b) GENERAL RULE.—Notwithstanding any other provision of this Act, in any civil action whose subject matter affects commerce brought in any Federal or State court on any theory, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant only if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct by the defendant that was either—

(1) specifically intended to cause harm; or

(2) carried out with conscious, flagrant disregard to the rights or safety of others.

(c) PROPORTIONAL AWARDS.—The amount of punitive damages that may be awarded to a claimant in any civil action subject to this section shall not exceed 2 times the sum of—

(1) the amount awarded to the claimant for economic loss; and

(2) the amount awarded to the claimant for noneconomic loss.

This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(d) BIFURCATION.—At the request of any party, the trier of fact shall consider in a separate proceeding whether punitive damages are to be awarded and the amount of such an award. If a separate proceeding is requested—

(1) evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded; and

(2) evidence admissible in the punitive damages proceeding may include evidence of the defendant's profits, if any, from its alleged wrongdoing.

(e) APPLICABILITY.—Nothing in this section shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by the United States, or by any State, under any law;

(2) create any cause of action or any right to punitive damages;

(3) supersede or alter any Federal law;

(4) preempt, supersede, or alter any State law to the extent that such law would further limit the availability or amount of punitive damages;

(5) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(6) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(7) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

(f) FEDERAL CAUSE OF ACTION PRECLUDED.—Nothing in this section shall confer jurisdiction on the Federal district courts of the United States under section 1331 or 1337 of title 28, United States Code, over any civil action covered under this section.

(g) DEFINITIONS.—For purposes of this section:

(1) The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) The term "clear and convincing evidence" means that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard shall be more than that required under preponderance of the evidence, and less than that required for proof beyond a reasonable doubt.

(3) The term "commerce" means commerce between or among the several States, or with foreign nations.

(4)(A) The term "economic loss" means any objectively verifiable monetary losses resulting from the harm suffered, including past and future medical expenses, loss of past and future earnings, burial costs, costs of repair or replacement, costs of replacement services in the home, including child care, transportation, food preparation, and household care, costs of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(B) The term "economic loss" shall not include noneconomic loss.

(5) The term "harm" means any legally cognizable wrong or injury for which damages may be imposed.

(6)(A) The term "noneconomic loss" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(B) The term "noneconomic loss" shall not include economic loss or punitive damages.

(7) The term "punitive damages" means damages awarded against any person or entity to punish such person or entity or to deter such person or entity, or others, from engaging in similar behavior in the future.

(8) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

(h) EFFECTIVE DATE.—This section shall apply to any civil action in which trial has not commenced before the date of enactment of this Act.

Mr. DOLE. Mr. President, this is a bipartisan amendment—Senator EXON is a cosponsor, as are Senators HATCH, MCCONNELL, ABRAHAM, KYL, THOMAS, HUTCHISON, and GRAMM.

This is an amendment that offers needed protections from lawsuit abuse to every American—small business or large; volunteer or charitable organizations. The spectre of lawsuit abuse hangs over us all, and our amendment would expand the protections in the Gorton substitute to ensure that every American is covered.

The bill as it now stands calls for limiting punitive damages in product liability cases to three times economic damages, or $250,000, whichever is greater.

This amendment makes two changes: It would extend the limits on punitive damages beyond product liability to all civil cases; and it would provide a rule of proportionality that limits punitive damages to two times compensatory damages; that is, any economic and noneconomic damages combined.

This amendment is needed because our Nation desperately needs broadly based relief from lawsuit abuse.

America's litigation tax—the tort tax—hurts every American; at least every American who is not a personal injury lawyer.

Anyone who cares about middle-class American families, consumers, and workers would want that litigation tax reduced.

We all know the numbers: $20 in the cost of an ordinary $100 step ladder goes to the litigation tax, as does one-sixth of the price of an $18,000 pacemaker and $8 of an $11.50 DPT childhood vaccine.

The litigation tax is a national "value subtracted" tax—$1,200 on every American, rich or poor, with nothing received in return.

And where does that money go? According to a 1986 Rand Corp. study, less than half ends up with those who are suing. Most goes to trial expenses and particularly to lawyers.

In other words, the litigation tax takes income right out of the middle-class family's pocket and puts it into the pockets of one of the wealthiest groups in America—personal injury lawyers.

Even worse, just the fear of litigation has led to the canceling of life-saving research and product improvements in many fields. Companies are afraid of being sued over anything that is new and this has made America less safe.

In other words, the biggest cost of the litigation tax may be measured, not in dollars, but in lives.

The underlying bill goes a long way toward reducing the abuses we currently suffer. But, in my view, it leaves many deserving organizations and small businesses outside its protective scope.

The litigation tax is paid, not just by consumers who buy products, but by

every nonprofit organization, every small business, every municipality in the Nation—and those who depend on the services they provide.

This amendment will free our nonprofit organizations, small businesses, and local governments to serve America without first serving up a tribute to personal injury lawyers.

We do not have to look far to count the costs of the litigation tax to nonprofits, small businesses, and municipalties—and to the rest of America.

For example, the head of the Girls Scout Council of the Nation's Capital Area wrote this to House leaders during the debate over there:

> Locally, we must sell 87,000 boxes of cookies each year to pay for liability insurance. We have no diving boards at our camps. We will never own horses. And, many local schools will no longer provide meeting space for our volunteers.

The chief executive officer of Little League Baseball, Dr. Creighton Hale, has issued a similar plea.

Writing in the Wall Street Journal recently, Dr. Hale reported that, as he put it:

> In recent years, litigation has been the end result of two boys colliding in the outfield [the two picked themselves up and sued the coach]. * * * In still another case—

He continued:

> A man and woman won a cash settlement when the woman was hit by a ball a player failed to catch. The player was her daughter.

Dr. Hale says:

> The costs of this litigation lunacy score out * * * in bewildered dads calling our offices asking about personal liability, and volunteer coaches waking up to the fact that they're taking major league risks.

And he added:

> It's a problem common to all nonprofit organizations and the volunteers they depend on.

This is not even close to being in the ballpark of what most people think of when we think of justice in America.

Mr. President, legal speculators have declared war on American volunteerism, entrepreneurship, and local government—the institutions that make for strong communities and a better America.

Expanding the limits on punitive damages to all civil suits will help end the legal speculators' war on these institutions. It will help return justice to the law. It will reach into every home and school and town board and small business and community group in the Nation.

It will tell them that they need not fear for their financial security when they venture outside their home to help a neighbor or open a small business.

It will tell them the siege is over.

Mr. President, it seems to me that this is a very, very important amendment to the substitute. It is one that I hope my colleagues will look at very, very carefully.

I would certainly be willing to enter into a time agreement on this amendment. We would like to finish action on the punitive damage amendment today, as well as a joint and several liability amendment. I hope we can reach some time agreement. I state that now so that my colleagues on the other side of this issue, perhaps we can negotiate a time agreement later this afternoon.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. KYL). The Senator from Utah.

Mr. HATCH. Mr. President, I am pleased to be a cosponsor of the amendment to S. 565.

This amendment would, in effect, extend the punitive damage provision of S. 565 for product liability actions to all civil actions. The subject matter affects interstate commerce brought in State or Federal courts.

Our system of civil justice is broken, in the eyes of many people. The American people do deserve better. They deserve change. They deserve some common sense in our legal system.

I hope we can pass this amendment, along with some others, and send S. 565 to the President for his signature.

Let me be clear: The pending amendment helps volunteer organizations, towns, cities, counties, States, farmers, small businesses, transportation companies, convenience stores, blood banks, school boards, as well as product manufacturers. This amendment is proconsumer.

The pending amendment focuses on one aspect of our civil justice system: Punitive damages. Punitive damages are not awarded to compensate a victim of wrongdoing. These damages constitute punishment in an effort to deter future egregious misconduct.

Punitive damage reform is not about shielding wrongdoers from liability, nor does such reform prevent victims of wrongdoing from being rightfully compensated for their injuries or for their damages. Safeguards are needed to protect against abuse in the form of punitive damages.

In a 1994 opinion authored by Justice Stevens, the Supreme Court noted that punitive damages pose an acute danger of arbitrary deprivation of property. That was the Honda Motor Co. case.

More than that, our current punitive damage system harms consumers. I wish all of my colleagues could have heard the testimony of George L. Priest, who appeared before the Judiciary Committee on April 4 of this year. Mr. Priest is a professor of law and economics at the Yale Law School and has taught in the area of tort law, product liability and damages for 21 years, for the last 15 years at Yale.

Since 1982, he has been the director of the Yale Law School program in civil liability. He has studied jury verdicts extensively, and he did not appear before the committee on behalf of any client, interest, or group.

Professor Priest testified, "The reform of punitive damages alone, even reforms that would cap punitive damages or introduce a proportionality cap, will help consumers."

I note that the amendment before Members embodies a proportionality principle for punitive damages. I will return to Professor Priest's remarks later in my remarks and to this point later.

Let me give examples of what is wrong. This past September, an Alabama Supreme Court upheld a multimillion dollar punitive damage award against an automobile distributor who failed to inform a buyer that his new vehicle had been refinished to cure superficial paint damage. The amount expended to refinish this automobile, $601, was less than 3 percent of the vehicle's suggested price. A number of States do not require disclosure of repairs costing below a 3 percent threshold. Indeed, Alabama later adopted such a minimum threshold statute after the events which occurred in this case.

The victim was a purchaser of a $40,000 automobile. Nine months after his purchase, he took his vehicle to Slick Finish, an independent automobile detailing shop, to make the car look "snazzier" than it normally does—to use his terms. He was not then dissatisfied with the vehicle's look and had not previously noticed any problems with the car's finish. It was then that he was told by the detailer of the partial refinishing.

As a result of the discovery, he sued the automobile dealer, the North American distributor, and the manufacturer for fraud and breach of contract. He also sought an award for punitive damages. He won and he did hit the jackpot.

At trial, the jury was allowed to assess damages for each of the partially refinished vehicles that had been sold throughout the United States for a period of 10 years. The jury returned a verdict of $4,000 in compensatory damages. It also returned a verdict of $4 million in punitive damages.

On appeal to the State Supreme Court, the punitive damages award was reduced to $2 million, applicable only to the North American distributor. The U.S. Supreme Court has accepted this case for review of the constitutionality of the $2 million punitive damage award.

There is some indication that the law, though, did not permit that type of an award but the court decided anyway that they would halve the award from $4 million to $2 million.

My colleagues want to know why Americans are fed up with the civil justice system? I defy any Member of this body to read the opinion in this case and tell the American people that justice was done.

Why does it matter? In this case, it is not the purchasers of $40,000 automobiles that I am so concerned about, although they are consumers too. But the North American distributor of this automobile, spending tens of thousands of dollars in fees to defend a lawsuit over a $601 paint refinishing, and subject to a ridiculous $2 million punitive damage award, employs our constituents. Many of those employees cannot afford such expensive cars—nor can they afford such ridiculous results from our legal system. If the cost of business goes up, that cost will get passed on, and a business can only raise prices so far before its product becomes uncompetitive. At some point, that business will have to reduce its payroll. Who makes out like bandits from this case? The purchaser of a car with a $601 refinished paint job and, of course, his lawyer. I mean, punitive damages, for this case? And 2 million dollars' worth?

I should also note that this same defendant can be sued again and again for punitive damages by every owner of a partially refinished vehicle. In fact, according to defense counsel, the same plaintiff's attorney has filed 24 other similar lawsuits. No surprise there.

As a further note about this fiasco, in one of those other cases, the jury awarded no punitive damages. The very same conduct by the defendant and in one case, it is socked with $2 million in punitive damages and in another case zero punitive damages. Who knows what the litigation lottery will bring in the other, similar cases.

Let us look at another example. The September 26, 1994, National Law Journal, has a headline reading: "Blockbuster Busted for $123.6 Million."

A Dallas, TX, judge ordered Blockbuster Entertainment Corp., Video Superstores Master LP, and an individual to pay $14.7 million in damages and interest and $108.9 million in punitive damages to an individual investor. Why?

In 1986, the investor invested in the first Blockbuster franchises, and according to his attorney, "he was supposed to be included in the sale when the general partner sold." But the plaintiff-investor was not informed when such a sale was made. He charged the three defendants with breach of fiduciary duty and fraud. Aside from the $14.7 million in damages and interest, as mentioned earlier, the judge assessed just over $36 million in punitive damages to each of the three defendants, or an astonishing $108.9 million in punitive damages assessed against the defendants.

If the defendants in this case did breach their fiduciary duty and commit fraud, the plaintiff should be made whole. The pending amendment would not alter anyone's right to such a recovery.

But is this a case where punitive damages should also be imposed for the wrong? Moreover, after over $10 million in actual damages and nearly $4 million in interest, is there a further deterrent effect by imposing punitive damages? I do not have all of the facts, and I understand the case is under appeal. But even if punitive damages are appropriate, is it sensible to impose nearly 109 million dollars' worth, or over 7 times the award of damages and interest? I might add, if this plaintiff could meet the substantive standard of the pending amendment, the amendment itself would allow over $30 million in punitive damages. Frankly, that is an astronomical award itself, yet critics of this amendment argue that it is penurious.

My colleagues should understand, as the American people do, such awards impose costs. Prices on goods and services can be affected, wages and benefits paid to employees and the level of employment itself can be affected. The availability of goods and services can be affected.

Let me go back to Alabama, for yet another case, demonstrating the lack of common sense in our current civil justice system giving rise to this amendment. Indeed, this example is so outrageous, I will simply quote, at some length, the well-considered testimony of Professor Priest, at our April 4, 1995, hearing. This is from his written statement:

In the case *Gallant* v. *Prudential*, decided this past April 1994, Iran and Leslie Gallant sued Prudential Life Insurance Company based on the actions of a Prudential agent. The Gallant's had purchased a combination life insurance-annuity policy with a $25,000 face value at a monthly premium of roughly $39.00. At the time of sale, the agent had told them that the value of the annuity was roughly twice what in fact it was; the agent had added together the table indicating "Projected Return" with the table indicating the lower "Guaranteed Return." A jury found this action fraudulent and held the agent liable and Prudential separately liable for failing to better supervise the agent.

Professor Priest goes on to say:

Fortunately, the problem was discovered before either the policyholder had died or had retired to receive the annuity. Thus, to the time of trial, there was no true economic loss beyond the failed expectation of the larger future return. I have carefully read the transcript of the testimony, and the Gallants testified that, between the time that they discovered the misinformation and Prudential called them to offer a remedy (Prudential offered to return their premiums or to discuss adjusting the policy), they had suffered roughly two weeks of sleepless nights and substantial anger at having been misled. That was the extent of their "mental anguish".

Twenty years ago, I taught cases of this nature in a course entitled Restitution, in which the appropriate remedy was restitution of all paid premiums or out-of-pocket costs. On very rare occasions such as especially egregious actions by a defendant, some courts considered awarding plaintiffs the benefit of the bargains, say, by increasing their annuity benefits.

Our modern world has changed: After a one and one-half day trial, an Alabama jury awarded the Gallants damages equal to $30,000 in economic loss; $400,000 in mental anguish; and $25 million in punitive damages.

Again the face value of the policy was only $25,000, and they had not yet qualified to receive that. Think about it. A $25,000 policy, the agent made a mistake, they have 2 weeks of alleged sleepless nights, they were angry for much of that time, and they got $30,000 in economic loss, $400,000 for their 2 weeks of sleepless nights and anger, and $25 million in punitive damages.

Professor Priest said:

I do not wish to minimize the harm to the Gallants, especially the indignity of the misrepresentation, nor to condone the fraudulent actions of the agent, apparently perpetrated on several other Alabama citizens who recovered separately. Nevertheless, there is not a single person to whom I have described this case—not an attorney, whether plaintiff or defendant; not a liberal or a conservative; not even a radical or idealist Yale Law student (or faculty member)—who has not been shocked by the outcome or who could defend it as a rational or sensible verdict in the context of the harm. Again, many defenders of punitive damages argue that exceptionally large verdicts are usually overturned on appeal. Alabama provides a review procedure for punitive damages verdicts that the U.S. Supreme Court has approved. In the Gallant case, however, the judge conducting the review affirmed the $25 million award in its entirety, though directing part of the amount to be paid to the State.

What will be the effect of a punitive damages verdict of this nature? The Gallants appear to be persons of modest means (before the verdict). Does a verdict of this nature help middle- or low-income consumers? Totally, the opposite. The insurance policy in question—face value, $25,000—was the cheapest form of life insurance annuity available on the market; again, its monthly premium was only $39.00. Obviously, at such a premium, the insurance carrier could not be expecting to make a substantial profit on the policy. Indeed, an expert in the case estimated that over the entire life of the policy, the premiums net of payouts paid by the Gallants would increase Prudential's assets by only $46.00. Prudential, like most other life insurance companies, profits more substantially from large dollar, rather than small dollar policies. The expert estimated that the verdict reduced dividends to every Alabama policyholder . . . by $323.

That points out the ridiculousness of this.

Priest goes on to say:

How do we analyze a case like this in terms of whether punitive damages serve a necessary deterrent effect? In his closing argument, the . . . attorney for the Gallants asked the jury to determine a level of damages that would send a message to the giant Prudential Life Insurance Company that fraudulent behavior on the part of an agent will not be tolerated. What kind of damages message is necessary to achieve that effect? Obviously, if the insurer stood to gain no more than $46 over the life of the policy, any damages judgment greater than $46 sends the insurer a message by making the policy unprofitable. (Of course, I ignore entirely Prudential's defense costs plus the reputational harm from the lawsuit.) The jury in the Gallant case went substantially beyond that amount, however, in awarding

compensatory damages of $30,000 for economic loss and $400,000 for the mental anguish of the two weeks' lost sleep and anger. It certainly cannot be argued that the jury has undervalued the Gallant's compensatory loss—indeed, the $400,000 for the mental anguish award is extreme. Furthermore, there is no reason to think that the agent's behavior in other contexts would go undetected. (Prudential later settled other cases brought by the agent's clients.) As a consequence, there is no justification for a punitive damages award whatsoever.

What will be the effect of punitive damages verdicts such as that in the Gallant case? In the face of such a verdict, what is the rational response of an insurer like Prudential or other insurers selling similar policies? Regrettably, but necessarily in a competitive industry, the rational response is to quit selling such low value policies altogether. It makes little sense to expose the company and its policyholders to the risk of such a damages verdict given the very small gain from the sale of such a policy.

Is this the type of product that our civil liability system should drive from the market? Obviously, not, and low-income consumers in Alabama are directly harmed as a result. Here, the dramatically differential effects of such verdicts on high-income versus low-income consumers are made clear. In my own view, it is far more important to our society to have our insurance industry provide life insurance coverage to low-income citizens, since the relatively affluent of our society have other means of providing financial security for their families. The availability of financial protection and security at relatively low cost will be substantially diminished if such low premium policies, as here, are no longer available.

More generally, where expected punitive damages verdicts are added to the price of products and services, the first to feel the effect will be low-income consumers. And where the magnitude of punitive damages verdicts rise, imperiling the continued provision of the product or service, the first to be affected will be those products and services with the lowest profit margins, most attractive to the low-income. The Gallant case provides a dramatic example of the effect. Following Gallant and other large punitive damages verdicts, several insurers have quit offering coverage in Alabama altogether.

I understand this case settled for an undisclosed sum. I urge my colleagues to take a close look at the concerns raised by Professor Priest.

The consequences of our current civil justice system can be felt in many ways.

The July 17, 1992, Science magazine reported that Abbott Laboratories put off testing for a drug that might prevent the spread of AIDS from infected pregnant women to their newborns. Why? According to the article, "Abbott officials announced that testing its HIV hyperimmune globulin (HIVIG) * * * would make the company too vulnerable to lawsuits." This action touched off some controversy. The Science article continued:

In spite of the uproar, National Institute of Health officials agree with Abbott that liability is a significant issue in AIDS vaccine and therapy research. A recent investigation by Science (April 10, 1992, page 168) revealed that fear of lawsuits has led several HIV vaccine developers to delay or even abandon promising projects.

Creighton Hale, chief executive officer of Little League Baseball, wrote about lawsuits filed against coaches over the ordinary mishaps of a baseball game in the February 13, 1995, Wall Street Journal. He noted, "from my spot in the bleachers, the costs of this litigation lunacy [result in] bewildered dads calling our offices asking about personal liability, and volunteer coaches waking up to the fact that they're taking on major league risks." He went on to say significantly, "It's a problem common to all nonprofits and the volunteers they depend on. Little League Baseball has seen its liability insurance skyrocket 1000 percent—from $75 dollars per league annually to $795—in a recent five year period. Good Samaritans are caught in a suicide squeeze."

Mr. Hale urged Congress to extend common sense legal reform beyond products liability cases to cover volunteers and others. I note that Ms. Jan A. Verhage, executive director of the Girl Scouts Council of the Nation's Capital, which also serves the surrounding Maryland and Virginia communities, wrote to Speaker GINGRICH on February 13, 1995. She asked that legal reform legislation be extended to include organizations like the Girl Scouts.

Now, she was not speaking for the national organization. But her comments are very telling: "Locally we must sell 87,000 boxes of these Girl Scout cookies each year to pay for liability insurance. We have no diving boards at our camps. We will never own horses, and many local schools will no longer provide meeting space for our volunteers."

Paul A. Crotty, the top lawyer for New York City, wrote to Commerce Committee Chairman LARRY PRESSLER on April 5, 1995, on behalf of New York City and Mayor Guiliani. He urged that the punitive damages provision in the underlying products liability bill be extended to all cases. He wrote, "Although punitive damages generally cannot be imposed against cities, they generally can be imposed against governmental employees. Excessive awards against individuals providing government services can be as destructive as large awards against businesses that manufacture or sell products."

This is all just the tip of the iceberg.

STATISTICS

Let me say a word about the battle of statistics that rages over punitive damages. Supporters and opponents of this amendment can rely on various studies about the number and dollar amount of punitive damages awards. We heard reports on some such studies in the Judiciary Committee. There is no single definitive study.

But let me say this: Anyone with even a passing familiarity with our civil justice system knows that the likelihood of a punitive damages award, justified or not, is far greater today than 40 years ago. Moreover, and this is the crucial point, even beyond the increase in the frequency and amount of actual awards over that time, the mere threat of punitive damages affects volunteers, school boards, businesses of all sizes. The mere inclusion of a claim for punitive damages in today's litigation climate boosts the settlement value of a case, regardless of the case's merits. Insurance premiums go up, products and services are curtailed, innovation is stifled, consumer prices go up, and payroll costs rise, adversely affecting employment.

Professor Priest states,

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

The terrible, irrational consequences of these developments are easy to see. Take the $601 paint refinishing case in Alabama that mushroomed into a $2 million litigation bonanza. If the plaintiff knew punitive damages were not a real possibility, the case could have settled. How utterly wasteful to the economy to have such a minor case, the equivalent of less than a fender-bender under any rational view, actually proceed through depositions and discovery, let alone actually be tried and then go through the appeals process. For heaven's sake, this paint refinishing case is now before the Supreme Court of the United States. What a waste of the company's resources which go to its lawyers and to court costs, and of scarce judicial resources. Only the plaintiff and his lawyer, if on a contingent fee, benefit from this windfall.

A civil justice system where all of this can happen is broken. One of the problems which needs fixing is the lack of meaningful control over punitive damages.

DETERRENCE

The cost of our current civil justice system might be offset at least somewhat if it actually does deter egregious wrongdoing. Here again, listen to the testimony of Professor Priest:

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

* * * forty years ago, in a tort law regime that provided little in the way of consumer remedies, it might have been that ever-increasing civil liability verdicts, including punitive damages verdicts, would serve to reduce the number of accidents. That view, however, has been totally discredited today, and I know of no serious tort scholar publishing in a major legal journal who could

maintain it. Instead, it is widely accepted—and it is a routine proposition of a first-year modern torts course—that compensatory damages—economic losses and pain and suffering—serve a complete deterrent purpose in addition to their role in compensating injured parties. Compensatory damages impose costs on defendants who wrongfully fail to prevent accidents, costs equal in amount to the injuries suffered * * *.

He also testified that adverse publicity is another powerful deterrent to wrongdoers.

Let me stress that the pending amendment, of course, by no means eliminates punitive damages. Indeed, it allows punitive damages in an appropriate case, in an amount up to three times economic damages or $250,000, whichever is greater.

Actually, that was the old rule. Senator SNOWE's language allows two times the total of compensatory and noneconomic damages.

CONSUMERS

Do punitive damages help consumers? Here, again, is the testimony of Professor Priest: "The central problem of punitive damages, however, is that except in the rare cases of jury undervaluation of damages or underlitigation, punitive damages settlements and verdicts affirmatively harm consumers, and low-income consumers most of all.

"Where punitive damages become a commonplace of civil litigation as in Alabama, or even where they become a significant risk of business operations, consumers are harmed because expected punitive damage verdicts or settlements must be built into the price of products and services. The effect of the greater frequency and magnitude of punitive damages recoveries of modern times has been to increase the price level for all products and services provided in the U.S. economy."

Indeed, Mr. President, as mentioned earlier, a punitive damage award in a case like Gallant versus Prudential, involving a combination life insurance-annuity policy with a $25,000 face value and $39 monthly premium, can only make insurance less available and more costly for middle- and low-income people.

Mr. President, the problems with the current punitive damages regime in this country are national in scope. Only Congress can fix these problems.

The pending amendment would require that the claimant establish by clear and convincing evidence that the harmful conduct was carried out with conscious, flagrant indifference to the rights or safety of the claimant before winning an award of punitive damages. It would then place a proportional limit on punitive damages of up to two times the sum of a plaintiff's economic loss and noneconomic loss.

Any party to the action could obtain a separate proceeding for the consideration of whether punitive damages are to be awarded and the amount of such award. Our amendment does not supersede or later any Federal law. It does not deny States the right to enact punitive damages provisions, consistent with this amendment, or to place further limits on such awards. These are worthy provisions.

I urge support for the Dole amendment.

I yield the floor.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Arizona.

Mr. KYL. I speak in support of the Dole amendment. The comments of the Senator from Utah just given really portray I think in the most thorough way the basic thrust of this amendment and the arguments for it. I will very briefly just add at the margins some information which I think helps to flesh out the arguments that have just been made by the Senator from Utah.

As he pointed out, this amendment would extend the product liability punitive damage limitation in the Gorton-Rockefeller bill to be set at two times the economic damages in all civil actions involving interstate commerce. The exception is the civil rights and environmental laws. Therefore, at the margin, this amendment makes the underlying bill even better than it is.

Historically, as has been noted, punitive damages were awarded in only the rarest and most egregious cases in order to punish, to make an example of the defendant when that defendant's conduct fell below a certain standard. According to Prof. George Priest of Yale Law School, who has already been quoted here, 65 to 78 percent of all tort actions over the last fiscal year include punitive damages in the pleadings. So what was originally designed to be a recovery in the very most narrow situation has now become part of the pleadings in a majority, even exceeding three-fourths, of the cases. Although punitive damage awards represent a relatively small part of the overall awards, the amount of the average award continues to increase.

For example, according to Investors Business Daily, in an article of April 3 of this year, a study of jury awards between 1965 and 1984 shows that the average inflation adjusted damage award increased 1,595 percent, Mr. President. These awards clearly are skyrocketing, and they need to be reined in. Punitive damage awards have in effect become a lottery in which the jackpot is continuously doubling. The lawyer's incentive to file suit is the 30 percent of the settlement amount and the 40 percent of most trial judgments that he or she realizes. The plaintiff's incentive is the often outrageous jury verdict.

Two well-publicized examples will be recalled by most people: The nearly $1 million awarded to the McDonald's customer who put hot coffee between her legs while driving and, unfortunately, was burned; and the Alabama case in which actual damages totaled only $1,200 but the jury awarded $4 million in punitive damages.

I said that punitive damages were skyrocketing a moment ago. Those were not my words. Those were the words in an opinion of Justice Sandra Day O'Connor, who said in a 1993 Supreme Court opinion that they were "skyrocketing." She was addressing a lower court ruling which upheld a $4.3 million award, Mr. President, to a convicted felon who, in the course of violently robbing a 72-year-old subway passenger, was shot and paralyzed by a transit authority police officer. The case was McCummings versus New York City Transit Authority, 1993.

This is outrageous, Mr. President. It is the kind of cap that we need to place into law. These outrageous punitive damages create a tort tax paid by consumers in the form of higher prices, higher insurance premiums, and reduced market choice and quality.

It is a regressive tort tax paid disproportionately by citizens on the lower end of the economic spectrum because higher prices, of course, hit them the hardest.

Do punitive damages serve as a necessary deterrent? Sadly, Mr. President, in many cases, no.

Again, according to Richard Posner, the best theory is that full compensatory damages generate exactly the optimal level of deterrent.

Mr. President, punitive damages are a quasi-criminal remedy. They are the product of a bygone era when the resources of public prosecutors were slim.

Today, public prosecutors are better able to serve the public interest in a certain level of punishment. To the contrary, plaintiffs and their lawyers seeking huge punitive damages awards often initiate litigation without consideration of the public interest, but of their own interest. That is why these damages need to be controlled.

Let me cite just a few of the examples. The Senator from Utah cited some egregious examples a moment ago.

Another example: A juror in a punitive damages case said that his fellow jurors discussed a damage award of between $100,000 and $8.5 million before deciding on $10 million. Later, when asked why $10 million was chosen, this juror said, "Quite honestly, I think it had something to do with finding a round figure. We were given no guidelines."

There was a recent article in USA Today, March 6, 1995, which I think had some interesting points to make and some other examples to cite. I will cite just a couple quotations from the article.

The court system that's supposed to assure fair compensation for people harmed through the fault of others looks at times more like a gambling casino than the house of Justice.

Some injured individuals are walking away with pots of money—far, far beyond any actual losses they've suffered.

Here are some of the horror stories that the USA Today story cited.

The Alabama woman awarded $250,000 in punitive damages even though she wasn't injured and wasn't even present when a gas water heater malfunctioned.

The San Francisco mugger who won a $24,595 judgment for leg injuries when a cab driver pinned him to a wall with his taxi to keep the criminal from escaping.

The Miami woman awarded $250,000 after she, having used cocaine and alcohol and splashed herself with gasoline, was severely burned trying to light a barbecue.

The Florida theme park ordered to pay 86 percent of a woman's award for injuries received on its "Grand Prix" ride, even though the jury found the park only 1 percent at fault and the woman's husband—who rammed his car into hers—85 percent at fault.

The tricycle manufacturer who settled out of court for $7.5 million rather than risk an even more generous jury award over the color of its trikes.

According to one five-state study, the dollar volume of punitive-damage awards against business alone is up 89-fold over a 20-year span.

I want to quote just one other thing from this USA Today article before I close, Mr. President.

Given the emotional pull of tragic personal injuries or honest businesses driven to bankruptcy, few opportunities to exaggerate have been missed by either side. But there is at bottom an undeniable sense: The system doesn't operate fairly. And that sense of unfairness invites opportunists to try to cash in—looking for a jackpot on the chance that the system's unfairness will work in their favor:

And then this article goes on to note a couple other cases.

Like the Michigan man who lost an eye when a July 4 skyrocket exploded in his face and then sued his parents for letting him set off fireworks when he was drunk.

Or the 305-pound man who had a stomach-stapling operation and sued the hospital because he was allowed near a refrigerator and ate so much he popped his staples.

Mr. President, these examples would be humorous if the problem were not so serious. The problem is that we are all paying for this, for this jackpot, this lottery that is called punitive damages. It is time to rein it in. It is time to put a modest cap on these punitive damages.

That is all the amendment of the majority leader does. It is time that we adopt this kind of approach to the liability reform that is before us today and, hopefully, that we will be voting on later this afternoon. I urge my colleagues to support this amendment.

I yield the floor.

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

The PRESIDING OFFICER. The absence of a quorum has been noted. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROCKEFELLER. Mr. President, I rise again to report to my colleagues on our situation and to make a reflection.

This morning, we conducted a series of rollcall votes. I believe there were eight. They all had to do with something called malpractice reform, which is not part of the product liability reform.

We were able to accept two amendments, which means that we did not accept others. Those were on fairly minor issues, I might say.

Of the eight amendments that required votes, the Senate adopted three by sort of an interesting variety of margins. The net result is that the product liability bill, which is the sole focus of the concern of the Senator from West Virginia, as well as the Senator from the State of Washington, now includes the malpractice proposal as offered by the Senator from Kentucky, which prevailed with 53 votes.

So that means we now have a bill which has product liability in it, has malpractice reform in it. I have indicated before that I think at some point Senators are going to have to make a choice. I do not think when it comes right down to it, we are going to be voting on a bill that has these two elements in it. We may be voting on no bill that has, therefore, nothing in it. Or we may be voting on a bill that has both elements in it which causes both elements to lose, products and malpractice, which is in nobody's interest. Now we found another one. I say this with all respect and without anything but respect. But we are debating an amendment by the majority leader, with a number of other Senators as cosponsors, to limit punitive damages in all civil actions, not just product liability. So now this comes from the House.

This, again, opens up an entire new range of problems and possibilities for product liability and the chances of passage. This is opening the whole thing up. It is all civil torts. I recognize the basis of the amendment. There is a very impressive array of organizations, including municipalities, small businesses, nonprofit groups—they want to curb the costs—and problems associated with punitive damages in our legal system. They have that right in a democracy, and they are exercising that right. And now we are seeing the results of that.

I am not going to get into the substance of the amendment or into the merits of the amendment. I simply want to indicate that this is not product liability as it has been introduced. It is, again, trying to open it up so that other things can be attached to it. Some may think that helps it. Some may think that by adding other extraneous areas it shows that they are abreast of everything that is going on in the House and fighting with equal vigor, and I understand that; I understand it politically, substantively, and every other way.

But it does not help product liability to pass. I would remind Senators, as I have on a number of occasions and I will continue, that the underlying amendment here is the Product Liability Reform Fairness Act of 1995. For both those who oppose it and who favor it and who have invested a lot of time in it, it is this bill which we want to see acted upon.

So I just make this point at the beginning of the debate. And I am perfectly willing to have a time agreement. I understand the majority leader will be very amenable to a time agreement. I think that is being shopped on both sides. I do not expect this debate to go on for a very long time. But, again, it is an extraneous amendment. I simply point that out. It hurts the possibilities of product liability reform. I think it has almost no chance of passing. Of course, a vote will tell that, but I forecast that. Thus, I wonder what it is in fact we are accomplishing by all of this.

I thank the Chair and yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I turned on the TV in the office and was amused to see a series of whining and moaning and groaning with respect to punitive damages. This contract crowd is going in two different directions. Under the contract now, the welfare recipient is to show more responsibility. Under the contract, we have a family. They do not want Government in anything, but they want it in everything. They want it in the family. I would think that would be the last thing, to get into the family. But the contract crowd wants a family bill. And, of course, fundamental to the family is that we punish the child when it misbehaves. We spank the baby and teach it some discipline when it misbehaves and teach it how to do right as opposed to doing wrong.

But when it comes to large corporate America and manufacturers, there should be no spanking. All of a sudden, it costs consumers. Mr. President, whoever thought for a second that this bill is in the interests of consumers? It is the biggest fraud that ever tried to be perpetrated on this august body. Every consumer organization in the United States of any size, care, or responsibility is absolutely opposed to the bill.

And with regard to the better legal minds of the American Bar Association, the State supreme court justices and their Conference of Chief Justices of the several State supreme courts, the Conference of State legislatures, the attorneys general, oh, yes, they are going to look out for them? Uh-uh, no, they are looking out for manufacturers. Look at the section in here that exempts the manufacturer. They have

all of these great provisions in here because they say they are so concerned about consumers, except when you mention manufacturers. They say, by the way, manufacturers should be exempt from this bill.

Now, come on. I will read several things about punitive damages, and I will go right to the heart of the issue. It is not saving consumers' pocketbooks and costs. This crowd knows the cost of everything and the value of nothing. The truth of the matter is on account of product liability in this country of ours, we have the safest products and we are saving our citizenry from injury, from maiming, from blindness, from being killed over and over again by the millions. Why do you think there were over 19 million car recalls in the last 10 years? We went to the Department of Transportation and we summed up all these automobile recalls. And if you think the big automobile companies—not only in the United States, but Toyota in Japan, and others—are recalling defective automobiles to save consumers money—they are doing it to save themselves money on account of product liability, because they are going to get nailed. And so to save themselves money, they save lives and injury to the consuming public. It is not the pocketbook that we are involved with here. On the contrary, it is the safety of products and the safety of our citizenry.

So let us quit bringing all of these cases, one by one, out here, and say, oh, what a terrible punitive damage verdict this is and thereby we have a national problem. Not so.

The States have handled this. And rather than going into this case or that case—I do not countenance for a second that there are not some mistakes. There are mistakes everywhere in the administration of the law. That does not call for national legislation. But, in a general sense, if you take all the product liability verdicts in the last 30 years—and this is what we asked when we saw the witness take the stand in the Commerce Committee. We asked Jonathan S. Massey, an expert who had defended punitive damages before the U.S. Supreme Court, allegedly the most experienced attorney. I said, yes, but I still get these anecdotal incidents of what we would call outrageous punitive damage findings.

I said, "Could you please go and get into the record exactly all the punitive damage verdicts for the last 30 years, since 1965, and find out just exactly how many there were, and what were the amendments and then add them all up?" With respect to that, I ask unanimous consent to have this material printed in the RECORD.

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

APRIL 13, 1995.

Hon. ERNEST F. HOLLINGS,
U.S. Senate Committee on Commerce, Science and Transportation, Washington, DC.

DEAR SENATOR HOLLINGS: At the hearing on April 4, 1995 before the Consumer Affairs, Foreign Commerce, and Tourism Committee of the Committee on Commerce, Science, and Transportation on S. 565, the Product Liability Fairness Act of 1995, you asked me to compare the $3 billion in punitive damages awarded in the Pennzoil v. Texaco case with the sum of punitive damage awards in all product liability cases since 1965.

The attached pages show that punitive damage awards in products liability cases since 1965 come to a fraction of the $3 billion figure. For products liability cases in which the punitive damage award is known, the total comes to $953,073,079. There are 109 additional cases in which the punitive damage award was not reported by the court or either party, most likely because it was not large. If one were to extrapolate for those 109 cases by taking the average award in cases in which the punitive award is known—which would err on the side of the inflating punitive damage awards in products liability cases—the total of punitive damage awards in all products liability cases since 1965 would come to only $1,337,832,211—less than half the award in Pennzoil v. Texaco.

I hope this information is of assistance.

Sincerely,

JONATHAN S. MASSEY.

PRODUCT LIABILITY PUNITIVE AWARDS, 1965–PRESENT

Alabama—20 cases—$58,604,000; 9 additional cases with unknown amounts.

Alaska—2 cases—$2,520,000; 1 additional case with unknown amounts.

Arizona—6 cases—$3,362,500; 3 additional cases with unknown amounts.

Alabama—1 case—$25,000,000; 0 additional cases with unknown amounts.

Alaska—1 case—$1,000,000; 0 additional cases with unknown amounts.

Arizona—2 cases—$6,000,000; 3 additional cases with unknown amounts.

California—17 cases—$35,854,000; 9 additional cases with unknown amounts.

Florida—1 case—$1,000,000; 0 additional cases with unknown amounts.

Connecticut—1 case—$688,000; 0 additional cases with unknown amounts.

Florida—1 case—$519,000; 0 additional cases with unknown amounts.

California—4 cases—$3,618,653; 0 additional cases with unknown amounts.

Florida—1 case—$750,000; 0 additional cases with unknown amounts.

California—3 cases—$2,425,000; 0 additional cases with unknown amounts.

Colorado—3 cases—$7,350,000; 1 additional case with unknown amounts.

Connecticut—0 cases—$0; 1 additional case with unknown amounts.

Delaware—2 cases—$75,120,000; 0 additional cases with unknown amounts.

Florida—26 cases—$40,607,000; 9 additional cases with unknown amounts.

California—1 case—$30,000; 0 additional cases with unknown amounts.

Florida—2 case—$3,500,000; 0 additional cases with unknown amounts.

Georgia—10 cases—$43,378,333; 3 additional cases with unknown amounts.

Hawaii—1 case—$11,250,000; 0 additional cases with unknown amounts.

Idaho—0 cases—$0; 1 additional case with unknown amounts.

Illinois—16 cases—$44,149,827; 3 additional cases with unknown amounts.

Minnesota—1 case—$7,000,000; 0 additional cases with unknown amounts.

Illinois—3 cases—$5,000,000; 0 additional cases with unknown amounts.

Indiana—1 case—$500,000; 0 additional cases with unknown amounts.

Iowa—1 case—$50,000; 2 additional cases with unknown amounts.

Kansas—7 cases—$47,521,500; 1 additional case with unknown amounts.

Kentucky—2 cases—$6,500,000; 0 additional cases with unknown amounts.

Louisiana—2 cases—$8,171,885; 0 additional cases with unknown amounts.

Maine—3 cases—$5,112,500; 0 additional cases with unknown amounts.

Maryland—3 cases—$77,200,000; 2 additional cases with unknown amounts.

Michigan—2 cases—$400,000; 0 additional cases with unknown amounts.

Minnesota—4 cases—$10,000,000; 1 additional case with unknown amounts.

Mississippi—4 cases—$2,790,000; 1 additional case with unknown amounts.

Missouri—9 cases—$20,785,000; 1 additional case with unknown amounts.

Montana—2 cases—$1,600,000; 1 additional case with unknown amounts.

Nevada—1 case—$40,000; 1 additional case with unknown amounts.

New Jersey—4 cases—$900,000; 5 additional cases with unknown amounts.

New Mexico—4 cases—$1,715,000; 1 additional case with unknown amounts.

New York—7 cases—$6,019,000; 6 additional cases with unknown amounts.

North Carolina—2 cases—$4,500,000; 0 additional cases with unknown amounts.

Ohio—6 cases—$4,393,000; 1 additional case with unknown amounts.

Oklahoma—6 cases—$15,390,000; 1 additional case with unknown amounts.

Oregon—3 cases—$62,700,000; 0 additional cases with unknown amounts.

Pennsylvania—5 cases—$16,298,000; 8 additional cases with unknown amounts.

Rhode Island—1 case—$9,700,000; 0 additional cases with unknown amounts.

South Carolina—5 cases—$2,945,500; 4 additional cases with unknown amounts.

Rhode Island—1 case—$100,000; 0 additional cases with unknown amounts.

South Dakota—1 case—$2,500,000; 0 additional cases with unknown amounts.

Tennessee—4 cases—$4,720,000; 3 additional cases with unknown amounts.

Texas—38 cases—$217,098,000; 19 additional cases with unknown amounts.

Utah—1 case—$300,000; 0 additional cases with unknown amounts.

Virginia—2 cases—$340,000; 0 additional cases with unknown amounts.

West Virginia—3 cases—$2,433,100; 4 additional cases with unknown amounts.

Wisconsin—7 cases—$10,622,000; 4 additional cases with unknown amounts.

Florida—1 case—$2,500,000; 0 additional cases with unknown amounts.

Wisconsin—2 cases—$26,000,000; 0 additional cases with unknown amounts.

District of Columbia—1 case—$2,500,000; 0 additional cases with unknown amounts.

Grand total—270 cases—$953,073,079; 109 additional cases with unknown amounts.

Average punitive award: $3,529,900.

Extrapolated total of all awards: $1,337,832,211.

Mr. HOLLINGS. Mr. President, the pages show that punitive damage awards in product liability cases since 1965 come to a fraction of $3 billion. To be exact, they come to $1,337,832,211.

Why does this Senator say "a fraction" of $3 billion? If we go to the

Pennzoil versus Texaco case, of businesses suing businesses, what do we get? We get almost a $12 billion verdict that included what? It included a finding of punitive damages in the amount of 3 billion bucks.

In other words, of all the product liability punitive damage findings in the last 30 years amounting to $1.3 billion, we have one business-against-business case of $3 billion. Or another one, since they are picking out cases, I will pick the *Exxon Valdez* case, a case where Exxon was sued and they came in with a verdict of what in punitive damages? Mr. President, $3 billion.

I cannot find out the amount for businesses, there are so many of them. But it is up into the billions and billions of dollars. If this Congress was really interested in lowering the verdicts in tort cases, they would go right to the businesses suing businesses. They would go right to the automobile accident cases. They would go to all the other kinds of tort cases.

The fact is that, of all the civil findings in the United States of America, tort filings only amount to 9 percent of the total amount of civil findings; and of the 9 percent, product liability amounts to 4 percent of the 9 percent or .36 of 1 percent.

Another problem solved by the States. The Supreme Court Justices and legislatures say we handle it, and I will go right, for example, to my own State of South Carolina with respect to punitive damages.

In a recent case of the State versus Rush, but the heading would be Gamble versus Stevenson, an appeal of the Southern Bell Telephone Telegraph.

Now, I read from the opinion of the Supreme Court as follows: "In South Carolina punitive damages are allowed in the interest of society." Listen to that. We would think punitive damages was the most heinous offense that ever occurred without any relation in the world to the good it has done.

Why do we fine motorists for speeding and disobeying our motor vehicle laws in America? We fine them. Why do we fine the others for their various crimes? To make certain they do not commit them again. Similarly, with manufacturers.

Punitive damages—fine them, to make absolutely sure that they do not repeat their wrong.

They would say we cannot lose, we are making money. So why has Chrysler recalled 4 million cars to fix the back latch on the door? Not on account of the cost. They could get by with that. They would leave it there, but they know that there are chances now brought to the attention of the public that they are not only going to be verdicts against them in compensatory damages but in punitive damages. No longer can they factor it in the cost of product because of punitive damages.

This is the very element that is bringing about the safety—not taking care of the parties involved but taking care of society, generally—that is the point to be made here.

The first sentence:

> In South Carolina, punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future. Moreover, they serve as an indication of private rights when it is proved that such have been wantonly, willfully, or maliciously violated. Lastly, punitive damages may be awarded only upon a finding of actual damage. In the instant case the trial judge's jury charge concluded the degree of recklessness requisite to punitive damage award, that such an award was to punish a defendant or deter and stop it and others from similar conduct in the future, that is, to make an example of the defendant.

That is an affirmative action program, to make an example. Everybody is interested in affirmative action. Here it is. Make an example of the defendant, the wrongdoer. "That it must find actual damages before awarding punitive damages and that in calculating the amount of such damages, it may consider the defendant's ability to pay."

Now, Mr. President, to ensure that a punitive damages award is proper, the trial court shall conduct a post trial review and consider the following: one, the defendant's degree of culpability; two, duration of the conduct.

Mind you me, Mr. President, this is not the jury, the runaway juries, the same people that elected Members in Congress, all of a sudden impanelled and with a sworn oath, to find unanimously by a preponderance of the evidence, willful misconduct. And all 12 having found such, that same crowd that elects and sends Members, all of a sudden, they have lost their minds, their judgment. They are runaway and now have to be restricted by national restrictions. For what? For manufacturers, that is for what, and for less safety in America.

Let me read that again:

> To ensure that punitive damages award is proper, the trial court shall conduct a posttrial review that may consider the following:
>
> 1, defendant's degree of culpability; 2, the duration of the conduct; 3, the defendant's awareness or concealment; 4, the existence of similar past conduct; 5, likelihood the award will deter the defendant or others from like conduct; 6, whether the award is reasonably related to the harm likely to result from such conduct; 7, defendant's ability to pay; 8, as noted in Haslip case, "other factors" deemed appropriate.

That is, the court, not only the 12 impaneled jurors, but the court itself, shall review and study.

Now, generally, this is a law that applies in 45 of the 50 States but, of course, due to the Conference Board, due to the Business Advisory Roundtable, due to the National Association of Manufacturers' lobbyists that have been going on for years and they come and report at every election time, "Now, Senator, we have to do something about tort reform or product liability reform."

The average Senator or candidate, not aware of the ramifications, not having attended any of the hearings or otherwise, might say, "Oh? I am trying to get votes. Reform?" They get caught. Words do mean things in our society. And they say, "Heavens, I can get the support of this strong crowd. I can even get financial contributions if all I have to say is yes, yes, I am for reform. Product liability? Put me down."

They put them down. Then they come here and they get embarrassed because they finally hear the truth of the matter here. And I sort of get embarrassed for them.

The reason I get embarrassed for them is just this. I got a letter today from my distinguished colleague and friend, Drew Lewis, the chairman of Union Pacific Corp., dated April 27. He is a former Secretary of Transportation. He did an outstanding job. I do not speak in criticism or derision. Rather, I speak—and this is the factual dismay that I have—because I know he knows better. It is a short letter and I know why he is writing it.

> Union Pacific urges your support for S. 565, the Product Liability Fairness Act legislation. The U.S. legal system is out of control. The high cost of litigation and large damage awards translate into higher prices for consumers. Typically less than half the money awarded in product liability cases goes to compensate the claimant. The winner is the trial attorney, not the American consumer. If American business is going to succeed in the global marketplace and American jobs are to grow, your vote is critical. Please vote for cloture and final passage of S. 565.
>
> Sincerely, Drew.

Let us take that little letter here and see it exactly. I know this gentleman knows better. He is the most sophisticated of former public servants and corporate executives and he has been around. I know his entities. The Business Roundtable and the National Association of Manufacturers and all got him to write this thing and it was ground out.

He calls it the "Fairness Act." He picked up the title. That is not what they called it over on the House side. It started off—if you get the title of the bill itself on the desk here, you will find out—"To establish legal standards and procedures for product liability litigation." At least it was straightforward in the House. Applesauce in the U.S. Senate. Fairness? Fair to whom? Not consumers. This crowd does not represent consumers. I have; they have not.

When I asked the distinguished Chair where was the record here whereby trial lawyers had done in their clients, under the Abraham amendment, he had one letter from a constituent in Michigan. I knew that there were not a big wave of clients being done in. In fact, had it not been for the trial lawyers, they would not have received anything.

After all, these manufacturers do have a team of attorneys, investigators, adjusters, local attorneys and otherwise, and they readily, on any kind of claim or letter they get, immediately zoom in and, generally speaking, settle the case or claim. It is good business judgment that they do; it is good business judgment they do. They do not want to be claimed to have unsafe products.

It is only when they deny an obvious claim that should be compensated that it comes to the trial lawyers. We do not scare up cases—except, of course, in these class action suits, like asbestosis. But that is what had to be done. That is exactly what was done with respect to the example of the Senator from Michigan in his letter with the Senator from Kentucky relative to the airlines. They had to go and get all the airlines together, get law firms all over the country, and assemble 2.1 million clients.

In the letter to the colleagues, under the Abraham-McConnell letter, it appeared that, heavens above, quoting the Washington Post, the lawyers got $16.1 million in fees and the client got a $25 gift certificate for travel. I knew that the client just getting $25 and the lawyer getting $16 million would not be approved by any court. So we went back to the record.

Yes, in a class action of that kind, what was the number of clients? It was 2.1 million. What was the amount of the verdict? It was $438 million. How many law firms? They had 37 law firms all over the country, and the average fee was not a third, or 33⅓ percent, or 25 percent, or 20 percent, or 10 percent, or 5 percent, or 1 percent. The average fee of the attorneys involved was less—less than 1 percent. Had they not correlated all that, it would not look so garish and enormous to us unstudied witnesses here.

But this is the Fairness Act, they say. Then the next sentence, "The United States legal system is out of control."

That is sheer nonsense. If it is out of control, it is on account of businesses suing businesses. It certainly is not a litigation explosion. We have proved that. We have proved time and again that product liability cases, as the Senator from West Virginia, the principal sponsor of the measure, says—when we engaged in looking at product liability cases, we find the entity in the testimony before the Commerce Committee, unquestioned—no one has proved otherwise—unquestioned, that there are less filings and less verdicts and less plaintiffs' victories all the way across the board. So if the legal system is out of control, it is out of control for other reasons but not product liability.

"The high cost of litigation and large damage awards translate into higher prices for consumers." I just reread that my way: The high cost of litigation and large damage awards translate into higher safety for the consuming public of America. That is what it translates into. And it ought to go into the costs. It is a minimal cost to them to put out safe products. And the best of manufacturers want to do that and they brag about the quality now of their particular manufacture. They brag about their quality of manufacture. So it is not high cost translating into high prices but, let us say, a higher degree of safety.

"Typically, less than half the money awarded in product liability cases goes to compensate * * *" We find that is incorrect. There was a study by the National Insurance Foundation to the effect that, yes, the claimant did not get the majority of the money, but the majority of the money was going to the defendants' attorneys.

You ought to see these billable hours. That is why the Senator from South Carolina wanted to limit billable hours around this town to $50 an hour. I could catch the thrust of the movement earlier last week, when they came in, about the money going to the claimant as compared to the money going to attorneys. And the thrust was that they had given up on Girl Scout cookies and they have given up now on Little League baseball and all these other things they tried to raise, competitiveness and otherwise. Now they say, "Well, let us kill all the lawyers."

I say, if you want to get rid of half the 60,000 lawyers in this town, if you want to get rid of 30,000 lawyers, just put not a minimum wage but put a maximum wage, a maximum wage of $50 an hour which will give them the salary of a U.S. Senator. If they worked any overtime, like we do work overtime as Senators, they could easily make $200,000 a year. But that is where the compensation is going. It is just like the situation, if you had a $100 finding, you would find that $40 would go to the defendant's attorneys, $20 would go to the plaintiff's attorneys, and $40 to the claimant.

(Mr. THOMPSON assumed the Chair).

Mr. HOLLINGS. Mr. President, the rationale of this simple statement is get rid of or kill all of the lawyers; get rid of the trial lawyers because—the next sentence is—"The winner is the trial attorney, not the American consumer." If you think this crowd is interested in consumers, just get all the consumer legislation and look at their votes on that.

But going right back to the report, in the 103d Congress, I knew we had this when we had the hearings. In a 1977 survey conducted by the Insurance Services Office, for every dollar paid to claimants, insurers paid an average of an additional 42 cents in defense costs; while for every dollar awarded to a plaintiff, the plaintiff pays an average contingent fee of 33 cents of that dollar. Thus, in cases in which the plaintiffs prevail, out of each $1.42 spent on litigation, half of that goes to attorney fees, with the defendants' attorneys on average paid better than the plaintiffs' attorneys.

That is the national insurance consumer organization finding that the attorney for the insurance companies received on the average close to one-third more than the average attorney's fee paid to plaintiffs' attorneys. I am glad I quoted that for the record, but that is not the way this letter reads. "The winner is the trial attorney." We are not winners or losers. But if you are going to characterize, as my distinguished friend, Mr. Drew Lewis, does here in the letter about the winner, he says, "The winner is the trial attorney, not the American consumer." Absolutely false. We have all the facts and all the hearings proving otherwise.

Going now to the final two sentences, "If American business is going to succeed in the global marketplace, and American jobs are to grow, your vote is critical." What is the inference there? The inference regarding the global marketplace is that product liability costs and the burden on American production is a cost and a burden not suffered by foreign production. We will go right to the heart of that matter.

In addition, working over the years—and I have had a delightful experience, I have to immodestly acknowledge, with respect to the attraction of industry to my own State, and I will be glad to meet with anybody and we will compare the records. We will compare the endeavor, and we will compare the results. I have had the experience of working at the local level on the attraction not only of the American blue chip corporations, but those in the global marketplace. Admittedly, of course, many of the blue chips are in the global marketplace. But let us go directly to the ones we know. Let us say German industries and Japanese industries.

In our great State of South Carolina, we have over 100 German industries. I made the first trip over there with the Governors, to the various communities in Germany, with an industrial group to attract investment in South Carolina in 1960. So that is 35 years ago. We just got, of course, BMW. BMW, by the way, in Spartanburg, stands not for Bavarian Motor Works, but BMW stands for "Bubba Makes Wheels." We have a wonderful system down there.

I was with the Vice President this last Friday at a luncheon. We put out 20,000 and some BMW automobiles this year from Spartanburg, SC. Do they have a problem with product liability? Not at all. I went to Bosch not long ago. They came in making fuel injectors for all automobile manufacturers, and more particularly now have become expert in antilock brake manufacture. They have a 10-year contract with General Motors for all the

antilock brakes on their cars. They have the contract for Toyota and Mercedes Benz. I turned to that manufacturer. I said, "What about product liability? How many product liability claims?" He said, "What is that?" I said, "Product liability? You know, where you have a defective antilock?" "Oh, no, no, no," he said, "We will not have that." He went right over on the line and he picked up one of the antilock brake devices.

He said, "See. See that serial number." He said, "We have a serial number on every antilock brake that comes out of this factory. We would know immediately by that number if there was a defect where it occurred. But we haven't had any of that occur down here, and we are not going to have any of that occur." And he was proud—proud—not whining and crying through political representation up here in the national Congress about saving consumers money. He was proud of putting out an absolutely safe product.

Can you imagine one of those antilock brakes not working and the other three working on an automobile? It would turn it over into a tailspin in a minute. They know it. So they are super careful in their manufacture. That goes into the cost of the product. And, yes, it costs consumers, and consumers welcome paying that higher price for the antilock brake and safety.

Mr. President, it goes to the safety, not the cost. But what happens in Germany? In Germany, they come with Mercedes Benz down in Alabama where, incidentally, both Alabama Senators are opposed to this bill. Both Alabama Senators are opposed to this bill. Mercedes Benz says, "We love Alabama, and we are putting our new manufacturer down there." BMW says, "We love South Carolina and its product liability law," just like Mercedes Benz likes Alabama's product liability law, and they put a factory there. I have over 100 German factories liking the product liability law in my State. I have over 50 Japanese industries liking the product liability law in my State. But they are not a member of the Business Roundtable.

So what you have here is this mailing out of absolutely unfounded conclusions, which is an embarrassment to this Senator. Specifically, you look at what they put out in their advertisements when it comes to punitive damages and product liability. Here is the ad they are running in newspapers. This is an easy one to carry. It is entitled, "Let's Put an End to the Lawsuit Lottery."

You know, my conservative friends, when they get this rap music, say, "You have to cut out that rap music. It teaches violence." There was one that I remember even President Clinton as a candidate took to task, about "kill all the cops," the "cop-killer" one. He complained then. The American public went along with him and voted for candidate Clinton to become President because those words mean something. They want to cut all of that out. Now that they are blowing up buildings in America, and some people say, "Oh, no. Words don't mean anything."

The truth of the matter is, Mr. President, my colleagues on the other side of the aisle have a school where they teach them to use words. I think this is a good time, since this is the thrust of the measure here, if I have it here in one of these files. With respect to the words, they come in and they hold a school. I know they attend a school, these newcomers to public office. I will see if I cannot find that, generally speaking, so that the colleagues can be educated about what is really going on. But this is a school that the distinguished Speaker has been running for years. He tells all the candidates that have come in. I know when a new Republican is elected from South Carolina, he has to attend a school to find out how to talk. And, in fact, if they can get them ahead of time, they tell them how to campaign and how to use words that inflame, words that stir up.

It was put into the RECORD some time ago; I think back in 1990, if I am not mistaken. But we had the meaningful words. I certainly would like to be able to refer to that, because what happens is that they call this—that is, the Government here in Washington, and this is reported in the David Broder column. They reported that the Government in Washington is the "corrupt, liberal, welfare state."

These are the handouts in the schools that they give to my Republican colleagues and say you ought to all join in. And they list the word "corrupt." They list the word "liberal." They list the word "welfare." So the revolution, according to Speaker Gingrich in his courses, is against the corrupt, liberal welfare State. And that is the way they refer to it.

Mr. President, let us go to the words here about the lawsuit lottery. There is not any lottery, I can tell you that right now. All you have to do, if you defend a product liability case, is convince one juror. That is all you have to do, raise a doubt in one juror's mind because it has to be a unanimous verdict by the greater weight of the preponderance of the evidence.

But here is the mailout that they put in the advertisements that they have going now for the past several weeks. "Let's Put an End to the Lawsuit Lottery. It's sad," this article says, the advertisement, "but the civil justice system in America has become nothing more than a legal lottery."

That is outrageous nonsense. It is embarrassing to see things being sponsored by responsible business entities that have buddied up together here in what they call the Product Liability Coordinating Committee.

It goes on to read, "With juries returning one outrageous award after another, it's not surprising that the number of product liability suits is skyrocketing."

Absolutely false. We have had hearings upon hearings upon hearings, and the filings and the suits themselves are less and less each year. The awards given are less and less and the number of plaintiff victories are less and less. But this ad says they have skyrocketed—no basis in fact.

"There are 51 separate laws, one for each State and the District of Columbia, governing product liability."

There are 51 separate laws, Mr. President, governing insurance companies. Do you see them up here complaining? They have to file every one of their policies they want to sell in any one of the States. Get these casualty companies together and ask them when are they going to complain about filing all of these policies here, 50 to 60 different policies that they have now, in each one of the 50 States. They are not complaining about that. In fact, they want the McCarran-Ferguson antitrust exemption so they can get together. They want to continue. I have suggested maybe we ought to federalize it because they are in interstate commerce. "Oh, no, no, no, we don't want that. We don't want you to see our records."

We have had hearings upon hearings upon hearings. We never, in the 15-year period of handling this problem, have been able to get from the casualty insurance companies their costs and profits, their records. Even the Senator from West Virginia has put on an amendment, which I am constrained to submit later on when we get to the actual bill itself, to say that they file these reports. They never have. They do not want to.

The reason we asked for these facts way back almost 15 years ago, they said it was impossible to obtain insurance, impossible to obtain. They have plenty of insurance. It is easily obtainable. And we wanted to find out, as was later found out in other hearings, if they, like the S&L's and all, had made bad investments in real estate and where their losses came from—not from a product liability litigation explosion but, rather, sorry investments in real estate and supermarket and shopping center developments. They made the same mistake that all of these banks and insurance companies and savings and loan institutions had made.

But this says 51 separate laws. If you did not know what you were reading, you would say, "Good golly, Moses; let's get uniformity." They do not want uniformity even under this. If they wanted uniformity, they would give you a Federal cause of action. That is why, one of the big reasons, the American Bar Association says this

adds complexity; this is not uniformity. You have words of art: requirements, findings, measures of evidence, exemptions of evidence, all to be interpreted by 50 separate supreme courts and the circuit court of appeals here in the District of Columbia.

Now, try that on for a lawyers' full employment act. Come on. Everyone knows that if they really wanted uniformity, they would have required a Federal cause of action and they would have uniformity and that would have at least cut down on some of the multiplicities—the appeals, the interpretations, the motions and everything else of that kind in the 51 separate laws and separate jurisdictions governing product liability.

"But today the outcome of a lawsuit can depend more on geography than the merits of the case."

They know that. Their commercial code, the Uniform Commercial Code, is anything but uniform. You can sit up there in New York. You can sell a product made in Canada and solicit down in Alabama and deliver it, by gosh, to the factory site in North Carolina, and you can say, "Under my interpretation of this particular contract, I select the New York law."

You have got what they talk about, forum shopping. The manufacturers do just that. They know about that. But unless you have diversity of jurisdiction—and I do not go over to Alabama, I never have heard of a South Carolina lawyer going over and suing in Alabama. They act like all we have to do is go over there and file the case in Alabama.

"The current product liability system with its patchwork of local laws"—patchwork. Who has given us patchwork? Read this bill. "* * * with its patchwork of local laws got its start at the turn of the century when businesses were all so local, but times have changed."

They are trying to give a sense of history to this. This is absolutely false. During my 20 years of law practice before I came to the Senate, I never heard of any of this, ever. And they continue to do business under different laws in the 50 different States under the interstate commerce clause and it is not about times have changed.

"American-made products now travel across State lines"—well, they have always traveled across State lines.

I will never forget Henry Grady and the funeral in the days just after the Civil War. The Senator from Tennessee would remember it. I think they said that he was a poor man, buried, let us say, in South Carolina. He was buried with a New Jersey frock and some New York shoes, and the buttons were made in Minnesota, the wood for the shovel had come from New Hampshire, the steel had come from Pennsylvania, and they went on and on down there about the caskets and all. They said the only thing South Carolina furnished was the hole in the ground.

Now, tell me about traveling in the different States. That is Henry Grady 100 years ago. They say no, times have changed now and all products travel across State lines. "Unfortunately, so do plaintiffs and their lawyers seeking the most favorable State for their claim." Unless you have diversity, you do not run around and seek anything of that kind. And you have the client in the community where the client is injured. I can tell you now, having tried these cases, that you go try it in the vicinity of the client where they can understand and know the injury and we might get a friend on the jury or an acquaintance or whatever it is. Sometimes the blind hog picks up an acorn. You might get a break. If I go to another State, that immediately cuts me down to next to nothing with respect to the fee, if I have to go and get the lawyers who know the local law there, let us say, if I went to Birmingham, AL, I would have to give all the moneys to the lawyers in Birmingham.

I am not a passthrough for lawyers in Birmingham. I am trying my clients' cases in my own State.

This is outrageous hogwash here and they know it.

"Unfortunately, so do plaintiffs and their lawyers seeking the most favorable state for their claim. This not only hurts competitiveness, it stifles innovation, eliminates jobs and hurts all Americans.

How can we stop the lawsuit lottery? We need a uniform, modern national product liability law.

But it's time for Congress to act. When it comes to the lawsuit lottery no one wins.

They do not say that for automobile accident cases, where there is a far, far higher number of different laws, different highway speed laws, degrees of care, comparative negligence, contributory negligence, go right on down the list, all the automobile accident cases and, in this case, automobile product liability cases.

They do not say that here with respect to medical malpractice or the securities or anything else.

Then they have a little thing like they are even trying to mimic Oliphant: "Less than half of all money awarded in a lawsuit goes to the victim." Like they are for the victim.

It is clever. But it is outrageous blasphemy, I can tell you right now, to put this kind of thing out to the unknowing public and perhaps to the unknowing Congressman and Senator. We know better.

What we have is a solution looking for a problem. What we have here is trying to find justification for a lobbying effort that has been going on with the AMA, the Business Roundtable, and the Conference Board for 15 years, where they seek out the candidates and ask for a commitment and, generally speaking, get that commitment without any hearing.

And certainly if they are newcomers to this particular Senate, they have not had any hearings in the Commerce Committee. We had 2 days because we were told we had to agree to it, because we had to move, we had to catch up with the Contract With America. We did not have hearings in depth. We had them by reference. I had to include other hearings that we had with respect to the law professors that oppose this measure, with respect not only to the American Bar Association now but the American Bar Association in each one of the five hearings that we had over the 15-year period, and all the other entities that went into depth on this matter.

And that is what they hope to do here with this fix that is on in the U.S. Senate. And do not come up with, "Oh, we are looking out for consumers." They have the audacity in the same instrument here to say they look out for consumers when they exempt the manufacturers. The unmitigated gall of that provision is just so offensive it gets me stirred up.

How we ever got good, right-thinking folks on the floor of the U.S. Senate proposing this measure, saying that they are proposing it for the consumer, I do not know. Show me that consumer. What is that saying—"Let them come to Berlin." Well, show me that consumer. Heavens above.

The Consumer Federation, Consumers Union, Public Citizen, all the consumer groups again appear in opposition to this particular measure, particularly with respect to punitive damages.

One more time. On punitive damages, go ahead and cite your two or three little cases that sound outrageous. I do not have the time to run down and search out every one of the cases to find out whether the amount of the verdict was cut, whether it was changed.

Just like the McDonald's coffee case. Once we searched that out, we found out, yes, there were third-degree burns over one-sixth of the injured woman's body, 3 weeks in the hospital. After 700 calls and an offer to settle for $20,000, they totally ignored it and said we put this in the cost of the product, because the hotter we make the coffee, the more coffee we produce.

It is money, money that concerns these manufacturers on product liability. That is the one thing, the bottom line. It is not the safety of the citizenry in America, but it is the money that they are interested in.

But of all the product liability cases, what we have found, as they sum up over the last 30 years, is some $1.333 billion. One verdict in business suing business, Pennzoil versus Texaco, a $3 billion punitive damages finding in just one case, is twice the number of the

consummate sum total of all product liability punitive findings in the last 30 years. Or take *Exxon Valdez*, another $3 billion in punitive damages.

At the court level, I do not think the courts of this land have gone crazy. They have been all the way up to the Supreme Court to question the constitutionality of punitive damages. And each State either avoided it or it is measured or it is rescinded and sent back with a cut or total elimination.

Look under the steps that I have read here with respect to the South Carolina law. I can go down some other States laws if they are interested.

As a matter of punishment, we spank the baby when the baby misbehaves, that crowd that wants the family bill. What we are trying to do is spank the manufacturer when the manufacturer misbehaves and tell them, "Don't repeat this. Don't you do this again."

And when you tell that manufacturer, you have to look at his size, you have to look at his income, you have to look at his culpability, you have to look at his willfulness, whether it was mere neglect or whether it was a willful act, whether they had any warnings or disregarded or heeded the particular warnings, whether it was a mistake or exactly what. And you have to prove all that by the greater weight of the preponderance of the evidence to all 12 jurors and to the trial judge.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, nominally, at least, the issue before the Senate at the moment is the Dole amendment. The Dole amendment, which incorporates the limitations on punitive damages proposed by the Senator from Maine [Ms. SNOWE], and accepted earlier here today, would extend those limitations from the product liability sections of this bill and the now medical malpractice sections of this bill to all actions. In other words, we would have one uniform standard of limitations and relatively one uniform definition of the degree of proof required for punitive damages in all States which have fewer limitations at the present time or no limitations at all.

Mr. President, the majority leader has outlined some of the persuasive reasons for this extension. The primary reasons being the impact on small businesses which now live under the Damocles sword of a punitive damage judgment which can literally put them out of business and the increasing and adverse impact of punitive damage awards or potential punitive damage awards on nonprofit organizations, including charities, including, as the majority leader pointed out, the Girl Scouts, Little League, and the like.

I find these reasons to be persuasive reasons. I find it easy to be persuaded because it has been my view, almost from the time that I began to practice law, that the rule with respect to punitive damages in the State I represent, the State of Washington, which prohibits punitive damages for all practical purposes in all civil litigations, to be the appropriate rule.

Punitive damages are just exactly that. They are a form of punishment. In our society and American tradition, punishment by the Government or at the hands of the Government is traditionally reserved for the criminal code. The criminal code carries with it privileges against self incrimination, a requirement that the prosecution prove its case beyond a reasonable doubt and, of course, explicit statutory limitations and definitions of what punishment is appropriate in connection with a particular crime. None of these projections exist with respect to punitive damages. Juries decide them on an ad hoc basis, generally speaking, on whether or not the same conduct or product resulted in punitive damages.

There is, of course, no self-incrimination. The standard of proof in many States is a preponderance of the evidence, and even in this bill it is clear and convincing evidence, which falls short of the beyond a reasonable doubt standard. And most significantly of all, there are absolutely no limitations on the amount of punitive damages, thus the degree of punishment which can be imposed on a given defendant in civil litigation.

The Supreme Court of the United States has heard several appeals of large punitive damage judgments, appeals based on constitutional protections through the 14th amendment. The Supreme Court has never come up with a standard, with a maxim, by any means, although there have been hints that punitive damage awards that exceed four times the actual damages come close to reaching some potential constitutional limitation.

So from my perspective, I believe that it is both constitutional and appropriate for the Congress to deal with these issues and for the Congress to adopt the rule of the minority of the States—my own included—that say punishment should be reserved for the criminal code and that civil litigation should make a claimant whole, a wronged claimant whole, but do no more. As a consequence, I find it easy to support the relatively mild limitations which are included in the amendment proposed by Senator DOLE, the majority leader of this body.

My friend from South Carolina, with whom I have engaged in debates on this subject in the Commerce Committee and here on the floor, is most eloquent on the other side of this issue. Whatever his point about a political organization which trains its candidates in rhetoric may have been, it is very clear that he does not need any lessons in how to present a case forcefully and well. He does it here on this floor in this connection and in many others. But I must admit to being puzzled by at least some elements of the point that he makes. He says that because certain foreign companies—in this case in the automobile business—are willing to locate their factories in Alabama, that must mean they love the Alabama laws with respect to product liability.

Well, Mr. President, there is no connection between the two. Just because the market for manufactured products is nationwide, the location of a particular factory is absolutely irrelevant. Those automobile companies can be sued, for all practical purposes, in any State because they sell their automobiles in every State, whether it is the State in which their factory is located or some other. In fact, if there might be any possible motivation created by product liability laws, which I doubt, it would be to locate your factory in the most notorious plaintiff-minded State because at least the judgments in that State would not be against an out-of-State manufacturer but an in-State one, which might create the tiniest degree of sympathy for the manufacturer. But the location of a place at which a manufacturer operates and the product liability laws of that State simply have no relevance to one another at all.

The question before this body is whether we are dealing with product liability or with medical malpractice or, for that matter, with tort litigation in general. Do we have a system at the present time that appropriately balances the interests of claimants, people who have been injured or claim injury as a result of the use of products or as a result of the quality of health care they have received, or as a result of any other kind of act; do we properly balance their rights in court with other undoubted purposes of our society?

In the case of product liability, have we properly balanced it with our desire that our companies spend large amounts on research and then develop new and improved products and then market those products or market existing products—sometimes for dangerous occupations where inevitably someone using the product is going to be injured? Or do we have a system which is so unbalanced that perfectly legitimate products are taken off the market, not because they are unsafe but because they simply cannot create profits enough to run the risk of litigation, even of successful litigation.

Incidentally, Mr. President, very little has been said here on the floor about the impact of unsuccessful litigation in these areas. The attorney's fees, the expert witness fees, the cost in time and effort on the part of employees is every bit as much when the claim is rejected, when there is a verdict in litigation for the defendant, as

it is when the litigation lottery turns out exactly the other way. Any intelligent individual or company is going to say, "I know I am going to get sued and even if I am successful, I am going to spend more money than I can possibly make by marketing the product or engaging in the activity." That individual is going to say, "Why bother?" Even if that individual or that company has produced something good for society or is a part of the medical profession that is frequently sued or, for that matter, is a Little League volunteer or Red Cross volunteer, that volunteer figures he or she has a good chance of being sued, and it hardly matters whether they calculate that they will lose or win the lawsuit. They are going to say, "I do not need the aggravation."

It seems to me that it is almost beyond arguing that we have constricted the activities, restricted the activities, of individual volunteers. We have caused physicians with many productive years left in their careers to abandon those careers and to retire when they become reasonably financially comfortable. We have caused companies to abandon promising areas of research and development. We have caused the removal from the market of significant products by the threat of litigation, by the lottery of litigation—not just litigation that is going to be lost, but litigation which, more often than not, is won.

We have done this all in the name of a system which produces only a relatively moderate percentage of the dollars that go into it for claimants who actually establish their claims. A claimant who loses the case, of course, ends up with nothing. But claimants taken collectively who win these cases, at least in the fields of product liability and medical malpractice, win less than half the cost of the system.

Sixty percent, roughly, of the dollars that go into the system go to the lawyers and insurance adjustors and hired expert witnesses—all of the transaction costs of the system.

So we have a system which not only penalizes volunteers and restricts the operation of our health care system and restricts research and development and the production and sale of goods, but one which is extraordinarily inefficient in compensating the actual real victims of breakdowns in the system itself.

To say, as opponents do, that somehow or another this presents no national issue whatever just seems to me to beg the question. There is a problem. In a national economy, it is appropriate that at least there be a partial national solution to the problem.

Yes, we have not attempted to move all of these cases into Federal courts with the requirement that we probably double the number of our judges and courthouses. We have not made an entirely uniform system.

However, we have created in this bill a considerably greater degree of uniformity than there is now. We have even, in one section, said that the interpretation of this statute by circuit courts of appeals are going to be strong precedents for all State courts and all other Federal courts in those given circuits.

So the degree of uniformity as a result of this bill will not by any means be 100 percent. It is not designed to be 100 percent. However, it will be far greater than it is at the present time, and the predictability of the result will be greater than it is at the present time, and the lottery aspects of the business will be fewer than they are at the present time.

If we learn from the experience of this bill that greater uniformity is not necessary, we can go ahead and change it in the future. This is not an unchangeable law, by any stretch of the imagination.

We can at least find out, by this cautious and partial experiment, whether or not the evils ascribed in this legislation are true, but whether or not there is a cure or a partial cure as a result of this legislation.

I come back to one initial point, Mr. President. We have already tried this solution in one modest area of our Nation's economy: The reforms we made just a year ago in connection with the manufacture and sale of piston-driven aircraft. It is now clear beyond any argument that that business, that manufacturing business, was for all practical purposes destroyed by product liability litigation.

The production of such aircraft declined 95 percent in the United States of America over a 20-year period, ascribed by the manufacturers to product liability litigation.

Those manufacturers said that there would be a recovery if we reformed the system. We did reform the system a year ago, more modestly than the product liability system is reformed here, but in a significant fashion.

Already, there has been a significant recovery, including the planning and construction of new plants and an increase in the production and sale of U.S.-built piston-driven aircraft.

This side in the debate is able to argue not from theory but from experience. That experience would, it seems to me, give extraordinarily heavy weight to saying that if we expand it, if we expand it to other areas, we will have a similar, if perhaps not so striking, increase in the creation of jobs in this country, in the development and marketing of new products, of voluntarism, if the DOLE amendment passes and the like.

I hope we will be able to go forward, Mr. President, and cast votes on these various amendments and the other amendments before the Senate, and reach a positive conclusion to this debate within the immediate and foreseeable future.

Mr. HOLLINGS. Mr. President, I thank the distinguished Senator from Washington.

I mention once again the Girl Scouts, because I want to try to clean up the RECORD here. What I will read here is the Associated Press report:

When advocates of tort reform went looking for sympathetic symbols, they thought they had found a winner—the Girl Scouts of America. The story spread quickly among tort reform lobbyists and their supporters on Capitol Hill, and it was compelling. Girl Scouts in the Nation's Capitol have to sell 87,000 boxes of cookies each year just to cover the cost of their liability insurance. The lobbying and public relations machinery went into high gear. The U.S. Chamber of Commerce produced a radio ad using the information, and a business coalition began planning a television spot showing a Girl Scout trudging door to door with a basket of Thin Mints and S'Mores. But when the Girl Scouts got wind of it, they called a halt. The 87,000-box statistic was undocumented, they said. The Girl Scouts do not consider damage suits much of a problem. The local council in Washington has never been sued, and the National Accounting Organization takes no position on tort reform legislation. "They found an easy and emotional issue that they could get hold of," said Sandra Jordan, spokeswoman for the Washington Area Girl Scouts. People will take a sound bite on easy image over hard information.

Therein, Mr. President, is my position in referring not only to Girl Scouts, but to the sound bites here with respect to "Let's put an end to the lawsuit lottery."

Now, we are not talking about product liability reform or uniformity or, more correctly, any kind of abuses of the law. They immediately call it a lottery and skyrocket, and all these words that have been used; "The lottery wins, and the consumer loses," and that kind of thing.

I referred a moment ago to the matters of words with respect to these words being used here. I know some in this Congress are very sensitive about it. However, it has had its effect.

A former colleague here had introduced this, and we had it received otherwise back in 1990, because I am referring to the one who is disassociating himself from his GOPAC movement, because here is a GOPAC movement that I will read out, and I will say how it has had an effect in my State with respect to the Government being the enemy.

This is a GOPAC letter, signed by NEWT GINGRICH, and it is addressed:

Dear friend: The enclosed tape is another in the regular series of GOPAC audio cassettes, but is more than just another tape. This is a special lecture I delivered just a few weeks ago on August 22, 1990, to the third-generation group at the Heritage Foundation.

I am sending you this tape in the belief that it contains a timely and extraordinary message that could be of help to you in the coming months. While most activists and legislative candidates are not asked to give

your views on Iraq, the Mideast crisis, the budget conference, and the state of the economy, it is critical that you have the tools available that will help you take the offensive and define the agenda of the campaign based on our values rather than falling into the trap of merely answering the news releases.

I have also included a new document entitled "Language, a Key Mechanism of Control," drafted by GOPAC political director Tom Morgan. The words in that paper attest to language from a recent series of focus groups where we actually tested ideas and language.

I hope this proves useful in writing speeches and other campaign communications. My personal wish for the best of luck in your campaign and everything else.

Then, the GOPAC language is here, "A Key Mechanism of Control."

As you know, one of the key points in the GOPAC tapes is that language matters.

I will repeat that sentence. Here is the Speaker himself now saying back 5 years ago, practically:

As you know, one of the key points in the GOPAC tapes is that language matters.

In the video "We Are a Majority," language is listed as a key mechanism of control used by a majority party along with gender, rules, attitude, and learning. As the tapes have been used in training sessions across the country and mailed to candidates, we have heard a plaintive plea: "I wish I could speak like Newt." That takes years of practice, but we believe that you could have a significant impact on your campaign in the way you communicate if we help a little. That is why we have created this list of words and phrases.

This list is prepared that you might have a directory of words to use in writing literature and mail, in preparing speeches, and producing electronic media. The words and phrases are powerful. Read them. Memorize as many as possible. And remember that, like any tool, these words will not help if they are not used. While the list could be the size of the latest college edition dictionary, we have attempted to keep it small enough to be readily useful yet large enough to be broadly functional. The list is divided into two sections, the optimistic governing words to help describe your vision, contrasting words to help you clearly define the policies and record of your opponent in the Democratic Party.

Then, "Please let us know of your suggestions."

Now, Mr. President, listen to these words amongst others. We will put them all in the RECORD:

Sick, lie, liberal, betray, traitors, devour, corrupt, corruption, cheat, steal, criminal rights.

I ran into this in my campaign for reelection in 1992. I never heard such expressions before, and I wondered where in the world my opponent was getting all these blase references and words that really, in my judgment, were out of order.

Now let us bring it up to date in two instances. The Speaker himself uses these words. You look in David Broder's column here just about 10 days ago and you will see where Speaker GINGRICH, talking of his revolution, says we have a revolution against the Washington Government. But he does not call it the Washington Government. He calls it—and he has the buzz words, the key words, "the corrupt, liberal welfare state."

If these are not inflammatory, I do not know what are. They have had that effect in my State of South Carolina.

I went home to a 600-member State Chamber of Commerce seminar where they bring in the congressional delegation and we answer these questions as they go along. It so happened the distinguished colleague from the 4th district in Greenville, SC, BOB INGLIS, had answered a question and ended up by saying:

Yes, abolish the Departments of Commerce, Education, Energy and Housing.

My turn came immediately afterwards and I said:

Wait a minute. You don't mean to say that the Chamber of Commerce wants to do away with the Department of Commerce?

Yes. Yes.

A good number of them, I would say, a fifth of them, started smiling and putting their hands together. And I said to Dick Riley, the former Governor, popular Governor, Secretary of Education—he was there and I said:

Dick Reilly, do you want to do away with the Department of Education?

Yes, yes, yes.

And HUD and Energy both? All four of them?

Yes.

Half of them clapping and all, standing up. That is what is happening about this "corrupt, liberal welfare state." They feel, irrespective of the functions and the need for these various departments, that the dickens with it. "The Government is the enemy," they say. "Get rid of the Government. That is the only way. Tear it down, rip it out. Abandon it, abolish it. And then let us start all over again and to be sure none," as they say, "get corrupted. Be sure nobody serves over 6 years, or 12 years in this body." That is what you have going on in this land.

I can tell you here and now, words do count. And they count with respect to this, which is a total mislead as to the actual hearings, the facts that we had before us about the lawsuit lottery, who wins and who loses, and about the rights of consumers and everything else. It is entirely different. It is the safety of consumers. It is the defendants' lawyers on billable hours that are winning, sitting up there just grinding out, trying their own case.

It is a matter not of a lottery but a sworn jury to listen to the facts, reviewed by the trial judge and reviewed by the appellate court. And all back to the issue at hand, punitive damages, a sum total of $1.333 billion, the whole sum total of all punitive damage findings in the last 30 years, which is less than half of one business verdict against another business verdict in punitive damages, in two cases, not only the Pennzoil case but in the Exxon case.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 619 TO AMENDMENT NO. 617

(Purpose: To strike the punitive damage limits)

Mr. DORGAN. Mr. President, I rise to offer a second-degree amendment to the Dole amendment that is now pending. I send the amendment to the desk and ask for its immediate consideration.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 619 to amendment No. 617.

Mr. DORGAN. 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 1, beginning with line 3, strike through line 2 on page 8 and insert the following:

SEC. 107. UNIFORM STANDARDS FOR AWARDS OF PUNITIVE DAMAGES.

"(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

"(b) BIFURCATION AT REQUEST OF EITHER PARTY.—At the request of either party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award."

Mr. DORGAN. Mr. President, the amendment I have offered deals with the cap on punitive damages in the bill, S. 565, that was reported out by the Senate Commerce Committee. I voted for this legislation because I think, on balance, there is reason for us to legislate in this area. I think there is a problem with product liability legislation. And I think the approach that is taken is generally a reasonable approach. Therefore, I cast a "yes" vote. I did say in the committee, however, I was concerned about the punitive damage section and intended to offer an amendment on the floor of the Senate to respond to my concerns. That is what brings me to the floor today.

It occurs to me as I listen to the debate on product liability, as well as the debate on tort reform in general, that this is another one of those cases where there is truth on both sides of this issue. I listened to the Senator from South Carolina, who has spoken not just this year but in previous years on this subject and speaks with great passion and eloquence on this issue. He feels very strongly that it is a mistake

for Congress to move forward and to enact Federal legislation in this area. I understand what he says and why he says it.

On the other hand, I hear others in the Chamber stand up and speak with great persuasiveness about the need for Federal product liability legislation to restrain the number of suits that are filed.

My sense is we are a country that litigates too much. We have lawyers all over our country filing suits for virtually everything. I would like to see us litigate a little less in this country. I would like to see judges throw out frivolous lawsuits and sanction those who bring them. I would like to see us back away from this excessive litigation.

Excessive litigation puts many small businesses and others at risk. I talked with a business owner recently and she said, "They have jacked up my insurance cost to $500 a month. I pay $6,000 a year now for liability insurance to protect me against lawsuits." I asked, "Have you ever been sued?" "No, never had a suit against me. But, I have to pay these tremendous costs because somebody might decide to sue me." This is a real problem for many.

Some might say this is a problem with insurance companies. That may be, I do not know. I do know we have too many lawsuits in this country and too many people who want to sue. Excessive litigation has an effect on people trying to run small businesses who have to shell out money month after month in order to protect themselves.

On the other hand, there are enterprises in this country that provide products that they know are unsafe. They make these products available to consumers figuring they can make a bunch of money. These corporations accept the risk that a product might hurt somebody in order to make a profit. In most cases their profit will exceed their potential risk for damages. There are plenty of lawsuits that exemplify this.

I think there are merits on each side of this issue. I think we need to pass a Federal standard with respect to product liability. But, let us go back to last year's legislation on the issue of punitive damages. The bill that we reported out of the Senate Commerce Committee last year had no limit on punitive damages. We do change the standard or the threshold. We raise the bar. We require clear and convincing evidence that the harm caused was carried out with a conscious, flagrant indifference to the safety of others. That is the bar you have to get over in order to prove that you are entitled to punitive damages and that this enterprise should be punished for its behavior.

That is an appropriate place to establish burden of proof. You have to prove that there is clear and convincing evidence that the harm is carried out with a conscious, flagrant indifference to the safety of others.

Once you have done that, we should not say to the largest enterprises in this country, those with billions and billions of dollars, do not worry—even though you knew that product was going to harm them, could have killed them, we have put a limit on punitive damages. It does not make any sense to me.

Let us take punitive damages as an issue. The punitive damage section of tort law is to punish or deter a defendant's egregious conduct. There is no litigation crisis with respect to punitive damages. According to a survey, from 1965 to 1990, 355 punitive damages were awarded in State and Federal product liability lawsuits nationwide, an average of 14 a year. Of these awards, only 35 were larger than $10 million. All but one of these awards were reduced, and 11 of the 35 were reduced to zero. This was in a 25-year span.

It is hard for anyone to make the case that punitive damages represent some sort of crisis in the area of product liability. That is not supported by the facts. Congress should decide to raise the bar and create a new, higher standard, higher threshold over which someone who was injured must cross in order to prove punitive damages. To restrict it even further by placing a limit, a substantial limit on what someone can collect on punitive damages, is not justified. I think in rare cases where punitive damages should be or can be awarded, if this test is met, the test of conscious, flagrant indifference to the safety of others, then it is inappropriate for this Congress to provide this limitation.

My amendment would allow the States to debate this and provide their own limitation. Some States have limits. My amendment will not affect those States. But it will say that the underlying bill, S. 565 will not establish a new national standard that will replace every other State that has a limit and replace those specific limits. Or, in cases where States do not now have a limit, tell those States, "Here is your new limit on punitive damages." That is inappropriate.

I hope that Congress will support the amendment that I am offering today, which strikes those provisions in the punitive damages section that limit caps.

I come from a State that is largely a State of small businesses. We have some industry and a few larger enterprises. I have visited with many North Dakotans who have told me of their view of and their circumstances with respect to product liability. The case they make warrants this kind of legislation. But, it does not warrant a cap that has been placed on punitive damages.

I would like to include in the RECORD some examples of punitive damage cases. I will not go into them. But most of us understand where and when punitive damages have been awarded in this country, and in most of these instances they were warranted and necessary. The fact is the awarding of those punitive damages deter and persuade other corporations from taking the same risk. Corporations who suffered those damages may be more careful in the future.

I think that many safety improvements on products have been made not because of the benevolence of those making the products but because they worry about the consequences of putting an unsafe product on the market. Especially because other large enterprises which put unsafe products on the market knowing they were not safe suffered some very substantial punitive damages.

That has helped this country and the people in this country produce products that are safer and more reliable and products that consumers could purchase without fear of being hurt by the product. I hope that we will have an opportunity to allow others to discuss my amendment. My understanding is that they are seeking some kind of unanimous consent in which we would stack some votes tomorrow. I would like the opportunity to have others discuss the issue of lifting the cap on punitive damages in the underlying bill.

Let me again reemphasize. I am not amending the Dole amendment that deals with issues other than product liability. My amendment will deal with the underlying bill, and the cap on punitive damages in S. 565.

My hope would be that we will continue to debate this issue. As we discuss punitive damages, this Congress ought to consider the option of returning to the language in the product liability reform legislation considered last year with respect to punitive damages. Under last year's legislation a Federal standard would have been established without a cap on punitive damages. The legislation we are considering this year not only changes the standard but imposes a cap. It seems to me this cap is not necessary and inappropriate.

Last year, I was upset about another provision. The legislation that was brought to the floor included an FDA defense, whereby, a product that was approved by the FDA would be immune from punitive damage liability. Last year, I said I will not support that, and I will not vote for cloture until that is stripped out. I voted against cloture, until I was assured that the FDA defense would be stricken. I decided to vote for cloture at that point.

The FDA provision was not included in this year's provision, but, they put in another cap on punitive damages which they did not have last year. That makes no sense to me. I hope that this

Congress will come to the same conclusion that I have come to, that this bill is worth advancing, that we should pass a product liability reform bill, but that it should be enacted without the section that includes a cap on punitive damages. I think a cap is unwarranted, unfair and unwise.

With that, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER (Ms. SNOWE). The Senator from Washington.

Mr. GORTON. Madam President, I thank the distinguished Senator from North Dakota for offering and defending his amendment. It moves this process forward, and as he said we are seeking at this point a unanimous-consent agreement under which we can deal with punitive damages today and tomorrow morning the way in which we dealt with medical malpractice yesterday and this morning, by gathering all the amendments together, debating them tonight and for a while tomorrow morning and then voting on them all in a row.

AMENDMENT NO. 620 TO AMENDMENT NO. 596

(Purpose: To limit the amount of punitive damages that may be awarded in a health care liability action.)

Mr. GORTON. Madam President, at this point I send an amendment to the desk on behalf of the distinguished Senator who now occupies the Chair and ask for its immediate question.

I ask unanimous consent to set aside the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

Mr. GORTON. This is an amendment to the Gorton substitute, so I ask to set aside the Dole amendment as well for the purposes of considering this amendment.

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

The bill clerk read as follows:

The Senator from Washington [Mr. GORTON], for Ms. SNOWE, proposes an amendment numbered 620 to amendment No. 596.

Mr. GORTON. 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 19 strike line 22 through page 20 line 4, and insert the following new subsection:

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—The amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed 2 times the sum of—

(A) the amount awarded to the claimant for economic loss; and

(B) the amount awarded to the claimant for noneconomic loss.

(2) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

Mr. GORTON. Madam President, for the information of the Senate, this is identical to the Snowe amendment on punitive damages which was adopted as a part of the medical malpractice amendment which now, as a result of our last recorded vote, is a part of this bill. It differs only in that it is an amendment to the underlying Gorton substitute and imposes the same rule with respect to punitive damages, that is to say, two times the combination of economic and noneconomic damages for the original limitation on punitive damages included in the Gorton substitute.

I have discussed this next request with the distinguished Senator from North Dakota because it is a milder version than his, I think logically assuming that we get the votes tomorrow, that it be voted on before his amendment, and I ask unanimous consent that it be placed on any future agreement to a vote ahead of the Dorgan amendment.

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

Mr. DORGAN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. And I do not expect we will object, but I wanted to clear that with our side of the aisle, so if the Senator will withhold momentarily.

Mr. GORTON. I will withhold it momentarily.

Madam President, I briefly explained this amendment. I would expect that it would be adopted by voice vote because there was a rollcall vote earlier today on precisely this amendment, and I doubt that the body needs that vote repeated. It is in my view a preferable formula to that proposed by the Senator from North Dakota, which, of course, would remove all limitations and essentially all Federal controls over punitive damages. And it is punitive damages, of course, which is the subject not only of the Dole amendment but of much of the original product liability bill, and it is a formula with respect to punitive damages proposed by the occupant of the chair as accepted by a unanimous vote this morning.

Mr. DORGAN. Madam President, I withdraw my reservation. I have no objection.

Mr. GORTON. I repeat the unanimous-consent request.

The PRESIDING OFFICER. Would the Senator from Washington repeat the unanimous-consent request?

Mr. GORTON. Assuming there is later today an order for votes on all amendments dealing with punitive damages, that the Snowe amendment be voted on immediately prior to the Dorgan amendment.

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

Mr. GORTON. Madam President, I wish to repeat once more that I understand there are additional amendments to be proposed by the Senator from Tennessee [Mr. THOMPSON], the Senator from Arizona [Mr. KYL], the Senator from Utah [Mr. HATCH], the majority leader, the Senator from Kansas [Mr. DOLE], and the Senator from Alabama [Mr. SHELBY], from this side of the aisle and perhaps additional amendments on punitive damages on the other side of the aisle. We have no unanimous consent on the subject yet. I hope that Members who want to speak to the subject of punitive damages and introduce amendments on the subject of punitive damages will do so as promptly as is convenient to them.

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

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

AUTOMOTIVE TRADE WITH JAPAN

Mr. BYRD. Madam President, America's trading relationship with Japan is now reaching a historic, serious phase in what has been a long history of innumerable initiatives and negotiations to gain access for American products into her market. Strong action will very likely need to be taken by the administration, and the support of the Senate and American industry will be important.

The United States and Japan are nearing the end of over a year and a half of negotiations on automotive trade, aimed at reducing our $66 billion trade imbalance with Japan by opening major elements of her closed domestic market to our products. The issue, access to Japan's automobile market, including to her dealerships for American cars, and to the lucrative auto parts market, is reaching a critical juncture. The issue this time involves, once again, more than the securing of commitments by the Japanese in a written agreement to try to do something to open her market. It goes to the heart of America's strategy on how to gain the actual results of opening the Japanese market.

The question is whether we, including both the executive branch and the Congress, along with American industry are all prepared to stick to our guns and take action against Japanese imports if the auto market in Japan remains essentially closed to our cars and our spare parts. Specifically, are we willing to take retaliatory action and impose trade sanctions on her products, under section 301 of the 1974 Trade Act? I say to my colleagues that now is the time to change the paradigm in our trading relations with Japan. If we are not prepared to take retaliatory actions under the law, in a

situation which is about as perfectly suited as is possible to the intent of the law as it was written, then we may be looking at a continuation of these deficits in perpetuity.

Madam President, if anyone doubts the persistence of unfair barriers in Japan to her marketplace, then they ought to take a look at the 1995 National Trade Estimate Report on Foreign Trade Barriers, which provides an annual inventory of the most important foreign barriers affecting U.S. export of goods and services, foreign direct investment, and protection of intellectual property rights. The latest report dedicates some 44 pages of material to the subject on Japan alone, far more than to any other country, far more than to the second place, the European Union, most of the important countries of Western Europe combined, which takes up 28 pages, and double that of China, with which country we run our second largest annual trade deficit—44 pages, much of it dedicated to the automobile trade.

How important is the auto trade for America's current account balance and for the American economy? The answer is: as important as any single sector can be. America's trade deficit with Japan in 1994 reached another record high, at $65.7 billion, up 10 percent from 1993, when it totaled $59.3 billion. Of that amount, the bilateral automotive trade deficit accounted for about $37 billion, or 56 percent of the total, so most of our deficit with Japan can be attributed to cars and to auto parts. More than that, the auto trade deficit with Japan constituted some 22 percent of our entire trade deficit with the world. The policy announced by our Trade Representative, Ambassador Kantor—according to his testimony before the Finance Committee on April 4, 1995—is that this deficit is the result of unfair Japanese practices, that it is unacceptable, that he will use every tool at his disposal to correct it, and that, in general, he will use a practical, market-based, results oriented approach to dealing with these non-market barriers. I strongly support this approach, and I believe that the Senate as a whole does as well.

As far as the impact on the American economy is concerned, a strong auto sector is crucial. Two million, two hundred thousand people in the United States are employed in the parts industry alone—such vital industries as aluminum, steel, glass, rubber, electronics, semiconductors, machine tools, and many others. This is on top of the some 700,000 people employed by the Big Three auto manufacturers themselves, the Nation's largest manufacturing industry. Sales of cars and trucks constitute some 4.4 percent of our gross domestic product.

Negotiations with Japan have reached a crucial stage regarding the auto industry's attempts to deregulate the Japanese auto parts market. Negotiations on access to the Japan auto business began as a result of the agreement reached by this administration with the Government of Japan in July of 1993, the so-called Framework for a New Economic Partnership. This framework established a general set of results to be used in specific negotiations, and refocused the criteria for progress away from the process of removing trade barriers to actual results in the way of real economic progress in market penetration. After 18 months of negotiations on automobile negotiations—including access to the motor vehicle market by breaking into Japan's dealerships, the purchase of original parts by Japan's automakers from United States suppliers, and the regulation of the auto parts aftermarket, which is repair parts—Ambassador Kantor has concluded that "there has been virtually no progress." One result has been the initiation by the Trade Representative, on October 1, 1994, of a section 301 investigation of Japan's replacement auto parts market, which is virtually closed.

The difference between the United States and Japanese markets in this area could not be more dramatic and more symbolic of our troubled trade relationship: A Department of Commerce study in 1991 estimated that Japanese vehicle manufacturers controlled about 80 percent of the parts market, while in the United States the situation is the reverse, and independent replacement parts producers account for 80 percent of the market. So, while the United States market is wide open, the Japanese market is closed. To make the situation more unfair to us, the Japanese closed market allows their manufacturers to run the prices up on their own consumers for repair parts. Another U.S. Government survey has concluded that their aftermarket repair parts cost, on average, some 340 percent higher than comparable parts in the United States.

This tremendous windfall of billions of dollars in extra profits helps subsidize the Japanese car industry, so that it can compete more effectively in the international market, subsidizing lower costs for Japanese cars here in the United States, Europe, and elsewhere. Therefore, it is a triple whammy: Our parts manufacturers cannot sell effectively in the Japanese market; Japanese consumers get gouged; and the whole thing results in cheaper, more competitive Japanese cars worldwide.

The "Keiretsu" system of interlocking and cozy exclusive relationships among suppliers, manufacturers, and dealers serves as an effective blocking action against market penetration, and I am advised that the powerful Japanese Government bureaucracy serves to abet this exclusivity in supporting a regulatory framework not conductive to easy access. Japan's competition law, known as the Antimonopoly Act, which prohibits unfair trade practices has, according to the 1995 Foreign Trade Barriers report, a "weak and ineffective" enforcement history. The Japan Fair Trade Commission, which is supposed to implement that law, has "not shown any serious inclination to use its enforcement powers to eliminate the anticompetitive practices in sectoral markets that are excluding foreign goods and services from the Japanese market." This is a system totally incompatible with the principles of free international trade.

As to new American cars, it is nearly impossible for Japanese businessmen who operate dealerships and showrooms to agree to sell American cars. I understand that many of these dealers would like to do so, but they fear retribution from Japanese car manufacturers and are warned against taking American business. Hence, the marketplace for new American cars in Japan remains extremely narrow and difficult to penetrate. What are the results? While Japanese automakers hold some 22.5 percent of the American market, the share of the Japanese market held by the Big Three United States automakers is less than 1 percent.

The Japanese economy is, in many ways, a sanctuary market, closed to the world, but depending to a large extent on robust exports. Trade agreements are, more often than not, written agreements which are frustrated by a maze of business practices, Government regulations, and other hurdles for importers to jump. The problem is that other nations, particularly in Asia, are engaging in the same practices, and if the Japanese market is not pried open, these trade imbalances will be mirrored elsewhere, as they are today with China. We see the same kind of practices in Korea.

Therefore, the stakes in fair trade with Japan have worldwide ramifications and affect the very future of American participation in a trading system which enjoys access to a wide open American market. We need to demand reciprocity, which would allow our products to compete freely. If our products fail to attract buyers because they fall short on the merits, fine, then that is our fault. But this is not what is driving the large deficits with Japan, and our industries and economy will suffer as they are suffering, and as they have suffered.

I was very pleased to see the dramatic accord that was achieved by our Trade Representative with China on the matter of intellectual property rights, and I would note that it was achieved only at the 11th hour and with the certainty of definite retaliation by the United States, absent achieving an accord. Given the history of trade practices with the Japanese, I fear that

only a believable threat, or actual retaliation, may be sufficient to get equitable results in the Japanese auto market.

In the new world that is emerging after the collapse of the Soviet Empire, it is important to see the overall United States-Japanese relationship as one of give-and-take across the board. The United States still maintains armed forces in Japan and that relationship has been excellent, with Japan providing needed host-nation financial support. It is an excellent burden-sharing arrangement. While our security relationship has been in balance, and a close relationship remains intact, the trading situation has generated unneeded frictions.

Today, American national security and economic security go together, hand-in-hand. Japan has a deep-vested interest in the health of the American economy, and economy increasingly dependent on trade. Eleven million Americans are now employed in export-industry jobs, a doubling of the number from just 10 years ago. It will be more and more difficult to maintain robust deployed forces in the Pacific, as we should, without a strong American economy.

Persistent massive trade deficits with Japan and other Asian nations runs counter to this, and they erode our ability to sustain the kind of a Pacific rim presence that both we and our allies in the Pacific, particularly Japan, believe is in our overall interest of stability and peace. And so it is important for the Japanese Government to make every effort to ensure that our trade relationship enjoys the same healthy substance of a two-way street.

The deficit in the United States-Japanese automotive parts trade reached a record $12.8 billion in 1994, deteriorating 15 percent from 1993, at the very time that negotiations were ongoing on this matter. The Japanese sold a record $14.3 billion in auto parts in the United States, compared to a meager $1.5 billion in United States auto parts which managed to squeeze into the Japanese market. It is a major element in our deficit picture, and something has to give.

It is precisely in this situation that the 301 law is available to the Trade Representative, and I certainly expect that he will probably have to use it and he should have no compunction against using it. This means that when the section 301 investigation of unfair practices in the auto parts market is concluded—at the latest by October 1, 1995—if the current stalemate continues, the United States should not hesitate to retaliate. According to a New York Times article of April 13, 1995, an administration "task force has already been established to draw up a list of Japanese products that would be subject to 100-percent tariffs unless Japan takes what one senior official today called 'enormous leaps' during meetings scheduled over the next several weeks." These officials indicated such a list would be announced this month. I note that the next round of negotiations with the Japanese is scheduled to take place this week, on tomorrow, Wednesday, May 3, 1995, and I hope that our negotiator there, Ambassador-designate Ira Shapiro, will tell the Japanese that stonewalling will result in retaliatory action, with strong Senate action, if needed, to follow up on the retaliatory measures that might be announced by the administration.

I point out, Madam President, that there is extensive support across the board in American industry for the strong action that might be required against Japanese products in the event that the results sought by the administration are not obtained. I include in the RECORD a list of 27 major United States companies and associations that deal with Japan which support our negotiations on this matter. It includes the Business Roundtable, the major auto companies, and associations representing those manufacturers who have a stake in the health of the auto and auto parts industries, such as glass, iron and steel, and electronics. It includes the major labor organizations, including the United Auto Workers and the AFL–CIO. There is obviously very broad consensus across American business and labor organizations that the time for action is past; so we have only now left to us.

It is clear that, while there may be every good intention on the part of Japanese policymakers and other sectors of Japanese society and business to open the Japanese market to American automobiles and products, what really counts in the long run are results, and actions to do so. Performance, not promises, is only what we are seeking, and one must be prepared to take strong action to encourage such performance.

Madam President, automobiles and parts have been the central problem in Japan's trading relations with the rest of the world for many years. If we can solve the problem, and break the "keiretsu" psychology and practices which close Japan's markets, a new era between our two nations will emerge. If we fail, our relationship will continue to deteriorate.

Mr. President, I ask unanimous consent that a group of supporting documents be printed in the RECORD.

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

ORGANIZATIONS SUPPORTING UNITED STATES-JAPAN AUTO AND AUTO PARTS TRADE NEGOTIATIONS

Aluminum Association.
American Automobile Manufacturers Association.
American Electronics Association.
American Federation of Labor Congress of Industrial Organizations.
American Forest and Paper Association.
American Iron and Steel Institute.
American Textile Manufacturers Association.
Association of Manufacturing Technology.
Automotive Parts and Accessories Association.
Business Roundtable.
Chrysler Corporation.
Copper and Brass Fabricators Association.
Ford Motor Company.
General Motors.
Guardian Industries.
International Insurance Council.
Joint Automotive Supplier Government Action Council.
Motion Picture Association.
Motor Equipment Manufacturers Association.
National Association of Manufacturers.
National Glass Association.
Pharmaceutical Research and Manufacturers Association.
Semiconductor Industry Association.
Specialty Equipment Market Association.
United Auto Workers.
United States Business and Industrial Council.
US-Japan Business Council.

NATIONAL CONSUMERS LEAGUE,
Washington, DC, April 25, 1995.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: On behalf of the National Consumers League, I want to express our support for the Administration's position in the Framework negotiations with Japan and our interest in opening the Japanese market to competitive American automotive products. The vehicles and parts made in this country meet a wide variety of safety and environmental standards. The production facilities in which they are made meet standards for their operation as well. The workers in these plants benefit from protective health and safety laws and many have won further protection through union representation. All of these conditions contribute to beneficial results for Americans who are consumers of the products made by the industry and consumers of its environmental impacts.

The companies that meet these conditions should be able to supply markets abroad on the same terms as foreign companies find in this market. All foreign producers of vehicles and auto parts have unrestricted access to the U.S. market. We understand that the Clinton Administration is seeking just such access to the Japanese market for U.S. automotive products and we fully support that objective.

American industries that contribute to the social and economic well-being of the nation, as does the automotive industry by meeting a variety of legal and regulatory standards and affording workers a voice in their work lives, deserve the support of the U.S. government in gaining the ability to sell their products internationally. American consumers and Japanese consumers would benefit from the elimination of Japanese barriers to access to that market for the quality products made by American workers.

Sincerely,

LINDA GOLODNER,
President.

CATERPILLAR, INC.,
April 7, 1995.

The PRESIDENT,
The White House, Washington, DC.

DEAR PRESIDENT CLINTON: I'm writing as Chairman of the U.S.-Japan Business Council

which represents the interests of leading U.S. manufacturing and service firms. The purpose of my letter is to commend your Administration for the aggressive leadership it's providing on behalf of U.S. automobile and auto parts producers as they attempt to compete in the Japanese marketplace.

As your trade negotiators have recognized, the fundamental problem in the U.S.-Japan economic relationship is that Japan's markets in a host of industrial and service sectors remain more restrictive than those in the United States and other major economies. It's equally clear that the U.S. trade deficit with Japan will persist—despite sharp appreciations of the yen and a sizable reduction in the U.S. budget deficit—until Japan reforms its regulatory and market entry practices.

Your Administration has managed to negotiate several results-oriented trade agreements with Japan in such areas as government procurement of medical and telecommunications equipment, insurance, flat glass, and financial services under the U.S.-Japan Framework Agreement. The members of the U.S.-Japan Business Council, many of whom will benefit once these agreements are implemented, commend your trade team for this achievement.

But the fact that no agreement has been reached in one of the most important sectors of our trading relationship with Japan—autos and auto parts—is troublesome . . . especially given the broad range of industries and jobs involved in the automotive sector . . . electronics, semiconductors, steel, chemicals, and machine tools.

Although U.S. auto and auto parts companies are now competitive and committed to the Japanese market, they and other foreign producers continue to be denied full and comparable access to the Japanese automobile distribution system, as well as markets for original equipment and replacement parts.

Meanwhile, the bilateral trade imbalance in motor vehicles and parts, which typically accounts for some 60 percent of the U.S. trade deficit with Japan, hit a record high of $36.7 billion in 1994. Forecasts suggest even greater deficits in this sector in 1995.

On behalf of the U.S.-Japan Business Council, I urge your Administration to continue working toward a comprehensive agreement that will result in increased access and sales opportunities for U.S. automobile manufacturers and parts producers in the original equipment and replacement parts markets in Japan and the United States.

Sincerely,

DONALD V. FITES.

STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS ON THE UNITED STATES-JAPAN AUTO NEGOTIATIONS

The NAM's membership has a clear and substantial interest in a U.S.-Japan relationship characterized by a two-way free flow of goods, services and investment. The NAM thus supports the "framework for a new economic partnership" between Japan and the United States. As part of this framework, it is appropriate that Japan has committed to implement policies "intended to achieve a highly significant reduction" in its persistent and large trade surplus with the United States. The framework addresses both structural imbalances between the U.S. and Japanese economies as well as those sectors of the Japanese economy where market forces have, in the past, clearly not been allowed to operate freely.

The NAM recognizes the importance of successfully resolving the current bilateral automotive negotiations by ensuring significant and sustained market access and sales opportunities for foreign vehicles and parts in the Japanese market. The NAM thus supports the efforts of the U.S. and the Japanese Governments to reach speedy agreement to achieve such access.

The NAM also urges the U.S. Government to reassert that the full implementation of all previously negotiated agreements with Japan in other sectors remains a priority objective.

THE BUSINESS ROUNDTABLE,
Washington, DC, April 13, 1995.

Hon. MICHAEL KANTOR,
Office of the U.S. Trade Representative, Washington, DC.

DEAR AMBASSADOR KANTOR. As you know, The Business Roundtable has long been a major supporter of the efforts of the U.S. government to open foreign markets to international trade and investment. In this connection, U.S./Japan trade policy developments have been of particular concern to us.

The difficulties that U.S. business has had in expanding its sales and investments in Japan have been a continuing frustration. While progress has been achieved in some sectors, such as semiconductors, other areas have seen insufficient improvements.

In particular, the automotive sector has experienced significant difficulty penetrating the Japan market, and the trade imbalance in this sector alone represents nearly 60% of the total trade deficit between the U.S. and Japan. The Roundtable believes that a successful auto negotiation with the Japanese will have ramifications beyond Japan and could help to facilitate further market opening initiatives in other Asian countries.

The purpose of this letter is not to provide you with the specifics of the auto sector trade problem faced by U.S. exporters; the U.S. auto and auto parts industries can do this far more effectively than we can. Rather, it is to underscore the importance of negotiations in this sector. We are also not the ones to advise you on the precise shape of a successful agreement on auto sector trade with Japan. That said, we believe that fundamental to any successful negotiation is the need for agreements to include a basis on which the results can be evaluated. Without an acceptable basis to gauge the impact of an auto sector trade agreement, there will be a significant risk that subsequent activities/discussions to any agreement will devolve into continuous argument regarding implementation process rather than achieving actual results.

We know that the auto sector negotiations with Japan have been, and will continue to be, difficult. For this reason, we think that it is important for you to know that The Business Roundtable fully supports the pursuit of U.S. rights under the rules of the World Trade Organization, aggressive use of U.S. trade laws and whatever other action may be necessary to achieve meaningful access to the Japanese market in this critical sector.

In closing, thank you for your tireless efforts to open foreign markets to U.S. exports, and we encourage your continued resolve in these negotiations.

Sincerely,

JERRY R. JUNKINS,
Chairman, President & CEO, Texas Instruments, Chairman, The Business Roundtable International Trade and Investment Task Force.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
Washington, DC, April 18, 1995.

Hon. MICKEY KANTOR,
U.S. Trade Representatives, Washington, DC.

DEAR AMBASSADOR KANTOR: I am writing to urge the Administration to continue its efforts to reach a results-oriented agreement with Japan on autos and auto parts. The discrimination and inequity present in the existing trading relationship can no longer be papered over.

American workers in a wide range of industries and occupations would benefit from the reduction of the U.S. deficit in automotive trade with Japan and the elimination of discriminatory practices by Japanese companies directed at U.S. firms. Union members in the rubber, glass, steel, aluminum, textile, machine tool, chemical, electrical, electronics and other industries would directly benefit from increased access to the Japanese auto market for competitive American products. Unionized workers in other industries, including entertainment, telecommunications, construction, aerospace, paper and even-more, would gain additional jobs if the Japanese market were truly open and discrimination against U.S. producers was ended.

The AFL–CIO believes that international trade can benefit American workers, but that trade must be fair and equitable. That is not the case with U.S. auto trade with Japan today. During the past nine years, the U.S. deficit in auto trades with Japan nearly hit $300 billion. If that deficit could be reduced substantially, the Clinton Administration's effort to establish equity in that trading relationship through the Framework negotiations could lead to the creation of many thousands of American jobs. We will judge the success of the Framework's auto talks by their impact on the jobs of American workers, not by the quantity of words in any agreement. Under a good agreement, we expect the U.S. automotive trade deficit with Japan to decline rapidly.

The commitment of the Clinton Administration to "result-oriented" negotiations must be fulfilled either through effective, verifiable agreements or reciprocal treatment of U.S. imports from Japan. If an acceptable agreement cannot be reached in the next few months, the U.S. must impose sanctions on imports from Japan that are commensurate with the damage to American workers caused by Japan's barriers to U.S. products. It is time to demonstrate the Administration's commitment to settling this long-running trade disaster.

Sincerely,

LANE KIRKLAND,
President.

ALUMINUM INDUSTRY SUPPORTS U.S.-JAPAN NEGOTIATIONS

THE ALUMINUM ASSOCIATION STRONGLY SUPPORTS MARKET ACCESS WITH JAPAN

WASHINGTON, D.C., April 13, 1995.—The Aluminum Association announced today its strong support for a swift and positive conclusion to the U.S.-Japan automotive trade negotiations. The aluminum industry, longtime advocates of free trade, urged the removal of barriers and the opening of Japan's parts and vehicle market to foreign cars and parts.

U.S. aluminum companies are historic free-traders. They produce 19 billion pounds of metal each year, making them the world's largest aluminum industry. The U.S. aluminum market is the world's largest, most

sophisticated and most open, yet major barriers to market access in Japan remain. The aluminum industry strongly supports the U.S. Government's efforts to remedy this persistent problem.

The auto and auto parts industry and its unhindered access to Japanese markets and manufacturers is extremely important to our industry. In 1993, the aluminum industry shipped about 4.2 billion pounds of aluminum to the transportation market. This makes it the industry's second largest market.

Aluminum Association President David N. Parker, called for an effective, results-oriented agreement on the negotiations and remarked that the "talks mirror our industry's long time efforts to achieve open markets for aluminum."

Aluminum represents over 200 pounds of an average vehicle, a growth of over 55 percent in the last decade. Aluminum plays a significant role in lightweighting both domestic and foreign vehicles. Industry experts expect its percentage of the average car to increase rapidly as demand for fuel efficient vehicles which retain size, safety, and environmental friendliness grows. Select cars have already shown that as much as 500–1,000 pounds of aluminum can be used successfully to achieve high performance or fuel efficiency.

The Aluminum Association represents primary and secondary producers of aluminum, as well as semi-fabricated products. Member companies operate approximately 300 plants in 40 states.

AISI ISSUES POLICY STATEMENT ON UNITED STATES-JAPAN AUTO TALKS: STEEL GIVES STRONG SUPPORT TO GOAL OF TIMELY AND MEANINGFUL MARKET ACCESS IN JAPAN

WASHINGTON, D.C.—The American Iron and Steel Institute (AISI) today issued the following policy statement in strong support of U.S. government efforts to achieve a prompt, "results-oriented" resolution of the U.S.-Japan bilateral automotive negotiations.

"Steel producers in North America have an important, direct stake in—and indeed, have contributed substantially to—the renewed competitiveness of North America's auto industry in recent years. That was a main reason steel producers throughout North America strongly supported NAFTA—because we saw it benefiting our major customers in the North American auto industry.

Given the auto industry's continued importance to the North American economy (4.6 percent of total U.S. GDP). AISI's U.S., Canadian and Mexican member companies remain deeply concerned by North America's large and persistent trade deficit with Japan in the automotive sector.

The fact is, as competitive as the North American auto industry has become, it still requires free and open markets and fair and reciprocal market access worldwide to reap the full benefits of its restored status as a world class industry. Unfortunately, North America's producers of motor vehicles and auto parts do not have such equality of market access currently with respect to Japan.

It is therefore essential that the ongoing U.S.-Japan bilateral automotive negotiations produce a successful and timely resolution of this critical problem by achieving significant and sustained market access and sales opportunities in Japan for North American and other non-Japanese producers of vehicles and parts. Thus, AISI strongly supports the U.S. government's "results-oriented" efforts to reach agreement as quickly as possible on meaningful market access in Japan for this vital North American industry.

As part of the U.S.-Japan "framework agreement"—under which the automotive talks are occurring—Japan has committed to implement policies "intended to achieve a highly significant reduction" in its trade surplus with the United States, which exceeded $65 billion last year.

This enormous and unsustainable trade imbalance, two-thirds of which is in the automotive sector, requires prompt corrective action—by achieving measurable results in the auto sector as soon as possible, and ensuring full implementation of all previously negotiated agreements with Japan in other sectors."

STATEMENT OF THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE ON UNITED STATES-JAPAN AUTOMOBILE TRADE

The American Textile Manufacturers Institute (ATMI) strongly supports the Clinton administration's efforts to open the Japanese market to U.S. automobile and automobile parts. ATMI is the national trade association for the domestic textile industry. ATMI member companies operate in more than 30 states and account for over 80 percent of all textile fibers consumed by U.S. mills.

The American textile industry is a major supplier to the U.S. automobile industry. Textile goods produced for use in automobiles include not only upholstery and floor coverings, but sidewalls (the interior sides of cars), head linings (the interior roof material), hood linings (material on the underside of the hood), trunk linings, convertible tops and vinyl hardtops, tire reinforcement, hose fabric and transmission belts. In fact, the average truck contains 18 square yards of textile fabric, while the average car contains 29 square yards.

In 1993, automobiles and trucks accounted for more than 1.2 billion square yards of fabric consumption in the United States, or 1.2 billion pounds of fiber. By weight, this represents nearly 10 percent of the total fiber consumption in the U.S. Clearly, the auto industry is an important customer of the American textile industry.

The opening of foreign markets to U.S. textile products and to items containing U.S. textile products is a vital part of our industry's global competitiveness strategy. In this light, ATMI endorses the efforts of Ambassador Kantor to open Japan's market to U.S. autos and auto parts and urges the administration to continue to seek adequate market access in the current negotiations with the government of Japan.

NEARLY TWENTY INDUSTRIES JOIN IN CALL FOR JAPAN GOVERNMENT TO OPEN CLOSED MARKETS TO U.S. PRODUCTS

WASHINGTON, D.C.—A diverse group of the nation's largest industries joined together today to call on the Japanese government to open its market to reduce its record $66 billion merchandise trade surplus with the U.S.

"Japan's chronic trade surplus is choking its economy and playing havoc with the world's currency markets," said Andrew H. Card, Jr., President and CEO of the American Automobile Manufacturers Association (AAMA). "After more than 25 years of foot-dragging, it's time for the Japanese government to join with other industrialized nations to practice free trade in its own market."

Autos and auto parts accounted for $36.8 billion of the U.S. trade deficit with Japan last year and is predicted to reach $39 billion in 1995.

The latest round of U.S.-Japan trade negotiations is scheduled to conclude in Washington on Tuesday.

Nearly twenty industry representatives—from aluminum and steel producers to pharmaceutical manufacturers—joined Card in calling for greater access to Japan's "sanctuary" markets.

"The whole world is watching the outcome of these negotiations. If Japan fails to undertake decisive reform to open its automotive sector, there are numerous developing economies waiting in the wings—China, Korea, Indonesia, Vietnam—which will be tempted to follow Japan's sanctuary market as a model, rather than to adopt a free and open model which provides benefits to all participants in the world open-trading system," Card said.

Other groups joining AAMA at the press conference include the: Aluminum Association, American Electronics Association, American Forest and Paper Association, American Iron and Steel Institute, Automobile Parts and Accessories Association, Copper and Brass Fabricators Association, Pharmaceutical Research and Manufacturers of America, Association of Manufacturing Technology, International Insurance Council, Motor and Equipment Manufacturers Association, Specialty Equipment Manufacturers Association and the United Auto Workers Union.

Other groups calling on Japan to open its markets include the: American Textile Manufacturers Institute, Joint automotive Supplier Government Action council, Motion Picture Association of America, National Association of Manufacturers, National Glass Association and U.S.-Japan Business Council.

During the press conference, Card pointed to a new report by the American Chamber of Commerce in Japan which outlines trade barriers across 35 industrial sectors.

With regard to autos, the ACCJ report concluded that the Japanese manufacturers intend to continue discouraging dealers from franchise agreements with U.S. automakers.

The ACCJ report recommends that the Japanese Government: Open Japan's auto market; provide free access to Japanese dealers; simplify regulations and procedures; and open Japan's parts market to foreign suppliers.

AAMA is the trade association headquartered in Washington, D.C. whose members are Chrysler, Ford and General Motors.

SEMICONDUCTOR INDUSTRY ASSOCIATION,
San Jose, CA, April 19, 1995.

Hon. MICHAEL KANTOR,
U.S. Trade Representative,
Washington, DC.
Hon. RONALD H. BROWN,
Secretary of Commerce, Department of Commerce, Washington, DC.

DEAR AMBASSADOR KANTOR AND SECRETARY BROWN: The Semiconductor Industry Association strongly supports your efforts to achieve a substantial measurable increase in imports into Japan's automotive and automotive parts markets. These efforts are both necessary and appropriate. There can be no acceptable alternative to having outcomes in the Japanese market reflect the competitiveness of American auto and auto parts producers. This has not yet been allowed to occur.

Your efforts serve not only the broad national interest but are of real economic interest to our industry as well. Semiconductors are a key component in modern automobiles, with applications including engine controllers, air bags, and antilock brakes. There is a direct impact on U.S. chip companies from both the very low levels of U.S.

automobile exports to Japan and the reluctance of Japan automobile companies to use American components.

In 1994 over $1.7 billion of semiconductors were used in American automobiles. This figure could have been substantially higher if it were not for the fact that of the 10 million vehicles produced by the three American firms in the U.S., only 33,000 were exported to Japan.

U.S. firms have been working for years to increase their share of the $1.3 billion Japanese automotive chip market through the U.S.-Japan Semiconductor Agreement. The foreign automotive semiconductor share in Japan of about 10 percent, while much higher than five years ago, remains well below the dominant shares that U.S. firms have achieved in other world markets. The limited foreign penetration to Japan's auto semiconductor market is also in contrast to the significant progress which is being made in a number of other electronics sectors in Japan.

The implementation of market access agreements with Japan requires extraordinary efforts on the part of both American suppliers and Japanese purchasers, and by both governments, but the benefits can also be extraordinary. The U.S.-Japan Semiconductor Agreement has led to an additional $2.5 billion in annual U.S. sales in Japan and to unprecedented cooperation between American and Japanese companies and industries.

While SIA intends to continue to work through the U.S.-Japan Semiconductor Agreement to further programs in semiconductor market access, an agreement on auto parts is fully complementary and very much in the interest of not only the U.S. economy, but of harmonious relations between the United States and Japan.

We wish you well in this vital endeavor. A successful autos and auto parts agreements would promote the change in attitudes towards imported components that is required for success in increasing access to the Japanese market. SIA fully supports your efforts to quickly achieve an effective results-oriented agreement with the Government of Japan on auto and auto parts.

Sincerely,

A. A. PROCENSINI,
President.

AMERICAN FOREST & PAPER ASSOCIATION,
Washington, DC, April 11, 1995.

Hon. IRA SHAPIRO,
General Counsel, Office of the U.S. Trade Representative, Washington, DC.

DEAR IRA: The American Forest & Paper Association, on behalf of the U.S. forest products industry, is highly supportive of your efforts to open the Japanese market to U.S. suppliers of autos and auto parts.

The long-standing problems of market access in this sector—including kieretsu relationships between auto producers and suppliers, denial of access to the producer-owner distribution network, and the use of government standards to exclude imports—are all-too-familiar features of our own problems in penetrating the Japanese market. We believe that a comprehensive, negotiated solution to the auto/auto parts problems will have important implications for the resolution of similar problems in other sectors, such as ours, where the same pattern of exclusion is evident.

At the same time, we believe that the firm stand which USTR has taken in these negotiations sends a very clear signal to the Government of Japan that the Administration will take the steps necessary to ensure compliance with existing agreements. With both the wood and paper agreements designated to a Super 301 watchlist, we anticipate that the result of your efforts in the auto sector will be to heighten Japanese awareness of the need to refocus its "encouragement" of imports in a direction which leads to concrete results.

Sincerely,

MAUREEN R. SMITH,
Vice President, International.

Mr. HOLLINGS. Madam President, let me commend our distinguished senior Senator, former leader and President pro tempore of the body. Senator BYRD's words are music to this Senator's ears, because in all of the almost 5 months now of the so-called "contract," not one word has been stated until Senator BYRD has spoken about competitive trade policy.

That is exactly what we need. Right to the point, as the distinguished Senator has pointed out, the Japanese are subsidizing their sales—what we call "loss leaders," in the retail business. They subsidize and sell automobiles there for less than it costs them back in Japan.

I could not get the updated figures right now to be accurate, but I remember over a year ago a Toyota Cressida that sells for $21,800 in Washington, DC, sells for $31,800 back in Tokyo.

We had other comparable prices, and I would be glad to bring us up to date. The point is, in the year 1994 just passed, Business Week reported that, once again, Japan had taken over a larger share of the American domestic automobile market. Specifically, they had inched up another 1.2 percent in spite of the competitiveness and quality production of the American automobile industry. We have all been bragging. Detroit is finally putting out real cars, quality production, and we are now demanding, instead of foreign cars, American cars for a change. But with it all, Japan has still taken over more of the market.

Five years ago, I had the vice presidents of Chrysler, Ford, and General Motors orchestrated almost to bring an antidumping case against Japan. While I had the agreement of Chrysler tentatively and Ford tentatively, General Motors bugged out. They said it was not good for business. They better wake up and understand what is good for business.

Yes, our leader here is making a very cogent observation, but we will have to go back to another colleague of ours who adopted the expression, "Where's the beef?" Our Vice President.

We have been talking for years—years on end. I testified 35 years ago with similar language about the textile industry. In 1980, 15 years ago, the deficit in the balance of textile trade of the entire European market with Japan was some $4 billion—not with just Japan but with the Pacific rim. We had a deficit, also, in the balance of textile trade of $4 billion.

In the ensuing 15 years now the Europeans have shown they know how to deal with Japan. They do not have this weeping and wailing about fair trade and level the playing field and whining and crying and moaning and groaning—business is business. Through the enforcement of their antidumping laws, they have reduced it to less than $1 billion. And our deficit in the balance of textile trade has gone from $4 billion to $32 billion. Add in that $28 billion in textile manufacture, and we have millions of jobs.

Politicians are running all over the Hill talking about jobs, jobs, create jobs, jobs, jobs. We are exporting them as fast as we possibly can.

A fundamental is involved, Madam President. They use the Friedrich List or German model, which Alexander Hamilton initiated in the founding days of this Republic whereby the wealth of a nation is measured not by what it can buy but by what it can produce. The decisions are made on the basis of whether or not it strengthens the Japanese economy or weakens the Japanese economy. The Japanese use government, along with trade policies and private sector to take over—in this instance, market share. That is why year upon year, end upon end, we send over our trade representatives. They moan, they groan, they whine, they cry. We continue to keep our markets open.

The only time anybody made any progress at all was under the voluntary restraints agreement, and we slowed it down somewhat. However, we still have not really denied them access to our market.

Adam Smith, free trade is strictly passe in the global competition. Forget it. Forget it. We have little Boy Scouts, and the Golden Rule, do unto others as they do unto you. That does not apply in global competition.

I can say here and now we have to protect the economic backbone, the manufacturing capacity and capability of our Nation or, as Akio Morita said years ago, that power that loses its manufacturing power ceases to be a world power.

That is the road that we are on in this country of ours. I am glad the distinguished Senator from West Virginia is emphasizing this. It is well stated, and I hope we can get an administration that will answer the question of our former Vice President Mondale, "Where's the beef?"

If they begin to put in some beef like they did with China, then we can get an agreement like we did with China. If we put some beef behind the words of the distinguished leader from West Virginia, we will get a result. Business is business and it is not politics, and we have got to begin to understand that.

One other item, and then I will yield, Madam President. It is a very, some

might say, splendored thing, but the question of telecommunications, the information superhighway, is one of the most complex subjects or issues that we can possibly deal with.

The problem is that everyone wants to deregulate and let market forces control. Certainly this Senator does, and all the Senators that I know of with respect to our Commerce Committee holding the particular hearings.

The problem is we have a monopoly on the one hand and a responsibility for universal service on the other hand. With respect to universal service, Madam President, we do not want to make the same mistake we did with airlines whereas today, now, 85 percent of the medium- and small-sized towns and communities of America are subsidizing the 50 percent long hauls, and all the airlines have gone broke.

Universal service is splendid, outstanding, wonderful communications from our seven Bell companies. The local service operators, we want to continue that universal service and require, thereby, on the one hand, everybody coming in to contribute to a universal service fund, and on the other, not allow our Bell companies to be cherrypicked and take off the good business, high-concentrated service, so to speak, and leave the rural and less populated areas for others to serve.

That is one of the tasks in regulating service. Otherwise, we have to regulate the unbundling of the monopoly. The monopoly is there, and we know twofold: No. 1, that monopoly gets a 46 percent return on their guaranteed cash flow. Now, man, oh man, oh man. It did not come to my attention until just now. Later in the RECORD I will insert whereby the return of all investment to the leading industrial sectors of the United States of America—and now we will take long distance—the return they receive is 19 percent. The average is less than the 19 percent return on their investment. The highest of any in the United States of America are seven Southern Bell. They get a 46 percent return.

Now, if I am president of a Bell company, why should I be pursuing the Congress to get over the business where I am getting a 46-percent return into a business that gets, say, 19 percent or lesser return? Business is business.

I do not want my stockholders to lynch me and throw me out. So necessarily, I am not, although I talk pretty-like on the one hand about the superhighway and everything else like that, let the competition begin, I really do not care if we never pass a bill because I have a guaranteed cash flow of 5.6 billion bucks. I keep Wall Street happy with that. I spend about $2.7 billion in upgrading the system. And I have $1.7 billion in my back pocket here—cash. I can go to any bank, not only in the United States, but into Tokyo or wherever, and with $1.7 billion cash in my back pocket, I can finance anything.

So what I am saying in essence is that what we have to do is break up that monopoly. These monopolistic Bell companies, we intended for them to be monopolies. The law required it. But having given it to them, we know now, under the modified final judgment, they know how to get past every rule and every regulation. I found it out all during the 1960's and 1970's when, on the Communications Subcommittee, I worked with them. We tried our dead-level best to, by gosh, deregulate and open up AT&T and the Bell companies, and we could not do it.

We had to finally do it with the Department of Justice, the Antitrust Division, and a consent decree. That modified final judgment is what finally did the trick, because we had 12 rulings and findings by the Federal Communications Commission and they kept appealing them. And even though we would find against them, nothing was enforced. This crowd knows how to use every word we write in the law and how to get around it and how to appeal it. And therein is another complexity.

Now we have an astounding development. The astounding development is that with all the hearings and everything we have had, and how they have stonewalled us, we finally had, just about 3 weeks ago, Ameritech, a Bell company, along with the Justice Department, along with AT&T, the long distance carrier, along with the Consumer Federation of America, agreed to a consent order to open up competition up in the mid-Northern section of the United States of America.

I could hardly believe my ears, but they agreed to it. In fact, the Bell companies have jumped all over their friend, Ameritech, and said, "Oh, no, no; this is not a precedent. This cannot be done. It is terrible. What did you do? You are a traitor," and everything else. They have really been giving poor Ameritech a fit.

Be that as it may, I have in my hand a memorandum of the U.S. Department of Justice "In Support of its Motion for a Modification of the Decree to Permit a Limited Trial of Interexchange Service by Ameritech." This explains the complexities of all the requirements necessary in doing those two things, bringing about competition in the main; but the two things: Maintaining the universal service on the one hand, and unbundling a monopoly on the other.

That is why some of these Senators can run around and say I want to build more deregulatory policy. That is political cover for saying I want you to give me a day certain. If they get a day certain and the monopoly is not broken up, then no one will enter the particular local exchange. The local exchange monopoly will be used to take over all the other competitive services and satellites, long distance, PCS, and all the rest of the communications, and you are going to end up with monopolistic conduct and not open competition. It is very, very complex. The best document I could possibly find is the one by our Assistant Attorney General, the Honorable Anne Bingaman, and her colleagues here, on behalf of the United States of America.

I ask unanimous consent that this explanation of these complexities of this issue of deregulating communications and bringing about competition be printed in the RECORD at this particular point.

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

[In the United States District Court for the District of Columbia, Civil Action No. 82-0192 (HHG)]

UNITED STATES OF AMERICA, PLAINTIFF, *v.* WESTERN ELECTRIC COMPANY, INC., ET AL., AND AMERICAN TELEPHONE & TELEGRAPH COMPANY, DEFENDANTS

MEMORANDUM OF THE UNITED STATES IN SUPPORT OF ITS MOTION FOR A MODIFICATION OF THE DECREE TO PERMIT A LIMITED TRIAL OF INTEREXCHANGE SERVICE BY AMERITECH

Anne K. Bingaman, Assistant Attorney General.

Willard K. Tom, Counselor to the Assistant Attorney General.

David S. Turetsky, Senior Counsel to the Assistant Attorney General.

Jerry S. Fowler, Jr., Special Counsel to the Assistant Attorney General.

Donald J. Russell, Chief, Telecommunications Task Force.

The United States has moved for a modification of the Decree in this case to permit a limited trial of interexchange service by Ameritech. As explained in the Preliminary Memorandum filed with that motion, the trial would begin only when Ameritech faces actual local exchange competition and there are substantial opportunities for more such competition; would be limited to certain geographic areas within the states of Illinois and Michigan; and could be terminated if Ameritech violates the order governing the trial or if it can no longer establish the absence of any substantial possibility that continuation of the trial would impede competition. The United States, Ameritech, and AT&T have stipulated that the proposed order filed with the motion is in the public interest and have consented to its entry under Section VII of the Decree.

The Preliminary Memorandum outlined briefly the terms and conditions of the proposal. This Memorandum provides a more detailed explanation of the purpose, history, and structure of the proposed modification and the reasons why it should be approved.

I. PURPOSE AND GENERAL STRUCTURE OF THE PROPOSED MODIFICATION

The proposed modification is both more limited and more profound than most requests for removal or modification of the Decree's line of business restrictions that have previously come before the Department of Justice and the Court: more limited because it proposes only a circumscribed trial of an otherwise prohibited service, not a permanent lifting of the restriction for some category of service; more profound because it

would take *affirmative* steps toward understanding and achieving the conditions that might render unnecessary one of the most fundamental and important restrictions of the Decree.

The proposal contemplates a three-stage process. First, the motion and proposed order present to the Court the rules under which the proposed trial would be conducted, and seek a determination that they are in the public interest. Second, before any interexchange service could actually begin, Ameritech would have to take certain steps to open local exchange service to competition, and the Department of Justice would have to determine that competitive conditions in the marketplace, in conjunction with the other safeguards in the order, ensure that there is no substantial possibility that commencement of the experiment could impede competition in interexchange service. (Proposed Order, ¶¶9–11.) Third, after interexchange service begins, Ameritech would be subject to certain post-entry safeguards, including all existing equal access requirements, and the Department would supervise the trial and could terminate it if conditions required. (Proposed Order, ¶¶15–17.) The Court would retain discretion to take any necessary actions at any point, including review of any determinations made by the Department. (Proposed Order, ¶51.)

This three-stage process recognizes that the transition to competition in local exchange services will be complex. No set of conditions for promoting such competition could hope to address in advance the dozens of complicated implementation issues that will have to be resolved before meaningful competition is a practical reality, rather than merely a theoretical possibility. As local competition develops, and as industry and regulators gain experience with ensuring the competitiveness of markets that depend on access to local exchange services when the principal local exchange carrier is a participant in those markets, it may be possible to relax some of the post-entry restrictions, and the proposed order makes provision for such modification. (Proposed Order, ¶17.)

The process that the proposed modification would establish will help the Department, the Court, the telecommunications industry, and the public to gain practical experience and develop real marketplace facts about (1) the extent to which telecommunications markets can become fully competitive so that Decree restrictions might become unnecessary and (2) short of such fully competitive conditions, what combination of competition and safeguards might be sufficient to enable the Regional Bell Operating Companies ("RBOCs") to enter the market for interexchange services without harming competition in that market—all in a setting that does not threaten substantial harm to competition in the interexchange market. Equally important, the Department believes that the same process will itself hasten the development of competition for local exchange services. It will encourage the states that are working to open up local exchange services to competition. And it will establish a mechanism to identify, understand, and address the many implementation issues that will arise in the transition to competition in local exchange markets.

II. DEVELOPMENT OF THE PROPOSAL

A. Technological and competitive developments

Technological changes in recent years have raised the possibility that the scope of the natural monopoly in local telephone service may be subject to erosion.[1] For example, in many densely populated urban areas, Competitive Access Providers ("CAPs") have laid their own fiber optic networks to serve large business customers. At present, those fiber networks are principally used to provide exchange access, either by supplying a direct link from the customer's premises to the point of presence ("POP") of the interexchange carrier ("IXC"), or by supplying only the transport from the central office or tandem switch of the local exchange carrier ("LEC") to the IXC's POP. Those same fiber networks, under the right circumstances, might be able to be used to provide "dialtone"—i.e., local exchange service. Indeed, two CAPs—MFS and Teleport—have already obtained certificates from the Illinois Commerce Commission to operate as local exchange carriers in Chicago, and another CAP, U.S. Signal (formerly known as City Signal), has obtained such authority to serve Grand Rapids.[2] Similarly, as cable television systems make greater use of fiber optics, those systems may also be able to provide both dialtone and access.[3] Although competition from CAPs has just begun to develop (and competition from cable companies remains largely a theoretical possibility), these technological developments raise important questions about the possible future extent of such competition.

B. Ameritech's original proposal

Based in part on these technological changes, Ameritech filed with the Department and circulated for public comment a waiver request under Section VIII(C) of the Decree, seeking complete removal of the interexchange prohibition, or in the alternative, a waiver of the prohibition to conduct statewide trials of interexchange service in one or more states. It premised that request partly on the notion that the technological changes described above, plus developments in Federal Communications Commission ("FCC") regulatory tools and policies, were enough to constrain any possible anticompetitive conduct.[4] At the heart of its request, however, was what it called its "Customers First Plan"—its proposal that it would take certain steps and seek certain state regulatory changes that would open up the local exchange to competition.

To understand the significance of the steps outlined in the Customers First Plan, it helps to consider some of the principal barriers facing potential entrants into local exchange service. First, there are substantial legal barriers to entry in most markets. Until quite recently, the underlying assumption of telecommunications regulation was that local exchange service is a "natural monopoly" that should be provided by one entity, subject to government regulation. Thus, states strictly prohibited entry into local telephone service by competitors, often granting monopoly franchises to a single company in each market.[5] Even where states have taken steps to end prohibitions on entry by competitors, potential entrants have sometimes had difficulty obtaining required certification from state regulators.

Second, even as legal and regulatory barriers come down, a substantial barrier remains if entrants must replicate the entire network of the LEC in order to provide local exchange service. *See United States v. Western Elec. Co.*, 673 F. Supp. 525, 544–45 (D.D.C. 1987) ("The conditions that caused these monopolies to emerge in the first place . . . preclude any thought of a duplication of the local networks."), *aff'd in relevant part*, F.2d 283 (D.C. Cir.), *cert. denied*, 498 U.S. 911 (1990).

Third, a fundamental characteristic of telephone markets—the existence of network externalities[6]—requires that any entrant be able to offer its customers the ability to make calls to and receive calls from the incumbent's customers. Because a large portion of the value of telephone service for a particular user depends on that user's ability to contact other users, the incumbent's ubiquity is an insurmountable barrier to competition, absent mechanisms for effective interconnection of networks.

Ameritech's original Customers First Plan had three basic components. First, Ameritech promised not to oppose certification of local exchange competitors and to waive any exclusive franchise rights it had "if the interexchange restriction is removed, and if state and federal regulators adopt the other reforms proposed [by Ameritech]." *Ameritech Memorandum in Support of Motions to Remove the Decree's Interexchange Restriction* ("*Ameritech's Customers First Memo*") at 36 (filed with the Justice Department on Dec. 7, 1993) [Appendix, Tab 6]. Second, Ameritech offered what it characterized as "unprecedented interconnection at the local level," *id.* at 4, which would "enabl[e] [competitors] customers to originate and terminate calls on the same basis as Ameritech customers, without dialing access codes or waiting for a second dial tone," *id.* at 37. Third, the Plan, Ameritech claimed, "thoroughly unbundle[d] Ameritech's network for resale." *Id.* at 38. This unbundling was designed to "enable competitors either to provide for themselves, or to procure from Ameritech, any facilities or functions they require, either one at a time or in any combination," thus obviating the need for competitors to replicate Ameritech's entire network. *Id.*

In sum, Ameritech argued, the Customers First Plan "does away with legal barriers to entry by rejecting 'first in the field' regulation, and . . . tears down economic barriers to competition by allowing full interconnection and resale." *Id.* at 40.

C. Inadequacies of Ameritech's original proposal

The Customers First Plan as originally proposed represented an innovative and significant step in the right direction, because it acknowledged and sought to remove many of the barriers to local competition. But the Department recognized, and stressed in subsequent negotiations with Ameritech, that the plan neither resolved all the issues involved in breaking down those barriers, nor contained adequate safeguards against Ameritech's impeding competition in the interexchange market before those barriers were fully identified and eliminated. It thus fell short of Ameritech's claims in numerous respects, of which the following are illustrative.

To begin with, the original proposal assumed that local competition would automatically flow from eliminating the legal bar to such competition and from the theoretical availability of interconnection and unbundling. "No more needs to be done to enable and encourage competition for local exchange service." *Ameritech's Customers First Memo* at 40 [Appendix, Tab 6]. The Department concluded otherwise, however. The terms and conditions of interconnection and unbundling are critical. For example, Ameritech argued that its unbundling proposal obviated the need for competitors to replicate the "loop" that connects the subscriber's premises to Ameritech's central offices. With unbundling, such competitors could connect Ameritech loops to their own "ports" (i.e., switches and other non-loop elements of local exchange service) by running trunks from their central offices to Ameritech's central offices. But if loops are

Footnotes at end of article.

priced too high in relation to the retail price of the bundled local exchange service, it will be uneconomic for even the most efficient competitor to connect Ameritech loops to the competitor's ports in order to offer service in competition with Ameritech. One therefore cannot simply *assume* that competition will occur; the Department must instead apply its traditional expertise, evaluating the competitive state of markets in light of actual market conditions and experience.

Similarly, Ameritech argued that the network externality problem would be solved if Ameritech agreed to interconnect with other carriers, to terminate traffic originating from a competing carrier and destined for a customer on Ameritech's network, and to send traffic to other carriers when Ameritech subscribers wished to call competitors' subscribers. But the Department recognized that if Ameritech's prices to terminate calls from subscribers of competing recognized that if Ameritech's prices to terminate calls from subscribers of competing networks to called parties on Ameritech's network are unreasonably high, competition could be seriously hindered. Indeed, in a decision rendered just last month, the Illinois Commerce Commission found that:

". . . Illinois Bell's proposal to charge new LECs tariffed switched access rates to complete local traffic on its network would result in a situation in which wholesale compensation rates would be above retail market rates for a wide variety of calls. In other words, carriers would pay more in terminating compensation to Illinois Bell than it currently receives in revenues from its local usage customers. . . . [S]everal witnessed independently demonstrated that in most cases Illinois Bell would charge a new LEC more in access charges than it would charge its own local residential or business customer for the entire usage service, making it impossible for a new LEC to establish a competitive price. . . ."[7]

Implementation issues of this kind are inevitable, and no one knows for certain whether, or how soon, entry into the local market will occur on a significant scale. Every scenario for the emergency of competition assumes continuing dependence upon Ameritech, at least for interconnection and in many cases for loops and perhaps other network elements as well. This continuing dependence means that competition will involve complex business relationships and numerous pricing and technical issues, any one of which can make competition infeasible. The Department therefore concluded that Ameritech's original proposal that it be granted interexchange authority simultaneous with the formal lifting of legal entry barriers and adoption of regulatory reforms permitting unbundling and interconnection was unrealistic. That proposal offered no assurance that consumers would actually have alternatives available to them upon the adoption of such reforms, or that competitors would be able to enter sufficiently quickly or pervasively to prevent anticompetitive conduct by Ameritech. The potential harm to competition was particularly great in light of Ameritech's own argument that the ability to offer a full range of "one-stop shopping" services confers a great competitive advantage. If true, giving Ameritech such ability at a time when competitors cannot realistically offer local exchange services would tend to extend Ameritech's monopoly from local exchange services to the interexchange market. It is thus critical that actual marketplace conditions be examined to test the true economic feasibility of local competition before Ameritech is allowed to offer interexchange services.

A second major flaw of the original proposal was its failure to address the issue of number portability. Customers are reluctant to switch to competing providers if it entails the inconvenience of losing their existing telephone numbers. For example, a Gallup poll of residential and business customers in 1994 found that 40–50% of residential customers and 70–80% of business customers who otherwise would consider switching local telephone service providers if alternatives existed were unlikely to consider such a switch if they had to change telephone numbers in order to do so.[8] The Department therefore concluded that number portability was an important issue that needed to be addressed if local competition were to play the role envisioned by Ameritech's plan.

Third, the original Customers First Plan did not address competitors' access to poles, conduits, and rights of way. Entrants who wish to lay wire networks face formidable obstacles in obtaining rights of way, problems that the incumbents historically have avoided through use of public condemnation powers and that new entrants might be able to avoid by obtaining access to existing poles and conduits. Discussions between the Department and Ameritech led Ameritech to agree to make access available to the extent such access was in Ameritech's control, so as to provide the best possible opportunity for the Ameritech trial to succeed.

Fourth, the original Customers First Plan gave Ameritech excessive latitude to market its interexchange service through its local exchange operations—through which the overwhelming majority of existing customers get their local phone service and which is usually the first place that new customers call when they need to get phone service. The Department concluded that this latitude would have provided Ameritech's interexchange business a tremendous advantage over other interexchange carriers, attributable only to its position as the monopoly provider of local exchange service.

Fifth, although the original proposal would have prohibited Ameritech from using the Customer Proprietary Network Information ("CPNT") gained in the course of providing access to competing interexchange carriers, it would have allowed Ameritech to use CPNI gained in providing local exchange and intraLATA toll service in marketing its own interexchange service. The Department concluded that this would give Ameritech a significant advantage based on its current position as the monopoly provider of local exchange service.

Sixth, the original proposal did not require that Ameritech provide interexchange services through a subsidiary separate from its local operations. Although separate subsidiary requirements are imperfect instruments, the Department believes they will nonetheless be useful, both to regulators trying to ensure that Ameritech does not cross-subsidize or discriminate, and to the Department in supervising the trial and evaluating its results.

Seventh, Ameritech's original plan included departures from equal access. For example, it would have allowed Ameritech to put interexchange routing functions in its local switch for its own interexchange traffic but not for that of competing IXCs. The Department concluded that, in the absence of a truly competitive marketplace, this would make it virtually impossible to prevent cross-subsidization and discrimination.

D. Revision of Ameritech's proposal

The proposed modification presented to this Court differs substantially from Ameritech's original proposal, suffers from none of the deficiencies identified in that proposal, and offers far more procompetitive potential and far fewer anticompetitive risks than that proposal. It is the product of thousands of hours of work over the past year by the Department as well as by Ameritech, state regulators, potential competitive local exchange carriers, long distance carriers, consumer groups, and others who filed several rounds of public comment on several versions of the proposal and engaged in intensive discussions with the Department. The Assistant Attorney General for Antitrust participated directly in many of these discussions and in the crafting of language for the proposed order, reflecting her strong personal commitment to the purpose of the 1982 Decree and to competition in telecommunications markets. Thus, although Ameritech's original proposal shares with the current proposal the important concept of taking steps to open the local exchange to competition as a predicate for removing the interexchange line of business restriction, the two proposals are otherwise far different. The current proposal is in every sense a joint product of the Department of Justice, Ameritech, and all of the parties that filed comments or participated in these discussions. The principles embodied in the current proposal have the support of AT&T, a decree party and major competitor in the interexchange market; Sprint, also a major interexchange competitor; CompTel, a trade association representing more than 150 competitive interexchange carriers and their suppliers; America's Carriers Telecommunication Association ("ACTA"), a trade association of smaller interexchange carriers; MFS Communications, Time-Warner Communications, and Electric Lighwave, Inc., three providers of competing local exchange service in various parts of the country; the Association for Local Telecommunications Services, a trade association of competing providers of local exchange services; and the Consumer Federation of America and Consumers Union, two major consumer groups.

III. DETAILED EXPLANATION OF THE COMPETITION-BASED CRITERIA AND SAFEGUARDS IN THE PROPOSED MODIFICATION

At the heart of the proposed order is the premise that various steps are being taken by Ameritech and the state regulatory commissions in Illinois and Michigan, and that these steps will likely lead to competitive conditions that make it both safe and desirable to allow Ameritech, on a trial basis, to offer interexchange services in certain portions of those states (the "Trial Territory").[9] Because those competitive conditions have not yet been achieved, the proposed order contemplates a multi-stage procedure, under which the actual trial of such services will not begin until Ameritech presents facts from which the Department can determine that such competitive conditions do, in fact, exist. The process by which that determination is to be made is set forth in paragraphs 9–11 of the proposed order. That process has two parts. First, Ameritech begins the process by certifying that certain required steps have, in fact, been taken to open local exchange service to competition, and by filing a compliance plan dealing with equal access, separate subsidiary provisions, and other post-entry safeguards. The Department will then investigate, take any necessary discovery, and make a determination, reviewable

by the Court, as to whether there is sufficient competition and other sufficient assurances against harm to the interexchange market that the trial may safely begin.

The proposed order also contains a number of post-entry safeguards and gives the Department the responsibility of supervising the course of the trial. If Ameritech violates the order or otherwise engages in anticompetitive conduct, the Department can require it to cease such conduct, ask the Court to impose civil fines, or terminate the trial.

The required steps to foster local competition, the standard for the Department to determine that the interexchange trial should begin, the post-entry safeguards, and the Department's supervisory responsibilities are described below.

A. Steps to foster the emergence of local competition

Paragraph 9 of the proposed order lists a number of developments with respect to local exchange competition that must occur before Ameritech can apply for authority to begin interexchange services. By design, the order does not specify in every detail the precise terms and conditions on which these developments must take place—matters that are in the purview of the state regulators, and with which the regulators in the two trial states are already grappling in their efforts to foster competition. There are many issues that remain to be resolved, and it is for the states and the market participants, not the Department, to resolve them. On the other hand, the way in which those issues are resolved may have an extremely significant effect on competitive conditions, as may a variety of other technical and economic factors, some of which may be beyond the control of the regulators. The Department's traditional area of expertise, of course, is in evaluating the competitive structure and behavior of markets. Under the proposed order, therefore, the state regulators and the Department each discharge their traditional types of responsibilities: the states are already in the process of determining the terms and conditions under which the steps set forth in paragraph 9 will take place, and the Department, under paragraph 11 of the proposed order, will concern itself with the resulting competitive circumstances, and with whether those circumstances and other safeguards are sufficient to ensure that a trial of Ameritech interchange entry will not harm interexchange competition.

The specific steps required by paragraph 9 of the proposed order are as follows.

1. Unbundling of loops and ports

As discussed in Section II.B, unbundling of loops and ports is important to local competition because it obviates the need to replicate the LEC's entire network of distribution facilities. Outside of dense downtown areas, a portion of that network—the loop connecting the customer premises to the main distribution frame in the central office—may well exhibit natural monopoly (or at best, duopoly) characteristics for some time to come. Unbundling is intended to address the natural monopoly problem, but whether it does so successfully or not depends heavily on the pricing of the unbundled loops and on other terms and conditions such as the speed and reliability of provisioning and repair. (See Section II.C.) The proposed order recognizes this dependence and deals with it through a collaboration between the Department and the appropriate state regulatory authorities, whereby each entity acts within its sphere of expertise. Thus, the state regulatory authorities will regulate the pricing of loops and ports.[10] For Ameritech to be authorized to begin interexchange service, however, the Department will have to investigate and determine, among other things, that

"regulatory developments (including * * * the terms and conditions thereof) and market conditions offer substantial opportunities for additional local exchange competition. * * *"

(Proposed Order, ¶ 11(b)(ii).) Because the proposed order bases entry into interexchange service on an assessment of marketplace facts about competitive conditions at the time of decision, it is unnecessary to resolve the pricing issue—or most of the other myriad and perhaps unforeseeable implementation issues—in advance.[11]

2. IntraLATA toll dialing parity

The Court recognized, at the time of the Decree, the importance of dialing parity to a competitive telecommunications marketplace. *See United States v. Western Electric Co.*, 552 F. Supp. 131, 197 (D.D.C. 1982), *aff'd sub nom, Maryland v. United States*, 460 U.S. 1001 (1983). The proposed order requires that, before it applies to begin the interexchange trial, Ameritech must

"I have made the necessary technical, operational, administrative and other changes to implement dialing parity for intraLATA toll telecommunications no later than 21 days prior to the effective date of Ameritech's authority . . . on terms approved by the appropriate state regulatory authority."

(Proposed Order, ¶9(b).) Thus, to begin the application process, Ameritech must make the necessary changes to ensure that dialing parity can be implemented prior to Ameritech's interexchange authority. Before the Department can approve commencement on the trial, it must ensure that Ameritech has taken the further step of having installed and tested the capability for providing such parity. (Proposed Order, ¶11(d).) The Department can thus ensure that Ameritech annually implements dialing parity no later than the time it begins interexchange service.[12]

3. Resale of local exchange service

Another prerequisite before Ameritech can file its application with the Department is that steps have been taken to allow non-facilities-based (i.e., resale) competition for all classes of service, including residential service. (Proposed Order, ¶9(c).)

Resale competition is not a replacement for facilities-based competition. Competition from exchange carriers that supply their own loops (e.g., cable systems) can help thwart discrimination in the pricing, provisioning, and maintenance of loop facilities, so long as adequate provisions are made to deal with the advantages that flow to the dominant carrier because of network externalities (i.e., the need to terminate calls on the dominant carrier's system, number portability, access to signalling resources and database information, etc.). Competition from exchange carriers that supply their own switching facilities but use Ameritech loops (e.g., CAPs connecting their switches to Ameritech loops to extend the geographic area they can serve) are dependent upon the appropriate pricing, provisioning, and maintenance of loop facilities. If those conditions are right, however, they can prevent discrimination in the provision of network features and functionality, excessive charges for exchange access, and so on. Pure resale competition, by itself, does none of these things. It brings competition only to the *marketing* of local exchange services, and it requires extensive regulations to ensure that the prices, terms, and conditions under which Ameritech offers the underlying service make resale meaningful available.

Nonetheless, resale competition is important for two reasons. First Ameritech will be able to offer interexchange services very quickly and easily once it has the authority to do so, by reselling such services just as hundreds of other companies resell interexchange services. The availability of commercially feasible resale opportunities is one way to ensure that interexchange carriers that are not in a position to enter local exchange service quickly and easily on a facilities basis will have opportunities similar to Ameritech's to offer a full range of services.

Second, the availability of resale will tend to reduce the barriers to facilities-based entry, because a company that already has a subscriber base as a reseller will be able to make investments in switches and other facilities with less risk. Just as unbundling of loops and ports makes it possible for competing exchange carriers to offer services outside the dense downtown areas where they can justify installing their own loops, so full resale of the entire local service (loops *and* ports) makes it possible to offer services before there is enough traffic to justify investment in a switch (or in trunks to connect more distant Ameritech central offices to an existing switch). Once a subscriber base is built, more investment may be justified. Such reductions in barriers to entry will enhance the prospects of the ultimate success of the trial.

The requirement that there be adequate resale opportunities is thus directly tied to the requirement of paragraph 11 that competitive circumstances and the safeguards and supervisory provisions of the order ensure the absence of any substantial possibility that Ameritech could use its position in the local exchange market to harm competition in the interexchange market. The important point is that the ability of the interexchange market to function competitively not be harmed.

As with the other provisions already discussed, it is left to the states whether non-facilities-based competition should be achieved by directly reselling Ameritech bundled services, or by renting Ameritech loops and Ameritech ports on their separate pricing schedules and selling the combined package as a service, or both.

4. Pole attachments and conduit space

A fourth prerequisite is that Ameritech have implemented reasonable and nondiscriminatory arrangements for sharing of pole attachments and conduit space, and for competitors to secure access to entrance facilities, risers, and telephone closets, to the extent such arrangements are under the control of Ameritech. Inability to secure access to poles, conduits, entrance facilities, and so forth could be a significant barrier to a facilities-based competitor seeking to install its own loops. To the extent that this potential barrier is under Ameritech's control, Ameritech promises, by its consent to the proposed order, to eliminate it, thereby encouraging the competition that could serve as a predicate for Ameritech's entry into interexchange service. In many cases, of course, such barriers may not be in Ameritech's control. But whether they are or not, the ultimate question remains that set forth in paragraph 11: to what extent do competition, the potential for more competition, and the other provisions of the order

constrain Ameritech's exercise of market power to harm competition in the interexchange market? (*See* Section III.B.)

5. Interconnection

Effective interconnection arrangements are among the most critical issues for facilities-based competitors. As explained above (Section II.B), competitors must be able to offer their customers the ability to make calls to and receive calls from anybody else who owns a phone—most notably Ameritech's customers. Without such interconnection, the competitor's service essentially would be worthless. This basic need for interconnection gives rise to a host of complex issues, the resolution of which has important ramifications for competition. For example, arrangements must be made for networks to compensate each other for terminating calls that originate in another network. Unless properly structured, the reciprocal compensation arrangements can raise significant barriers to entry by potential local competitors.

Likeswise, the interconnection arrangements must be on terms that permit local dialing parity, so that customers of Ameritech's competitors can place local calls without suffering any inconvenience—such as dialing extra digits—that is not imposed on Ameritech customers. Local competitors must also have adequate access to various services necessary to the provision of local exchange service, such as unbundled signalling and 611, 911, E911, call completion, and TRS relay services, as well as data necessary to provide 411 (directory assistance) service.

The proposed order does not attempt to dictate the precise resolution of each of these issues. Some of these issues might be resolved among the carriers without intervention by state regulators. If the terms are acceptable to the competitive exchange carriers, the arrangements will satisfy paragraph 9(e).[13] If the carriers cannot agree, regulatory approval will satisfy paragraph 9(e), because it would not further the public interest in competition to give each competitor a veto power over Ameritech's ability to move forward with a trial.[14] In either case, the ultimate question will be the competitive effects of the arrangements, which will necessarily be considered in connection with the assessment of competitive conditions required by paragraph 11 of the proposed order.

6. Number portability

As discussed above in Section II.C, an important element in local exchange competition is service provider number portability—the ability of a subscriber to retain his telephone number when changing carriers. The proposed order distinguishes between two ways of achieving service provider number portability: true number portability and interim number portability. True number portability allows calls to be delivered directly to the subscriber's new exchange carrier without having to route traffic through the old exchange carrier and retains the full range of functionality (e.g., delivery of information necessary to provide caller ID functions) that would have been available to the subscriber in the absence of a change in service provider. Such true number portability is likely to involve some form of database look-up: for example, an IXC delivering a call into the Chicago area would use the signalling network to consult a database, which would supply to the service provider the information necessary to deliver the call to the correct exchange carrier.

In the absence of true number portability, a variety of means exist to provide number portability on an interim basis. An example is remote call-forwarding. A subscriber changing from Ameritech to a new exchange carrier would receive a new telephone number, the first three digits ("NXX code") of which would be an NXX code assigned to the subscriber's new carrier. If a caller dialed the subscriber's old telephone number, the call would be routed to Ameritech's switch, since the old number would contain an NXX code assigned to Ameritech. Ameritech's switch would be programmed to complete the call by use of an additional circuit from its switch to the next exchange carrier's switch. Such interim forms of number portability may suffer certain drawbacks, e.g., the loss of data necessary to provide certain functions, such as caller ID; transmission delays as a result of the additional switching that may impair suitability for data transmission; and inability of the new exchange carrier to collect the access charge for terminating an interexchange or intraLATA toll call.[15]

The proposed order requires Ameritech to implement true number portability in the Trial Territory, except that if it is unable to do so as of the date 120 days before the anticipated implementation of intraLATA dialing parity, it may rely on interim number portability if it explains satisfactorily why it cannot implement true number portability as of that date and sets forth a plan acceptable to the Department for achieving true number portability.

Achievement of true number potability is not totally in the control of Ameritech. It will require cooperation from vendors of hardware and software, such as AT&T, as well as from other industry participants, such as IXCs, who will be delivering traffic destined for ported numbers. Ameritech has already issued a Request for Proposal for the technology and administrative services necessary to implement true number portability. The Illinois Commerce Commission has ordered an industry task force to be created, under the supervision of the Commission staff, to deal with the issue of number portability. *ICC Order, supra* note 7, at 110 [Appendix, Tab 7]. This task force will hold workshops, at which industry participants can react to that RFP, propose alternative specifications, and attempt to arrive at a workable solution. The first of those workshops was held on April 21, 1995.

As with many of the other steps in paragraph 9, the actual terms and conditions under which either true or interim number portability is offered are likely to have a major impact on whether there are substantial opportunities for other exchange carriers to compete. The proposed order requires that arrangements be made for allocating the costs of number portability that do not place an unreasonable burden upon competing exchange carriers, leaving to Ameritech, industry participants, and state regulators the task of working out the precise terms of such arrangements in the first instance.

Separate from service provider number portability is the issue of location portability—the ability to retain the same telephone number at a different location within a geographic area. It is not particularly significant for competition that location portability be available. If it *is* available, however, competition could be adversely affected if Ameritech's control over monopoly facilities allows it to offer such a feature while preventing its competitors from doing the same. The proposed order thus requires that, to the extent Ameritech is offering location portability to its own customers, and to the extent it is technically and practicably feasible, Ameritech make available to other exchange carriers, on nondiscriminatory terms and conditions, the capability to offer such portability.

Nondiscrimination in this context would not mean that exchange carriers offering switching services in competition with Ameritech would necessarily be afforded access to features in Ameritech's switch. To the extent that switching facilities are competitive, and location portability is a service offered through such facilities, competition should encourage all competitors to differentiate their services by offering new and better features. Nondiscrimination *would* mean, however, that Ameritech could not hinder competitors offering such services through discrimination in the terms in which they connected to Ameritech's network or through other means. For example, if location portability is achieved through wiring changes at the central office rather than through software features in the switch, an exchange carrier competing with Ameritech by connecting its own switches to Ameritech loops would be placed at a significant disadvantage if Ameritech denied equal access to such wiring changes. Similarly, it would likely be discriminatory for Ameritech to refuse to offer to switchless resellers, (i.e., those using both Ameritech loops and Ameritech ports, including switching services) the same location portability features it offers to its own subscribers; since Ameritech facilities are handling the entire call, there is no apparent reason why the same features could not be made available.

7. Number assignment

Telephone numbers are the most fundamental means of interface between end users and the telephone network, as well as between one network and another. A competitive local telephone network must have fair and equal access to number resources as an essential element of developing telecommunications services and competing for customers. To ensure the competitively neutral administration of number resources, the proposed order requires Ameritech to have made reasonable efforts to transfer any duties it has in administering those resources to a neutral third party. (Proposed Order, ¶9(h).) If its efforts to transfer its duties are not successful by the time Ameritech applies for authorization to provide interexchange service, it must explain in writing why they have not been successful and what further steps it plans to take, and must implement a nondiscriminatory procedure for assigning numbers. The efficacy of such arrangements will be considered by the Department in making its determination under paragraph 11.

B. Actual marketplace facts concerning the emergence of local competition

1. Procedures for department approval

Completion of the above steps would not result in immediate commencement of the trial of interexchange service. Instead, at that point Ameritech will apply to begin the trial if it believes competitive circumstances in the local market warrant. Ameritech will report to the Department that it has taken the required steps with respect to unbundling, intraLATA toll dialing parity, resale of local services, pole attachments and conduit space, interconnection, number portability, and nondiscriminatory number assignment. In addition, Ameritech must file a compliance plan.[16] After Ameritech has filed both the report and compliance plan,

the Department will have thirty days to determine whether it needs any additional information from Ameritech. Within sixty days after Ameritech has substantially complied with the Department's request for additional information or 120 days after the filing of both the report and the compliance plan, whichever is later, the Department will determine whether Ameritech may begin the trial. In making that decision, the Department will seek comments from the appropriate state regulatory authorities and interested persons. (Proposed Order, ¶11(a).) It may also take any other action reasonably necessary to make its decision, including conducting third-party discovery. (*Id.*, ¶¶11(a), 49.)

2. Procedures for court review

The Court may, in its discretion, review any decision of the Department, both with respect to commencement of the trial and otherwise. (*Id.*, ¶51.) If the Department approves commencement of the trial, such approval could not go into effect for at least 30 days (Proposed Order, ¶13), thus allowing a period of time during which interested persons could seek a temporary restraining order from the Court. The Court could then establish such schedule and procedures for such review as it deemed appropriate under the circumstances. If the Department does not approve commencement of the trial upon a particular application by Ameritech, Ameritech does not have a right of review within the structure of the proposed order. (Proposed Order, ¶51.) It does, however, retain the right to seek Court action independent of the proposed order, under sections VII or VIII(C) of the Decree. (*Id.*). Ameritech is thus no worse off under the unreviewability provision than it would be in the absence of the proposed order. to avail itself of the benefits of the proposed order, however, it would have to work further toward creating conditions that meet the standard of paragraph 11 rather than involve the Court in reviewing the Department's decision. This provision gives Ameritech a strong incentive to apply to begin the interexchange trial only when the test for doing so is actually met. The judicial system is thus spared the burden of premature applications that could otherwise lead to extensive judicial review, and Ameritech is given a reason to provide information to the Department as quickly as possible, even in advance of its application where appropriate.

3. Substantive standard for department approval

The substantive standard for commencing the trail of interexchange service is set out in paragraph 11(b) of the proposed order:

"To render an affirmative decision on Ameritech's application, the Department must find that

"(i) *actual competition* (including facilities-based competition) in local exchange telecommunications exists in the Trial Territory,

"(ii) the conditions specified in paragraph 9 have been substantially satisfied, and that regulatory developments (including but not limited to those developments set forth in Paragraph 9 and the terms and conditions thereof) and market conditions offer *substantial opportunities for additional local exchange competition*, as evidenced by, among other things, the increasing availability of local exchange telecommunications alternatives for such customers,

"(iii) the conditions described in (i) and (ii) above, together with regulatory protections, the Department's right to terminate Ameritech's interexchange telecommunications authority under Paragraph 16, the transport facilities restrictions of Paragraph 19, the compliance plan, the limited geographic scope described in Exhibit A, and the other provisions of this Order, are sufficient to ensure that there is *no substantial possibility that Ameritech could use its position in local exchange telecommunications to impede competition for the provision of interexchange telecommunications to business or residential customers in the Trial Territory.*"

(Proposed Order, ¶11(b) (emphasis added).)

Thus, the standard has three parts—actual competition, substantial opportunities for additional competition, and a determination that such competition and competitive opportunities, together with regulation, post-entry safeguards, and the fact that Ameritech's interexchange service would only be on a trial basis, make it safe and desirable to begin the trial. These three parts of the standard are related both to each other and to the ultimate objectives of the trial.

For the trial to be an ultimate success, it will have to help prove or disprove one or both of two propositions: (1) the competitive steps outlined above produce enough actual competition and opportunities for additional competition to ensure by themselves that there is no substantial possibility Ameritech could engage in anticompetitive conduct affecting the interexchange market, or (2) some combination of actual competition and opportunities for additional competition, together with regulation and post-entry safeguards, is sufficient to ensure the absence of such possibility.[17]

Paragraph 11 does not require that either of these propositions be proved before the trial begins; indeed, the purpose of the trial is to test these propositions. At the same time, it is important to ensure that the trial itself does not result in harm to competition in the interexchange market. Many of the same factors—actual competition, opportunities for additional competition, and post-entry safeguards—that would protect competition in the event permanent relief were appropriate will also serve to protect competition during the trial. Since the premise of the trial is that these factors will not be known to be sufficient at the beginning of the trial, however, the proposed order also provides for very close supervision by the Department, including a provision for the Department to terminate the trial if necessary. Before beginning the trial, the Department is to make a determination that all of these factors, including the provision for termination, together will be sufficient to negate any substantial possibility that Ameritech could use market power in the local market to harm competition in the interexchange market.

The three parts that make up that judgment are discussed in greater detail below. Because they are so closely related, actual competition and substantial opportunities for potential competition are discussed together.

a. Actual Competition and substantial opportunities for additional competition

Competitive outcomes can generally be assured if there is a sufficient level of actual competition—multiple competitors actually producing and selling the good or service. Theoretically, some markets can produce competitive outcomes even if they do not contain multiple competitors actually producing and selling the good or service. One situation in which such outcomes may occur is where firms not currently producing or selling the relevant product in the relevant area would start doing so quickly, and without the expenditure of significant sunk costs, in response to a small but significant price increase. If these firms are sufficiently numerous that the incumbent firm cannot maintain prices above the competitive level, then the market will behave competitively. *Cf. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines*, §1.32 (April 2, 1992) [hereinafter "*1992 Merger Guidelines*"]. Such a market is said to be "contestable."

It is hard to think of a market less likely to be "contestable" than local exchange service. Sunk costs in this industry are, in a word, gigantic. Perhaps recognizing this, Ameritech's original waiver request was supported by an affidavit and a reply affidavit that spoke not of "contestability" but of something Ameritech's expert called "effective" or "as-if" contestability. Affidavit of David J. Teece, ¶41 (Nov. 29, 1993) (filed with the Department of Justice in support of Ameritech's Original Proposal on Dec. 7, 1993) [Appendix, Tab. 13]; Reply Affidavit of David J. Teece at 3–8 (Apr. 6, 1994) (filed with the Department of Justice on Apr. 12, 1994) [Appendix, Tab. 14]. By this he meant that Ameritech's unbundling of loops and ports would allow competitors to treat those assets as if they were not sunk costs, freely entering and exiting the industry in response to competitive conditions by renting only what they needed at a given moment in time from Ameritech.

Such an argument, however, is highly speculative. It assumes that state regulators will get the prices of those loops and ports exactly right, precisely duplicating the prices that would obtain in a competitive market. (See Section II.C.) It further assumes that Ameritech could not discriminate in the provisioning or maintenance of loops or ports or in the terms and conditions of interconnection, and that competitors will not incur substantial sunk costs in other elements of their operation. In short, on the current state of the record, the Department regards the suggestion that unbundling would make local telephone markets behave "as-if" they were contestable as both unproven and implausible.

A market with only one firm could also behave competitively if longer-term entry (i.e., with sunk costs) into the market is so easy that the incumbent firm could not profitably behave anticompetitively (e.g., maintain a price above competitive levels or—more relevant here—use a monopoly position in that market to adversely affect competition in an adjacent market). For entry to be that easy, it would have to be "timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern." *1993 Merger Guidelines*, §3.0. Ameritech argues that unbundling, interconnection, and the other steps it is taking pursuant to state regulatory action and paragraph 9 of the proposed order will make entry that easy.

As a practical matter, however, it is impossible to evaluate that argument in the abstract, without the existence of some actual competition to guide the way. Once there are significant actual competitors, one can begin to ask questions such as:

How were those competitors able to enter? What certification and other regulatory requirements did they have to meet, and how long did it take? Is there any reason other competitors would not be able to do the same?

Is the availability of such competing service expanding? Are competitors encountering significant barriers to such expansion?

To what extent are competitors entering by renting loops from Ameritech as opposed to building their own loop plant, either for the whole of their local exchange business or as a way of extending the reach of their network? To the extent that competitors have to build some of their own facilities, how long does that take, and how many other competitors could do the same?

Are competitors able to serve a wide range of customers throughout the Trial Territory, or are they limited to niche markets?

To the extent that not all customers have competitive alternatives available to them, could Ameritech discriminate against just those customers that have no alternatives, or would anticompetitive behavior against those customers necessarily cause it to lose so many other customers that Ameritech could not profitably persist in the anticompetitive behavior?

The proposed order does not specifically state how much actual competition is necessary to satisfy paragraph 11(b). Nonetheless, the foregoing discussion suggests the implicit level: there must be enough actual competition to provide an empirical basis for answering these kinds of questions, and the answers must indicate that there are substantial additional opportunities for competition and that these opportunities will be sufficient, in combination with the safeguards and supervisory provisions of the order, to deter Ameritech from behaving anticompetitively. To provide such answers requires more than a single competitor serving niche markets but less than the level of actual competition that would suffice in and of itself to justify permanent removal of the interexchange restriction, without the safeguards and supervisory provisions that will accompany the trial (including the right of the Department to terminate the trial and the ability of the Court to review the Department's determinations).

The proposed order also emphasizes that there must be facilities-based competition in the Trial Territory. As discussed in Section III.A.3, resale competition is not a perfect substitute for facilities-based competition. Facilities-based competition can discipline a wide range of anticompetitive conduct that would be left untouched by resale. Thus, the Department will look closely at the extent of facilities-based competition in determining whether the standards of paragraph 11 are met.

b. Determination that the state of the market safeguards, and supervisory provisions make it safe to begin the trial

In addition to actual competition and ease of entry, the proposed order relies on supervisory provisions and post-entry safeguards, as more fully described in Section III.C. For example, the Department may terminate Ameritech's interexchange authority if it no longer believes that there is no substantial possibility that continuation of the trial would impede competition. (Proposed Order, ¶16.) To authorize commencement of the trial, then, the Department must determine that actual competition, substantial opportunities for additional competition, and these other supervisory provisions and safeguards are sufficient to ensure that going forward with the trial will not create any "substantial possibility that ameritech could use its position in local exchange telecommunications to impede competition for the provision of interexchange telecommunications." (Proposed order, ¶11(b)(iii).) The assurance against harm to competition must protect both business and residential customers in the Trial Territory. (*Id.*)

4. Other factors the department may consider

The proposed order specifically highlights a number of additional factors that the Department may consider in making the determination under paragraph 11 to proceed with the trial.

a. Certification, licensing, franchising, and similar requirements

Implicit in the concept that there are substantial opportunities for additional local exchange competition is the premise that certification, licensing, franchising, and similar regulatory and legal requirements are not significantly impeding the development of such competition. State and local regulation serves important public policy objectives, such as protecting consumers from deception and ensuring that carriers have adequate financial backing. In states such as Illinois and Michigan, which have state policies favoring competition and in which there is already a recent history of granting certificates to competitors, it is the Department's expectation that such requirements would be narrowly tailored to achieve such public policy objectives without impeding competition significantly. Nonetheless, this factor is specifically mentioned in the proposed order as an issue for the Department to consider, because state and local government policies can have a major and even decisive impact on whether and how fast competition will develop.

b. Ordering, provisioning, and repair systems

There are two different provisions in the proposed order dealing with electronic access to ordering, provisioning, and repair systems. First, if Ameritech wishes to make such systems available to the Ameritech interexchange subsidiary, it *must* offer such access, on nondiscriminatory terms and rates, to unaffiliated carriers. (Proposed Order, ¶ 26.) Second, in making its decision under paragraph 11, the Department may take into account the extent to which Ameritech offers unaffiliated carriers access equivalent to that used in Ameritech's *local exchange operations* (whether or not Ameritech's interexchange subsidiary is given access). (Proposed Order, ¶ 11(c)(ii).)

The requirement in paragraph 26 is a matter of equal access—putting other carriers in a position equal to Ameritech's interexchange subsidiary—and is absolute. The requirement in paragraph 11 is more judgmental. It recognizes that there could be technical reasons why it would not be practicable for Ameritech to provide access to certain systems to anyone outside Ameritech's local exchange operations, including Ameritech's interexchange subsidiary. At the same time, it recognizes that lack of such access could have a considerable impact on the prospects for local competition, and thus specifically provides for the Department to consider the issue and take it into account.

C. Supervision and safeguards

When the interexchange trial begins, there will be actual local exchange competition and substantial opportunities for additional such competition, but no firm assurance that the competitive state of the market will suffice by itself to thwart any anticompetitive conduct that Ameritech might attempt in the interexchange market. Therefore, the proposed order contains supervisory provisions and post-entry safeguards, designed for use during the trial, to supplement such competition and ensure that there is no substantial possibility that Ameritech could use market power in the local market to harm competition in the interexchange market during the trial.

As competition develops, many of the post-entry safeguards may become unnecessary to ensure the absence of any such substantial possibility, and the proposed order provides for their removal as appropriate. (Proposed Order, ¶17.) The proposed order does not specifically provide for Ameritech's interexchange authority to be made permanent and the Department's supervisory role to be terminated, because Sections VII and VIII(C) of the Decree already establish the appropriate mechanism and standard for permanent relief.

The Department is required to conduct a comprehensive review of all aspects of the trial within three years of Ameritech's interexchange authority under the proposed order. (Proposed Order, ¶18.)

The specific supervisory provisions and safeguards are as follows:

1. Terminability of the trial

If Ameritech violates the order, or if the Department no longer believes that there is no substantial possibility that continuation of the trial would impede competition, Ameritech's interexchange authority can be terminated (Proposed Order, ¶16.), subject to review by the Court (Proposed Order, ¶51.). This termination provision ensures that, even if the opportunities for local exchange competition at the start of the trial and other safeguards turn out not to be sufficient to prevent Ameritech from taking actions that harm competition in the interexchange market, any such harm will be short-lived and insubstantial.

During the comment process, a number of commenters suggested that it would be difficult for the Department to exercise this authority. In response to these concerns, a provision was included in the proposed order to require Ameritech's compliance plan to supply, prior to approval of its interexchange service, a credible plan for orderly withdrawal from the provision of interexchange telecommunications in the event Ameritech's authority to offer interexchange telecommunications is discontinued. (Proposed Order, ¶10(j).) Such a plan might include, for example, a procedure for balloting customers or for reverting them to their previous interexchange carrier. Moreover, the proposed order makes clear that financial hardship to Ameritech resulting from such discontinuance shall not be a ground for opposing such discontinuance. (Proposed Order, ¶16.)

2. Self-reporting

The proposed order requires Ameritech to develop a plan for detecting and reporting violations of the order or of the compliance plan, and to report any such violations and any corrective action taken. (Proposed Order, ¶¶10)i), 15.)

3. Orders to discontinue conduct

If the Department determines (a) that Ameritech is violating any of the terms of the order, its compliance plan, or additional conditions imposed on Ameritech in connection with approval of its interexchange service, or (b) any other conduct by Ameritech may impede competition for interexchange telecommunications in the Trial Territory, the Department may require Ameritech to discontinue such violations or other conduct. Ameritech bears the burden of proof in resisting such a requirement. (Proposed Order, ¶15.)

4. Civil fines

In the event of a violation by Ameritech, the proposed order gives the Department the authority to ask the Court to impose civil fines. (*Id.*)

5. Limited geographic scope

The proposed trial is limited initially to the portion of the Chicago LATA that is in the state of Illinois and to the Grand Rapids, Michigan, LATA. Focusing on the state of competitive conditions on a LATA-by-LATA basis ensures that the competitive analysis takes into account differences not just in state regulatory schemes, but also in demographic and other conditions. Chicago was chosen because there is widespread agreement that, of all the areas in the Ameritech service territory, the potential for competition—though still embryonic—is most advanced there. Grand Rapids was chosen because the first competing exchange carrier in Michigan, U.S. Signal (formerly known as City Signal), has been certified to serve a portion of that territory and was the subject of a detailed interconnection order issued by the Michigan Public Service Commission. Thus, it seems appropriate for the Department to focus first on those two areas and to be prepared to act with respect to those areas within the period set forth in paragraph 11(a).

The inclusion of these two areas in the Trial Territory does not mean that the trials in those two areas necessarily must proceed simultaneously. Competitive conditions in one of the areas may justify proceeding with an interexchange trial before such conditions have evolved in the other area. Further, explicit provision is made for expansion of the Trial Territory in those two states, and each area in the two states will stand on its own merits, governed by the standard in paragraph 11(b).[18] (*See* Proposed Order, ¶17.) As with other determinations under the proposed order, the Court may, in its discretion, review any decision to expand the Trial Territory, (*Id.*, ¶51.) If the Department approves expansion, such expansion could not go into effect for at least 30 days (Proposed Order, ¶17), thus allowing a period of time during which interested persons could seek a temporary restraining order from the Court. A decision by the Department not to expand the Trial Territory would also be reviewable. (*See* Proposed Order, ¶51.)

Most important, the designation of those two areas as comprising the initial Trial Territory, and of those two states as being eligible for expansion of the Trial Territory within the framework of the order, is not meant in any way to discourage the ongoing efforts of the other Ameritech states (Indiana, Ohio, and Wisconsin)—or similar efforts underway or that may arise in the states in which other RBOCs operate—to bring the benefits of local competition to the consumers in their states, completely independent of any interexchange entry by Ameritech in those states. Local competition promises benefits to consumers separate from any benefits they may get as a result of interexchange competition from Ameritech. Moreover, the development of such competition can only hasten the day when interexchange entry by Ameritech—or other RBOCs—will be appropriately granted under Section VII or VIII(C), wholly apart from the proposed order now before the Court.

6. Types of services

Paragraph 7 of the proposed order limits Ameritech to providing certain enumerated types of interexchange services that have a clear nexus to the Trial Territory, i.e., services as to which the fact that competition exists in the Trial Territory is relevant even if competition does not exist elsewhere in the country. Thus, for most switched services, as to which the interexchange carrier is selected by the party placing the call, Ameritech could provide interexchange service originating from the Trial Territory. (Proposed Order, ¶7(a).) For services such as inbound 800 service, which is ordinarily carried by the interexchange carrier selected by the billed party at the terminating location, Ameritech could provide service terminating at subscribers' locations in the Trial Territory. (Proposed Order, ¶7(b).) Ameritech may also provide certain other types of services normally provided by interexchange carriers to their subscribers, such as calling card and private line services, with limitations to ensure an adequate nexus to the Trial Territory. (Proposed Order, ¶¶7(c)-(d).) There may also be other types of services that Ameritech may wish to offer in the future in order to stay competitive with the offerings of other IXCs. Because these services may not yet exist, it is difficult to enumerate them, much less to determine in advance whether any potential harm to competition is adequate addressed by the proposed order. Hence, a mechanism is provided to allow Ameritech to provide such services, subject to disapproval by the Department. (Proposed Order, ¶7(e).) Under the provision, Ameritech would have to give at least 30 days notice of such services, and the Department, after soliciting comments from interested persons, could disapprove the offering of such services. A relatively short notification and objection period is provided because it is anticipated that this provision will principally be used to respond to competitive offerings in the marketplace; however, a decision not to disapprove the services would be without prejudice to later withdrawal of authority under paragraphs 15 or 16 of the order if necessary.

7. Ownership of transport facilities

Paragraph 19 of the proposed order provides that Ameritech shall not own any of the transport facilities used to provide interexchange telecommunications. Instead it must contract for such facilities for a term not to exceed five years. This safeguard serves two purposes: to the extent Ameritech has not made substantial investments in facilities in the ground, it makes it easier to terminate the trial; and it reduces Ameritech's incentive to discriminate in favor of those facilities because it makes it harder for Ameritech to capture all of the benefits of such discrimination.

8. Separate subsidiary requirements

Paragraph 20 of the proposed order provides for the separation of the Ameritech subsidiary providing interexchange services from the Ameritech local exchange operations. The provisions generally track the more stringent approach taken by the Federal Communications Commission in its Computer Inquiry II proceedings and rules and in the requirement of separate subsidiaries for RBOC provision of commercial mobile radio services, rather than more lenient approaches relying on cost accounting instead of structural separation (such as the approach taken by the FCC in its Computer Inquiry III proceeding[19]). The more stringent structural separation approach is more appropriate for a trial of interexchange services, at least in the early stages before competition is fully developed and before additional information about the need for separate subsidiary requirements is gained from the trial itself.[20]

9. Equal access provisions

Under the proposed order, the equal access provisions of the Decree would remain in full force; the order would grant Ameritech only a temporary and limited modification of the line of business restriction of Section II(D)(1) of the Decree and would not relieve Ameritech of any other restrictions. (Proposed Order, ¶4.) In addition, a number of provisions are added to adapt the equal access concept to a situation in which an Ameritech subsidiary is one of the interexchange carriers interconnecting with the Ameritech local exchange operations. These provisions deal with equality in the type, quality, and pricing of interconnection, exchange access, and local exchange telecommunications (¶¶21, 25); technical information, standards, collocation, and other terms of interconnection (¶¶22-24); availability of service order, maintenance, and other telecommunications support systems (¶26);[21] billing services (¶27); location number portability (¶28); White Pages directory listings (¶29); and customer information (¶¶30-32).[22]

10. Marketing restrictions

The marketing provisions of the order (¶¶33-47) deal with two principal issues: (1) "equal access"-type obligations preventing Ameritech's local exchange operations from assisting the Ameritech interexchange subsidiary in its marketing efforts, and (2) the circumstances under which Ameritech can make one-stop shopping arrangements (i.e., the ability of customers to get their local and long distance calling from one, full-service carrier) available to business and residential customers, respectively. The "equal access" obligations (¶¶34, 36, 38-39, 44) embody the basic principles of existing obligations, with modifications to ensure that those principles will be effectuated when Ameritech competes in the provision of interexchange services. The provisions regarding one-stop shopping (¶¶35, 41-43, 45-47) are intended to avoid giving an inappropriate competitive advantage to, or imposing an unfair handicap on, any carrier. The order would allow Ameritech to offer one-stop shopping to business or residential customers only when at least one other carrier is marketing services on a comparable basis.[23]

The proposed order does not set out specific conditions under which Ameritech can engage in "bundle-pricing" of its interexchange services with local exchange or intraLATA toll services (i.e., pricing whose availability is contingent upon the subscriber's election of Ameritech for both such services). Whether such bundle-pricing is appropriate, and the types of conditions needed to prevent harm to competition in interexchange services, depends on the state of competition. The issue of "bundle-pricing" has therefore been made an element of Ameritech's compliance plan (Proposed Order, ¶¶10(e)-(f)). Ameritech will tailor its proposal to the competitive circumstances then existing, and the Department will review it in light of those circumstances.

11. Compliance plan

The proposed order requires Ameritech to file a compliance plan prior to obtaining approval to begin its trial of interexchange services. (Proposed Order, ¶10.) The compliance plan reinforces the separate subsidiary, equal access, and marketing provisions of the order by requiring Ameritech to spell out detailed plans for implementation of those requirements. (Proposed Order, ¶¶10(a)-(d), (g).) It also provides the mechanism for determining the appropriate market and other conditions for Ameritech's offering of bundled pricing (¶¶10(e)-(f)) and for the Ameritech interexchange subsidiary's ownership, leasing, or control of any of the facilities it uses to provide local exchange telecommunications and exchange access services (¶10(h)). The compliance plan also will

include procedures for Ameritech to detect and self-report violations of the order or the compliance plan (¶10(i)) and for Ameritech's withdrawal from interexchange service should it be required to do so (¶10(j)).

12. Other conditions

Ameritech's entry into interexchange services may also be conditioned on any other terms that may be appropriate to further the purposes of the order. (Proposed Order, ¶11(e).)

IV. THE PROPOSED MODIFICATION SHOULD BE APPROVED BECAUSE IT IS IN THE PUBLIC INTEREST.

A. The public interest standard applies to entry of the proposed modification

In reviewing the proposed modification, the Court should apply the "public interest" standard. The motion was filed by the United States under section VII of the decree, and Ameritech and AT&T have joined the United States in stipulating to the proposed order.

The Court of Appeals has held that a proposed modification satisfies the public interest test "so long as the resulting array of rights and obligations is within the *zone of settlements* consonant with the public interest *today*." *United States v. Western Electric Co.*, 993 F.2d 1572, 1576 (D.C. Cir.) (quoting *United States v. Western Electric Co.*, 900 F.2d 283, 307 (D.C. Cir.), *cert. denied*, 498 U.S. 911 (1990)) (emphasis in original), *cert. denied*, 114 S. Ct. 487 (1993). The public interest test is "flexible," allowing the government to choose among various decree provisions that could further the public interest in competition. When the government and the party whose decree obligations are at issue agree on a decree modification proposal, as is the case here,

"the court's function is not to determine whether the resulting array of rights and liabilities "is one that will *best* serve society," but only to confirm that the resulting "settlement is 'within the *reaches* of the public interest.'"

993 F.2d at 1576 (citing and quoting 900 F.2d at 309; *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); and *United States v. Gillette Co.*, 406 F.Supp. 713, 716 (D. Mass. 1975)) (emphasis in original). Therefore, a court is to approve a consensual decree modification under the public interest standard unless "it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency." 993 F.2d at 1577.

The Department welcomes this Court's careful review of the proposed modification under this standard. We are confident that the text of the proposed order, the explanation that we are providing in this Memorandum, and the comments of other interested persons will give the Court ample reason for entering the proposed order.

B. The proposed modification is in the public interest

The proposed modification both avoids harm to competition in the interexchange market and yields affirmative benefits to competition. Accordingly, it is in the public interest and should be approved and entered by this Court.

1. The proposed modification is structured to avoid harm to competition in the interexchange market

Far from giving the Court "exceptional confidence that adverse antitrust consequences will result," the proposed modification gives the Court ample assurance that no adverse consequences will occur. As this Memorandum has explained, the order we ask the Court to enter would permit only a limited trial of Ameritech provision of interexchange services, and even that trial could not begin until the Department (and the Court if it reviews the Department's determination) is satisfied that local competition exists and will continue to develop in the Trial Territory. In addition, the interexchange services that the modification permits would remain subject to a variety of safeguards, including the power of the Court or the Department to terminate the trial at any time.

The proposed order thus ensures that competition in the interexchange market will not be harmed by the modification—a fact underscored by AT&T's stipulation that the proposed modification is in the public interest and by the support of Sprint, CompTel, and ACTA.

2. The trial will provide affirmative benefits to competition

Not only is the proposed order structured to prevent any *harm* to competition, but it also presents a valuable opportunity affirmatively *to advance* the public interest in competition.

First, as a prerequisite to its offering of interexchange service pursuant to this modification, Ameritech must take specific actions to remove barriers to local competition, including those relating to terms of interconnection, unbundling of loops, dialing parity, and number portability. The proposed modification thus complements the efforts of the state regulatory commissions in the Ameritech region to lower such barriers, as reflected in the comments of the staff of the Michigan PSC on an earlier version of the proposal:

"[T]he Department of Justice (DOJ) and the court should move forward in a measured fashion to permit more competition in the telecommunications marketplace. That action, however[,] should be such that it recognizes the need to balance the interests of the Regional Bell Operating Companies (RBOC), their local and toll competitors, and residential and business customers in the telecommunications marketplace. That balance can be achieve through an approach which minimizes the potential for anticompetitive actions on the part of the RBOCs. This coupled with the coordination and recognition of appropriate State law and regulatory agency actions to remove barriers to entry to the State or local telecommunications markets should set the stage for a trial waiver of the interLATA restrictions currently in effect."—Michigan PSC Staff Comments on Draft Dated February 21, 1995 [Appendix, Tab 16].

Second, the trial will yield important information about RBOC provision of interexchange services. The Department, the Court, all segments of the telecommunications industry, and the public will be able to observe and analyze the effects of the stipulated conditions, and related regulatory and technological developments, on competition in local and interchange telecommunications markets. We will learn much about whether local competition will develop to such an extent that harm to interchange competition can be avoided, with or without other safeguards. We will also enhance our understanding of the importance of factors such as call set-up and transmission delays resulting from interim forms of number portability, consumer demand for one-stop shopping, the terms and conditions of interconnection, and the pricing of network elements in the development of such competition. If competition is not sufficient to be self-policing, we may learn how difficult and costly it is to monitor and prevent discrimination and cross-subsidization. We will also learn about what kinds of safeguards are effective and/or necessary.

No trial, or course, could provide all the answers. Nonetheless, this trial should substantially assist in determining whether and on what terms the Decree's interexchange restriction should be retained, modified or removed.

Third, the trial may yield important information about the possible benefits to interexchange competition from RBOC provision of interexchange services. The RBOCs have argued that the interexchange market, particularly for residential customers, is oligopolistic rather than competitive, and that RBOC entry will tend to disrupt that oligopolistic coordination, resulting in substantial benefits to consumers. While Ameritech has not yet presented sufficient evidence to substantiate this claim, actual experience may cast additional light on this argument.

CONCLUSION

The carefully crafted details of the proposed order grew out of intensive work by the Department and extensive consultation and negotiation with interested persons. We do not expect all commenters to be satisfied; in an arena filled with competing private interests, we can be assured that some will claim that the balance has not been struck precisely right. The issue, however, is whether the Department "reasonably regard[s]" the modification "as advancing the public interest," 993 F.2d at 1576. On that issue, the terms of the proposed order demonstrate, and we believe the comments of interested persons as a whole will confirm, that the proposed modification advances the public interest. The Court should therefore enter the proposed order and allow this important trial to proceed, subject to the preconditions, safeguards, and continuing review for which the order itself provides.

Respectfully submitted,

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FOOTNOTES

[1] *See, e.g.*, MCI Corp., *A Blueprint for Action: The Transition to Local Exchange Competition*, Tab 1 at 1 (March 1995) [Appendix, Tab 1]; William J. Baumol & J. Gregory Sidak, Toward Competition in Local Telephony 9 (1994); Affidavit of William J. Baumol at 5, submitted on behalf of AT&T as an attachment to AT&T's Opposition to Ameritech's Motions for "Permanent" and "Temporary" Waivers From the Interexchange Restrictions of the Decree (filed with the Department in opposition to Ameritech's original proposal on February 15, 1994) [that opposition cited hereinafter as "AT&T Opposition to Original Proposal"] [Appendix, Tab 2].

[2] *See* Order, Dkt. No. 93-0409 (Ill. Commerce Comm'n, July 20, 1994) (MFS) [Appendix, Tab 3]; Order, Dkt. No. 94-0162 (Ill. Commerce Comm'n Sept.

7, 1994) (Teleport) [Appendix, Tab 4]; *In re City Signal, Inc., Application for a License to Provide Basic Local Exchange Service in the Grand Rapids Exchange*, No. U-10555, 1994 Mich. PSC LEXIS 267 (Mich. Pub. Serv. Comm'n Oct. 12, 1994) [Appendix, Tab 5].

[3] Teleport is planning to test the use of cable facilities owned by Tele-Communications, Inc., ("TCI") to provide local exchange service to residential customers in the Chicago area. *See* Leslie Cauley, *Tele-Communications, Motorola to Join Teleport for Venture in Chicago Area*, Wall Street J., Oct. 12, 1994, at B5. Others are exploring similar possibilities.

[4] Specifically, Ameritech asserted that "industry-wide developments . . . are themselves more than sufficient to warrant removal of the interexchange restriction." *Ameritech Memorandum in Support of Motions to Remove the Decree's Interexchange Restriction* at 3 (filed with the Department of Justice on Dec. 7, 1993) [Appendix, Tab 6]. The Department does not believe that the record is sufficient at this time to support this contention (either as to technological or regulatory developments), and does not base the present motion on any such contention.

[5] These prohibitions were also justified as a way to promote universal service, by requiring high-margin services to subsidize below-cost services and prohibiting new entrants from "cream skimming" those services. In recent years, progressive states have begun to explore alternative ways of ensuring universal service that would permit competition and allow consumers the benefit of the efficiencies and lower prices that competition brings.

[6] Positive network externalities characterize those "products for which the utility that a user derives from consumption of the good increases with the number of our agents consuming the good. . . . [T]he utility that a given user derives from the good depends upon the number of other users who are in the same 'network' as he or she." Michael L. Katz & Carl Shapiro, *Network Externalities, Competition and Compatibility*, 75 AM. Econ. Rev. 424 (1985). "The utility that a consumer derives from purchasing a telephone . . . clearly depends on the number of other households or businesses that have joined the telephone Network." *Id.*

[7] *In re Illinois Bell Telephone Company Proposed Introduction of a Trial of Ameritech's Customers First Plan is Illinois*, Dkt. No. 94-0096, slip op. at 97 (Ill. Commerce Comm'n, Apr. 7, 1995) [hereinafter "*ICC order*"] [Appendix, Tab 7].

[8] *A Blueprint for Action, supra* note 1, Tab 3 at 2 [Appendix, Tab 1]. A similar telephone survey was conducted in January 1994, by First Market Research Corporation, for a study sponsored by AT&T, MCI, and CompTel. That survey found that in the absence of number portability, the number of respondents interested in changing to a cable TV company for local telephone service in response to a 20% discount fell from 32.8% to 22.6%. Corresponding figures for a 10% discount and for no discount were a drop from 18% to 12.6% and from 8.7% to zero, respectively. Economics & Technology, Inc, & Hatfield Associates, Inc., The Enduring Local Bottleneck 108-10 (February 1994) [Appendix, Tab 8].

[9] Initially, the Trial Territory would consists of the portion of the Chicago LATA that is located in the state of Illinois and the Grand Rapids LATA in the state of Michigan. The two LATAs could begin their interexchange trials at different times, and the Trial Territory could have eventually be expanded to include other portions of those two states (but only those two states) if those portions met the competitive standards set out in the proposed order.

[10] Regulatory consideration of such issues is already well underway in the trial states. In Michigan, the Michigan PSC adopted on an interim basis a pricing scheme for unbundled loops that was proposed by City Signal, a CAP which in 1994 was granted a license to provide local service in the Grand Rapids LATA. Under the interim scheme, Ameritech will charge City Signal $8 for a residential loop and $11 for a business loop. The Commission will further address these issues in an upcoming generic proceeding, to commence June 1, 1995, and to be completed no later than nine months thereafter. *In the matter of the Application of City Signal, Inc., for an Order Establishing and Approving Interconnection Arrangements with Ameritech Michigan*, Case No. U-10647, at 85-95 (Mich. Pub. Serv. Comm'n, Feb. 23, 1995) [hereinafter "*City Signal Order*"] [Appendix, Tab 9].

In Illinois, the Illinois Commerce Commission heard extensive testimony on Ameritech's proposed pricing of unbundled loops and ports, disapproved certain aspects of that pricing, and required that Ameritech file new tariffs to ensure that the sum of prices for unbundled network functions not exceed the price of bundled functions and to reduce and equalize the contribution that those prices would make to common costs. *ICC Order, supra* note 7, at 60-61 [Appendix, Tab 7].

[11] The issue of "sub-loop unbundling" is dealt with in similar fashion. AT&T and others have contended that merely unbundling loops from ports does not go far enough. Instead, AT&T contends that local service should be unbundled into at least twelve basic network elements: distribution, concentration, feeding, end office switching, dedicated line transport, common transport, tandem switching, databases used in signaling, packet switching of signaling from the originating central office, packet switching of signaling at the destination, links from the packet switches to data processors and storage points, and operator services. Affidavit of Lawrence A. Sullivan, submitted by AT&T in its Opposition to Original Proposal, at 29-30 (filed with the Department of Justice on Feb. 15, 1994) [Appendix, Tab 10]. Advocates for this position argue, for example, that a provider of personal communications services ("PCS") might be able to provide a witness connection from the home to a neighborhood node, and then use Ameritech facilities to get from the neighborhood node to the central office. Testimony of Dr. Mark T. Bryant on behalf of MCI before the Illinois Commerce Commission, at 10-11 (Dkt. No. 94-0048, Aug. 8, 1994) [Appendix, Tab 11]. Ameritech responds that such an approach could lead to the uneconomic stranding of significant amounts of its investment, to no real purpose since the facilities can be made available to competitors on a nondiscriminatory basis and since continued use of Ameritech facilities whose costs are already sunk would be in the interests of consumers. The proposed order does not require sub-loop unbundling, but makes clear that this resolution is without prejudice to the power of a state to require such further unbundling. (Proposed Order, ¶1(m).) Moreover, it makes clear that the Department may consider the competitive effects of such unbundling (or lack thereof). (*Id.*).

[12] State law or regulatory requirements intended to benefit competition in the intraLATA toll market may require Ameritech to implement intraLATA toll dialing parity before Ameritech has met the conditions in ¶11 of the proposed order. In that case, intraLATA toll dialing parity would come into effect before Ameritech commences interexchange service.

[13] The proposed order does not displace state regulation, however. (*See* Proposed Order, ¶ 3.) State regulators may choose to regulate arrangements even when consented to by the carriers involved.

In allowing paragraph 9(e) to be satisfied by consent of the other exchange carriers, we recognize that unequal bargaining power may lead a competitive exchange carrier to agree to unsatisfactory terms. That is precisely why the provisions of paragraph 9 are not a checklist that will lead automatically to Ameritech's entry into interexchange service. The ultimate issue will always be the competitive results of the negotiated arrangements, as tested against actual marketplace facts. (*See* Section III.B.) Thus, because the proposed order requires that the Department analyze market facts and assess competitive circumstances, the proposed order gives Ameritech the incentive to negotiate in good faith and arrive at a procompetitive agreement with competitive exchange carriers.

[14] Of course, the *reasons* advanced by a competing carrier as to why the proffered interconnection arrangements are inadequate may have a bearing on any assessment of competitive circumstances.

[15] *See, e.g., A Blueprint for Action, supra* note 1, Tab 3 at 5-19 (discussing shortcomings of interim number portability) [Appendix, Tab 1].

[16] The compliance plan, which deals principally with post-entry safeguards, is discussed in more detail in Section III.C, below.

[17] The Department is currently investigating claims that regulation and post-entry safeguards are sufficient to ensure that there is no substantial possibility that an RBOC could engage in anticompetitive conduct, without the market-opening measures contemplated in the proposed order, in connection with the Motion of Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, and Southwestern Bell Corporation to Vacate the Decree. (Bell Atlantic has since withdrawn from that motion.) Ameritech is not advancing that proposition at this time, however, and the proposed trial is not designed to test such claims.

[18] The staff of the Michigan PSC, in its comments on an earlier version of the proposal, urged the Department to include the Detroit and Lansing LATAs in the Trial Territory. Revised Comments of the Staff of the Michigan Public Service Commission (Mar. 22, 1995) [Appendix, Tab 15]. The Department does not believe this change to be appropriate, because it is too early to tell how widely different areas of the state will vary in the availability of competitive alternatives and the ability of such alternatives to guard against harm to competition in the interexchange market. We stress, however, that the modification provisions of the proposed order establish sufficient flexibility to deal appropriately with whatever competitive conditions should arise.

[19] The FCC's order removing structural separation requirements was vacated and remanded by the Ninth Circuit. *California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert. denied*, 63 U.S.L.W. 3721 (U.S. April 3, 1995). Further proceedings on remand are pending at the FCC.

[20] Even under the FCC's Computer Inquiry II approach, certain kinds of services can be shared between the interexchange subsidiary and other affiliates. These are enumerated in ¶ 20(g). To the extent that any such sharing is carried out in a way that harms competition, the Department and the Court retain the power to take corrective action under ¶¶ 15-16, as well as to take that fact into account in evaluating the progress of the trail under ¶ 18.

[21] The proposed order calls for "equivalent" rather than identical order, maintenance, and support systems, to account for the possibility that access to such systems may involve the use of different interfaces because of the different requirements of different carriers' computer systems and because of Ameritech's need to protect the security of its systems. The access must, however, be equivalently convenient; the provision would not be satisfied by providing electronic connections to Ameritech's interexchange subsidiary but only fax machines to its competitors.

[22] Among the restrictions on access to customer information is a provision that the Ameritech interexchange subsidiary may not have access to customer proprietary network information ("CPNI") as defined by the FCC, except in the same manner that CPNI is available to unaffiliated carriers. This would mean, for example, that unlike the Ameritech local exchange operations, the Ameritech interexchange subsidiary would have to obtain the affirmative consent of the local exchange operations' customers in order to get local and intraLATA toll usage patterns of those customers. At one point, Ameritech expressed concern that this restriction would put it at a marketing disadvantage compared to AT&T, which could target the marketing of one-stop shopping services to its more lucrative interexchange customers, based on their long-distance usage patterns, which would be available to AT&T without such affirmative consent because they would relate to services as to which AT&T was the subscribers' provider. Ameritech concluded, however, that it could overcome this disadvantage if it could start seeking such affirmative consent from Ameritech local exchange customers as soon as possible. Since nothing in the existing Decree would appear to prohibit the seeking of such consent before the trial begins or even before the proposed order is entered, so long as customers are not misled as to the actual extent of Ameritech's authority to offer interexchange service, Ameritech withdrew this concern.

[23] In some cases, such as the provision of interexchange and intraLATA toll services by the interexchange subsidiary (¶¶ 41, 45) and the provision of Centrex service to business customers (¶ 43), the proposed order provides for the offering of such services immediately upon the commencement of Ameritech's authority to offer interexchange telecommunications, because other carriers are already offering such services on a "one-stop-shopping" basis.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I ask unanimous consent that my remarks appear as in morning business.

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

TRADE POLICY

Mr. DORGAN. Madam President, I was very interested to hear the comments by Senator BYRD and Senator

HOLLINGS today on the issue of trade. I think the three of us, with perhaps one or two others, are the only Members of the Senate who come and speak about the issue of trade. There is almost a conspiracy of silence in this Senate, in the entire Congress, and in this town, especially, on the issue of trade.

U.S. TRADE POLICY

We have the largest trade deficit in human history in this country now. We have a lot of hand wringing about the fiscal policy deficits, and they are dangerous and troublesome. We must deal with them. But no one speaks about the trade deficit and what causes it and what it means for our country. I hope one day soon that will change, because today's trade deficits will be repaid in the future with a lower standard of living in this country. We must get rid of these terrible, terrible trade deficits that are going to ruin this country's future.

Beginning on Friday this week, I am going to make about four presentations on the floor of the Senate over the period of the next couple of weeks, talking about the last 50 years. I want to start with post-Second World War trade strategy, which was really foreign policy, in which we were linked to other countries try to strengthen others around the world who had been suffering from the ravages of war. During that period of time, there was general expansion in world trade and general expansion of prosperity. Our allies prospered and so did we. We prospered in output. We saw higher wages. Our country generally, in the first 25 years, did well.

You look at the last 25 years and you will see, even as others began to compete with us very aggressively, we clung to the same strategy. And what have we seen for it? We have seen a lower standard of living in this country generally, lower wages, and we have seen American jobs move overseas. That has been the result of this strategy. It is a strategy that hurts this country, and it is a strategy that must be changed.

We must get to a point where, if you close your eyes and simply listen, you can hear a difference between what people are saying on trade policy. You cannot anymore. There is no difference between what the Republicans say and what the Democrats say on trade. It sounds all the same to me.

Oh, Senator HOLLINGS sounds different to me because he is talking a different kind of strategy—plus he comes from a different part of the country. And Senator BYRD sounds different because he is talking about trade in a completely different way. But it is very unusual, and we need to create a national debate on this subject. We need to do it soon. The merchandise trade deficit last year was $166 billion, the highest in history. Jobs left our country. Wages in this country were down.

Our current strategy says to American workers they can now compete with 2 or 3 billion others in the world, some of whom are willing to work for 12 cents an hour at the age of 12, for 12 hours a day. That ought not be the competition for the American worker. No one should produce a product that enters our marketplace under those conditions. And we must, posthaste, create a national debate about trade strategy, looking out for the best interests of this country.

I do not want a trade war. That does not serve anybody's interests. But I do want our country to stand up for its own economic interests for a change. Can we not, for a change, just for once, have a trade negotiation that we win, or at least come out even on? We lose every time we pull up to the table. We lost on NAFTA; we lost on Canada; we lost on GATT. We can go all the way back. It is time for this country to stand up for its economic interests.

MEDICARE AND TAX CUTS FOR THE RICH

Mr. DORGAN. I did not come to speak about trade, but I wanted to say something about what I saw this weekend—the Speaker of the House, the majority leader of the Senate, and now today I see the chairman of the Ways and Means Committee of the other body, all talking about Medicare.

It was interesting to me. I was thinking about these old movies I used to see when I was a kid, when all these cowboys would whistle when they go into a box canyon and then when the trouble would start, they would start jumping off their horses, trying to find a place to hide.

This is kind of a box canyon we have created in the last couple of months, just riding in, whistling all the way, with the Contract With America, saying: Do you know what we can do? We can balance the Federal budget easily. We can do it before lunch. We will not even break a sweat. We will just change the U.S. Constitution and use $1.3 trillion in the Social Security trust funds to offset against other revenues. We will balance the budget.

Plus we will do more than that. We will promise you American people we will not only balance the budget, we will give you a tax cut. In fact, we will call it a middle-class tax cut. We will do all of that, and we will tame this Medicare and Medicaid problem. We will cut money out of Medicare and Medicaid and we will solve that problem.

Then what happened? I think this weekend somehow these folks that rode into this box canyon understood the trouble they were in because, all of a sudden, the three dismounted and are scurrying in every direction.

I noticed today the Ways and Means Committee in the House was asking the administration to give them advice on how to solve the Medicare and Medicaid problem. They were not asking for any advice when they talked about the tax cut bill or the welfare reform bill that they moved through there quickly. They did not need any advice then. But all of a sudden they find out their promises are coming home to pinch. What they are worried about is that the American people might see what has been created—a promise of tax cuts for the middle class that looks like this:

This is the middle-class tax cut for those middle-class folks who live on Rodeo Drive. At least it must be Rodeo Drive because how else could you explain this chart? Who benefits from the tax bill? If you earn $30,000 or below, as an average family, you get an enormous tax cut, $134 a year. If your income is $200,000 or above as an American family, you get a check back for your tax bill, a tax cut of $11,266.

I was on a radio talk show with a conservative host, somebody who believes in all of this, who said, "Well, Senator DORGAN, what do you think about this middle-income tax cut?" I said, "What middle-income tax cut? What on Earth are you talking about?" He said, "The one just passed by the House of Representatives which benefits the middle-income folks." I said, "Really? Do you understand it? Have you really seen the results of it?" I said, "If you are over $200,000, you get a $11,200 tax break; $30,000 or under, you get $134. That is middle income?" Not in my hometown, it is not middle income.

But you know what has happened here. You know what the box canyon is—people are going to look and say, "Gee. Now if we have a big deficit and we have economic troubles in our country and we are trying to reduce the budget deficit and give a $11,200 tax cut to families over $200,000 a year, and then the same folks who want to do it come along and say, "Do you know how we can pay for all of this? We can take a $300 billion or $400 billion out of Medicare and Medicaid. That is how we can pay for this."

All of a sudden I think a light bulb went on in the minds of some of these architects who said maybe we will get blamed for taking money away from people who are elderly or poor for their health care and using it to give a tax cut to those who are wealthy. Will not that be unfair for those of us who know the facts to stand up and talk about those folks? So all of a sudden we have seen in the last 48 hours, 72 hours, folks scurrying around town here saying, "Wait a second. Do not be so quick on Medicare and Medicaid. That is not really what we meant. That is not what we said."

We do not really know what they mean because those same folks who were out here in an enormous hurry to

change the U.S. Constitution were not in a very big hurry on April 1 when the law said they were required to bring a budget to the floor of the Senate.

You see, you cannot change the Constitution and alter the deficit. If you change the Constitution with a constitutional amendment to require a balanced budget, you will not change the deficit by one nickel. What changes the budget deficit is when we bring a budget to the floor and make decisions.

They were in a big hurry to change the Constitution, but somehow this enormous need to move quickly has left them. Now they simply cannot seem to get over here. The law says April 1 they should be here with their budget. Then it says by April 15 we should have a conference report. Well, April 1 came and went. April 15 is here and gone. May 1 is here and gone. No budget. But we have tax cuts for the big folks.

If you make half a million dollars sitting there clipping coupons, using that channel changer to search to see what entertainment is on tonight for you, boy, you can look at this Congress, and, say, "What a Congress. What a bunch of folks those folks are. $11,000 I have to spend. I can buy some more radio equipment. In fact, I can probably lease a Rolls Royce for 6 or 8 months, or lease a Mercedes Benz." Could you not with $11,000 lease a Mercedes Benz for a year? Then you say to the person that is making $20,000 or $25,000 a year, maybe a hubcap. Maybe you will not be able to afford the hubcap. Maybe a radiator cap, but certainly not the Mercedes Benz we are going to give to the big folks.

Here we are. No budget; got a tax cut, not middle-class tax cut, a tax cut that gives the bulk of the benefits to the wealthiest. It is the old cake and crumbs theory. Give the cake to the big shots. Leave a few crumbs to the rest and say everybody got something.

It is like somebody going to Camden Yards and saying, "You know something. I am going to give away $100 million in Camden Yards over at the baseball stadium in Baltimore." So everybody files in with great expectations because it is going to be divided up among them. The person goes around to every seat and gives everybody a dollar. But the person sitting behind home plate, seat A, row one, that person gets $99,999,000—essentially the bulk of the tax cut, the bulk of the giveaway. That is what is happening here, and people understand that.

So we are in a situation now where those of us who look at this contract and the strategy wonder what is real. They say, "I want a balanced budget. I want a balanced budget. I am willing to weigh in and lift for a balanced budget. I am going to propose a container of spending cuts that is real and substantial."

But as I said a couple of months ago, you know, I tuned in once to a television program and saw weight lifting and body building. They had the body building contest where the folks come out and pose. I had never seen this before. They oil themselves up and they come out and flex their muscles. And the announcer said, "In the sport of body building there is a big difference between lifting and posing."

I thought to myself. Gee. That sort of spells the difference in politics. There are a lot of folks who are terrific in posing. They come out here and flex around, get all oiled up, and look pretty and impress everybody. The question then on April 1 is what can you lift? The answer is apparently nothing. This is all posing.

I think all of us here need to understand what the dimensions of the problem are for this country. We have serious dimensions in the problem of Medicare and Medicaid, and we have to resolve it. We have to reform the system. We ought to redress the rate of growth to the extent we can. We ought to do that in a bipartisan way. But nobody that I know of on this side of the aisle believes we ought to provide $11,000 tax cuts for the people with a couple hundred thousand dollars in income, and then say to the seniors in this country, "We are sorry. We don't have enough money to provide health care for you."

Those are the issues. Is it fair to juxtapose them? It is darned right it is fair. We intend to do that because I think we ought to pass a budget that moves us toward a balanced budget and get rid of these deficits. I think we ought to reform the welfare system. We ought to reduce the rate of growth in Medicare and Medicaid. We should reform the welfare system as well. We ought to reduce the rate of growth in health-care programs.

But we ought not under any circumstance play this kind of a game where we can construct one more bit of evidence of reaching out to the wealthiest in our country and saying, "By the way, let us give you an extra bonus, a little extra appreciation for what you do for America." There is nothing wrong with being wealthy. I think everybody would like to be wealthy. But there are a whole lot of folks in this country who are not wealthy who work and try very hard and also need some help.

I think the help we can give them in this country as a whole is to reduce this crushing budget deficit, do it in an honest way, address the wrenching issues of health care in an omnibus way, but especially with respect to Medicare and Medicaid. If we do that, then I think finally these kinds of things will be believable.

I came today to discuss this only because I have seen the scurrying or the flurry of activity in the last couple of days by our majority leader, and by the Speaker, and by so many others who now say, "Well, it is true we were thinking of several hundred billion dollars in cuts in Medicare and Medicaid but now we want to talk about it in a different context." Why the change? All of us know why the change. Because they understand that even those of us who went to the smallest schools can add and subtract, and when things do not add up, you have to live with the consequences.

This kind of a chart does not add up against the backdrop of those who want to go after Medicare and Medicaid. It does not add up either that those who are most anxious to change the Constitution now somehow seem not anxious at all to bring the budget resolution to the floor of the Senate.

My hope is that in the very near future all of us who care about this can work together and solve these problems together.

You know, I supported, in 1993, a budget resolution that passed this Chamber by one vote, and I have never apologized and never intend to apologize to anybody for voting to do it. I am glad I did. It was the right vote.

The easiest vote and the political vote would have been to vote no, because what we did was we cut some spending, we increased some taxes, and we reduced the deficit.

Nearly half of our Chamber said, "Count me out. I just want to talk about deficit reduction, but when it comes to voting for it, I ain't going to vote for it in a minute, not an hour, not a year." So we did not even get one Republican vote to pass the budget resolution.

So I do not want people in this Chamber wondering whether the Senator from South Carolina or others are willing to balance the budget. We have been willing to cast the difficult votes and live with the consequences. And I am perfectly satisfied with that.

But there is much, much more to do. The next step, and I hope the final step, in getting toward a balanced budget amendment requires, I think, sober, serious budget cuts. It requires us to jettison these kinds of approaches that are called middle-class tax cuts, that really once again reduce the revenues and increase the deficit in order to give tax cuts to the wealthy.

Madam President, I see the Senator from South Carolina is on his feet. Those are the points I wanted to make today about wondering why the budget is not before us, No. 1; and, No. 2, trying to understand a bit, why so much activity in the last 72 hours by leaders of the other party on the Medicare and Medicaid reform issue? I think I understand it. I think they understand it. We will see in the coming days what results from it.

I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I want to join in the comments of our distinguished colleague from North Dakota along the line of the difficulty with respect to the budget, and then let me also address Medicare and some of the comments made recently.

I ask unanimous consent that a document released last January on the realities of truth in budgeting be printed in the RECORD.

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

HOLLINGS RELEASES REALITIES ON TRUTH IN BUDGETING

Reality No. 1: $1.2 trillion in spending cuts is necessary.

Reality No. 2: There aren't enough savings in entitlements. Have welfare reform, but a jobs program will cost; savings are questionable. Health reform can and should save some, but slowing growth from 10 to 5 percent doesn't offer enough savings. Social Security won't be cut and will be off-budget again.

Reality No. 3: We should hold the line on the budget on Defense; that would be no savings.

Reality No. 4: Savings must come from freezes and cuts in domestic discretionary spending but that's not enough to stop hemorrhaging interest costs.

Reality No. 5: Taxes are necessary to stop hemorrhage in interest costs.

	1996	1997	1998	1999	2000	2001	2002
Deficit CBO Jan. 1995 (using trust funds)	207	224	225	253	284	297	322
Freeze discretionary outlays after 1998	0	0	0	−19	−38	−58	−78
Spending cuts	−37	−74	−111	−128	−146	−163	−180
Interest savings	−1	−5	−11	−20	−32	−46	−64
Total savings ($1.2 trillion)	−38	−79	−122	−167	−216	−267	−322
Remaining deficit using trust funds	169	145	103	86	68	30	0
Remaining deficit excluding trust funds	287	264	222	202	185	149	121
5 percent VAT	96	155	172	184	190	196	200
Net deficit excluding trust funds	187	97	27	(17)	(54)	(111)	(159)
Gross debt	5,142	5,257	5,300	5,305	5,272	5,200	5,091
Average interest rate on debt (percent)	7.0	7.1	6.9	6.8	6.7	6.7	6.7
Interest cost on the debt	367	370	368	368	366	360	354

Note.—Figures are in billions. Figures don't include the billions necessary for a middle-class tax cut.

Nondefense discretionary spending cuts	1996	1997
Space station	2.1	2.1
Eliminate CDBG	2.0	2.0
Eliminate low-income home energy assistance	1.4	1.5
Eliminate arts funding	1.0	1.0
Eliminate funding for campus based aid	1.4	1.4
Eliminate funding for impact aid	1.0	1.0
Reduce law enforcement funding to control drugs	1.5	1.8
Eliminate Federal wastewater grants	0.8	1.6
Eliminate SBA loans	0.21	0.282
Reduce Federal aid for mass transit	0.5	0.1
Eliminate EDA	0.02	0.1
Reduce Federal rent subsidies	0.1	0.2
Reduce overhead for university research	0.2	0.3
Repeal Davis-Bacon	0.2	0.5
Reduce State Dept. funding and end misc. activities	0.1	0.2
End P.L. 480 title I and III sales	0.4	0.6
Eliminate overseas broadcasting	0.458	0.570
Eliminate the Bureau of Mines	0.1	0.2
Eliminate expansion of rural housing assistance	0.1	0.2
Eliminate USTTA	0.012	0.16
Eliminate ATP	0.1	0.2
Eliminate airport grant in aids	0.3	1.0
Eliminate Federal highway demonstration projects	0.1	0.3
Eliminate Amtrak subsidies	0.4	0.4
Eliminate RDA loan guarantees	0.0	0.1
Eliminate Appalachian Regional Commission	0.0	0.1
Eliminate untargeted funds for math and science	0.1	0.2
Cut Federal salaries by 4 percent	4.0	4.0
Charge Federal employees commercial rates for parking	0.1	0.1
Reduce agricultural research extension activities	0.2	0.2
Cancel advanced solid rocket motor	0.3	0.4
Eliminate legal services	0.4	0.4
Reduce Federal travel by 30 percent	0.4	0.4
Reduce energy funding for Energy Technology Develop.	0.2	0.5
Reduce Superfund cleanup costs	0.2	0.4
Reduce REA subsidies	0.1	0.1
Eliminate postal subsidies for nonprofits	0.1	0.1
Reduce NIH funding	0.5	1.1
Eliminate Federal Crop Insurance Program	0.3	0.3
Reduce Justice State-local assistance grants	0.1	0.2
Reduce export-import direct loans	0.1	0.2
Eliminate library programs	0.1	0.1
Modify Service Contract Act	0.2	0.2
Eliminate HUD special purpose grants	0.2	0.3
Reduce housing programs	0.4	1.0
Eliminate Community Investment Program	0.1	0.4
Reduce Strategic Petroleum Program	0.1	0.1
Eliminate Senior Community Service Program	0.1	0.4
Reduce USDA spending for export marketing	0.02	0.02
Reduce maternal and child health grants	0.2	0.4
Close veterans hospitals	0.1	0.2
Reduce number of political employees	0.1	0.1
Reduce management costs for VA health care	0.2	0.4
Reduce PMA subsidy	0.0	1.2
Reduce below cost timber sales	0.0	0.1
Reduce the legislative branch 15 percent	0.3	0.3
Eliminate Small Business Development Centers	0.056	0.074
Eliminate minority assistance—Score, Small Business Institute and other technical assistance programs, women's business assistance, international trade assistance, empowerment zones	0.033	0.046
Eliminate new State Department construction projects	0.010	0.023
Eliminate Int'l Boundaries and Water Commission	0.013	0.02
Eliminate Asia Foundation	0.013	0.015
Eliminate International Fisheries Commission	0.015	0.015
Eliminate Arms Control Disarmament Agency	0.041	0.054
Eliminate NED	0.014	0.034
Eliminate Fulbright and other international exchanges	0.119	0.207
Eliminate North-South Center	0.002	0.004
Eliminate U.S. contribution to WHO, OAS and other international organizations including the United Nations	0.873	0.873
Eliminate participation in U.N. peacekeeping	0.533	0.533
Eliminate Byrne grant	0.112	0.306
Eliminate Community Policing Program	0.286	0.780
Moratorium on new Federal prison construction	0.028	0.140
Reduce coast guard 10 percent	0.208	0.260
Eliminate Manufacturing Extension Program	0.03	0.06
Eliminate coastal zone management	0.03	0.06
Eliminate national marine sanctuaries	0.007	0.012
Eliminate climate and global change research	0.047	0.078
Eliminate national sea grant	0.032	0.054
Eliminate State weather modification grant	0.002	0.003
Cut weather service operations 10 percent	0.031	0.051
Eliminate regional climate centers	0.002	0.003
Eliminate Minority Business Development Agency	0.022	0.044
Eliminate Public Telecommunications Facilities Program grant	0.003	0.016
Eliminate children's educational television	0.0	0.002
Eliminate national information infrastructure grant	0.001	0.032
Cut Pell grants 20 percent	0.250	1.24
Eliminate education research	0.042	0.283
Cut Head Start 50 percent	0.840	1.8
Eliminate meals and services for the elderly	0.335	0.473
Eliminate title II social service block grant	2.7	2.8
Eliminate community services block grant	0.317	0.470
Eliminate rehabilitation services	1.85	2.30
Eliminate vocational education	0.176	1.2
Reduce chapter 1 20 percent	0.173	1.16
Reduce special education 20 percent	0.072	0.480
Eliminate bilingual education	0.029	0.196
Eliminate JTPA	0.250	4.5
Eliminate child welfare services	0.240	0.289
Eliminate CDC Breast Cancer Program	0.048	0.089
Eliminate CDC AIDS Control Program	0.283	0.525
Eliminate Ryan White AIDS Program	0.228	0.468
Eliminate maternal and child health	0.246	0.506
Eliminate Family Planning Program	0.069	0.143
Eliminate CDC Immunization Program	0.168	0.345
Eliminate Tuberculosis Program	0.042	0.087
Eliminate agricultural research service	0.546	0.656
Reduce WIC 50 percent	1.579	1.735
Eliminate TEFAP:		
Administrative	0.024	0.040
Commodities	0.025	0.025
Reduce cooperative State research service 20 percent	0.044	0.070
Reduce animal plant health inspection service 10 percent	0.036	0.044
Reduce food safety inspection service 10 percent	0.047	0.052
Total	36.941	58.402

AMENDMENT INTENDED TO BE PROPOSED BY MR. HOLLINGS

At the appropriate place insert the following:

SEC. . SENSE OF THE SENATE CONCERNING CONGRESSIONAL ENFORCEMENT OF A BALANCED BUDGET.

It is the Sense of the Senate

(A) that the Congress should move to eliminate the biggest unfunded mandate—interest on the national debt, which drives the increasing federal burden on state and local governments; and

(B) that prior to adopting in the first session of the 104th Congress a joint resolution proposing an amendment to the Constitution requiring a balanced budget—

(1) the Congress set forth specific outlay and revenue changes to achieve a balanced federal budget by the year 2002; and

(2) enforce through the Congressional budget process the requirement to achieve a balanced federal budget by the year 2002.

Mr. HOLLINGS. Mr. President, in this particular document, I went as seriously in purpose as I possibly could to try my dead-level best to do what the contract said.

As you well know, Mr. President, I have voted for and supported a balanced budget. I voted for one in 1968 and 1969. As chairman of the Budget Committee, we cut the deficit materially. I opposed the tax cuts of President Reagan and favored the spending cuts, which was very costly to me politically. But I knew we had to do it. I knew what the problem was.

I, thereupon, recommended a freeze when our friend, Senator Howard Baker, was the majority leader, and we worked on that. I later worked, of course, with Senator GRAMM and Senator RUDMAN on Gramm-Rudman-Hollings, where we sequestered, cut right straight across the board, reduced the deficit for awhile, and fought like a tiger at 12:41 a.m., October 19, 1990, when they repealed Gramm-Rudman-Hollings on that point of order, with Senator GRAMM voting to repeal it. And I have been disillusioned by that.

But I had tried the freeze; I tried the cuts. And then, under President Bush, talking with his OMB Director, Dick Darman, I said to Dick, "If you can get President Bush to go along now, we will have to have not only the spending cuts, the spending freezes, the elimination of tax loopholes, but we need revenues to get on top of this."

Because I will show in later debate where President Reagan got us the first $100 billion deficit and the first $200 billion. President Bush got us the first $300 billion deficit and the first $400 billion deficit. And I will show that by actual record.

As I have said, we have to get on top of this monster. I testified before the Finance Committee for a value-added tax. So I put this particular item that I have referred to in the RECORD just once again to justify my capacity and sincerity to talk on this particular point.

Because I listed the very, very difficult task that was confronting us whereby, in a line, you are not going to save that much in entitlements and welfare reform and health reform or Social Security or defense, but rather you are going to have to look for domestic discretionary spending. And to put us on a glidepath that first year, you had to cut $37 billion in domestic discretionary spending and even then, you would not accomplish it because interest costs grows this year by $43 billion.

So like "Alice in Wonderland," in order to stay where you are, you have to run as fast as you can; in order to get ahead, you have to run even faster. So it is a far, far more serious problem.

And the talk about tax cuts, that is out of the whole cloth. Everybody likes tax cuts. I joined with Senator FEINGOLD from Wisconsin earlier this year in saying forget about cutting the revenues. The problem is you need revenues, because we have spending on automatic pilot.

I can tell you here and now, irrespective of what they are saying, as we talk this particular day, May 2, 1995, we have spent another $1 billion. And tomorrow, we will spend another $1 billion; Thursday, another $1 billion; and Friday another $1 billion; and Saturday, another $1 billion; and Sunday, another $1 billion, just in interest costs, on automatic pilot.

How do you get on top of this monster? Well, you have to do all the above and, yes, it is going to take bipartisanship and not going to take politics.

I want to make reference now to the statement just made by the Senator from North Dakota about Medicare, because we hear a lot of whooping and wailing about Medicare and, above all, about the President of the United States.

Now, heavens above, if there is one thing—and I think President William Jefferson Clinton has been blamed for everything up here—but if there is one thing that President Clinton cannot be blamed for, that is any deficit in Medicare-Medicaid. He was back home in Little Rock, AR, when we were up here creating these deficits. So let us not blame the President.

Moreover, let us not blame him since he has come to town. He put this as the No. 1 issue. They are talking about AWOL now. I am going to get to this point. Here is the gentleman they talk about being AWOL. He came to town with health care reform as his No. 1 interest and issue. Along with that, he submitted a cut of $125 billion. And the then-chairman of our Finance Committee was the distinguished Senator from New York, Senator MOYNIHAN. He described that as fantasy. And Senator PACKWOOD, the ranking member, joined in with him—a $125 billion cut was fantasy. It just could not be done.

But we worked on it. And we worked on spending cuts. We worked on controlling entitlements, and we worked on tax increases. And, yes, we came up, finally, with a plan that year with all three of them, without a single, single, single Republican vote in either the Senate or the U. S. House of Representatives.

We reduced the deficit some $500 billion. We eliminated over 100,000 Government jobs. We increased taxes on gasoline, liquor, and cigarettes. We increased taxes even on Social Security. And, finally, we did get an agreement, after hard work, of a $56 billion cut in Medicare.

Now, remember, in the last 24 hours, we have heard AWOL: The President is AWOL; took a walk; waved the flag of surrender; AWOL.

Here was a President who led and got his Vice President over and all to get the necessary votes so we could get those cuts in Medicare.

Thereupon, the President came last year with another $80 billion in cuts, along with health care reform, and what did they do? They rebuffed him and beat up on him and ridiculed the First Lady. But she worked, and, agree or disagree, you could not say that Hillary Rodham Clinton was AWOL or that William Jefferson Clinton was AWOL.

Now what they want to do, Mr. President—and this is the interesting thing and I am going to include this in the RECORD—they wanted the President of the United States to do all the dirty work, all the cuts. I want to show you the Dole-Domenici alternative entitled "Because Government, Not People, Should Be the First to Sacrifice." Mr. President, I ask unanimous consent that the Dole-Domenici alternative be printed in the RECORD.

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

The Dole/Domenici Alternative: Because government, not people, should be the first to sacrifice

	Billions[1]
Drop all proposed spending add-ons	−$124
Drop investment	
Drop stimulus	
Permit new spending if paid for by added spending cuts	
Eliminate proposed taxes	−295
Drop all individual income taxes	
Drop President Clinton's proposed new energy tax	
Drop all business income taxes	
Eliminate Social Security tax increase	
Eliminate all proposed user fees	−18
Accept all proposed mandatory and discretionary cuts	−241
Accept all mandatory savings	
Accept all discretionary savings (Defense and non-Defense)	
Restore $20 billion in Defense budget	+20
Specific details await President's budget submission	
Freeze domestic discretionary baseline	−92
Freeze fiscal year 1994 domestic discretionary BA except for increased funding for child immunization and WIC programs ($500 million in 1994)	
Extend domestic discretionary sequester to enforce freeze and savings	
Revenues:	
Pay for R&E and other investment tax incentives:	
Cap non-Social Security mandatory spending	−93.1
Total non-Social Security mandatory savings: $177 billion over 5 years	
Cap on Medicare and Medicaid spending (CPI+population+4%)	
Debt savings	−38
Real deficit reduction[2]	−444.2
Sasser assumptions on debt management	16.1
Total deficit reduction	−460.4

[1] Numbers are based on CBO capped baseline.

[2] Deficit in 1998 would drop to $168.4 billion and continue falling into the next century.

Process reform proposals:

Establish discretionary spending caps for defense and non-defense domestic programs.

Create fixed deficit targets with enforcement through across the board cuts if targets breached.

Assumes zero-based budgeting to control future spending.

Mr. HOLLINGS. Mr. President, this is the Dole-Domenici alternative budget they put up in March 1993. The language is: "Accept all proposed mandatory and discretionary cuts, $241 billion." They not only accepted the President's cuts but on top of that they capped non-Social Security mandatory spending—a cap on Medicare and Medicaid. So they could go to the 1994 election and say, "Look at what they have done. The President wants to cut your Medicare."

And in 1994, here is what they had. This one is entitled "GOP Alternative Deficit Reduction and Tax Relief, Slashing the Deficit, Cutting Middle-Class Taxes." Mr. President, I ask unanimous consent to print the GOP alternative in the RECORD.

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

GOP ALTERNATIVE: DEFICIT REDUCTION AND TAX RELIEF

SLASHING THE DEFICIT, CUTTING MIDDLE CLASS TAXES

The Republican Alternative Budget will reduce the deficit $318 billion over the next five years—$287 billion in policy savings and $31 billion from interest savings. This is $322 billion more in deficit reduction than the

President proposes and $303 billion more in deficit reduction than the House-passed resolution contains.

Moreover, the GOP alternative budget helps President Clinton achieve two of his most important campaign promises—to cut the deficit in half in four years and provide a middle-class tax cut. The GOP plan:

Reduces the deficit to $99 billion in 1999. This is $106 billion less than the 1999 deficit projected under the Clinton budget.

Even under this budget Federal spending will continue to grow.

Total spending would increase from $1.48 trillion in FY 1995 to more than $1.7 trillion in FY 1999.

Medicare would grow by 7.8-percent a year rather than the projected 10.6-percent. Medicaid's growth would slow to 8.1-percent annually rather than the projected 12-percent a year growth.

It increases funding for President Clinton's defense request by the $20 billion shortfall acknowledged by the Pentagon.

Provides promised tax relief to American families and small business:

Provides tax relief to middle-class families by providing a $500 tax credit for each child in the household. The provision grants needed tax relief to the families of 52 million American children. The tax credit provides a typical family of four $80 every month for family expenses and savings.

Restores deductibility for interest on student loans—321,000 for 25,000.

Indexes capital gains for inflation and allows for capital loss on principal residence.

Creates new incentives for family savings and investments through new IRA proposals that would allow penalty free withdrawals for first time homebuyers, educational and medical expenses.

Establishes new Individual Retirement Account for homemakers.

Extends R&E tax credit for one-year and provides for a one-year exclusion of employer provided educational assistance.

Adjusts depreciation schedules for inflation (neutral cost recovery).

Tax provisions result in total tax cut of $88 billion over five years.

Fully funds the Senate Crime Bill Trust Fund, providing $22 billion for anti-crime measures over the next five years. The Clinton budget does not. The House-passed budget does not. The Chairman's mark does not.

Accepts the President's proposed $113 billion level in nondefense discretionary spending reductions and then secures additional savings by freezing aggregate nondefense spending for five years.

Accepts the President's proposed reductions in the Medicare program and indexes the current $100 annual Part "B" deductible for inflation. Total Medicare savings would reach $80 billion over the next five years.

Achieves $64 billion in Medicaid savings over the next five years, by capping Medicaid payments, reducing and freezing Disproportionate Share Hospital payments at their 1994 level.

Achieves additional savings through reform of our welfare system totaling $33 billion over the next five years.

Repeals Davis-Bacon, reduces the number of political appointees, reduces overhead expenditures for university research, and achieves savings from a cap on civilian FTE's.

Mr. HOLLINGS. Mr. President, now we have in March of last year: "Accept the President's proposed reduction in the Medicare program, and index the Part B deductible. Total Medicare savings would reach $80 billion over the next 5 years."

So there is a conscious awareness in the distinguished majority leader when he talks of the President being AWOL on Medicare. Rather than being AWOL, he has been wounded in the front lines while these others have been all back in the barracks and not even attending the battle. In fact, back in the barracks, the cattle call was what we needed was portability so you can carry your coverage from job to job—a little bit of this, that and the other, just some minor adjustments—why is there all this problem, there is no real problem in medical coverage in America.

Now it is a crisis. When? In 2002. I am trying to get by tomorrow. I am trying to stop spending a billion dollars a day today, tomorrow, and the next day. If I can stop doing that, I can get on top of the problems in the year 2002. But to come forward at this particular time and run all over the national TV talking about taking a walk and going AWOL when the poor fellow has been ground into the ground, he has been totally rebuffed. He has tried and fought the good fight. So now they come with all of this "Let's have bipartisanship." They would not give us a single vote, and now they want to get bipartisan, now they want to get commissions, now we are AWOL because we are ready to try to put the truth to their so-called contract.

The rubber is now meeting the road, and if you look at that contract, Mr. President, talking about Medicare and AWOL, who shoots the troops out there on the front line, the Medicare troops? The contract does, for the simple reason that we in raising Social Security taxes—and this Senator voted to raise Social Security taxes—we raised 25 billion bucks and allocated it to Medicare.

And what does the contract call for? Abolish that tax and not give the $25 billion, rather let us shoot the Medicare troops and add to the Medicare deficit.

Do not come with your contract and tell me how serious you are about this deficit and all the costs of Medicare. Then you say, oh, by the way, that problem that the President said for 2 years was the principal cause of the deficit and you shot him down, the President is AWOL. You know it. It was adopted momentarily by the distinguished majority leader, because one of these alternatives says "the GOP alternative," and I take it the majority of the GOP certainly was for it in March of last year. It is in the RECORD. Read it. And now you say that the President is AWOL, he does not even know the problem and he will not come front and center. He has used good common sense, as they call it, commonsense budgets, or whatever is supposed to be common sense around here. He used common sense on this one.

He has tried and fought the good fight. But to be accused, of all things, of being AWOL when they come with a contract trying to increase the Medicare deficit some 25 billion bucks and saying those who have led the fight since they have been in office and never caused any of it are AWOL. The President has been in the front lines leading the battle and fighting the fight.

My suggestion is they get out of the barracks and get out there on the line themselves and put out the full meaning of their so-called deficit reduction package.

On that score, I have been the chairman of the Budget Committee, and I have been the ranking member of the Budget Committee. I have worked on it since 1974, the only remaining Member of either the House or the Senate who has been on it all that time. And I can tell you here and now, in trying to get prompt consideration so the authorizing committees would know what to do and how to do it, we finally put into law that you had the budget out of the committee by April 1 and passed the Senate and passed both Houses by April 15 the concurrent resolution.

As of this minute, we have not met to discuss—we had some cursory hearings the first of the year—but we have not met in 2 months on this budget. They do not even call a meeting. They do not call a discussion. And yet they have the audacity to run around here as leaders and talk about people being AWOL on Medicare and Medicaid.

We have done our best, and we will continue to do our best. But if they want to get any kind of following, they are not going to get any following out of this Senator as long as they continue these political shenanigans. They know it and everybody else knows it. I hope the press will report it, because that is all they do now. They treat it like a spectator sport up here and just avoid dealing with the real issue.

I have pointed out the virtual impossibility of attaining—what Chairman KASICH says on the other side—a balanced budget by the year 2002 without taxes. They can be put on notice, now that I am speaking, that I will join with them on any plan they have so long as it includes revenue.

The reason I say that is because I have tried it every other way—and I am not dumb enough now, having struggled with this thing for 20 years on the Budget Committee with half a haircut. I do not want a little bit here in cuts and a little bit here and a halfway going there and saying, oh, we are going to save $170 billion in interest costs by 2002 and give $170 billion over to the Finance Committee so they can give a middle class tax cut, and beginning to play politics that way. We do not have the money. We are borrowing

every day to keep this Government going. They put a bunch of numbers down on paper, then they all wink at each other and say, "Well, who is going to be here in 2002?"

We can project it just as economists have projected it. We can put it down in black and white when we all know differently. If you are going for a real budget deficit reduction, by having the Government operating in the black by the year 2002, you have my vote. We will give, and take, all the way around because I am committed to the spending cuts and what have you, but not overall, unless you are going to agree to have the revenues. I put in a 5-percent value added tax because it is needed. But you have to have substantial revenues and not tax cuts for middle class and capital gains and family cuts and all these other kinds of things that they have in, just to buy the 1996 election. No half a haircut for me. If you want to have truth in budgeting, then you have my cooperation and vote. But if you are going to have a half truth, which is worse than any at all, a half a haircut, keep it yourself and get it passed by yourself.

Now, Mr. President, I have quite a bit to say with respect to punitive damages, because there have been more than enough articles written on this particular score. Let me ask at this point that we have printed in the RECORD an article by Thomas Lambert with respect to punitive damages, outlining, if you please, the various cases that are brought about safety in America. It is an article of some years ago. I ask unanimous consent that it be printed in the RECORD.

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

SUING FOR SAFETY

(By Thomas F. Lambert, Jr.)

It has been well and truly said, "If you would plant for a year, plant grain; for a decade, plant trees; but if you would plant for eternity, educate a man." For nearly four generations, ATLA has been teaching its men and women, and they have been demonstrating to one another, that you can sue for safety. Indeed, one of the most practical measures for cutting down accidents and injuries in the field of product failure is a successful lawsuit against the supplier of the flawed product. Here, as well as elsewhere in Tort Law, immunity breeds irresponsibility while liability induces the taking of preventive vigilance. The best way to make a merchant responsible is to make him accountable for harms caused by his defective products. The responsible merchant is the answerable merchant.

Harm is the tort signature. The primary aim of Tort Law, of the civil liability system, is compensation for harm. Tort Law also has a secondary, auxiliary and supportive function—the accident prevention function or prophylactic purpose of tort law—sometimes called the deterrent or admonitory function. Accident prevention, of course, is even better than accident compensation, an insight leading to ATLA's longstanding credo: "A Fence at the Top of the Cliff Is Better Than an Ambulance in the Valley Below."

As trial lawyers say, however, "If you would fortify, specify." The proposition that you can sue for safety is readily demonstrable because it is laced and leavened with specificities. They swarm as easily to mind as leaves to the trees.

ACCIDENT PREVENTION THROUGH SUCCESSFUL SUITS IN THE PRODUCTS LIABILITY FIELD

(1) Case of the Charcoal Briquets Causing Death from Carbon Monoxide. Liability was imposed on the manufacturer of charcoal briquets for the carbon monoxide death and injury of young men who used the briquets indoors to heat an unvented mountain cabin. The 10-pound bags read, "Quick to Give Off Heat" and "Ideal for Cooking in or Out of Doors." The manufacturer was guilty of failure to warn of a lethal latent danger. Any misuse of the product was foreseeable because it was virtually invited. Next time you stop in at the local supermarket or hardware store, glance at the label on the bags of charcoal briquets. In large capital letters you will find the following: "WARNING. DO NOT USE FOR INDOOR HEATING OR COOKING UNLESS VENTILATION IS PROVIDED FOR EXHAUSTING FUMES TO OUTSIDE. TOXIC FUMES MAY ACCUMULATE AND CAUSE DEATH." Liability here inspired and exacted a harder, more emphatic warning, once again reducing the level of excessive preventable danger.

(2) Case of the Exploding Cans of Drano. When granular Drano is combined with water, its caustic soda interacts with aluminum, another ingredient in its formula and produces intensive heat, converting any water into steam at a rapid rate. If the mixture is confined, the pressure builds up until an explosion results. The manufacturer's use of a screw-on top in the teeth of such well known hazard was a design for tragedy. The expectable came to pass (as is the fashion with expectability). In Moore v. Jewel Tea Co., a 48-year-old housewife suffered total blindness from the explosion of a Drano can with a screw-on top, eventuating in a $900,000 compensatory and $10,000 punitive award to the wife and a $20,000 award to her husband for loss of conjugal fellowship.

A high school chemistry student could see that what was needed was a "flip top" or "snap cap" designed to come off at a pressure of, say, 15–20 pounds per square inch. After a series of adverse judgments, the manufacturer substituted the safer flip top. Of course, even the Drano flip top will be marked for failure if not accompanied by adequate testing and quality control. Capers involved a suit for irreversible blindness suffered by 10-year-old Joe Capers when the redesigned flip top of a can of Drano failed to snap off when the can fell into the bathtub and the caustic contents spurted 8½ feet high impacting Joe in the face and eyes with resulting total blindness. The shortcomings in testing the can with the reformulated design cost the company an award of $805,000. As a great Torts scholar has said, "Defective products should be scrapped in the factory, not dodged in the home."

Drayton v. Jiffee Chemical Corp., is a grim and striking companion case to the Drano decisions mentioned above, and it underscores the same engineering verities of those cases: the place to design out dangers is on the drawing boards or when prescribing the chemical formula. a one-year-old black girl suffered horrendous facial injuries, "saponification" or fusion of her facial features, when an uncapped container of Liquid-Plumr was inadvertently tipped over. At the time of the accident, this excessively and unnecessarily caustic drain cleaner was composed of 26 percent sodium hydroxide, i.e., lye. No antidote existed because, as the manufacturer knew. Liquid-Plumr would dissolve human tissue in a fraction of a second. To a child (or any human being) a chemical bath of the drain cleaner could be as disfiguring as falling into a pool of piranha fish. Liquid-Plumr, mind you was a household product, which means that its expectable environment of use must contemplate the "patter of little feet" as the children's hour in the American home encompasses 24 hours of the day.

At the time of marketing this highly caustic drain cleaner, having made no tests as to its effect on human tissue within the existing state of the art, the defendant could have reformulated the design to use 5 percent potassium bydroxide which would have been less expensive, just as effective and much safer. After some 59 other Liquid-Plumr injuries were reported to defendant, it finally reformulated its design to produce a safer product. In Drayton the defendant was allowed to argue in defense and mitigation that its management was new, that it had learned from its prior claims and litigation experience and that it had purged the enterprise of its prior egregious misconduct.

To open the courtroom door is often to open a school door for predatory producers.

(3) Case of the Tip-Over Steam Vaporizer. A tip-over steam vaporizer true to that ominous description was upset by a little girl who tripped over the unit's electric outlet cord on the way to the bathroom in the middle of the night. The sudden spillage of scalding water in the vaporizer's glass jar severely burned the 3-year old child. The worst injuries in the world are burn injuries. The cause of the catastrophe was a loose-lidded top which could have been eliminated by adopting any one of several accessible, safe, practical, available, desirable and feasible design alternatives, such as a screw-on or child guard top. The truth is that the manufacturer, Hankscraft, had experienced a dozen prior similar disasters. In the instant case, the little girl recovered a $150,000 judgment against the heedless manufacturer, impeaching the vaporizer's design because of lack of screw-on or child-guard top. When the manufacturer, with icy indifference to the serious risks to infant users of its household product, refused to take its liability carrier's advice to recall and redesign its loose-lidded vaporizer, persisting in its stubborn refusal when over 100 claims had been filed against it, the carrier finally balked and refused to continue coverage unless the company would recall and redesign. Then and only then did Hankscraft stir itself to redeem and correct the faulty design of its product, thereafter proudly proclaiming (and I quote), "Cover-lock top protects against sudden spillage if accidentally tipped." Once again Tort Law had to play professor and policeman and teach another manufacturer that safety does not cost: It pays. Under what might be called the Cost-Cost formula, the manufacturer will add safety features when it comes to understand that the cost of accidents is greater than the cost of their prevention. The Tip-Over Steam Vaporizer case is the most graphic example known to us showing that corporate management can be recalled to its social responsibilities by threat of stringent liability, enhanced by deserved civil punishment via punitive damages, and that belief in such a proposition is more than an ivory tower illusion.

A good companion case to the Tip-Over-Steam-Vaporizer case, serving the same Tort

Touchstone of Deterrence, is the supremely instructive Case of the Remington Mohawk 600 Rifle. While a 14-year-old boy was seeking to unload one of these rifles, pushing the safety to the "off" position as required for the purpose, the rifle discharged with the bullet entering the boy's father's back, leaving him paralyzed and near death for a long time. The agony of his guilt, his feeling that he was to blame for his father's devastating injuries, pressed down on the boy's brow like a crown of thorns and almost unhinged his sanity. Assiduous investigation by the family's lawyer unearthed expert evidence of unsafe design and construction and lax quality control of the safety selector and trigger assemblies of the Mohawk 600.

The result of the exertions of the plaintiff's lawyer, deeply and redoubtedly involved in challenging the safety history of the rifle model, was a capitulation by Remington and an agreement to settle the father's claim (he was a seasoned and successful defense trial lawyer) for $6.8 million. Remington also wrote the son a letter, muting some of his anguish by stating that the weapon was the whole problem and that he was in no way responsible for his father's injuries. Then, facing the threat of cancelled coverage from its carriers for skyrocketing premiums in the projection of other multimillion dollar awards, Remington commendably served the public interest by announcing the recall campaign in which we see another electrifying example of Tort Law litigating another hazardous product feature from the market.

Remington's nationwide recall program affected 200,000 firearms; notices in newspapers and magazines similar to this one that appeared in the January 1979 issue of Field and Stream cut back on the harvest of hurt and heartbreak: "IMPORTANT MESSAGE TO OWNERS OF REMINGTON MODEL 600 and 660 RIFLES, MOHAWK 600 RIFLES, AND XP-100 PISTOLS. Under certain unusual circumstances, the safety selector and trigger of these firearms could be manipulated in a way that could result in accidental discharge. The installation of a new trigger assembly will remedy this situation. Remington is therefore recalling all Model 600 rifles except those with a serial number starting with an 'A'. . . Remington recommends that prior to any further usage of guns included in the recall, they be inspected and modified if necessary. [Directions are then given for obtaining name and address of nearest Remington Recommended Gunsmith who would perform the inspection and modification service free of charge.]."

Tort Law forced Remington to look down the barrel and see what it was up against. Once again Tort Law was the death knell to excessive preventable danger.

For a wonderfully absorbing account of The Mohawk 600, see Stuart M. Speiser's justly praised Lawsuit (Horizon Press, New York, 1980) 348–55.

(4) Case of MER/29, the Anti-Cholesterol Drug Which Turned out to Cause Cataracts. Many trial lawyers will recall the prescription drug MER 29 marketed for its benign and benevolent effect in lowering blood cholesterol levels and treating hardening of the arteries but which turned out to have an unpleasant and unbargained for effect on users, the risk of causing cataracts. As Peter DeVries recently observed, "There is nothing like a calamity to help us fight our troubles." Blatant fraud and suppression of evidence from animal experiments were proved on the manufacturer's part in the marketing of this dangerous drug. Who did more—the federal government or private trial lawyers—in getting this dangerous drug off the market and compensating the numerous victims left in its wake? The question carries its own answer. The United States drug industry has annual sales of 16 billion dollars per year, while the Food and Drug Administration has an annual budget of 65 million dollars to oversee all drug manufacture, production and safety. How can the foothills keep the Alps under surveillance? Worse, as shown by the MER/29 experience, enforcement of the law in that situation, far from being vigorous and vigilant, was lame, limp and lackluster. It was only private suits advanced by trial lawyers that furnished the real muscle of enforcement and sanction, compensation for victims, deterrence of wrongdoing, and discouragement of corporate attitudes toward the public recalling that attributed to Commodore Vanderbilt.

As to the indispensible role and mission of the trial lawyer in Suing for Safety, it should not be overlooked that the current Administration has moved to sharply restrict the regulation of product safety by the Consumer Product Safety Commission. The 1982 Budget for the commission was reduced by 30 percent in the first round of Reagan Administration budget cuts and is marked for further cuts in the future.

As the Thalidomide, MER/29, Dalkon Shield, Asbestos, DES, Slip-into-Reverse Transmissions and Fuel Tank scandals have been starkly revealed, we have crime in the suites as well as crime in the streets. Corporate culpability calls for corporate accountability, and our society has developed no better instrument to encourage socially responsible corporate behavior than the vehicle of adverse judgments beefed up by punitive damages. In the MER/29 situation, for example, the criminal fines levied on the corporate producer and its executives were slap-on-the-wrist trivial when contrasted with the deterrent impact of punitive damage awards in current uncrashworthiness cases where flagrant corporate indifference to public safety was established.

Our leading scholar in the field of punitive damages, writing with verve and virtuosity on that subject, concluded in 1976 that punitive damages awards should be permitted in appropriate products liability cases. Writing in 1982 with the same unbeatable authority, Professor David G. Owen traces the ferment and developments of doctrine in the ensuing years and then delivers a conclusion informed by exhaustive research, seasoned reflection, and an obvious morality of mind. "I remain convinced of the need to retain this tool of legal control over corporate abuses. . . ."

(5) Case of the Infant Who Died from Drinking Toxic Furniture Polish Where Manufacturer Failed to Warn Mother to Keep Toxic Product out of Reach of Children. This is the celebrated case of Spruill v. Boyle-Midway, Inc., in which a 14-month old child reached over from his crib and pulled a doily off a bureau, causing a bottle of Old English Red Oil Furniture Polish, manufactured by the defendant, to fall into the toddler's crib. During the few minutes his mother was out of the room, the baby got the cap off the bottle and drank a little bit of the polish. He was dead within two days of resulting chemical pneumonia. The bottle had a separate warning about combustibility in letters 1/8 inch high, but only in the midst of other text entitled "Directions" in letters 1/32 inch high did it say "contains refined petroleum distillates. May be harmful if swallowed, especially by children." The mother testified that she saw the warning about combustibility but did not read the directions because she knew how to use furniture polish. In a negligence action against the maker, the jury found that both defendant and the baby's mother were negligent and awarded wrongful death damages to the child's father and siblings but not to the mother. The Fourth Circuit in keeping with the grain of modern authority held that it was irrelevant that the child's ingestion of the toxic polish was an unintended use of the product. The jury could properly find that in the absence of an adequate warning to the mother that she could read and heed—to keep the polish out of the reach of children—such misuse of the product was a foreseeable one. The defect was to be tested not only by intended uses but by foreseeable misuses.

The jury could find that the manufacturer's placement of the warning was designed more to conceal than reveal, especially in view of the greater prominence given the fire warning 1/8 of an inch compared to the Lilliputian print, 1/32 of an inch, as to the contents containing "refined petroleum distillates". The poison warning could be found to fall short of what was required to convey to the average person the dangerous nature of this household product. The label suggested that harm from drinking the polish was not certain but merely possible, while experts on both sides agreed that a single teaspoon would be lethal to children.

The warning in short could properly be found to be inadequate—too soft, mispositioned and not sufficiently eye arresting. Defendant admitted in answer to interrogatories that it knew of 32 prior cases of poisoning from ingestion of its "Old English Red Polish."

Did the imposition of liability in this seminal Spruill case supra stimulate, goad or spur the manufacturer to take safety measures against the foreseeable risk of ingestion by innocent children? A trip to the local hardware store a couple of days ago reveals that Old English Red Oil Polish now sports the following on its label: "DANGER HARMFUL OR FATAL IF SWALLOWED. COMBUSTIBLE. KEEP OUT OF REACH OF CHILDREN. SAFETY CAP."

An error is not a mistake unless you refuse to correct it.

(6) Case Holding Manufacturer of PAM (Intended to Keep Food from Sticking to Cooking Surfaces) Liable for Death of Teen-Ager from Inhalation of PAM's Concentrated Vapors. Harless v. Boyle Midway Div. of Amer. Home Products, involved an increasing number of teenagers who were dying of a "glue-sniffing syndrome," inhaling the concentrated vapors of PAM, a household product intended to keep food from sticking to cooking surfaces. Originally, the manufacturer used only a soft warning on the can's label: "Avoid direct inhalation of concentrated vapors. Keep out of the reach of children." However, to the knowledge of defendant, the children continued sniffing and dying. Then the manufacturer, as an increasing number of lawsuits were pressed upon it for the preventable deaths of such children, changed the warning on its label, shifting to a harder warning: "CAUTION: Use only as directed, intentional misuse by deliberately concentrating and inhaling the contents can be fatal." This was, of course, a much harder and more emphatic warning. The Fifth Circuit held that it was reversible error to exclude plaintiff's evidence (in an action for the wrongful death of a PAM-sniffing 14-year-old) that no deaths had occurred from PAM sniffing after the defendant had hardened its warning by warning against the danger of death, the ultimate trauma.

On remand the jury brought in a verdict for the boy's estate in the amount of $585,000 with an additional finding by the jury that the lad's administrator was entitled to an award of punitive damages. Prior to the punitive damages suit, the case was settled for a total of $1.25 million. It was uncontested that prior to the lad's death the manufacturer knew of 45 inhalation deaths from foreseeable misuse of its product, and upon remand admitted to an additional 68 from the same expectable cause.

If you will examine the label on the can of PAM on your shelf, as the writer has just done, you will find: "WARNING USE ONLY AS DIRECTED, INTENTIONAL MISUSE BY DELIBERATELY CONCENTRATING AND INHALING THE CONTENTS CAN BE HARMFUL OR FATAL." Once again the pressures of liability, stimulated a producer to avoid excessive preventable dangers in its product's use by strengthening its warning label, thereby enhancing consumer protection.

(7) Case of the Poisonous Insecticide Holding That Warnings Must Contain Appropriate Symbols, Such as Skull and Crossbones, Where Manufacturer Knows That Product May Be Used by Illiterate Workers (Spanish-Speaking Imported Puerto Rican Laborers) Who Would Not Understand English. This is the salutary holding in the celebrated case of Hubbard-Hall Chem. Co. v. Silverman. The First Circuit upheld judgments entered on jury verdicts for the wrongful death of two illiterate migrant farm workers who were imported by a Massachusetts tobacco farmer and killed by contact with a highly toxic insecticide manufactured and distributed by defendant. Even though the comprehensive and detailed danger warnings on the sacks fully complied with label requirements of the Department of Agriculture, the jury could properly find that because of the lack of a skull or crossbones or other comparable symbols the warning was inadequate. Use of the admittedly dangerous product by persons who were of limited education and reading ability was within the range of apprehension of the manufacturer. While evidence of compliance with governmental regulations was admissible, it was not decisive. Governmental standards are "minimums," a floor not a ceiling, and so far as adequate precautions are concerned, federal regulations do not oust the possibly higher common-law standards of the Commonwealth of Massachusetts.

The steady, unflagging pressures of litigation against the inertia, complacency and moral obtuseness of manufacturers have not only resulted in enhanced safety in the field of conscious design choices (substituting child-guard screw-on tops on tip-over steam vaporizers or over-the-axle fuel tanks for those mispositioned more vulnerably in front of the axle or adding rear-view mirrors to blind behemothic earth-moving machines whose design obstructs the vision of a reversing operator, etc.) but also in inducing product suppliers to reduce marketing defects in the products they sell by strengthening the adequacy of the instructions and warnings that accompany their products set afloat in the stream of commerce.

The net affect of such benign and beneficial litigation has been to improve the adequacy and efficacy of the educational information given to consumers by producers via improvements in the conspicuousness of warnings given; making them more prominent, eye-arresting, comprehensive, complete and emphatic; placing the warnings in more effective locations; avoiding ambiguous warnings; extending warnings to the safe disposition of the product; and avoiding any dilution of the warnings given. In short, the bottom line, as indicated in the cited representative sampling of cases, is that successful lawsuits operate as safety incentives to "inspire" product suppliers to furnish instructions and warnings that are in ratio to the risk and in proportion to the perils attending foreseeable uses of the marketed products.

Here, too, we see the conspicuous usefulness of the lawsuit as the weapon for ferreting out marketing defects, whether ingenious or ingenuous, in selling dangerously defective products.

(8) Case of Marketing Carbon Tetrochloride Using Warnings Found to Be Inadequate Because Inconspicuous. Suppose a defendant sells carbon tetrachloride and places on all four sides of the can, in large letters, the words "Safety Kleen," and then uses small letters (Lilliputian print) to warn of the serious risk of using the cleaning fluid in an unventilated place for places the fine print warning only on the bottom of the can). It requires no tongue of prophecy to predict that this warning will be found inadequate because too inconspicuous. It was so held in Maize v. Atlantic Refining Co. Not only was the warning inadequate because not conspicuous enough, but the representation of safety ("Safety Kleen") operated to dilute, weaken, and counteract the warning. Moreover in Tampa Drug Co. v. Wait, the court upheld a judgment for the wrongful death of a 38-year-old husband who died from carbon tetrachloride poisoning after using a jug of the product to clean the floors of his home. While the label warned that the vapor from the liquid was harmful and that prolonged breathing of it or repeated contact with the skin should be avoided and that the product should only be used in well ventilated areas, the court with laser-beam accuracy ruled that the warning nonetheless could be found inadequate because of its failure to warn with qualitative sufficiency as to deadly effects or fatal potentialities which might follow from exposure to its fumes.

Decisions such as Maize and Wait supra were the prologue and predicate for the action taken by the FDA in 1970, under the Federal Hazardous Substances Act, to ban and outlaw carbon tetrachloride.

Torts archivists know that successful private lawsuits to recover for harm from products simply too dangerous to be sold at all, regardless of the completeness or urgency of the warning given, frequently lead to a recall and reformulation of the product's design or to a decision to ban the product from the market. Life and limb are too important to trade off against unmarketed inventory.

(9) Case of the 8-Year-Old Boy Who Choked to Death from Strangling on a Quarter-Inch Rubber Rivet, Part of a Riviton Toy Kit Given Him for Christmas. This case will indeed rivet the attention (in the sense of attract, fasten and hold) of concerned citizens who wish to understand how the threat of liability operates as a spur to safety on the part of product producers. The present example involves a toymaker whose work is indeed "child's play."

Parker Brothers, a General Mills subsidiary headquartered some 18 miles north of Boston, had big plans for Riviton. This was a toy kit consisting of plastic parts, rubber rivets and a riveting tool with which overjoyed children could put together anything from a windmill to an airplane. In the first year on the market in 1977, the Riviton set seemed on its way to becoming one of those classic toys that parents will buy everlastingly. However, one of the 450,000 Riviton sets bought in 1977 ended up under the Christmas tree of an 8-year-old boy in Menomonee Falls, Wis. He played with it daily for three weeks. Then he put one of the quarter-inch long rubber rivets into his mouth and choked to death. Ten months later, with Riviton sales well on their way to an expected $8.5 million for the year, a second child strangled on a rivet.

What should the company do? Just shrug off the two fatal child strangulations, ascribe the deaths to freakish mischance, try to shift the blame to parental failure to supervise and police their children at play, or assign responsibility to the child's abnormal misuse or abuse of their product? Could not the company cap its disavowal of responsibility by a bormidic disclaimer that, "After all, peanuts are the greatest cause of strangulation among children and nobody advocates the banning of the peanut."?

However, as manufacturers, Parker Brothers well knew that they would be held liable to an expert's skill and knowledge in the particular business of toymaking and were bound to keep reasonably abreast of scientific knowledge, discoveries and hazards associated with toys in their expectable environment of use by unsupervised children in the home. The toymaker knew that the Riviton set must be so designed and accompanied by proper instructions and warnings that its parts would be reasonably safe for purposes for which it was intended but also for other uses which, in the hands of the inexperienced, impulsive and artless children, were reasonably foreseeable. When you manufacture for children, you produce for the improvident, the impetuous, the irresponsible. As a seasoned judge put it: "The concept of a prudent child, God forbid, is a grotesque combination." Much must be expected from children not to be anticipated when you are dealing with adults, especially the propensity of children to put dangerous or toxic or air-stopping objects into their mouths. The motto of childhood seems to be: "When in doubt, eat it." Knowledge of such childish propensity is imputed to all manufacturers who produce products, especially toys, which are intended for the use of or exposure to children. Cases abound to document this axiom.

Recently, Wham-O Manufacturing Co. of San Gabriel, Calif., voluntarily recalled its Water Wiggle, a garden hose attachment that drowned a child when it jammed in its throat. Still more recently, Mattel, Inc. of Hawthorne, Calif., initiated a recall of missiles fired by its Battlestar Gallactica toys when a 4-year-old boy inhaled one and died. The manufacturer of a "Play Family" set of toy figurines would have been well advised to pull from the market and redesign the small carved and molded figures in the toy set, intended for children of the teething age. A 14-month-old child swallowed one of the toy figures 1¾" high and ⅞" in diameter, and before it could be extricated from his throat at a hospital's emergency room, the child was reduced to vegetable status as a result of irreversible brain damage from the toy's windpipe blockage of air supply to the brain. The manufacturer's dereliction of design and lack of product testing were to cost it a $3.1 million jury verdict for the child and his parents.

Against the marketing milieu and the legal setting sketched above, what should be the proper response of Parker Brothers, manufacturers of the Riviton toy set, when its executives learned of the second child's death from strangulation on the quarter-

inch rubber rivet in the toy kit? Should they have tried to tough it out or luck it out in the well known lottery "do nothing and wait and see"? The company was sensitive not only to the constraints of the law (liability follows the marketing of defective products), but also to the imperatives of moral duty and social responsibility, and the commercial value of an untarnished public image. Parker Brothers decided to halt sales and recall the toy. As the company president succinctly stated. "Were we supposed to sit back and wait for death No. 3?"

Business, the Frenchman observed, is a combination of war and sport. Tort Law pressures business to realize how profitless it may prove to war against children or to trifle and jest with their safety. The commendable conduct of Parker Brothers in this case is one of the most striking tributes we know to the deterrent value and efficacy of Tort Law and the example would make a splendid case study for the nation's business schools.

(10) Case of the Recycling Washing Machine That Pulled out a Boy's Arm. In *Carcia v. Halsett*. The plaintiff, an 11-year-old boy, sued the owner of a coin-operated laundromat for injuries inflicted while he was using one of the washing machines in the launderette. He waited several minutes after the machine had stopped its spin cycle before opening the door to unload his clothing. As he was inserting his hand into the machine a second time to remove a second handful of clothes the machine suddenly recycled and started spinning, entangling his arm in the clothing, causing him serious resulting injuries. The evidence was clear that a common $2 micro switch—feasible, desirable, long available—would have prevented the accident by automatically shutting off the electricity in the machine when the door was opened. The reviewing court held the launderette owner strictly liable for defective design because the machine lacked a necessary safety device, an available micro switch. Shortly thereafter the defendant obtained 12 of these micro switches and installed them himself on the machines. Once again, the threat of tort liability serves to deter—the prophylactic purpose of Tort Law at work. The deterrent function of Tort Law is not just an idea in the air; it has landing gear, has come down to earth and gone to work.

SUMMARY

The foregoing 10 cases and categories are merely random and representative examples, not intended to be complete or exhaustive, of the deterrent aim and effective of Tort Law in the field of product failure or disappointment.

It needs to be emphasized that the preventive aim of Tort Law is pervasive and runs like a red thread throughout the entire corpus of Torts. For example, the private Tort litigation system has served, continues to serve, as an effective and useful therapeutic and prophylactic tool in achieving better health care for our people by discouraging and thereby reducing the incidence of medical mistakes, mishaps and "misadventures." An error does not become a mistake unless you refuse to correct it. For example, successful medical malpractice suits have induced hospitals and doctors to introduce such safety procedures as sponge counts, electrical grounding of anesthesia machines, the padding of shoulder bars on operating tables, and the avoidance of colorless sterilizing solutions in spinal anesthesia agents. Remember, the fraudulent butchery practiced on defenseless patients by the notorious Dr. John Nork was not unearthed, pilloried or ended by the vigilant action of hospital administrators, peer review groups, or medical societies but by successful, energetically pressed malpractice actions prosecuted by trial lawyers in behalf of the victimized patients.

So we come full circle and end as we began: Accident Prevention Is Better Than Accident Compensation: "A Fence at the Top of the Cliff Is Better Than an Ambulance in the Valley Below." A successful lawsuit and the pressures of stringent liability are one of the most effective means for cutting down on excessive preventable dangers in our risk-beleaguered society.

My hero in the foregoing chronicle of good lawyering has been the hard-working trial lawyer with his care, commitment and concern for public safety, the civil religion of us all.

He more than any other professional has proved that we can indeed Sue for Safety. My tribute to him is in words Raymond Chandler used to salute his hero: "Down these mean streets a man must go who is not himself mean, who is neither tarnished nor afraid."

Mr. HOLLINGS. Mr. President, I think the point of the article, Mr. President, is that we really should be focusing on the issue of safety. We have a magnificent record here in the United States of America with respect to the safety of products, and one of the best articles I have ever seen on this is the one just printed in the RECORD entitled "Suing For Safety" by Thomas F. Lambert. He goes down the various cases up until that particular point some years ago. He says:

Tort law also has a secondary, auxiliary and supportive function—

In addition to compensation for the injured party.

sometimes called the deterrent or admonitory function.

He cites then the various cases that come to mind. "Accident Prevention Through Successful Suits in the Products Liability Field."

Case of the charcoal briquets causing death from carbon monoxide. Liability was imposed on the manufacturer of charcoal briquets for the carbon monoxide death and injury of a young who used the briquets indoors . . .

They produce these in my backyard in South Carolina. The warning is:

Do not use for indoor heating or cooking unless ventilation is provided for exhausting fumes to outside. Toxic fumes may accumulate and cause death.

That is exactly what happened in that case.

So we have hundreds and hundreds, maybe thousands, of individuals that have been saved from death by this one particular case. Specifically, the Moore versus Jewel Tea Co., where "a 48-year-old housewife suffered total blindness from a Drano can * * *" They had an imperfect screw on top of the can and, of course, it came under tremendous pressure and the Drano exploded and caused her blindness.

We also have the case of the Liquid-Plumber, where in almost the same way injuries were reported to defendant. They reformulated its design to produce a safer product. "After some 59 Liquid-Plumber injuries were reported to defendant, it finally reformulated its design to produce a safer product."

Then you have the Tip-over Steam Vaporizor.

A tip-over steam vaporizer scalded a young kid who was walking and tripped and pulled the particular electrical cord, turning it over. The insurance carrier finally balked after hundred claims, and went to the manufacturer and said, "Look, we are not going to continue coverage on your company unless you have recall and redesign." Thereafter, the company proudly proclaimed

Cover-lock top protects against sudden spillage if accidentally tipped.

Once again, the tort law had to play professor and policeman and teach another manufacturer that safety does not cost, it pays. All this about consumer cost, I am rather embarrassed to hear some of the arguments. A companion case goes to the Remington Mohawk 600 Rifle case, where when a young lad was trying to put the safety on to the off position, it discharged and shot the boy's father in the back. After pressure was brought Remington sent out this notice:

Important message to owners of Remington Model 600 and 660 rifles, Mohawk 600 rifles and XP-100 pistols. Under certain unusual circumstances, the safety selector and trigger of these firearms could be manipulated in a way that could result in accidental discharge. The installation of a new trigger assembly will remedy this situation. Remington is therefore recalling all Model 600 rifles except those with serial numbers starting with an "A". . . Remington recommends that prior to any further usage of guns included in the recall, they be inspected and modified if necessary. [Directions are then given for obtaining name and address of the nearest Remington recommended gunsmith . . .

Then of course, there was MER/29, the anti-cholesterol drug which turned out to cause cataracts. It would cause a calamity, and blatant fraud was proved on the manufacturer's part when they got into the manufacturer's record. In that particular case, they were manufacturing a dangerous drug. Who did more? Did the Federal Government or private trial lawyers do more in getting this dangerous drug off the market? The question carries its own answer.

The U.S. drug industry has annual sales of $16 billion per year, while the Food and Drug Administration has an annual budget of $65 million to oversee drug manufacture safety. How can the foothills keep the Alps under surveillance. Worse, as shown by the Mer/29 experience, enforcement of the law in that situation, far from being vigorous and vigilant, was lame, limp, and lackluster.

So it was the trial lawyers, product liability, all those who are talking about consumers. We are talking about

consumers, manufacturers, and everybody else.

The Consumer Product Safety Commission came about at that particular time. That is when we instituted it. The 1982 budget, of course, under President Reagan, cut it some 30 percent. Talking about spending cuts in the Government, in Government spending, in cut spending.

Now, looking at the Dalkon shield, asbestos, DES, slip into reverse transmission, fuel tank scandals—all the way down the list—and we find we have crime in the suites as well as crime in the streets.

We have the case of the infant who died drinking toxic furniture polish, while the manufacturer failed to warn the mother to keep the toxic product away and out of the reach of the children.

We have warning changes as to the foreseeable misuse: "DANGER. HARMFUL OR FATAL IF SWALLOWED. COMBUSTIBLE. KEEP OUT OF REACH OF CHILDREN," and so forth. That was done.

Then we have the case holding the manufacturer of PAM liable for the death of a teenager from inhalation of the PAM concentrated vapors, in the Harless versus Boyle-Midway Division of American Home Products case.

It was uncontested that prior to the lad's death the manufacturer knew of 45 inhalation deaths from the foreseeable misuse of its product, and upon remand admitted to an additional 68 from the same expectable cause.

In examining the label on the can of PAM on the shelf, Mr. President, we have: "WARNING: USE ONLY AS DIRECTED. INTENTIONAL MISUSE BY DELIBERATELY CONCENTRATING AND INHALING THE CONTENTS CAN BE HARMFUL OR FATAL."

We go even to the language difficulties—down in the distinguished Presiding Officer's backyard, they speak Spanish fluently—the case of the poisonous insecticide, holding that warning labels must contain appropriate symbols. Where they cannot read the language, at least they see the symbol. For wrongful death, in the case of Hubbard-Hall Chemical Co. versus Silverman, Puerto Rican laborers that could not understand English had to have, thereupon, the proper symbols.

The First Circuit upheld judgments entered on jury verdicts for the wrongful death of two illiterate migrant farm workers who were imported by a Massachusetts tobacco farmer and killed by contact with a highly toxic insecticide manufactured and distributed by defendant.

We see here, of course, the conspicuous usefulness of the lawsuit as the weapon for ferreting out marketing defects, whether ingenious or ingenuous, in selling dangerously defective products.

We have the case, Mr. President, of marketing carbon tetrachloride. That was finally taken, of course, off the market by the FDA as a result of this very disastrous case in Maize versus Atlantic Refining Co. and Tampa Drug Co. versus Wait. The court found that life and limb were too important to trade off against unmarketed inventory.

We have the case, Mr. President, of the 8-year-old boy who choked to death in strangling on a quarter-inch rubber rivet, part of a Riviton toy kit given him for Christmas. The toymaker knew that the Riviton set must be so designed and accompanied by proper instructions and warnings that its parts would be reasonably safe for purposes for which it was intended but also for other uses which, in the hands of the inexperienced, impulsive and artless children, were reasonably foreseeable.

So we had that decision. Parker Brothers decided to halt the sales and recall the toy. The company president, Mr. President, succinctly stated: "Were we supposed to sit back and wait for death No. 3?"

So there is a responsible manufacturer responding to product liability, saving thousands of others that are buying these toys and games. The commendable conduct of Parker Brothers in this case is one of the most striking tributes we know to the deterrent value and efficacy of tort law. The example would make a splendid case study for the Nation's business schools.

The case then, Mr. President, of the recycling washing machine that pulled out a boy's arm. He had waited for the washing machine at the laundromat for several minutes after the machine had stopped the spin cycle before opening the door to unload the clothing. As he was inserting his hand into the machine a second time to remove a second handful of clothes, the machine suddenly recycled and started spinning and tore his arm off.

The reviewing court held the launderette owner strictly liable for defective design because the machine lacked the necessary safety device, and of course thereafter they installed what they call a microswitch, which gave safe operation.

I could pursue this on and on, and I should. All we have heard here is a sham pose of how we are, on the floor of the U.S. Senate, sponsoring this bill to save the consumer the cost, the cost of the product, the thrust recognized with the Consumer Product Safety Commission, which has done outstanding work, and that is why this came about.

I could go into flammable pajamas, in the textile field, in my particular backyard. I visited, Mr. President, at Penney's safety laboratory on the 14th floor on Lexington Avenue in downtown New York. I was amazed at what Penney was doing. This was years ago.

I went up on that floor and they had all kinds of safety tests for all the toys and articles going into Penney stores around the country. That is responsible, corporate leadership. That is what product liability has brought about. The manufacturers and the retailers, Penney knows, under joint and several liability, they could be held liable. So they do not just take a product that appears good which they can make a profit on without looking at it themselves.

So we have the large marketing operations like Penney's which have instituted a safety laboratory. This has really saved money, and consumers—I wish they could find for me the word consumer in the Constitution. That is all I hear about with the sham trade policy they have. We are supposed to be saving the manufacturers' backbone, the jobs in the country.

We just referred a little while ago to manufacturing trade. Twenty-five years ago, in 1970, 10 percent of the manufactured products consumed in the United States of America was represented in imports—just 10 percent.

Today, in 1995, 25 years later, over 50 percent of manufactured products consumed in the United States is represented in imports. If we were back to 1970, with 90 percent of manufactured products consumed in the United States produced in the United States, we would automatically have 10 million more manufacturing jobs.

That is middle class. Those running around here wanting to do something for the middle class: We should build it, we should expand upon it, we should employ them, let them be able to afford a home, afford sending their kids to college.

We are going like the country of Great Britain, where they told them years ago, "Do not worry." Instead of a nation of brawn, we will be a nation of brains; instead of producing products, we will provide services, a service economy. Instead of creating wealth, we are going to handle it and be a financial center.

England has gone to hell in an economic handbasket, with two classes of society, in exactly the way we had it here in the United States of America.

When we get to product liability, we have one of the finest initiatives ever to come about in law. National problem—heavens above. Manufacturers come from the world around and gladly respond to product liability, bragging about their quality and safety, production.

That is what I have in my backyard. I see it. I talk to the Federal judges there. Most of them have been appointed by President Bush, President Reagan, President Nixon, President Ford—all of them.

They are good appointments. I am proud of them. I joined in them in confirming. I know them intimately. They will say, about product liability—they will laugh and they say they know it is a political issue gotten up by Victor

Schwartz, the National Association of Manufacturers, the Business Round Table, and the conference board, and they run around and ask candidates for the U.S. Senate, the U.S. House of Representatives, to commit. They use the buzzword reform. "Will you help us on product liability reform?"

I would say 95 percent of those asked as candidates have never tried or were aware of a product liability case. The easy answer, running for reelection or election, be that as it may, is to solve rather than create problems. If you have large financially supportive groups like the Conference Board, the Business Round Table, the Chamber of Commerce, the National Association of Manufacturers asking you, your immediate response is, "Well, sure, yes, I am for reform."

That is why we have been able to hold it up. Because the merit is on our side. This is a solution looking for a problem. There is not a national problem in product liability. Of all civil claims in the United States of America, torts are 9 percent of all civil filings. Of that 9 percent, only 4 percent of the 9,—36/100 of 1 percent—is in product liability. The States, over the past 15 years, with this issue raised, have all reformed—practically all—their product liability laws.

Why change on punitive damages, now the law of 45 States, at the national level? Why change that? Has anybody from the States come up and asked? Not a soul. The nearest they could get—and I remember politically when they changed it in the Governors Conference. I was waiting for the Governors because I have been a Governor. You could not find a Governor coming up and saying there is a terrible problem in my State. Because you would have to say: Wait a minute, I am a Governor. What did I propose? What did I try to do? So they sent up the executive secretary, who just rattled off some nostrums about litigation. He did not even know what he was talking about.

They brought up other witnesses. It was an embarrassment. In the Alabama cases they talked of businesses suing businesses. It had nothing to do with product liability. The hearings that we had before the Commerce Committee were an embarrassment, the way they were trying to get this thing on. And that is all it is and that is what is holding us up.

On the budget, we have not spent any time on the budget—serious national problems. Welfare reform—serious national problems. Crime, if they want to go back into the crime bill, or terrorism—serious national problems. Telecommunications—serious national problems.

But here they come with 36/100 of 1 percent of tort claims, which habitually have been held, for over 200-and-something years under the English rule, at the State level. They are preaching, if you please, Jeffersonian government, "That government nearest to the people is the best government" and that is why we have to get rid of this Washington bureaucracy, what they call the "corrupt, liberal welfare state." Take housing, block grants back; welfare, block grants back; crime, no policemen on the beat, block grants back—everything back in block grants, save this manufacturers bill. And by the way, as we enunciate the rules and regulations and compliance to the users and so forth, for the lawyers, let us not make them pertain or apply these to the manufacturers themselves.

The unmitigated gall of presenting this in a serious fashion on the floor of the U.S. Senate is an embarrassment to this Senator. I feel very keenly about it. I know I have behind me the American Bar Association. I know I have behind me the Association of State Legislatures. I know I have behind me the States Attorneys General. I know I have behind me the Association of State Supreme Court Justices. I know I have a list of over 130 organizations that we put in there comprising, amongst others, all the leading consumer organizations in the United States. Yet they have the audacity to keep pleading here, we have to save the cost to the consumer, the cost to the consumer.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

ORDER OF PROCEDURE

Mr. GORTON. Mr. President, I simply would like to inform my colleagues on the status of debate. We have two amendments to the Dole amendment that have been placed before us. One, by the Senator from Maine [Ms. SNOWE] is identical to the amendment that was agreed to this morning as an add-on to medical malpractice. I hope, and ask my colleagues who are here present—I hope we can simply adopt that amendment by a voice vote. We had a rollcall vote this morning on an identical proposition. Then, after an opportunity for Members to come to the floor and to debate the Dorgan amendment, I intend to move to table the Dorgan amendment.

The majority leader has said there will be votes, at least one additional vote and maybe more this evening.

All attempts during the afternoon have been made to secure a unanimous-consent agreement under which we could complete the debate on all amendments relating to punitive damages this evening and in a brief time tomorrow morning and then have a series of votes on punitive damages tomorrow morning, very much like those on medical malpractice today. We have been unable to secure that unanimous-consent agreement. In the absence of being able to secure it, the only way that any progress can be made is by motions to table and record votes on the amendments that are before us or are going to be in front of us.

So I intend at this point to yield so the Senator from Wisconsin may speak, I assume on one of these subjects.

Immediately after he has completed speaking I will ask unanimous-consent that we—I will ask we simply take a voice vote on the amendment by the Senator from Maine, Senator SNOWE. And then after the Senator from North Dakota has an opportunity to speak on his amendment, we will move to table it unless we can secure the unanimous-consent agreement we have been looking for.

I plead with our colleagues to try to do this in an orderly fashion. This is not the end of the bill. We are only attempting by tomorrow to finish up dealing with the subject of punitive damages.

With that, Mr. President, I yield the floor. I think the Member who has been waiting here the longest time to speak is the Senator from Wisconsin.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I will just take a second. I wonder if the Senator from Wisconsin can give us some idea how long he may wish to speak, and then the Senator from North Dakota, I understand, wishes to speak, too, on his amendment?

I would say before they respond, I share the views just expressed by the Senator from Washington. We had thought we would have an agreement where amendments would be offered this evening and then tomorrow morning we would start voting on amendments in the order they were offered. Apparently we cannot. Agreement has not been cleared on that side of the aisle.

We are still prepared to negotiate that agreement. That would get us finished with punitive damages on any and all second-degree amendments. Failing that, I do not see any alternative than to stay here late tonight and dispose of as many amendments as we can between now and 11 o'clock or midnight.

If I could just inquire of the Senator from Wisconsin how long he may wish?

Mr. FEINGOLD. I advise the majority leader, about 15 minutes.

Mr. DOLE. How much time does the Senator from North Dakota require?

Mr. DORGAN. Mr. President, I had hoped we would have a lengthier period of debate for my amendment. I offered my amendment prior to a couple of presentations and debate recently on the floor. I had not anticipated my amendment would be voted on tonight.

When I originally discussed this with the Senator from Washington, I understand they were at that point working

on a unanimous-consent agreement. I do not know why that unanimous consent agreement has not been agreed to at this point.

But I do know that there are others who wish to speak on my amendment. I would hope that if, however, you dispose of the Snowe amendment, that you would provide further opportunity for some additional debate. It is certainly not my intention to stretch out this process. But, by the same token, I think the Senator would admit that when you offer an amendment, they come to the floor and suggest we have a vote.

Mr. DOLE. Can we vote at 8 o'clock?

Mr. DORGAN. I have some other people who would like to speak on the amendment. But the intention of the Senator from Kansas is to do what?

Mr. DOLE. My original intent was to try to get an agreement where we could offer amendments tonight and vote on those tomorrow which I thought the Senator from North Dakota was supporting and obviously is supporting. For some reason we cannot reach that. The only other alternative we have is to stay here and grind through the amendments because we are now on the second week on this legislation. It seems to me that there may be other things we want to do in the next couple of weeks. But I would be prepared if we can reach an agreement. I certainly am not going to shut off the Senator from North Dakota. But if we could reach some reasonable agreement upon what time we could move to table the amendment, because we are going to stay here late tonight, late tomorrow night, and late the next night if we cannot reach an agreement. We do not have any alternative. Would the Senator have any indication of how much time he might need?

Mr. DORGAN. I might say to the majority leader, Mr. President, that I would like to visit with some other Members who would like to speak on my amendment. My understanding when I offered the amendment—I discussed it with the Senator from Washington—was that we were going to have a series of votes tomorrow morning. Apparently that has not materialized, at least in an agreement, at this point. But that was my understanding when I offered it.

My intention is that the proposal I have offered would eliminate the punitive damages cap in the underlying legislation. There will be a series of proposals on punitive damages, and there already have been some. And there will be others. This is probably the only opportunity the Senate will have on the issue of eliminating the cap on the underlying bill. I would hate to see a discussion on that issue go by in 15 or 20 minutes. I have spoken briefly. I know others would like to speak on the same subject.

Mr. DOLE. I am trying to reach an agreement. You say 8 o'clock is not enough time. Nine o'clock? Sooner or later we will move to table, if we cannot reach an agreement. We do not have any other recourse. We are the majority. We have to move legislation.

I think the Senator from Washington has a good suggestion. I think we will proceed and let the Senator from Wisconsin proceed, and then I will be recognized at that point either to make a tabling motion or reach an agreement.

Mr. FEINGOLD addressed the Chair.

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

Mr. FEINGOLD. I thank the Chair, and I thank the majority leader.

Mr. President, I believe my remarks at this point are not only relevant to the whole bill but in particular to the contents of the Dole amendment and some of the contents of the further amendments of the Senator from North Dakota.

I would like to take this opportunity to respond to statements made during the debate last week by the senior Senator from Washington that suggests that somehow or another the arguments that this bill has seventh amendment implications is somehow a bizarre argument.

In effect, that statement was made by the distinguished Senator from Washington on the opening day of this debate, on April 24, following the opening remarks by the Senator from South Carolina. On April 26, after my own remarks referencing the seventh amendment to the U.S. Constitution, the Senator from Washington described references to the seventh amendment in this context as both curious and bizarre.

I note that the Senator from Washington was very careful not to assert that either the Senator from South Carolina or the Senator from Wisconsin were making the argument that the pending legislation literally violated the seventh amendment, but rather he stated that we were "somehow or another implicating the seventh amendment right of trial by jury into this debate and thereby implied at least that the bill before us somehow or another restricts that constitutional right to trial by jury." That is the end of his statement.

Mr. President, I find the statements made by the Senator from Washington to be somewhat curious for two reasons:

First, a number of State courts have already struck down State statutes imposing limitations on amount of damages that juries can award as violating State constitutional guarantees of a right to trial by jury.

There is nothing strange or bizarre about suggesting that such limitations on the ability to recover may violate fundamental right to trial by jury since a number of State courts have already made precisely that determination with respect to similar State laws, and similar State constitutional provision.

For example, in *Smith* v. *Department of Insurance*, 507 So. 2d 1080 (Fla 1987) a $450,000 cap on noneconomic damager in tort actions was found to violate a right of access to the courts and the right to a trial by jury.

In *Kansas Malpractice Victims Coalition* v. *Bell*, 757 P 2d 251 (Kan 1988), a limit on noneconomic damages and on total damages was held to violate the state guarantee of right to remedy and jury trial.

In *Sophie* v. *Fibreboard Corporation*, 771 P. 2d 711 (Wash, 1989) a cap on noneconomic damages in tort actions was found to violate the State constitutional right to a jury trial. The Court said in the Sophie case that "[the state of Washington] has consistently looked to the jury to determine damages as a factual issue, especially in the area of noneconomic damages. The jury function receives constitutional protection [under the State constitution] which commands that the right of trial by jury shall remain inviolate".

There has thus been a series of State cases holding that statutory limitations quite similar to those proposed in the pending legislation violate State constitutional provisions guaranteeing a right to a trial by jury.

As the Senator from Washington well knows, the seventh amendment has not been held to apply to State court proceedings. Indeed, both the Senator from South Carolina and I have been careful not to argue that the legislation violates the seventh amendment as applied to State court proceedings.

However, many State constitutions provide for constitutional guarantees for trial by jury in State court proceedings that parallel the seventh amendment, and, as I have cited, a number of courts have held that limitations in State laws similar to those proposed in this legislation which limit the ability of a jury to award damages violate the right to a trial by jury under those State constitutional provisions.

So, Mr. President, that is the first reason it is neither bizarre nor inappropriate to argue about the right to trial by jury and the impact this legislation may have on it. But there is a second reason, Mr. President.

Second, it is clear that this legislation is an assault upon the American jury system and that is precisely what the proponents intend—an assault upon the American jury system.

Repeatedly, supporters of this legislation have asserted that it is needed because of excessive jury awards in product liability and other tort litigation.

They have repeatedly argued that the legislation is necessary to curb American juries from making these excessive awards.

This debate has been full of so-called examples of excessive jury awards,

starting with the infamous McDonald coffee case.

In fact, this is a specious argument.

To the extent that jury verdicts have been excessive, courts have routinely stepped in and reduced the awards, using their long-established powers of remittitur.

The infamous McDonald coffee case is an excellent example. The court there reduced the jury award from $2.7 million to $480,000.

I ask unanimous consent that a "Dear Colleague" I recently circulated dealing with the myth of excessive jury awards be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. FEINGOLD. Mr. President, this legislation would not only curtail the power of juries to determine the amount of punitive damages to be awarded; it would also prevent certain evidence relating to damages from even being presented to the jury in the first place. That has something to do with the right to trial by jury.

Section 107 provides that evidence relating to the punitive damages, for example, evidence of willful misconduct, would be inadmissible during the compensatory damages stage of the proceeding.

That section 107 also provides that evidence relating to a defendant's wealth, which I think is clearly a relevant factor in assessing what level of punitive damages should be assessed, could not be presented to the jury, which, in my view, is another serious derogation from the right to trial by jury.

Other proposals which may soon be added to this measure would do even more of the same.

They would prevent juries from making punitive damages awards entirely, leaving those decisions not to the jury but to judges alone.

All of these proposals, in my view, evidence a clear and very disturbing distrust of the jury system itself. And it looks to me like a presumption somehow that juries are incapable of reaching good decisions without these kinds of federally mandated restraints and constraints on the jury. That is what this is—a new Federal mandate that constrains and restrains juries.

Mr. President, as we debate whether Congress should place these kinds of mandates or restrictions on the deliberation of juries, it may help actually to take just a few moments to reflect upon the historical importance placed upon the jury system in our Nation.

The right to a trial by jury in civil as well as criminal cases was one of the most important rights that was sought by the framers of our Constitution.

Indeed, one of the primary grievances of the American colonists against the British was the extensive effort by the British to shift the adjudication of civil and criminal disputes from the colonial courts, where the local juries traditionally sat, to the vice-admiralty courts and other nonjury tribunals administered by judges who were, of course, completely beholden to the British Crown.

So this is not something that we just came up with recently. This goes back as far as our country's history to the colonial era.

This anger over the fact that under the British rule juries were being deprived of their authority was actually expressed in the Declaration of Independence itself, which cites among the many grievances lodged at the British, "For depriving us in many cases, of the benefits of Trial by Jury."

Thomas Jefferson described the jury in his writings as "the only anchor yet imagined by man, by which a government can be held to the principle of its Constitution."

Mr. President, in the constitutional convention, the proposed Constitution included the right to trial by jury in criminal cases under article III, but the absence of an expressed guarantee of the right in civil actions was condemned by the antifederalists as sufficient cause to reject the entire Constitution.

So the entire Constitution was in some jeopardy because of that omission. And, of course, it was those kinds of concerns of those who were not entirely happy with the Constitution itself that led to our Bill of Rights, specifically their demand for an explicit guarantee for the right of a trial by jury for civil cases, that led to its inclusion in the seventh amendment to the U.S. Constitution in our Bill of Rights.

Mr. President, it was included from the first among Madison's proposals for the Bill of Rights, noting "in suits at common law, the trial by jury, as one of the best securities to the right of the people, ought to remain inviolate."

Juries were regarded by the Framers, according to one constitutional scholar, Morris Arnold, in a 1980 University of Pennsylvania Law Review article, "A Historical Inquiry into the Right to Trial by Jury in Complex Civil Litigation," "as more than a 'mode of trial' they were instruments of local government as well."

I find that very interesting. The 104th Congress, I think, should be given the most credit on any issue perhaps so far for having dealt with that whole overriding issue of unfunded mandates, of showing respect for the local levels of government.

Mr. President, our Framers perceived the jury as one of those local levels of government, one of those institutions that was made up of the people back home not specifically beholden either to this Federal Government or, before the revolution, the British Crown.

Indeed, this view of juries as a critical element of the American democracy prompted Alexis de Tocqueville to observe in "Democracy in America," "The jury is, above all, a political institution, and it must be regarded in that light in order to be duly appreciated."

More recently in our modern history, Chief Justice Rehnquist recognized the historical role of the American jury in his dissenting opinion in Parklane Hosiery Co. versus Shore in 1979, in which our current Chief Justice stated, "The founders of our nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign."

Mr. President, that is what this bill is all about today. This is the sovereign, the Federal Government, choosing to override the right of State and local juries to make the decisions about what a jury should be free to do. This is exactly what Chief Justice Rehnquist must have meant.

The Supreme Court has repeatedly recognized the fundamental importance of trial by jury, stating in Dimmick versus Schiedt, that "Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment to the right to a jury trial should be scrutinized with the utmost care."

Tort reform, particularly limits on the amount of damages that juries may award, clearly implicates this right to trial by jury, as a number of State court decisions have held with respect to State laws and constitutional guarantees to trial by jury.

As the Washington Supreme Court found in the Sophie case, statutory damage limits interfere with the jury's traditional function to determine damages.

That case also contains a very instructive discussion of the difference between a trial judge's power of remittitur to reduce a jury verdict and a statutory cap, an overall, across-the-board cap, on the amount of damages a jury can award.

The court observed that the judicial finding that an award is too high in a particular case is fundamentally different from a legislatively imposed "remittitur" that operates automatically in all cases without regard to the facts and justice of the case.

A judge implements remittitur only under well-developed constitutional guidelines that provide that a judge can only reduce a jury's damages determination when that determination was wholly unsupported by the evidence, obviously motivated by passion or prejudice, or when in certain cases it actually shocks the conscience just for a jury to have given such an excessive award.

Mr. President, absent such factors, there is a strong presumption in favor of the jury's determination. And that comes to us all the way back from the Framers and the seventh amendment.

Finally, the opposing party in cases of remittitur has the choice generally of accepting the reduction or seeking a new trial. It is not necessarily completely the end of the line.

None of these safeguards, as was observed by the court in the Sophie case, is present in one of these across-the-board statutory damage limits that is contemplated by the legislation before us.

The system of remittitur thus operates in a fashion very different from the kind of statutory caps that are being advocated by the people who are presenting the so-called tort reform.

Mr. President, I do not intend to get into an extensive debate about whether or not the pending legislation violates the seventh amendment in practical terms, since the seventh amendment has not, to this date, actually been applied to the States through the 14th amendment, although it is certainly applicable, of course, to proceedings in Federal court.

It certainly, however, Mr. President, violates the spirit of the seventh amendment, which was intended to assure that local juries, local folks on local juries comprised of one's peers, not just governmental officials in Washington, would be the ones to makes these decisions.

I am advised that this measure, should it be enacted, Mr. President, will be challenged in court before the ink is dry, both on the basis of the seventh amendment and on the basis of last week's decision in United States versus Lopez, which restricts the right of Congress to intrude upon areas which have been traditionally regulated by the States under their own powers.

The decision in Lopez states that the scope of constitutional authority under the interstate commerce power "must be considered in light of our dual system of government and not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

Now that sounds like language, Mr. President, of the so-called Contract With America—let us not take away the power of the States and the local governments. But, in a very real sense, that is the best description of this bill I have heard.

Mr. President, I am one of the few Members of Congress who voted against the 1994 crime bill; in fact, one of only two Democrats to vote against the crime bill. I did it, in part, because I believe it represented an inappropriate incursion of the Federal Government into areas of law enforcement which had throughout our history been within the province of State and local law enforcement agencies.

My reasons at the time were based upon policy concerns that the Federal Government ought to do a better job with the responsibilities that clearly rested at the Federal level than seeking to usurp State and local law enforcement responsibilities.

Last week's decision, of course, by the U.S. Supreme Court adds an even more compelling argument to the debate.

Congress does need to learn to restrain itself from trying to take on every problem that gets a headline in the newspaper. We need to learn to say that some problems are better addressed at the State and local level.

That is why I voted for the unfunded mandates bill, and I believe, Mr. President, if especially the new Senators take a look at this bill, tort reform is clearly one of those areas that belongs with the States. I do not think the Federal Government knows better than the 50 States of this country as to what should be a law in this area.

There is often a great deal of rhetoric about what the Founding Fathers might think about various contemporary problems and how our Government deals with those problems. All we can do is speculate. It was 200 years ago. But every argument makes us want to know, even though we cannot know for sure, what the Framers would have said.

At least one of the proponents of this legislation argued last week that if we asked the Framers, they would not have wanted juries to consider medical malpractice or product liability cases. I do not agree with that at all. I think that would have made a lot of sense to them.

I, for one, believe that the Framers would be horrified—horrified—at the idea of the Federal Government passing legislation like this to preempt the powers of State governments, to require State courts to follow Federal law in an area which has been the domain of the States and local governments and local juries for 200 years.

They would have been horrified to hear the arguments that somehow the common citizens, the average folk of this country who comprise American juries, are somehow out of control and that they need the Federal Government in Washington to check their powers. That is about as direct an offense to the folks back home as I can think of, saying they cannot handle it on these juries, that they are out of control.

I think the American patriots who fought against the British attempts to take power away from colonial courts, to prevent local juries from rendering decisions would turn over in their graves to hear such arguments advanced in their name and in defense of this legislation.

Mr. President, this legislation is nothing more or less than an assault on the American jury system. It is predicated on a belief that local juries are not capable of rendering fair decisions. It is an attempt—a serious attempt—to diminish the role of juries, a role which our Framers regarded as vital to our democracy and system of government, and I think it should be soundly rejected.

I just want to raise one last point that actually came out during the Commerce Committee hearing, and I think it is worth repeating.

Testifying on behalf of the Conference of Chief Justices and in opposition to this bill was the Honorable Stanley Feldman, the chief justice of the Arizona State supreme court. The chief justice pointed out that in many States, we have entrusted juries with virtually all major decisions, including the decision of whether or not to sentence a criminal defendant to death.

In criminal courts, we say to the juries, here are the facts of the case, here is what the prosecution claims the defendant did, here is the defendant's alibi or confession and here is the doctor's psychiatric evaluation. We give the juries all of this information, and then we ask them to make a final judgment about whether a person should live or die.

As Chief Justice Feldman illustrated, it is almost bizarre that those who believe we should entrust with juries the power to put people to death also maintain that juries are unable to objectively calculate what a reasonable punitive damage award should be.

I find it unfathomable that we can say that juries are qualified to impose the death penalty on criminal defendants but underqualified and incapable to assess monetary penalties against civil defendants. I am afraid that says something about what our society has come to value in this day and age.

Mr. President, to conclude, this may not literally be an issue of whether the seventh amendment literally applies in this situation. It may, as constitutional interpretation has done with respect to Federal aspects of this bill. But, obviously, the right to trial by jury has to have some core meaning and, at some point, if you limit what a jury can do to make a person whole or you restrict the evidence a jury can hear to make its decision, it has to have an impact on the right to trial by jury.

Maybe we have not reached that point yet in our legislation in this country, but I believe this bill takes us quite far over the line and does seriously diminish what I think most Americans would agree is properly the role of the jury, not the role of the U.S. Congress.

I thank the Chair, and I yield the floor.

EXHIBIT 1

DEAR COLLEAGUE: As the debate continues around the product liability bill, I wanted to address one of the many myths circulating about the need for this legislation: that juries are out of control and they are subject to no restraints under current law. Quite simply, I believe this attack upon the jury system is unwarranted.

For over two hundred years Americans have valued the jury box as much as they have valued the ballot box. Perhaps there is nothing more symbolic of or distinguishing about the American judicial system—the greatest judicial system in the world—than the principal of trial by jury.

The one distinguishing characteristic about American jurors is that they have no distinguishing characteristics. A juror could be the waitress that served you breakfast this morning. It could be the person who delivers your mail. It could be your doctor, a family member or even your favorite celebrity. And we must remember that jurors today are just as capable of administering fair and equal justice as were jurors in 1791, the year the Seventh Amendment and the Bill of Rights were ratified.

Unfortunately, the powerful supporters of S. 565 have run an effective campaign of misinformation about jury verdicts in recent months. They have tried to convince this country that jurors are determined to drive American manufacturers and corporations into bankruptcy. Of course, nothing could be further from the truth.

A well-known study by Professors Michael Rustad and Thomas Koening—referred to by the Supreme Court as the "the most exhaustive study" ever on punitive damages—found only 355 punitive damages awards in federal and state courts for product liability cases between the years 1965-1990. Not counting the cases that related to asbestos, that is an average of about 10 punitive damage awards a year—hardly a situation of vindictive juries running amok in America.

Does this mean that juries are inhuman and incapable of mistakes? Does it mean that jury decisions should be absolute with no checks or limits? Of course not. In fact, just last year the Supreme Court affirmed in *Honda Motor Company* v. *Oberg* that judges have a clear authority and obligation to limit punitive damages awarded by juries. As Justice Stevens wrote in his majority opinion, ". . . judicial review of the size of punitive damage awards has been a safeguard against excessive verdicts for as long as punitive damages have been awarded."

In their study, Professors Rustad and Koening found that of the 355 punitive damage awards in the past 25 years, 90 of these awards—about 25 percent—were either reversed or remitted by the presiding judge. Take the infamous McDonald's coffee case. The jury awarded $2.7 million in that case—the equivalent of two days' worth of McDonald's coffee sales. The judge reduced this to $480,000 or three times the plaintiff's economic damages. Judges can and do reduce these awards.

In short, this is reflective of a system of justice in which juries prescribe appropriate sanctions against parties that have been found guilty in a product liability action and at the same time bestows upon judges a necessary oversight role that is exercised with frequency and prudence.

The fundamental issue here is this: If an injured consumer sues a manufacturer in a state court, who do you trust to administer justice in that case—the judge and the jury, or Congress?

Best regards,

RUSSELL D. FEINGOLD.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, the time has come for us to put some common sense in our court system. There is no question that we must make sure that every person has a right to go to court if that person has been injured. But we see courts being overcrowded, we see defendants having to settle because it is less expensive to settle than to go ahead and try a case. We have seen research, particularly in the area of women's health, being shut off because the drug companies and the pharmaceuticals just cannot do it. They cannot do it because of the liabilities they are afraid they will incur.

This is the eighth consecutive Congress in which the Senate or the Commerce Committee has considered product liability. During that time, the need for product liability reform has grown by leaps and bounds. A study by the Texas Public Policy Foundation found that from the early 1980's to the early 1990's, the total number of punitive damage awards in Dallas County was 14 times greater and the average award, adjusted for inflation, was 19 times higher.

In Harris County, which is Houston, total awards were up 26-fold and the average award was up eightfold, and that is from a House Judiciary Committee report.

My State of Texas and the State of California have begun to take steps to control this growth. But this is all over the country. These things are happening all over our country, and it is affecting the price of our products and the ability to do research.

In a recent letter, Robert Bork, the judge, explained how product liability laws force national manufacturers to plan and protect themselves against lawsuits in the most litigious States. He said a State like California or Texas can impose its views of appropriate product design and the penalties for falling short on manufacturers and distributors across the Nation. He found this to be a perversion of federalism. Instead of national standards being set by the National Legislature, national standards are set by the courts and juries of particular States. He was making the case that it is Congress' role at the Federal level to take control of this situation. It is a matter of interstate commerce. It is something that we must deal with.

Today, we are talking about an amendment by the majority leader—and I am a cosponsor of this amendment—to provide the same protection from excessive punitive damage awards that this bill provides for manufacturers and retailers, to civic groups, to charities, to churches, and to local governments. Our courts are being misused. People who have not done anything wrong are being held up for settlements, and now this applies to Girl Scouts and Boy Scouts, to our Boys and Girls Clubs of America.

Congress must take control. We can lower prices, we can lower insurance premiums, we can have new business starts, we can get new products and drugs on the market, we can increase jobs, and we can free the people who want to volunteer to do that without fear of retribution by a lawsuit.

We can keep cities and towns from being bankrupted by lawsuits over playground accidents. We can keep volunteers helping the needy by maintaining a proportionality between compensatory and punitive damage awards in tort actions. We must expand the product liability bill to protect all Americans from unnecessary and frivolous lawsuits, from excessive damages for injuries they did not cause.

This bill, under the leadership of Senators GORTON and ROCKEFELLER, goes a long way in the right direction to try to bring these abuses to heel. It is time to end the judicial lottery and put common sense back in the courts. If we are going to do that, Mr. President, I think we must apply it to the cities because, after all, it is the taxpayer who always foots the bill when there is a lawsuit that gets an award that the city's insurance does not cover. Who pays? You know. We all know. It is the taxpayers of this country. When it is the Girl Scouts selling cookies and they have a frivolous lawsuit because it is just assumed they would have deep pockets, who pays? It is all the good deeds and the leadership qualities that Girl Scouts give that will suffer.

It goes on and on, Mr. President. We must take control of the situation. I hope the Senate will not let this bill go by the wayside. I hope we do not argue and bicker so that we are not able to get a good bill out of this body, so that we can go to conference and work with the House and send something to the President that I hope he will sign. If we can do that, we will be able to reopen research that has been left out of the game right now because people are just not able to afford to do it, because they cannot protect themselves from the litigation attempts.

So I am hoping that we will take action so that we can open up the research capabilities and open up our playgrounds and swimming pools. Personal responsibility is a new theme in America that has been rejuvenated from the past. I think personal responsibility is part of what we are about. We are not talking about legitimate issues of a person being injured. We are not talking about the right to have economic damages, some damages for pain and suffering—absolutely not. I

have heard stories on the floor for the last week that are heart wrenching.

There is no question that some people are entitled to damages. But we have to curb the excesses. We have to bring common sense back into the mix. That is what this bill will do. I urge my colleagues to support the Dole amendment so that everyone will have the same coverage as the corporations do. I urge my colleagues to look at the big picture and try to make the decision to get a good bill out of the Senate so that we can send something to the President that I hope he will, in the name of responsibility, be able to sign.

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.

Mr. SHELBY. 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. SHELBY. Mr. President, the legislation that we are considering today has no place on the Senate floor or on the Senate calendar. This legislation is a blatant attempt to eliminate over 750 years of Anglo-American common law and to federalize over 200 years of State Tort law in this country.

I want to return power to the States, not federalize important areas of State control. I thought that returning power to the States was a major part of the philosophical victory of the Republican party, my party, which occurred last fall.

Mr. President, our current legal system, based on Anglo-American law, has its beginning in A.D. 1215 when the barons of England forced King John to sign the Magna Carta at Runnymede. The Magna Carta placed the King under the law and put limits on royal power. It also created remedies for many of the abuses that were occurring in England and gave legal protection to the English ruling class, which was later expanded to all Englishmen. Following the Magna Carta other English legal documents provided for additional legal protections for British citizens and the concept of rule of law.

Ultimately, the Magna Carta has come to stand for the proposition that no man is above the law.

English courts, after the Magna Carta, went on to develop a system of common law to provide legal protection to all men and women, the likes of which the world had never seen. Common law, including all Tort law, is basically judge-made law. For hundreds of years English judges decided cases which in turn formed the basis for future decisions.

Under the Magna Carta, the later laws passed by the British Parliament, and the English common law, men were for the first time given certain basic rights in the legal system such as due process, jury trials, and the right to cross examine witnesses.

Mr. President, this system of Anglo-American law was brought to our shores by English settlers and was adopted by our Founding Fathers when they wrote the United States Constitution—the single most important document in our land. Many of the provisions of the Magna Carta anticipate rights that were embedded in the U.S. Constitution and American law.

Our Constitution created a Federal system of Government. Under this system, that so many in this body appear to want to do away with, the Federal Government has certain areas of responsibilities and the States have their areas of influence.

As early as 1648 in the Maryland Act for the Liberties of the People, American colonists explicitly recognized that they were protected and governed by the common law. In 1774, the Declaration of Rights of the First Continental Congress stated that the "Colonies are entitled to the common law of England." After the American Revolution, the colonies, and later the 13 States developed and adopted the common law to their own needs and circumstances. Common law, including Tort law, has remained solely a responsibility of the States for over 200 years.

Mr. President, I would like to direct my colleagues' attention to the tenth amendment of the U.S. Constitution, the tenth amendment states that:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

For over 200 years, the States have had the responsibility and a duty, Mr. President, to develop tort law. They have done so.

The bill we are considering today is the first step, I believe, in destroying the States' important role in developing and administering rules and laws for the redress and compensation for various torts, including product liability cases.

In addition to eliminating over 750 years of Anglo-American common law, this bill violates the 10th amendment of our Constitution and the basic principles of American federalism.

Mr. President, the States have truly served as laboratories of democracy over the last 20 years in the area of tort reform. Virtually every State in the country has significantly reformed its legal system as it relates to product liability.

Where there have been problems, the States have examined their legal systems and corrected the problems. As Supreme Court Justice Powell has stated,

> Our 50 States have developed a complicated and effective system of tort laws and where there have been problems, the States have acted to fix those problems.

There is no current justification, I believe, Mr. President, for federalizing our Nation's tort system. Under the logic of this bill, if we carry it a step farther, if we federalize all product liability cases, why do we not federalize all civil and criminal statutes?

The Federal Government can usurp all State power. We know that. Unfortunately, Mr. President, there are many in this body who see federalizing product liability law and other things as a first step to federalizing all legal matters.

This bill will substantially disrupt and may end our country's State common law system. It will result in additional litigation in both State and Federal courts.

Mr. President, I hope that my colleagues will think long and hard before they go down the path toward ending federalism as we know it and preempting all State common law.

The Federal Government, including the Congress, I believe, cannot solve all of our society's ills by Federal statute.

I find this legislation totally unacceptable, and I urge all my colleagues to vote and work against it.

AMENDMENT NO. 621 TO AMENDMENT NO. 617

(Purpose: To provide that a defendant may be liable for certain damages if the alleged harm to a claimant is death and certain damages are provided for under State law, and for other purposes)

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

The PRESIDING OFFICER. The pending question is the Gorton amendment No. 620.

Mr. SHELBY. Mr. President, I ask unanimous consent that this amendment be made a second-degree amendment to the Dole amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Alabama [Mr. SHELBY], for himself and Mr. HEFLIN, proposes an amendment numbered 621.

Mr. SHELBY. Mr. President, I ask unanimous consent that the reading be dispensed with.

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

The amendment is as follows:

> At the appropriate place insert the following:
>
> **SEC. . LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.**
>
> In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

Mr. SHELBY. Mr. President, I have made statements in the past about the negative effects this bill will have on

State laws and federalism in general. Tonight, I want to be more specific.

My State of Alabama has a wrongful death statute whose damages are construed as only punitive in nature—yes, only punitive in nature.

Under the product liability bill that we are considering today in the Senate, along with some of the proposed amendments to this bill, people who have committed or are guilty of a wrongful death in my State of Alabama, the damages available will be severely limited.

In 1852, quite a while ago, the Alabama legislature passed what is known as the Alabama Homicide Act. This act permits a personal representative to recover damages for a death caused by a wrongful act, omission, or negligence. For the past 140 years, the Alabama Supreme Court has interpreted this statute as imposing punitive damages for any conduct which causes death.

Alabama believes that all people have equal worth in our society, so the financial position of a person is not used as the measure of damages in wrongful death cases in my State. The entire focus of Alabama's wrongful death civil action is on the cause of the death.

The amendment that I am offering tonight on behalf of myself and my colleague, Senator HEFLIN, will provide that in any civil action where the alleged harm to the claimants is death and the applicable State law only allows for punitive damages such as Alabama, the punitive damages provision of this bill will not apply—in other words, of the Federal statute if it were to pass.

Mr. President, I believe there are legitimate reasons to exclude from coverage of this bill actions such as those brought under Alabama's wrongful death statute.

I urge all of my colleagues to support this important amendment to my State.

Mr. HEFLIN. Mr. President, I rise in support of the Shelby amendment.

In all of the 50 States, Alabama has a different and unique recovery in the event that a decision is made by a court or jury in regard to the death of an individual, whether it be brought by negligence or any form of action. Alabama's wrongful death statute is unlike any other State's wrongful death statute because its damages are punitive only. A person cannot prove, in a wrongful death case in Alabama, compensatory damages. An Alabama plaintiff cannot show his wages, his doctor bills, or anything similar of an economic or noneconomic nature. Alabama's statute is very unique and different from any other State.

The language of the Shelby amendment was included in a number of previous bills that were reported out of the Commerce Committee. In the 102d Congress, in the bill that was reported out, S. 640, and in several bills that were reported out of the Commerce Committee on product liability previous to that, they contained the exact language of the pending Shelby amendment. This had been worked on, and there had been several drafts and everybody agreed that it was a proper amendment to be included.

I suppose since I have opposed the overall product liability, this provision may have been taken out. What I am saying is that the citizens of Alabama ought not to be at a disadvantage in regard to recovery under whatever product liability bill is passed.

The language of this amendment was agreed to and was in previous bills but has been omitted from this bill. Basically, it allows for punitive damages as the element of damages that is allowable. A person is not allowed to have compensatory damages. A wrongful death statute does not allow even for the matters pertaining to loss of wages or pain and suffering or anything else. It is strictly a matter left to the jury on the wrongful death issue, and has been in existence for a long time. The defense bar, the plaintiff bar, have all agreed that this is a type of damage that ought to prevail, pertaining to wrongful death in Alabama.

This concept was developed many years ago in what we know as the Lord Campbell Act. The Lord Campbell Act was passed because English jurisprudence realized that a defect existed in common law in that there were questions as to whether or not when someone died, that the cause of action survived.

Many States passed wrongful death statutes, and following the Lord Campbell Act that was passed in England, the Alabama Supreme Court a number of years ago, well over 100 years ago, interpreted that act as being punitive in nature only and compensatory damages could not be proved.

As a result, under the current language of punitive damage provisions in the product liability bill, unless the Shelby amendment is adopted, then a person who is killed in my State in a wrongful manner could not recover any damages.

I support the Shelby amendment. I think it ought to be adopted. I think if we look back into the past history and those that have dealt with it, we see that everybody at a previous time who worked on this came up with an agreement language, and it is one, I think, that ought to be adopted by the Senate.

I want Members to check with various people involved in this, and I think it is a legitimate amendment. It ought to be passed, or otherwise the people in the State of Alabama will be the only State in the Nation that could not recover when an individual is killed by negligence or by gross negligence or recklessness or wantonness or any type of proof that is necessary to prove a cause of action.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call.

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

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

AMENDMENT NO. 617, AS MODIFIED

Mr. DOLE. Mr. President, I send a modification to my amendment to the desk.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment (No. 617), as modified, is as follows:

On page 19, strike line 12 through line 5 on page 21, and insert the following:

SEC. 107. PUNITIVE DAMAGES IN CIVIL ACTIONS.

(a) FINDINGS.—The Congress finds that—

(1) punitive damages are imposed pursuant to vague, subjective, and often retrospective standards of liability, and these standards vary from State to State;

(2) the magnitude and unpredictability of punitive damage awards in civil actions have increased dramatically over the last 40 years, unreasonably inflating the cost of settling litigation, and discouraging socially useful and productive activity;

(3) excessive, arbitrary, and unpredictable punitive damage awards impair and burden commerce, imposing unreasonable and unjustified costs on consumers, taxpayers, governmental entities, large and small businesses, volunteer organizations, and nonprofit entities;

(4) products and services originating in a State with reasonable punitive damage provisions are still subject to excessive punitive damage awards because claimants have an economic incentive to bring suit in States in which punitive damage awards are arbitrary and inadequately controlled;

(5) because of the national scope of the problems created by excessive, arbitrary, and unpredictable punitive damage awards, it is not possible for the several States to enact laws that fully and effectively respond to the national economic and constitutional problems created by punitive damages; and

(6) the Supreme Court of the United States has recognized that punitive damages can produce grossly excessive, wholly unreasonable, and often arbitrary punishment, and therefore raise serious constitutional due process concerns.

(b) GENERAL RULE.—Notwithstanding any other provision of this Act, in any civil action whose subject matter affects commerce brought in any Federal or State court on any theory, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant only if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct by the defendant that was either—

(1) specifically intended to cause harm; or

(2) carried out with conscious, flagrant disregard to the rights or safety of others.

(c) PROPORTIONAL AWARDS.—The amount of punitive damages that may be awarded to a claimant in any civil action subject to this section shall not exceed 2 times the sum of—

(1) the amount awarded to the claimant for economic loss; and

(2) the amount awarded to the claimant for noneconomic loss.

This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(d) BIFURCATION.—At the request of any party, the trier of fact shall consider in a separate proceeding whether punitive damages are to be awarded and the amount of such an award. If a separate proceeding is requested—

(1) evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded; and

(2) evidence admissible in the punitive damages proceeding may include evidence of the defendant's profits, if any, from its alleged wrongdoing.

(e) APPLICABILITY.—Nothing in this section shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by the United States, or by any State, under any law;

(2) create any cause of action or any right to punitive damages;

(3) supersede or alter any Federal law;

(4) preempt, supersede, or alter any State law to the extent that such law would further limit the availability or amount of punitive damages;

(5) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(6) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(7) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

(f) FEDERAL CAUSE OF ACTION PRECLUDED.—Nothing in this section shall confer jurisdiction on the Federal district courts of the United States under section 1331 or 1337 of title 28, United States Code, over any civil action covered under this section.

(g) DEFINITIONS.—For purposes of this section:

(1) The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) The term "clear and convincing evidence" means that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard shall be more than that required under preponderance of the evidence, and less than that required for proof beyond a reasonable doubt.

(3) The term "commerce" means commerce between or among the several States, or with foreign nations.

(4)(A) The term "economic loss" means any objectively verifiable monetary losses resulting from the harm suffered, including past and future medical expenses, loss of past and future earnings, burial costs, costs of repair or replacement, costs of replacement services in the home, including child care, transportation, food preparation, and household care, costs of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(B) The term "economic loss" shall not include noneconomic loss.

(5) The term "harm" means any legally cognizable wrong or injury for which damages may be imposed.

(6)(A) The term "noneconomic loss" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(B) The term "noneconomic loss" shall not include economic loss or punitive damages.

(7) The term "punitive damages" means damages awarded against any person or entity to punish such person or entity or to deter such person or entity, or others, from engaging in similar behavior in the future.

(8) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

UNANIMOUS CONSENT AGREEMENT

Mr. DOLE. Mr. President, I think we have a consent agreement now. I will recite it. If there are any questions I will be happy to respond.

I ask unanimous consent that during the Senate's consideration of H.R. 956, all second-degree amendments to the Dole amendment must be debated during today's session of the Senate.

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

Mr. DOLE. I further ask that any votes ordered on or in relation to second-degree amendments to the Dole amendment, No. 617, occur beginning at 11:15, and that the final vote in the sequence be on or in relation to the Dole amendment, No. 617, as amended, if amended.

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

Mr. HEFLIN. Just a moment. I reserve the right to object.

I mean if the final—oh, I see; in the sequence in relationship. So it does not mean that that is the final vote of the day or anything like that?

Mr. DOLE. No. I wish it were.

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

Mr. DOLE. I further ask that at the hour of 10:15 a.m. there be 1 hour for debate to be equally divided between the two managers for discussion on any of the pending amendments to the Dole amendment.

Mr. HEFLIN. I assume that, in regards to that, it is to the managers, between the managers. That means that people who are opponents to the various amendments rather than the managers would be——

Mr. DOLE. I think that provision is set to accommodate the Senator from Alabama. If the Senator from West Virginia has no objection, I can say to the Members in opposition——

Mr. ROCKEFELLER. The Senator from West Virginia will do it in any way that is equitable.

Mr. HEFLIN. Why not put it that half of the time be under control of Senator HOLLINGS or his designee?

Mr. DOLE. Would that be all right with the Senator from West Virginia?

Mr. ROCKEFELLER. That will be fine.

Mr. DOLE. So I modify the request, time to be equally divided between Senator GORTON and Senator HOLLINGS or their designees.

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

Mr. DOLE. I further ask that following the disposition of the Dole amendment, as amended, if amended, Senator THOMPSON be recognized to offer an amendment to limit the bill to Federal court cases only.

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

Mr. DOLE. So I say to my colleagues, there will be no votes tonight. But anybody who has a second-degree amendment to the Dole amendment, or anybody who wishes to debate, we will be in session as long as that may take.

I thank my colleagues on both sides for agreeing to this request.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I ask unanimous consent if I could proceed as in morning business for 5 minutes?

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

TRIBUTE TO SENATOR JOHN C. STENNIS

Mr. COCHRAN. Mr. President, it was my honor, a unique honor and special pleasure to serve in this body as the State colleague of John C. Stennis for 10 years. I deeply appreciated the bond of friendship, respect and trust that developed between us as we worked together to represent the interests of the State of Mississippi, and its citizens, in the U.S. Senate.

He had already established a reputation for intelligent leadership in this body when I arrived here, and I considered it my good fortune to be able to learn first hand from him and from his example. We were never rivals. We talked almost every day. He was always friendly and courteous to me, as he was with every other Senator. Although we were members of different political parties, that did not interfere with or detract from our relationship.

Our State has its share of demagogues, as all other States have, and I have deplored their excesses and have been embarrassed by them. But in Senator Stennis we saw a man as pure in heart and deed with less inclination to

inflame the passions of the voters with exaggerated and flamboyant rhetoric as any we have ever elected to public office, and I admired him for that. He preferred to win a debate or an election on the basis of the well argued evidence, rather than to prey upon the fears or suspicions or prejudices of the audience.

He was the kind of Senator I try to be.

During his more than 41 years of service as a U.S. Senator, he was steady, conscientious and extraordinarily successful in every assignment and undertaking.

From his earliest days to his last days he gave the full measure of energy and his ability to the service of this body and to his State. He saw that as his duty, and he took that as seriously as anyone who has ever served here.

Others have recalled in their speeches the positions of responsibility he held and the legislation he authored and caused to be adopted. There were many of each, and they are persuasive testimony to his effectiveness as a Senator. I will not try to recount all of them.

What may not be as easily measured is the influence he had in the Senate by the force of his character. He was the epitome of rectitude, of fairness, of decorum. His selection to be the first chairman of the Senate's Select Committee on Standards and Conduct was an illustration of the view that others in the body had of him, and the confidence they had in him to do what was right and just.

That is why he was so admired and appreciated in Mississippi. He got things done that helped our State, and its people, but he was more than an effective Senator. He was totally honest and trustworthy.

Mississippi will forever honor the memory of John C. Stennis.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

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

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

Mr. ROCKEFELLER. Mr. President, I thank the presiding officer for his patience.

MEDICARE

Mr. ROCKEFELLER. Mr. President, I am here to talk about the Medicare Program. In the recent days, I have noticed all kinds of people expressing deep concern for Medicare. That is comforting, because there is more than enough reason to be concerned.

Let me get right to the point. The Republican leaders in Congress, and the chairs of both Budget Committees in Congress, want to balance the budget in 7 years. If they keep their word and leave Social Security and defense spending completely alone, that will require cuts totaling $1.2 trillion.

If they throw in the tax cuts for top income-earners that will require another whopping $345 billion to finance those cuts. Now here's the key point for anyone concerned about Medicare: as we have seen in papers distributed by the Senate Budget Committee itself, this drive for a balanced budget—and presumably some tax cuts—will require cuts in Medicare to the tune of $250 to $300 billion in 7 years. Medicaid will also have to help out with $160 to $190 billion in cuts.

The recent talk about Medicare is not really saying this. It is all about the need to shore up the Medicare trust fund, because it could be insolvent in 7 years. It is all about the idea of restructuring Medicare to save the program. The argument we are hearing is that Medicare has to be drained of $300 billion to save the program. A curious argument.

Somehow, I think we need to make sure Americans, especially the 37 million senior citizens and disabled citizens who rely on Medicare, aren't being sold a bill of goods.

The fact is that the terms set by the leadership on the other side of the aisle—balance the budget by 2002, leave defense alone, and throw in some tax cuts—may require a raid on Medicare to get the job done.

That is why I am here.

My basic reaction to all this talk is to urge the Republican leaders to simply show us precisely what you mean. I am speaking as someone who cast my vote, several times, for a very precise, very specific plan to reduce the federal deficit by $600 billion. It included savings in Medicare. The 1993 budget and deficit reduction plan was based on the simple concept of shared responsibility, and spread the burden fairly.

Along with spending cuts to reduce the deficit, it did important things like expand the tax credit for working families to make sure work is a better choice than welfare in this country.

But for all of the fire and brimstone heard this year about the need to balance the budget and now "save" the Medicare Program, we have yet to see a budget resolution, a budget plan, a single detail on just how everyone making the noise intends to achieve these impressive goals.

Of course, the President is reacting by saying essentially "show me." He submitted his budget on time. He offered a health care plan that tied Medicare savings to comprehensive health care reform. He rejected the idea of a constitution amendment on the Republicans' terms, and so of course, he is asking for some specifics.

I cannot conceive of a budget that meets the conditions of the other side of the aisle—stay away from Social Security, do not touch defense, no new revenue, and tax cuts for corporations and the wealthy—without huge cuts in Medicare.

And make no mistake about it, $250 to $300 billion of cuts in Medicare will mean higher deductibles and premiums for seniors, lower fees for hospitals and doctors, and a lot worse. If there is such a budget that can side-step Medicare, we are simply saying "show us." We have put our cards on the table for the past 2½ years when it comes to health care, Medicare, and deficit reduction.

While all of this talk and born-again interest in Medicare's solvency gets sorted out, I am here to lay out proposals that I think are bottom-line ways to act in the best interests of Medicare. I do this as someone who has tried to protect Medicare for a long time, and will keep fighting to do exactly that. I do this as the former chair of the Medicare Subcommittee on the Finance Committee, and now the ranking member—the majority leader is the chairman of that subcommittee now.

I do this as someone who smells a rat when the same people who have talked for months about stepping up to the plate, with specifics on how the budget can be balanced by 2002 with tax cuts thrown in and defense off the table, but now suggest that the $300 million in Medicare cuts they are talking about is their new plan for saving Medicare. Something is not quite right about this picture, I suggest. I agree that Medicare has to be put on better financial footing. But that effort should not be a smokescreen for using it to finance other agendas like tax cuts for corporations.

First, I am introducing legislation to create a National Commission on Medicare modeled after the National Commission on Social Security Reform that President Reagan chartered in 1981.

The charge given to the Social Security Commission was to propose "realistic, long-term reforms to put Social Security back on a sound financial footing; and to forge a working bipartisan consensus so that the necessary reforms can be passed into law."

We need this kind of bipartisan process to shore up Medicare. We need to jump off the current rhetorical, budget-driven track to one where we can resolve the real question: how best to keep Medicare dependable for seniors over the next generations.

If Medicare is cut by unprecedented amounts of money to pay for anything but Medicare, the consequences will be disastrous for health care providers

and beneficiaries. Rural hospitals will close in droves. Doctors will be forced to turn away the elderly. Medicare will no longer be reliable insurance for seniors in West Virginia.

As my second proposal, I will offer an amendment to the budget resolution when it comes to the Senate floor that will put Medicare in a lock-box to protect it from looting.

This isn't the blueprint we need to get Medicare back on solid ground for the long term, but it will buy a few more years of solvency and ensure it will not be used for anything but the promises made to senior citizens. Medicare is not a slush fund to finance tax cuts or other Government programs.

I will tell you why I am concerned about Medicare. I am worried its true purpose is getting lost.

It is a promise, a pledge, to the American people that they will be able to live their lives in dignity and security past their working years. Instead of treating Medicare like a checking account in this budget process, we need to remember it is an investment.

The Medicare trustees sounded the alarm about the short-term insolvency of the Medicare Program more than 3 years ago.

In fact, the Medicare trustees urged action on comprehensive health care reform to address the country's systemic problem of rising health care costs that are draining the Medicare hospital trust fund and the pockets of American families and businesses.

But comprehensive reform was rejected by the Congress last year. I should note that up until very recently, the Medicare Program outperformed the private sector in holding down its costs. Over the past 2 years, Medicare costs have been slightly higher than the private sector costs.

But, and this is a big "but," the private sector is insuring fewer and fewer people, while Medicare's enrollment is increasing; and Medicare pays for home care services and skilled nursing home care, types of services that are not normally covered by private insurance policies.

Mr. President, I have heard lots of talk about needing to move the Medicare Program into the 21st century by "restructuring" it so it looks more like insurance in the private sector.

So far, I just cannot share in the enthusiasm for copying something that is leaving out so many hard-working people and families from any kind of health care security. In fact, Medicare was first established because the private insurance industry had failed so miserably to provide affordable insurance to senior citizens. While many of my colleagues like to talk about the "miracles of the marketplace," I still see cherry-picking and redlining, medical underwriting and policy cancellations, job-lock, and families paying more and more money for fewer and fewer health benefits.

Just think about sending 37 million people with preexisting medical conditions to the private insurance market with vouchers called choice-clerk and medi-check. High administrative costs in the private sector will eat up the value of Medicare benefits right off the bat. Will the senior citizens living in small towns across West Virginia end up paying more of their own money for their health care or be forced to join an HMO—if one is even available in the area?

To "save" Medicare we need comprehensive proposals to address these issues, not just blind cutting of Medicare. Last year, we offered proposals to fix these myriad problems. Republicans disagreed with our approach, and celebrated the defeat of our proposals. Our opponents' television ads stated again and again that there's "a better way." Slashing $250 to $300 billion out of Medicare is not a better way.

Mr. President, cutting $250 billion out of Medicare over 7 years is not the way to guarantee the long-term solvency of the Medicare Hospital Trust Fund. It might add a few more years of solvency—5 to 8 tops, CBO thinks—to the trust fund. We need to rise to the challenge met when Medicare was created and Social Security was rescued, and chart a long-term prescription for Medicare's health over the next 25 years or more.

I make my two suggestions as a way to get started.

Protect Medicare from raids to pay for anything, especially tax cuts, but what its intended for—the promise of health care security for the seniors of West Virginia and the country. And while we know Medicare is safe, let us replicate the approach used to save Social Security and really prepared Medicare for the challenges of the next century.

I thank the Presiding Officer and yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

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

The PRESIDING OFFICER. The pending question is the Gorton amendment No. 620.

Mr. GORTON. Is the Snowe amendment to the Gorton amendment also pending?

The PRESIDING OFFICER. It is a Gorton amendment offered on behalf of Senator SNOWE.

Mr. GORTON. Mr. President, this amendment is identical to an amendment which was adopted by a rollcall vote earlier today to the medical malpractice sections of the bill. We have discussed it. Everyone has agreed that we do not need another rollcall vote on it. I believe all debate is concluded. I ask the President to put the question.

The PRESIDING OFFICER. If there is no further debate, the question occurs on agreeing to the amendment No. 620 to amendment No. 596.

The amendment (No. 620) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. GORTON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

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

AMENDMENT NO. 622 TO AMENDMENT NO. 617

(Purpose: To provide protection for individuals, small businesses, charitable organizations and other small entities from excessive punitive damage awards.)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE], for himself and Mr. ABRAHAM, proposes an amendment numbered 622 to amendment No. 617.

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

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

The amendment is as follows:

On page 3, line 23, strike "loss." and insert in lieu thereof: "loss;

"except that if the award is against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer than twenty-five full-time employees, that amount shall not exceed $250,000."

Mr. DEWINE. Mr. President, I offer this amendment on behalf of Senator ABRAHAM and myself. It really is an amendment that is a small business amendment.

I expressed yesterday on the floor a concern, a twofold concern: One, that

we make sure that the cap was sufficiently high so that larger businesses would in fact be deterred by the proper awards juries would make in regard to punitive damages, and that we not lose that deterrent effect; but I also expressed a concern that small business not be unduly penalized by punitive damages.

I have talked to small business men and women throughout Ohio who do have this very legitimate concern and who really live in fear literally every day of something happening where they would have a huge award that would literally put them out of business; that what would become a punitive damage award which, for a big business, might, in fact, be a deterrent, might, in fact, be for a small business actually the death penalty.

This particular amendment provides an exception for small business. And small business is defined in the amendment as any business that has 25 or fewer employees or has a net worth of not over one-half million dollars. If this amendment is agreed to, a punitive damage award could not exceed $250,000.

I think this amendment makes a great deal of sense. I think it will take care of one of the problems that we have today, a problem expressed to me many, many times by small business.

I hope that tomorrow it will, in fact, be adopted.

Mr. President, at this time, I ask unanimous consent that this amendment be set aside for the moment.

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

AMENDMENT NO. 623 TO AMENDMENT NO. 617

Mr. DEWINE. Mr. President, I send another 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 Ohio [Mr. DEWINE] proposes an amendment numbered 623 to amendment No. 617.

The amendment is as follows:

On page 4 line 11 strike the semicolon after the word "awarded" through line 15 and insert a period.

Mr. DEWINE. Mr. President, this amendment will, I believe, clean up the bill and it will finish a process that was begun several days ago. That was a concern that I expressed on the floor yesterday in regard to the way the bill was originally drafted, which said that juries no longer could consider the assets that a corporation had when that jury made its decision about what was the appropriate level of punitive damages.

As I indicated yesterday, that type of preemption of State law makes absolutely no sense because punitive damages have always been intended to do basically two things: One, to serve as punishment and, second, to serve as a legitimate deterrent.

A jury cannot make that determination unless the jury knows all the facts. One of the pertinent facts has to be what the assets of the corporation might be, and other relevant financial information.

The danger of the way the bill was written was not only that we might lose that deterrent effect. Because a jury would not really know what assets the company had, it might have just the opposite effect. You might have a jury assuming that a company had a great deal of assets and the company did not have those assets. The jury then would make a disproportionate award. And so it could hurt really on both sides.

What this amendment does is really complete the process that was started several days ago, by providing and taking out of the bill that preemption. So if this amendment would be passed, we would be back to where we were before in regard to what juries could consider in regard to making their decision about punitive damages; namely, we would be back to State law, which I think is where we need to go.

So, in this case, I hope that tomorrow, when we vote on this particular amendment, we will agree to it. I think it is only equitable and fair. I urge my colleagues to do so.

At this point, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

CLOTURE MOTION

Mr. GORTON. Mr. President, I send two separate motions to invoke cloture on the Gorton amendment No. 596 to the desk.

The PRESIDING OFFICER. The clerk will read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on the Gorton Amendment No. 596 to H.R. 956, the Product Liability bill.

Bob Dole, Slade Gorton, Rick Santorum, Jim Inhofe, Conrad Burns, Pete V. Domenici, Hank Brown, Spencer Abraham, Paul D. Coverdell, Larry E. Craig, Dirk Kempthorne, Bob Smith, Trent Lott, Chuck Grassley, Judd Gregg, Mitch McConnell.

CLOTURE MOTION

The PRESIDING OFFICER. The clerk will now read the second motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on the Gorton Amendment No. 596 to H.R. 956, the Product Liability bill.

Bob Dole, Slade Gorton, Orrin G. Hatch, Dirk Kempthorne, Pete V. Domenici, Conrad Burns, John Ashcroft, Dan Coats, Bill Frist, Olympia J. Snowe, Spencer Abraham, Nancy Landon Kassebaum, James J. Jeffords, Ted Stevens, Mark O. Hatfield, Frank H. Murkowski.

MORNING BUSINESS

(During today's session of the Senate, the following morning business was transacted.)

REMEMBERING GINGER ROGERS

Mr. MOYNIHAN. Mr. President, the Op-Ed page of Friday's Washington Post featured an irresistible account by Philip Geyelin, "When I Danced With Ginger Rogers." The occasion was the Gridiron Club dinner of March 28, 1981. With the advent of Ronald Reagan's presidency "Hooray for Hollywood" was the evening's theme, and Miss Rogers its most illustrious guest. It happens I was the Democratic speaker that evening, and I had the inexpressible joy of sitting next to Miss Rogers at the head table in my white tie and tails. I took the liberty of expounding, as best I was able, Professor Joseph Reed's theory of the dramatic import of Miss Rogers' abrupt decision to dance with Astaire on that lovely day they were caught in the raid in Regents Park. She confided to me that she had to slip off to dance, that night, with Geyelin. She returned to pronounce him divine!

Mr. President, I ask unanimous consent that the text of the above cited article be reprinted in the RECORD.

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

[From the Washington Post, Apr. 28, 1995]

WHEN I DANCED WITH GINGER ROGERS

(By Philip Geyelin)

That was a nice piece Tom Shales wrote about Ginger Rogers [Style, April 26]. He had it just right, except maybe the part about how she made it look effortless but "not for a minute did it look easy." I would have put it the other way around: It wasn't exactly effortless for me when I danced with Ginger Rogers, but she certainly made it look easy.

You heard me: When I danced with Ginger Rogers. I am not dreaming this up. Rather, I'm setting out to describe the realization of a dream of, oh, let's say close to a half-century. From the first time I saw a Fred Astaire-Ginger Rogers movie, I had nurtured the fantasy. And then, unbelievably, there I was 14 years ago standing on stage with Ginger, before an audience of more than 600 swells, waiting for the beat that would send us gliding off to the music of "Isn't This a Lovely Day."

It was March 28, 1981, at the spring dinner of what The Post's Style section describes

with relentless redundancy as the "exclusive Gridiron Club." By "swells" I mean that when you peer across the footlights on these occasions, you dimly see a head table that starts with the president and the vice president and their wives, most of the Cabinet, maybe three justices of the Supreme Court, the Joint Chiefs and a gaggle of ambassadors. The ballroom is wall-to-wall governors, members of Congress, CEOs, TV talking heads, other assorted celebrities and the publishers and editors of the newspapers whose Washington correspondent make up the Gridiron Club's membership.

So much for the setting. A dance story should be taken step by step. It was the first year of Ronald Reagan's presidency. A Hollywood touch was in order. An invitation was extended to Ms. Rogers through the good offices of Godfrey "Budge" Sperling Jr. of the Christian Science Monitor. She not only accepted but agreed in principle, to a surprise appearance on stage. In my capacity that year as music chairman (producer), I was in a position to claim the right to be Ms. Roger's partner if there was to be any dancing. I did so at the cost of what may be the earliest onset of stage fright ever experienced by anybody.

The plot was that Ms. Rogers, who was seated at the head table, would actually proceed directly backstage and appear in the opening number of the show, which, in another bow to the Gipper, was to the tune of "Hooray for Hollywood." The cue for her to step from the wings would be the line: "Hooray for Fred Astaire—Miss Ginger Rogers made him walk on air"—whereupon there she would be, the real thing, at the microphone, singing a satiric put-down of the Gridirons: "Isn't this a lovely way, to be meeting the press . . .?"

Not bad, showbizwise, wouldn't you say—for amateurs? With only mild trepidation, I called Ms. Rogers. I told her my name was of French origin. She said her favorite husband was French. It was going well. Then I got to the part of the briefing that had to do with "Hooray for Fred Astaire," and the stories that she didn't much like running as an entry turned out to have some truth to them. "Let's stop right there," she said. While I was mumbling my confusion she cut in to make her meaning clear. "If you were Abbott," she asked, "would you want people to be always asking. 'How's Costello'"? The mention of Astaire, I said quickly, will be excised.

She arrived in Washington the Friday night before the dinner, and on Saturday I sent flowers to her room, thinking that to be the Hollywood way, with the lyric tucked in among them. At an appointed hour we met, and she handed me the lyric with some pencil editing. Recklessly, I questioned whether her changes would scan, noting modestly that, while I was tone deaf and usually urged when singing as a member of the chorus not to get too close to the microphone, I did have some experience as a lyric writer.

"Honey," Ms. Rogers replied gently, with no hint of any awareness of what that salutation meant to me, "I've been singing that song longer than you've been writing lyrics for the Gridiron Club."

With only three hours to go before curtain, we repaired to the empty ballroom, where a piano player and the club's dance director put us briefly through what were, mercifully, pretty elementary paces. We parted to change for dinner, she to a ball gown, me to—you guessed it—white tie and tails.

We met again backstage and warmed up with a few practice twirls. Her introduction went precisely as planned; the song was a smash. We were perfectly poised to begin the dance, but somehow, with a full orchestra, the bar of music that was our cue didn't come through. I froze. Now, I'm not saying Ms. Rogers also missed it. But she knew what to do. Stepping to the mike, she said: "Let's try that again—We only had 20 minutes to rehearse."

The second effort was—how shall I put it?—pretty close to perfection, or at least relatively close. Things are relative when you have been contemplating the real possibility of stumbling off stage into the orchestra pit and taking Ginger Rogers with you.

My sigh of relief, however, was cut short. Ms. Rogers, was back at the microphone. "Let's see," she was saying, "if this guy can do it one more time." I did, or I should say that we did. She was then 69, but to dance with she was going on twenty-something, and she made it easy—so much so that when she graciously consented to stay over for the usual Sunday afternoon reprise of the Saturday night show, it was becoming very nearly effortless.

A few years later, she sent a message saying she was writing her memoirs and would appreciate a memorandum on some of the details of that night at the Gridiron. Ignoring my effusions on what the evening had meant to me, she wrote in her book that the dance "had brought the house down but not because of me; the audience couldn't get over Mr. Geyelin's dancing."

A classy dividend, I thought, from a classy lady who made the lifelong dream of an ink-stained wretch come true.

CARTNEY KOCH McRAVEN

Mr. PRESSLER. Mr. President, I was saddened to learn the news last night that rescue workers in Oklahoma City discovered the body of Cartney Koch McRaven amid the rubble that once was the Alfred P. Murrah Federal Building.

Cartney Koch McRaven was one American—not ordinary—extraordinary.

Cartney graduated from Spearfish High School in 1993. She enlisted in the Air Force, whose members believe that the protection of freedom is the highest, most important public service. With devotion and honor she served her country. Her action was a tribute to the core values that make this country great.

Cartney was only 19 years old. Newly married on April 15 to Shane McRaven, a fellow airman in the U.S. Air Force. She was stationed at Tinker Air Force Base. She had traveled to the Murrah Federal Building to register her new name on Federal documents. A new name. A new husband. About to start a new life. A life that will never be. A life cut short by the savagery of domestic terrorism. By murderers who kill their fellow citizens.

Cartney had a beautiful life ahead of her. On behalf of the people of South Dakota, my wife Harriet and I extend our condolences to Cartney's family, friends, and loved ones.

For Cartney and the other victims of the Oklahoma City tragedy, we must not let our commitment to freedom waiver. These cowards will be brought to justice. She and the others tragically killed in Oklahoma will not have died in vain.

RALPH NEAS—THE 101ST SENATOR FOR CIVIL RIGHTS

Mr. KENNEDY. Mr. President, later this month, Ralph Neas will step down from his position as executive director of the Leadership Conference on Civil Rights, after 14 years of extraordinary service as a champion of the basic rights of all Americans.

For nearly half a century, the Leadership Conference has been the Nation's conscience in meeting the fundamental challenge of protecting the civil rights of all of us. Ralph Neas joined the Leadership Conference in 1981, following 8 years of outstanding service to the Senate on the staffs of our former colleagues, Senators Edward Brooke and David Durenberger.

During Ralph's tenure, the Leadership Conference fought some of its most difficult battles, and achieved some of its most important victories. Time and again, when the forces of reaction sought to turn back the clock on civil rights, Ralph Neas rallied the coalition, and civil rights prevailed.

When the Reagan administration sought to block extension of the Voting Rights Act, Ralph Neas helped to put together a broad bipartisan majority in Congress to renew it.

When the Supreme Court in the Grove City case carved a hole below the waterline in laws banning discrimination in Federal programs, Ralph Neas played an indispensable role in developing the two-thirds majority needed to pass the Civil Rights Restoration Act of 1988 over President Reagan's veto.

When President Reagan nominated Judge Robert Bork to the Supreme Court, Ralph Neas assembled and led an extraordinary nationwide coalition which successfully opposed the nomination because of Judge Bork's hostility to protecting the constitutional rights and liberties of all Americans.

When the Supreme Court in 1989 issued a series of rulings severely reducing protections for job discrimination, Ralph Neas worked closely with Republicans and Democrats to fashion legislation to restore the protections, and after one unfortunate veto by President Bush, Congress enacted the Civil Rights Act of 1991.

Under Ralph Neas' leadership, we gained ground on several other important fronts during those years as well. In 1988, Congress passed the Fair Housing Act Amendments to strengthen the law banning housing discrimination and extend its reach to ban discrimination against families with children and persons with disabilities.

In 1990, we enacted the landmark American With Disabilities Act, providing comprehensive new protection

for the rights of 43 million disabled Americans. Because of that law, fellow citizens across the country are finally learning that "disabled" does not mean "unable."

Ralph Neas' enormous energy, and his extraordinary talents as an advocate, strategist, and spokesperson, helped make each of those victories possible. Now he is leaving the Leadership Conference to practice law and to serve as a visiting professor at Georgetown University Law School.

Ralph Neas is being honored at a gala dinner tomorrow evening, when he will receive the Hubert H. Humphrey Award for his outstanding achievements in making America a better and fairer land. Every citizen committed to the constitutional ideal of equal justice under law owes Ralph Neas a debt of gratitude for his brilliant public service.

Truly, through all these years, Ralph Neas has been the 101st Senator for civil rights. As he leaves the Leadership Conference, I congratulate him on his outstanding accomplishments, and I extend my best wishes to Ralph and his wife Katy for continuing success in the years ahead.

U.S./CUBA MIGRATION AGREEMENT

Mr. PELL. Mr. President, today President Clinton has announced the conclusion of a new migration agreement with the Government of Cuba. This new agreement treats the more than 15,000 Cuban migrants currently detained at Guantanamo in a very humane manner, while putting in place safeguards to ensure that a similar flood of migrants is not encouraged at some future date. I want to commend the President for his decision to enter into, what I believe is a fair and balanced approach to handling the Cuban migrant issue.

Under the terms of the agreement, Cuban migrants currently being detained at Guantanamo will now be eligible to be paroled into the United States, provided they qualify under United States immigration laws. Those paroled from Guantanamo will be counted in the annual 20,000 migration ceiling set last September in the context of the resolution of last year's Cuban migration crisis. This will mean that people at Guantanamo who have been in limbo since last year will now have the possibility of getting on with their lives. To continue to detain these people indefinitely was really inhumane, but nothing else could be done for them until this new agreement was reached with the Government of Cuba.

In contrast to the treatment of those currently at Guantanamo, any future Cuban rafters intercepted at sea will be returned to Havana. Cuban authorities have committed to accepting these migrants back without reprisal, and will allow for the monitoring of such individuals to ensure that this is the case. Obviously, any individual who might qualify for refugee status will be able to apply for asylum at the U.S. Interest Section in Havana.

Finally, those Cubans who may successfully evade interdiction and reach the United States will be subject to the same deportation procedures any other alien would face upon entering the United States illegally.

Mr. President, as you know I am in profound disagreement with our overall policy toward Cuba. I have said many times in the past that I believe that policy is outdated and ineffective and should be altered to enhance communications and contacts between the Untied States and Cuba. In my view this is the best way to facilitate the peaceful transition to democracy on that island.

Unfortunately, President Clinton has not yet decided to alter the overall framework of our policy toward Cuba. However, I believe that the agreement announced today is one step in the right direction toward a more enlightened Cuba policy. I hope there will be many more steps in that same direction in the very near future.

IS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, there's an impression that simply will not go away—that the $4.8-plus-trillion Federal debt is a grotesque parallel to the energizer bunny we see, and see, and see on television. The Federal debt keeps going and going and going—up, of course!—always to the misery of the American taxpayers.

So many politicians talk a good game—when, that is, they go home to take—and talk is the operative word—talk about bringing Federal deficits and the Federal debt under control.

But, oddly enough, so many of these same politicians regularly voted for one bloated spending bill after another during the 103d Congress. Come to think about it, this may have been a primary factor in the new configuration of U.S. Senators as a result of last November's elections.

In any event, Mr. President, as of yesterday, Friday, May 1, at the close of business, the total Federal debt stood—down to the penny—at exactly $4,860,333,100,308.86 or $18,449,91 per person. Res ipsa loquitur.

THE RETIREMENT OF NORMAN PODHORETZ

Mr. MOYNIHAN. Mr. President, on the occasion of his retirement after 35 years as editor-in-chief of Commentary magazine, I would like to offer my concurrence with the sentiments expressed in this morning's New York Post, Wall Street Journal, and Washington Times honoring the career and the person of Norman Podhoretz. As a New York Post editorial notes: "the ideas advanced in Commentary—thanks to Podhoretz's editorial gifts—make it a forum for the key policy questions confronting the Nation." David Brooks of the Wall Street Journal, offers a similar accolade:

> If there is one thing Mr. Podhoretz and his magazine have stood for all these years, it is the joy and value of ideas.

Thirty-four years ago, I first appeared as a contributor to Commentary. The article, entitled "Bosses and Reformers," dealt with conflict within the Democratic Party—a subject still alive and well today.

Norman Podhoretz and Commentary have contributed much of value to modern political discourse. We owe them both great thanks. Mr. President, I ask unanimous consent that the full text of the above cited articles be reprinted in the RECORD.

There being no objection, the articles were ordered to be printed in the Record, as follows:

[From the Wall Street Journal, May 2, 1995]

NORMAN PODHORETZ, NEVER RETIRING, RETIRES

(By David Brooks)

Hundreds will gather tonight in a New York hotel ballroom to honor Norman Podhoretz, who is retiring after 35 years as editor of Commentary. There will be toasts from Henry Kissinger, Daniel Patrick Moynihan and Cynthia Ozick—and if the thing were done in true Commentary style, then there would be rebuttals and the whole ballroom would break into discussion groups, debating until morning "The Podhoretz Question."

If there is one thing Mr. Podhoretz and his magazine have stood for all these years, it is the joy and value of serious discussion. He develop a prose style, instilled in the magazine, that is decisive, clear and authoritative, the sort of style that begs for response. Commentary has a letters section that is rivaled in length only by Penthouse and in quality by no American magazine. The monthly can be seen as an effort to create an ideal community, a group of people who are prone to sitting up late at the kitchen table, wrapped up in discussions about politics, culture or Judaism.

This is the sort of community that Mr. Podhoretz entered as a young man, having studied literature at Columbia and Cambridge. He called it The Family, the group of New York intellectuals centered around Partisan Review in the 1950s—Mary McCarthy, Sidney Hook, Saul Bellow. They were on the left, but anti-communist for the most part, which meant they were tough-minded and disputatious, because the verbal battles against American communists were like hockey games—every few minutes people would throw off the gloves.

Mr. Podhoretz was a young star, published in the New Yorker, editor of Commentary when he was 30, close friends with such leading writers as Norman Mailer, James Baldwin and Lionel Trilling. He drifted to the radical left in the early 1960s, publishing in Commentary the work of Paul Goodman, who laid out what would later become the standard New Left critique of American life. Mr. Podhoretz was an early opponent of the war in Vietnam.

But as the decade wore on, he discovered that the ideas that were provocative and subtle in Commentary in 1961 turned dumb and platitudinous when turned into clichés by Tom Hayden and the student radicals. Also, he discovered that teachings about Vietnam were not the sort of serious discussions that he cherished, but rather occasions for shouting down anyone who was deemed insufficiently outraged. In 1967, as he was turning away from the left, he published "Making It," which, typical of his writings, was a book that made everybody talk, not always in calm tones.

"Making It" is a memoir about life in The Family, but with a point—that literary people are not motivated simply by a desire for truth but by a passion that dare not speak its name, worldly ambition. Look at me, he said: I am successful because I am ambitious.

The New York intellectuals expended a lot of typewriter ribbon on the subject of the American identity. Not only were many of them, like Mr. Podhoretz, poor Jewish kids from Brooklyn, but they were also intellectuals, not a profession featured often on the cover of the Saturday Evening Post. But the thinkers in the Podhoretz camp decided that they approved of and identified with American culture, and were attacked by others for not being sufficiently alienated. "Making It" can be read as an attempt to show that just because its author is an intellectual doesn't mean he is not involved in the central activity of American life, making it.

Apparently there were no celebrations in Topeka, Des Moines and Fort Worth when the Partisan Review crowd announced it approved of American life: "Look, Eloise—They approve of us!" But it turned out to be important. Because those who like Mr. Podhoretz did approve turned out to be essential to the growth of the conservative movement, bringing to conservatism, when they made the jump in the late 1970s, an intellectual self-confidence that had been in short supply.

It's usual to say that Mr. Podhoretz and Commentary started out on the left and ended up neoconservative. But that's not quite right. Mr. Podhoretz has been consistent in his love for rigorous argument (and so was appalled by the Dionysian tone of the radical left). He has also remained consistent, for the most part, in his sympathy for mainstream American life, and in his staunch anti-communism. Furthermore, neither Commentary nor Mr. Podhoretz has reached a resting point. Neoconservatism looks lie a transitional phenomenon that may even today be extinct.

The term was once used to denote those who were hawkish in foreign policy but were sympathetic to the current structure of the welfare state. But Scoop Jackson has passed on, and the so-called neoconservatives are now among the most devastating critics of the welfare state. In what sense, for example, are William Bennett and Jeane Kirkpatrick neoconservative? Both made their reputations in the pages of Commentary but are now mainstream Republican figures.

These days, the people who seem most insistent on preserving the distinction between neoconservatives and regular conservatives are certain liberals on either coast. Possibly, that is because they see people like Norman Podhoretz and Irving Kristol—who are urbane, literate, and have wives who are equally accomplished—and they insist there must be a huge gulf between this sort of person (who by cultural measures looks like a liberal ideal) and the yahoos who they know (for they have read about it) make up the rank and file of American conservatives.

One of the legacies of Commentary in the Podhoretz era was that it enhanced the intellectual respectability of conservatism. In the 1960s, conservatives were shooting up at the liberal agenda. Now, liberals tend to be shooting up at the conservative agenda. Thanks to the passion and urgency of those earlier fights, those who travel in Mr. Podhoretz's footsteps can afford to be a little more benign.

[From the New York Post, May 2, 1995]

NORMAN PODHORETZ RETIRES

At a gala dinner tonight in New York, Norman Podhoretz will be honored on the occasion of his retirement after 35 years as editor of Commentary magazine. A monthly long published under the auspices of the American Jewish Committee (AJC), but without AJC editorial control, Commentary established itself under Podhoretz as America's leading journal of ideas.

Its circulation has never been large and it doesn't make a profit. But the core readership consists of influential Americans, and the ideas advanced in Commentary—thanks to Podhoretz's editorial gifts—make it a forum for the key policy questions confronting the nation.

Norman Podhoretz's tenure saw him start out as a seminal figure on the left during his early days at Commentary. But by the late 1960s, Podhoretz had moved significantly rightward. And he'd taken Commentary with him.

His decision to "Break Ranks," as he described the phenomenon in a late '70s memoir—Podhoretz's early intellectual compatriots remained wedded to the left—made Commentary a leading American voice for foes of Soviet communism, for advocates of a strong national defense, for critics of affirmative action and for supporters of Israel's security.

The pages of the magazine were filled with essays by then-U.N. Ambassador Daniel Patrick Moynihan—who called on the U.S. to conduct itself as an opposition party functioning within a hostile international arena—and by then-Georgetown Professor Jeane Kirkpatrick, who deplored the Carter administration's tendency to employ "double standards" in dealing with left-wing dictatorships (toward whom it showed some sympathy) as distinct from rightist authoritarian regimes.

Commentary—under Norman Podhoretz—played a central role in arguing the need for an aggressive posture vis-a-vis Soviet expansionism, for a re-evaluation of failed Great Society programs and for a recognition of "anti-Zionism" as the principal contemporary manifestation of international anti-Semitism.

In the last analysis, the most striking fact about Commentary consists in the fact that over the last 35 years—thanks to Norman Podhoretz's leadership—the magazine has always been important to the national intellectual discourse. That's a claim few journals can make for anything like that duration.

Eventually, many followed Podhoretz's rightward lead, resulting in a circumstance where the magazine he edited came to speak for a whole movement: neo-conservatism, an important intellectual tendency that can be defined loosely as the conservatism of people who were once liberals.

Norman Podhoretz, we're certain, has much left to say—as his magazine goes forward, he'll undoubtedly produce important books and articles. But it seems appropriate to pause and consider one of the most extraordinary careers in 20th-century American intellectual life. Podhoretz will deserve the tributes he receives tonight from Henry Kissinger, Irving Kristol, Daniel Patrick Moynihan, Rupert Murdoch and many others.

For some years a columnist for this newspaper, Podhoretz is a man who proved, above all else, that ideas matter. The Post joins in saluting him.

[From the Washington Times, May 2, 1995]

THE 35 REMARKABLE YEARS OF NORMAN PODHORETZ

(By Arnold Beichman)

This is the story of the little magazine that could and still can. Launched as a monthly half a century ago by the American Jewish Committee with a guarantee of editorial independence, Commentary became a magazine of enormous influence. Its articles on politics, particularly foreign policy, and culture over the years have had an enormous multiplier effect.

The editor of Commentary for the last 35 years, Norman Podhoretz, has reached the retirement age of 65. He is retiring to his Manhattan apartment-office to figure out with his wife, Midge Decter, author, publicist and editor in her own right, what his next major effort will be. Midge, however, who is semi-retired, has figured out what to do next. She found a neighborhood health club and is doing what she has wanted to do for years and never had time for—swimming every day. It is doubtful that such a future, however temporary, awaits Mr. Podhoretz, who has just been appointed a senior fellow at the Hudson Institute.

While Mr. Podhoretz, whose new title is Commentary editor-at-large, seeks implementation of several inspirations, he is being honored at a farewell dinner tonight—at New York's Hotel Pierre for four hundred friends, contributors, editors of other magazines, relatives and even critics.

The remarkable feature of Commentary is that an examination of its issues from the time Mr. Podhoretz took over as editor in 1960 shows the current relevance and readable topicality of so many of the articles published what seems to be so long ago. Here are some of the titles:

Was the Holocaust Predictable? Was Alger Hiss Guilty?; The Return of Islam; On Returning to Religion; Vietnam: New Light on the Question of American Guilt; Are Quotas Good for blacks?; The War Within the CIA; Reagan and the Republican Revival; What Happened to the Schools; Totalitarianism and the Lie; Education in Defense of a Free Society; The Political Dilemma of American Jews; AIDS: Are Heterosexuals at Risk?; Against the Legalization of Drugs; How Good Was Leonard Bernstein?; The Professors and the Poor; Intermarriage and Jewish Survival; The Liberated Women; Authenticity and the Modern Unconscious; The Problem of Euthanasia.

And the authors—Irving Kristol, Midge Decter, Thomas Sowell, Bernard Lewis, Lionel and Diana Trilling, Gertrude Himmelfarb, James Q. Wilson, Glenn C. Loury and dozens of other leading intellectuals and scholars. Mr. Podhoretz set a high standard for content. That standard obtained in the articles and also in the letters to the editor feature, which was as widely read as the articles. In fact, some readers who never managed to get articles accepted (and paid for) by Commentary got in anyway by writing long letters—for which there was no writer's fee but the satisfaction at least of being published in Commentary.

Commentary's overwhelming achievement was its leadership in the world of culture in the fight against communism and the Soviet Union, one undertaken by the magazine's first editor, Elliot Cohen. It is no exaggeration to say that Commentary in time became the scourge of the left, especially in culture. Major analyses of communist foreign policy by writers like Jeane J. Kirkpatrick, Sidney Hook, Lexzesek, Kolakowsi, Richard Pipes and other scholars and by Mr. Podhoretz himself filled its pages. They were widely discussed and were read in Congress and the White House. And all this, mind you, by a magazine whose circulation never exceeded 80,000.

It is a truism that few editors leave behind successors who deserve the promotion. Mr. Podhoretz, however, is the exception. His successor as editor-in-chief is Neal Nozodoy. He has been the leading member of the team which transformed a Jewish magazine with deep involvement in Jewish and Israeli affairs into a publication which without compromising its cultural and ethnic roots became an important part of the resistance to those who sought and still seek the perversion of Western civilization in the name of new revolutionary slogans.

AUTOMOBILE TRADE WITH JAPAN

Mr. LEVIN. Mr. President, as the United States-Japan framework negotiations in autos and auto parts accelerate over the next few weeks, I want to bring to my colleagues attention a New York Times op-ed by Thomas L. Friedman published on April 16. Mr. Friedman describes the problems American auto and auto parts manufacturers face when trying to sell their products into Japan's closed market and our limited chances of opening these protected markets unless we are willing to impose reciprocal treatment on Japan's products in this country.

Regarding the likelihood of concluding a market opening deal in the framework negotiations with Japan anytime in the near future, Mr. Friedman says:

Don't hold your breath. The Japanese will literally do anything to preserve their domestic car monopoly, even though it is one of the major causes of the massive trade imbalance between the U.S. and Japan that is, in turn, causing the yen to soar in value against the dollar.

In fact, the higher the yen goes the less likely Japan is to open its auto market. With the yen rising against the dollar, Japan's cars become more expensive and difficult to sell in the U.S., so Japanese auto company profits are squeezed. That makes it all the more important for Japanese auto makers to protect their home market from competition, so they can charge higher prices there and run up profits they need to cover losses abroad.

What the U.S. is seeking is an end to Japan's barriers. For instance, only 7.4 percent of Japanese car dealers, who are manipulated by the manufacturers, sell foreign cars alongside Japanese models. Almost 80 percent of U.S. dealers sell foreign models alongside their domestic brands.

The U.S. is also seeking better access to Japan's huge market for replacement auto parts, which has been largely closed to foreigners through Japanese regulations, customs codes and cartels. U.S. manufacturers have 3 percent of Japan's $27 billion replacement parts market, while foreigners have 18 percent of the U.S. replacement market and 22 percent of Europe's.

Mr. Friedman believes we should be willing to take reciprocal action against Japan in an effort to get Japan to open its markets to United States autos and auto parts. Doing so will not result in retaliation. Mr. Friedman says:

Maybe, just maybe, the Japanese need us more then we need them.

For starters we should charge Japanese auto manufacturers a distribution tax on every car they sell in the U.S.—a tax that will be reduced in proportion to how many Japanese manufacturers open their showrooms to foreign cars. We should also inspect every Japanese car and part that comes into this country, and take our sweet time doing it, which is just what Japan does.

He goes on to say:

Hold on, the Japanese will say, that is a violation of the rules of the World Trade Organization. Rules? Did somebody say rules? Does anyone think that Tokyo shrank the U.S. share of the Japanese auto market from 60 percent in 1953 to 1 percent in 1960 by playing by the rules? We'll only win equal opportunity in the Japanese market when we play the game by their rules—which are no rules at all.

Mr. Friedman has hit the nail on the head. Decades of painful history have proven that Japan will open its markets only when forced to do so. Now is the pivotal moment in auto and auto parts negotiations with Japan and the administration seems prepared to so what no other administration has done for 25 years: tell Japan that it faces equivalent restrictions on its goods if it does not open its market to our autos and auto parts.

Mr. President, I ask unanimous consent that the op-ed be printed in the RECORD.

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

[From the New York Times, Apr. 16, 1995]

WHERE DO CARS COME FROM?

WASHINGTON.—The other day I was playing the computer game "Where in the U.S.A. Is Carmen Sandiego?" with my 9-year-old daughter, Orly. It's a wonderful geography-teaching tool. You have to follow clues to different cities to trade down vile criminals. The clues we were given for one trip were all clearly pointing to Detroit. But instead of giving my daughter the answer, I wanted to see if she could figure it out herself, so I asked her: "Where are cars made?" And without missing a beat she answered: "Japan."

From the mouths of babes.

Where have I failed as a parent? I guess it's the same place that we've failed as a nation. We have so blithely surrendered so much of the car market to the Japanese that my own daughter thinks cars come from Japan as surely as pizza comes from Italy and babies from the stork.

My daughter, of course, was only part right. Roughly 25 percent of cars sold in the U.S. today are Japanese models. But if we were living in Tokyo she would be dead right, since only 1.5 percent of the cars sold in Japan are American.

This week U.S. and Japanese negotiators will once again try to work out a deal for opening the closed Japanese auto market. Don't hold your breath. The Japanese will literally do anything to preserve their domestic car monopoly, even though it is one of the major causes of the massive trade imbalance between the U.S. and Japan that is, in turn, causing the yen to soar in value against the dollar.

In fact, the higher the yen goes the less likely Japan is to open its auto market. With the yen rising against the dollar, Japan's cars become more expensive and difficult to sell in the U.S., so Japanese auto company profits are squeezed. That makes it all the more important for Japanese auto makers to protect their home market from competition, so they can charge higher prices there and run up profits they need to cover losses abroad.

What the U.S. is seeking is an end to Japan's barriers. For instance, only 7.4 percent of Japanese car dealers, who are manipulated by the manufacturers, sell foreign cars alongside Japanese models. Almost 80 percent of U.S. dealers sell foreign models alongside their domestic brands. It's hard to sell a car by mail order. You need a showroom and U.S. cars don't have many in Japan. And the old America-makes-the-wrong-cars line doesn't wash anymore. U.S. companies now make eight different right-hand-drive vehicles tailored for Japan.

The U.S. is also seeking better access to Japan's huge market for replacement auto parts, which has been largely closed to foreigners through Japanese regulations, customs codes and cartels. U.S. manufacturers have 3 percent of Japan's $27 billion replacement parts market, while foreigners have 18 percent of the U.S. replacement market and 22 percent of Europe's.

Clinton officials claim they are finally ready to tell Tokyo that either it enters into a meaningful agreement to open Japan's auto market, with measurable results or the U.S. will impose punitive tariffs.

(If this is true, it means the White House has rejected the brain-dead advice of the Pentagon that we must not allow "trade friction" to undermine our security ties with Japan. Nonsense. We're Japan's largest export market and we provide Japan with its security umbrella. We should use both as levers to promote our trade interests. Would somebody get the Pentagon a map. The last time I checked, North Korea and China were a lot closer to Tokyo than Washington. Maybe, just maybe, the Japanese need us more than we need them. How about a little less Keynes and a little more Machiavelli?)

For starters we should charge Japanese auto manufacturers a distribution tax on every car they sell in the U.S.—a tax that will be reduced in proportion to how many Japanese manufacturers open their showrooms to foreign cars. We should also inspect every Japanese car and part that comes into this country, and take our sweet time doing it, which is just what Japan does.

Hold on, the Japanese will say, that is a violation of the rules of the World Trade Organization. Rules? Did somebody say rules? Does anyone think that Tokyo shrank the U.S. share of the Japanese auto market from 60 percent in 1953 to 1 percent in 1960 by playing by the rules? We'll only win equal opportunity in the Japanese market when we play the game by their rules—which are no rules at all.

Even a 9-year-old understands that.

COOPERATIVE EXTENSION SERVICE AND 4-H

Mr. PRESSLER. Mr. President, periodically, it is my pleasure to address the Senate on the effective work of the Cooperative Extension Service and 4-H programs.

The Cooperative Extension Service [CES] is at the heart of many American communities. Established in 1914 by the Smith-Lever Act, the CES has been serving the needs of millions of Americans for more than 80 years. The CES provides education and one-on-one assistance on a wide variety of issues, from agribusiness skills and safe chemical handling to senior nutrition and child care. The U.S. Department of Agriculture works closely with each State's land-grant university to provide information on these and other programs to participating communities. The hands-on approach increases productivity and keeps thousands of farms and families running smoothly.

Local agents tailor CES programs to meet special area needs. In southeast South Dakota, for example, more than 1,200 producers affected by flooding received information on cropping alternatives and financial management. In Day and Marshall Counties, CES agents organized more than 450 South Dakota families and businesses in a recycling effort. Another example is the successful Extension Service Indian reservation programs. On the Pine Ridge and Rosebud Reservations, 87 farmers and ranchers completed training for their private pesticide applicators license.

One unique program run by the CES in every South Dakota county is helping to put welfare recipients back to work. Every recipient of Aid to Families With Dependent Children [AFDC] must attend resourceful living classes offered by county extension agents. In these classes, welfare recipients learn basic skills such as household budgeting, and interviewing skills. No other State in the country has such a program to establish self-sufficiency.

According to the CES, for every dollar invested in CES livestock programming, $4.60 to $5.80 is realized in the increased value of livestock sold. For every dollar invested in crop programming, the value of crops sold is increased by $5.90 to $8.62. Thousands and thousands of dollars in health care costs are saved through the nutrition and child care education offered by CES. Clearly, this is an example of a Federal program with an excellent return on the taxpayers' dollar. Why? Because it relies on the common sense participation of local folks who know the unique needs in their own communities.

Another program with a history of common sense result is 4-H. The mission of 4-H is to help young people become self-directed, productive, and contributing members of society. 4-H members have the opportunity to explore many areas of interest. Their projects can include raising cattle, hogs, and sheep. Other 4-H projects involve growing farm or garden crops, forestry and entomology collections, baking, sewing, handicrafts, art, electronics, horse showing, photography, public speaking, and much more.

Nationally about 5.5 million young people are involved in 4-H annually. I always enjoy meeting 4-H'ers in my Washington office or at our State fair. They always give me helpful advice. 4-H has helped them to become well-informed and articulate leaders.

While growing up on a small family farm in my home State of South Dakota, I was active in a local 4-H club, the Humboldt Hustlers. The 9 years I was active in 4-H helped me develop my personality and better focus myself. That helped me to confidently formulate and pursue my goals. Each 4-H participant learns the value of teamwork, and gains knowledge of the community, State, Nation, and world in which he or she lives. I was fortunate to have attended twice the 4-H Club Congress in Chicago and the 1961 World Agricultural Fair in Cairo, Egypt. Participation in such programs by young people is even more vital today with the growing importance of the global community to the United States.

The success of South Dakota 4-H is due to a team of very competent, well-informed adult professionals and volunteers who help educate 4-H members. I remember in particular two professionals who helped me and other South Dakota youth. They were Glenn Schrader, who was the Minnehaha County agent for more than 30 years, and John Younger, who was the South Dakota 4-H leader for nearly 25 years. Both were instrumental in the development of 4-H within South Dakota, as well as nationally. All 4-H participants also appreciate their local 4-H leaders for the time, effort, and commitment they volunteer. During the time I was involved in 4-H, I had two leaders: Elmer Anderson and Harry Stofferahn. They shared the values and spirit of 4-H to me and my fellow members, for which I am grateful to this day.

With the reported decline in rural communities, my colleagues may wonder how these programs continue to serve a useful purpose. The Extension Service and 4-H programs are no longer just for rural areas. They have expanded from addressing traditional farm and home economic problems to current issues such as teen pregnancy and violence. In fact, nearly one-third of 4-H students now reside in urban areas. They have grown so fast because the lessons and values that are the essence of 4-H—head, heart, hands, and health—transcend geography and demography. More important, at a time when thousands of young people in urban areas face so many challenges, the lessons and values of 4-H are needed more than ever before.

As Federal budgetary pressures grow, it will be tempting for Congress to cut funding for programs such as the CES and 4-H. I hope my colleagues will resist this pressure and continue supporting these effective programs. The CES and 4-H programs should be permitted to continue providing support for communities across the United States for many years to come.

CWO-2 PETER A. DAVIS, AN AMERICAN PATRIOT

Mr. SMITH. Mr. President, I rise today to salute CWO-2 Peter A. Davis, who died April 24, 1995, in a helicopter crash in Williamson County, TX. The accident that took the life of this fine man was a terrible tragedy for his family and for all those who knew him.

Mr. Davis, born in Kittery, ME and educated in Laconia, NH, was on active duty and has served in the U.S. Army for 21 years. He is the son of Phillip and Maria Davis of Laconia. He is also survived by his wife, Bonnee Davis and son Nicholas Davis, both of Fort Hood, TX.

Peter died in service to his country in the U.S. Army. I extend my deepest sympathies to Peter's family and friends. As a member of the Senate Armed Services Committee, I am honored to represent Peter's family in the U.S. Senate. CWO-2 Peter Davis joins a distinguished list of American patriots who have given their lives in service to their country.

TRIBUTE TO SHELDON L. MORGAN

Mr. HEFLIN. Mr. President, I want to pay tribute to Sheldon L. Morgan, who recently retired as senior vice president after 23 years with the First Alabama Bank. He was manager of the bank's corporate sales and services department, which included national accounts, industrial development, private banking, and corporate cash management. He had also served as head of First Alabama's marketing division.

Prior to joining the bank in 1972, Sheldon was manager of industrial trade development for the Mobile, AL Area Chamber of Commerce. His colorful career also carried him to the Alabama State docks, where he served as public relations director, and to the Mobile County schools, where he taught. He was in the U.S. Air Force from 1948 to 1952.

Sheldon received his bachelor's and a master's degrees from Auburn University. He also graduated from the Stonier Graduate School of Banking at Rutgers University in New Jersey. His thesis was selected for placement in the libraries of the American Bankers Association and the Harvard business school.

In addition to being an outstanding manager and banker, Sheldon Morgan has served his community through a wide variety of civic and professional organizations, including his service as president of the advisory board of the Providence Hospital School of Nursing; the Mobile Azalea Trail Festival; the Mobile Kiwanis Club; Senior Citizens Service; and the Industrial Developers Association of Alabama, which he founded. He has also served as a member of the Junior Chamber of Commerce, the American Cancer Society; and the Mobile Economic Development Council.

I congratulate Sheldon for his illustrious career and for his many contributions to his community and state. I wish him all the best for a happy, healthy, and long retirement.

IN TRIBUTE TO SENATOR JOHN C. STENNIS

Mr. HATFIELD. Mr. President, I join with my colleagues today in remembering a man who embodied the U.S. Senate perhaps better than anyone, Senator John C. Stennis. Known as a Senator's Senator and the conscience of the institution, his presence for 41 years in the Senate was formidable, yet comforting and reassuring.

While his departure represents the passing of an era and is cause for our grief, it is also certainly cause to rejoice, for our friend is no doubt experiencing the rewards of a faithful heart and humble service. The legacy he leaves is one defined by his strength, integrity, and compassion.

Growing up in rural Mississippi, John Cornelius Stennis learned the lessons that would last him a lifetime. Such lessons molded a man whose southern courtesy would become a mark of dignity and distinction. After receiving a law degree from the University of Virginia in 1927, young John Stennis spent 19 full years serving first as a State representative, then district prosecuting attorney and finally a circuit judge before being elected to the U.S. Senate in 1947.

Much in the same manner Senator Stennis took so many of us under his wing, upon his arrival in the Senate, it was Senator Richard B. Russell who mentored the like-minded Mississippian. Soon, Senator Stennis' sharp mind and unmatched work ethic earned him seats on the powerful Armed Services and Appropriations Committees. As chairman of the new Armed Services Preparedness Subcommittee, Senator Stennis became a watchdog for the Department of Defense and the armed services. His fair investigations and scrutiny of these organizations quickly secured him a reputation which would never be tarnished: He was analytical, critical, and he held unwavering convictions.

The impact John Stennis had over his 41 years in the U.S. Senate surpasses description. Early in his Senate career he courageously spoke against McCarthyism. While assuring America would have the strongest and most capable military on the planet, he demanded accountability for each defense dollar spent. While always standing by his commitment to a strong military, he also began to see the growing danger of our Federal deficit and supported necessary defense budget cutbacks. A consummate professional, Chairman Stennis commented more than once that his work was his play. Indeed, the joy with which he carried out our Nation's business was contagious—our Senator's Senator was humorous and likeable, a role model to Members on both sides of the aisle.

The trials Senator Stennis experienced during his sunset years in the U.S. Senate are almost unthinkable. He was shot twice by a burglar in 1973, but he returned to the work of the Senate; he lost his wife of 50 years in 1983, but he returned to the work of the Senate; and he lost a leg to cancer in 1984, but again he returned to the work of the Senate. Through all this, Senator Stennis remained a commanding presence. As the distinguished senior Senator from Virginia once put it, Senator Stennis " . . . had a great spiritual reservoir that came to his rescue and served as a solid, strong, foundation for him." Well, the spiritual reservoir overflowed and served as a solid and strong foundation for the rest of us as well.

To more than one Senator, John C. Stennis was more than a colleague, even more than a mentor. Indeed, I am not the only Senator still in this body who would call Senator Stennis a father figure—a figure worthy of our respect and deserving of our love. As long as he was in the Senate, I was his student—especially on the Appropriations Committee. Even when serving as chairman it was his counsel and leadership, his spirit and presence which guided me through the many hours of committee sessions and floor deliberations. To Senator John C. Stennis I owe a debt of gratitude that is both professional and personal. Seeing his patient and humble years presiding as chairman and as President pro tempore brought me peace of mind as I struggled through the difficult periods of my own service. And what would Senator Stennis' response to this tribute be? Well, about 7 years ago, upon his retirement, he remarked that he "* * * was just trying to do what looked like to be the duty and keep it up the best he could." He certainly did, and much, much more.

In the Book of Ezekiel, the third chapter, God declares the Prophet to be a watchman over the house of Israel. Ezekiel is commanded to warn the rebellious Israelities of God's impending judgment. Well, for the past several decades, John Cornelius Stennis has been our watchman. He has always cared for, and often admonished, a dignified yet sometimes unruly body of U.S. Senators. He has and will continue to represent the history of this body, to represent the integrity of this body and to represent the stature of this body. For his years of service, leadership, and friendship, I am eternally grateful.

TRIBUTE TO JEFFERY ALLEN BREAUX

Mr. BREAUX. Mr. President, today I would like to honor Jeffery Allen Breaux. Jeff was a native of my hometown of Crowley, LA, and he passed away on April 15, 1995. It is with extreme sorrow that I pay tribute to him on behalf of his parents, Mr. and Mrs. Larry J. Broussard, Sr.

THE 25TH ANNIVERSARY OF EARTH DAY

Mr. DASCHLE. Mr. President, more than a hundred years ago, Sitting Bull, chief of the Lakota Sioux Indians, implored Americans: "Let us put our minds together and see what life we can make for our children."

I thought of that plea again on Saturday, April 22, the 25th anniversary of Earth Day.

Much has changed since the first Earth Day.

More and more, Americans recognize that conserving our natural resources and safeguarding a clean environment is in everyone's best interests. It is, as Theodore Roosevelt said, the patriotic duty of every American.

Congress has attempted to fulfill that responsibility by passing laws such as the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and the Federal Land Policy Management Act. As a result of these and other protections, the water Americans drink and the air we breathe is cleaner than it was 25 years ago.

We also understand much more about how the delicate Earth system works and about the effects of human actions on the environment. For example, earth scientists have come to recognize that the Earth's climate is changing because of human actions that alter the composition of the atmosphere. Geologists tell us that global climate change could increase the frequency of droughts and floods.

We now appreciate that these events can have direct socioeconomic consequences for individuals and communities.

We need to build on this knowledge and our successes, not undo them.

Clearly, we cannot and will not tolerate laws and rules that frustrate businesses and justify redtape. We must be willing to heed the lessons of the last 25 years and adjust our environmental laws to be more efficient and less burdensome.

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But, we must not exploit the current frustration with Government to gut all laws protecting our environment.

Those who claim we must eviscerate environmental rules in order to sustain our economy are at best disingenuous. They know—we all know—that we cannot strengthen our economy if we destroy our environment. In fact, establishing policies for a sustainable environment is an economic necessity. We must develop policies using balance, reason, and good science.

We will debate many important environmental issues in this Congress. Let us hold ourselves to those standards: Balance, reason, and good science.

Pollution does not respect ideological boundaries. So our efforts to prevent pollution, to clean up mistakes from our past, and to plan thoughtfully for the future on this delicate planet must transcend those boundaries.

In my lifetime, the world population has doubled, and the U.S. population has soared from 150 million to 260 million people. At current growth rates, it's projected that the U.S. population will double—to 522 million people—just 60 years from now.

The cold, hard truth is that the Earth cannot supply the resources to sustain such a large human population unless we change our consumption and conservation practices now.

Earth Day reminds us that the Earth is not an infinitely bountiful cornucopia. Rather, it is a planet of finite resources from which comes the materials for our food, clothing, and shelter. We must learn to live within its geological and biological limits.

Environmental issues are often expressed by scientists in complicated, technical terms. But the essential issue is really quite simple and critical for all of us to embrace. President Theodore Roosevelt put it best early in this century when he said: "A nation behaves well if it treats its natural resources as assets which it must turn over to the next generation increased—not impaired—in value."

We have an obligation to our children and our children's children to safeguard their future, to preserve the water, soil, air, minerals, rivers, and oceans that are the resource base of this diverse planet and the many life forms that inhabit it.

Last week, students at the Grandview Elementary School in Rapid City spoke with me about pressing environmental problems and possible solutions.

Let us not disappoint our children. Let us, Democrats and Republicans alike, heed Sitting Bull's plea to "put our heads together," to work together, "to see what life we can make for our children."

SAFE WORKPLACES FOR AMERICAN WORKERS

Mr. DASCHLE. Mr. President, our Nation's history includes too many tragic and avoidable workplace accidents that have maimed and killed workers.

The Triangle Shirtwaist Factory fire early in this century, in which women died because the owner had locked the fire doors to prevent them taking an unauthorized work break, remains one of the most horrifying examples.

Twenty-five years ago last Friday, Congress passed the Occupational Safety and Health Act. With that legislation, we made a commitment to all American workers that the places where they earned their living would not themselves pose a hazard to life or health.

Yet it has been just a couple of years since the Hamlet chicken processing plant fire had a result all too similar to the Triangle Shirtwaist Factory disaster, and for the same cause—a locked fire escape door. Twenty-five working people in North Carolina died in that fire.

The Occupational Safety and Health Act was intended to prevent such tragedies, but despite the passage of a quarter century, its work is not yet done.

Every year, more than 6,000 workers are killed by workplace injuries; more than 50,000 die each year from occupational diseases.

We have made great strides in cleaning up the chemicals and other contaminants that pose a hazard to health in many workplaces. Most American employers are anxious to create workplaces that will not cause injury to their own employees.

But the number of deaths each year, whether from immediate injury or from the long-range effects of exposure to hazardous substances, means we cannot say that the work of the Occupational Health and Safety Administration is finished. It is not.

It is inconceivable that, with this heavy toll of premature worker death, there is today a concerted effort to roll back and eviscerate workplace safety provisions that protect workers today.

This is a misguided and mistaken approach. We are seeing improvements in the rate of workplace safety, with reduced injuries and accidents. Clearly, the work done by Federal and State inspectors is having an effect. It is counterproductive to take an effective enforcement approach and seek to weaken it.

American workers deserve better. American workers should not have to fear that the Congress, which promised to protect their health a quarter of a century ago, will today renege on that promise.

There are undoubtedly improvements to be made in the enforcement field, but proposals to eliminate the tools of enforcement itself are not improvements. They will do nothing but undermine the ability of inspectors to do their job.

There are fewer than 2,000 Federal workplace safety inspectors. They are already overwhelmed by the scope of their responsibilities. If they don't have the tools with which to enforce safety requirements, the promise of a safe workplace will become an empty one.

A week after the ultimate workplace tragedy, the bombing in Oklahoma City that took the lives of so many Federal employees as they worked at their desks, it is worthwhile to remember the tragic and wasteful loss of life that goes unremarked in the workplace every day.

I commend the AFL-CIO and its affiliates for the continued effort they make, through Workers Memorial Day, to recall to the national memory the lives needlessly lost to preventable injuries and hazards on the job.

THE 80TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

Mr. LIEBERMAN. Mr. President, this week we commemorate the 80th anniversary of the Armenian genocide—the death of over 1.5 million Armenians and their exile from their homeland.

This terrible tragedy marked the beginning of an ugly period in human history where there have been attempts to systematically liquidate certain ethnic groups. The Nazi Holocaust, the extermination of the Kulaks by Stalin, and the ruthless murders of innocent Cambodians by the Khmer Rouge are all further examples of brutality against fellow human beings. Today, people are being killed in the Balkans, Rwanda, and Burundi once again because they are members of a different ethnic group.

What can we learn from all these tragedies and especially the one we commemorate today? The first and foremost lesson is to acknowledge that a tragedy occurred and admit that it is a crime against all of humanity. Then we must never allow the world to forget what happened here and the fate of these people. This is why we mark this date in history—and why we must continue to do so.

In 1915, the Ottoman Empire was in a state of collapse. The Empire was exhausting its last strength in fighting World War I. The economy was in tatters and the Government was in a state of confusion. The victims of this time of upheaval were the Armenian people who were either killed or forced to flee their homelands.

The Armenian people kept their culture and beliefs, and with the collapse of the Soviet Union, the Nation of Armenia was born. This birth has been a troubled one.

The tragic 7-year conflict between Armenia and Azerbaijan has cost thousands of lives and displaced over a million people. I am very encouraged, however, by the cease-fire which has been in place in Nagorno-Karabakh for 1 year this month.

I am also encouraged that Russia decided this past December to work with the Minsk Group of the OSCE to seek a peaceful solution in Nagorno-Karabakh. The Minsk Group, cochaired by Russia and Finland, has been meeting regularly to address the needs of all the concerned parties. The process is moving along slowly, but there is hope that a peacekeeping unit may soon be in Nagorno-Karabakh to ensure the safety of all people.

The United States is eager to see a lifting of the blockade of Armenia and to see a return to the free flow of humanitarian aid in this region. We share the aspirations of Armenia, Azerbaijan, and the other members of the OSCE Minsk Group for a peaceful solution to this troubling problem.

We must do whatever we can to solve the situation in Nagorno-Karabakh. We must use all available resources to see that the tragedy which befell Armenians in the first part of this century is not repeated—either in Armenia or anywhere else in the world. On this, the 80th anniversary of a terrible genocide, we must learn from the past and make sure that such a tragedy is never repeated.

THE 80TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

Mr. GLENN. Mr. President, once again I join my colleagues in pausing to reflect upon, and remember the victims of, this century's first example of the horrendous crime of genocide, the Armenian population of the Ottoman Empire. April 24, 1995, marked the 80th anniversary of the beginning of this tragedy. On that day in 1915, some 200 Armenian religious, political, and intellectual leaders were arrested in Constantinople and exiled or taken to the interior and executed. For the next several years, Armenians were systematically expelled and deported. Some were killed and others left to die of deprivation. When the horror ended in 1923, 1.5 million Armenians had perished and another 500,000 had fled their homeland.

Evidence of the Armenian genocide is available from a number of sources, among the most compelling of which is the reporting of our own United States Ambassador to the Ottoman Empire, Henry Morgenthau. In a cable to the Secretary of State, Ambassador Morgenthau wrote:

> Deportation of and excesses against peaceful Armenians is increasing and from harrowing reports of eye witnesses it appears that a campaign of race extermination is in process under a pretext of reprisal against rebellion.

Some may ask why it is important to take time each year to commemorate an event which occurred over half a century ago. In reply I would recall the reported observation of Adolph Hitler as he contemplated the "final solution"—"Who remembers the Armenians?"

Sadly, as we all well know, the Armenian peoples' tragedy was not the last genocide of this century; there followed the horrors of the Holocaust and the extermination of the Cambodians during the brutal Khmer Rouge regime. Surveying the world today we unfortunately see many too many examples of brutal ethnic, religious, or tribal-based conflict, from ethnic cleansing in Bosnia to massacres in Rwanda.

Today we remember the 1½ million victims of the Armenian genocide. It is not comfortable to remind ourselves of this tragedy, or to visit the Holocaust Memorial Museum, or to see ongoing atrocities in real time on our television screens. Let us hope and pray today that we never allow ourselves to become complacent about man's inhumanity to man. For in the words of Edmund Burke, "the only thing necessary of the triumph of evil is for good men to do nothing."

ARMENIAN COMMEMORATION

Mr. JEFFORDS. Mr. President, I join many of my colleagues today in commemorating one of history's greatest tragedies: The slaughter 80 years ago of more than 1 million Armenians. That brutal assault on the Armenian people was an unconscionable effort to deny Armenians basic political and social rights of self-determination, independence, cultural identity, and community.

The atrocity could not extinguish the Armenian people's desire for freedom and justice. The Armenian community survives in many places around the globe, including, thankfully, the United States of America. In commemorating the immense tragedy which took place 80 years ago, we are honoring the achievements and lives of those who perished. We are also paying tribute to the perseverance and vigor of the Armenian people, who have maintained their cultural and historical identity despite oppression and diaspora. They continue to make positive contributions wherever they are, including in the United States and in the Republic of Armenia.

Commemorating these tragic events of 80 years ago, we also recognize the need for vigilance and action in the face of ethnic intolerance and injustice. Failure to learn the lessons of such events in history will unquestionably lead to future tragedies.

ARMENIAN GENOCIDE

Ms. MOSELEY-BRAUN. Mr. President, April 24 was the 80th anniversary of the beginning of the Armenian genocide. On that day in 1915, 200 Armenian leaders were arrested in Constantinople, now Istanbul, and taken to the Turkish interior, where they were executed. This act marked the beginning of the first genocide of the 20th century.

From 1915–23, 1.5 million Armenians were killed and more than 500,000 were exiled. By 1923, the entire Armenian population, which had numbered 2 million, 9 years before, was removed from Turkey.

During the last years of the Ottoman Empire, the government carried out the extermination of the Christian Armenian minority as a matter of government policy. The Turks were concerned that the Armenian population sympathized with the Allied Powers, and were worried that they might side with the Russians in the Turkish-Russian conflict during World War I. The Ottoman Government felt they needed to fully contain the Armenians.

All Armenians were equal candidates to be deported or massacred—men, women, children, the elderly. The Ottoman Empire justified the genocide as one of the necessary military operations during wartime.

Many Armenians were transferred from their homes and taken to desolate areas to be abused and killed in mass slayings. They were moved either by forced caravan marches or by overly packed cattle car trains, both of which caused massive casualties.

The survivors of these deportations were sent to camps in the middle of the Syrian desert, where they faced heat, starvation, exhaustion, thirst, and disease.

In addition to the loss of life, Armenian churches, libraries, towns, and other symbols of their culture were razed. The property and belongings of individual Armenians were transferred to the state.

The massacres ended only after the intervention by the Great Powers, including the United States. Henry Morgenthau, the United States Ambassador to the Ottoman Empire, organized and led protests against the targeting of Armenians. Congress chartered an organization, Near East Relief, which provided $113 million between 1915–30 for the Armenians' cause. 132,000 Armenian orphans were sent to America and placed in foster homes. The United States' efforts stopped the Turks from fully completing their plan of extermination. Unfortunately, though, we were unable to protect the majority of the Armenians from that brutal government.

Those who were not killed were scattered around the globe. The largest community of Armenians today is in the United States, and approximately 25,000 Armenians live in Illinois.

I believe it is important to recognize this history of suffering. The United States should make April 24 a national day of remembering the Armenian genocide. We must acknowledge the Armenian genocide for what it was.

There is no way we can go back and change history, but we must recount

the truth of what happened to the Armenian people between 1915–1923 in the Ottoman Empire. We must demonstrate that the attempted extermination of an entire people will not be tolerated. We must not forget those who suffered and died.

I dedicate this statement to those who did not survive the first genocide of the 20th century. They must never be forgotten.

THE ARMENIAN GENOCIDE

Mrs. BOXER. Mr. President, today I rise to pay tribute to the Armenian people on the 80th anniversary of the Armenian genocide. April 24, 1915, marked the beginning of the systematic elimination of the Armenian people in the Ottoman Empire by the Turks. It is important to recall this horrible chapter in history not only to commemorate the courage, strength, and energy of the Armenian people, but also to ensure that history does not repeat itself.

Beginning in 1915, the Ottoman Empire carried out a genocidal plot against its Armenian minority. From 1915 to 1923, approximately 1.5 million Armenian people, including religious, political, and intellectual leaders, lost their lives due to starvation, torture, and disease. More than 500,000 Armenians were exiled from their homes and by the end of 1923, the entire Armenian population of Anatolia and Western Armenia had been killed or deported.

During this bleak period for the Armenian people, hope was temporarily restored on May 28, 1918, when Armenian refugees, with the help of volunteers from abroad, defeated a Turkish attack and gained freedom. Unfortunately, in 1920 the Soviet Union joined with Ottoman Empire forces to attack and defeat Armenia, whose people were subjugated by these foreign powers for the next 70 years. It was not until 1991, after the break up of the Soviet Union, that the independence of the Armenian people was restored and the Republic of Armenia was born.

Although independence has been gained, Armenia's struggle still continues. There have been many efforts to deny the Armenian genocide and to discredit scholarship on this historical event. However, the suffering inflicted upon the Armenian people—one of the oldest Christian nations in the world—must not be forgotten or denied. The horror of these events must not be concealed, because only through education and remembrance can the wounds inflicted by this tragic incident in history be healed.

It is our duty to salute the Armenian people, for it reminds us that we all must work together to discourage prejudice and discrimination, to hold steadfast to the view that genocide will not be tolerated, and to make certain that it is never again repeated.

THE 80TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

Mr. BIDEN. Mr. President, I rise today to speak of a triple commemoration of horror. April 1995 marked the anniversary of both the first and the most recent genocide of the 20th century. The first, of course, was the massacre of 1.5 million Armenians in 1915. The most recent was last year's slaughter of the Tutsis of Rwanda.

Chronologically between these two grisly events stand the decimation of the Ukrainian people by Stalin's collectivization, the Jewish Holocaust, the killing fields of Cambodia, and most recently the unspeakable ethnic cleansing of Bosnia's Moslems.

The precedent for this inhuman chain was the Armenian genocide, the world's failure to prevent it, and the inability to ensure that it not be denied by future generations.

From 1915 to 1923, 30 percent of the Armenian people were massacred by the brutal hand of the Ottoman Turks, beginning with the Armenian intellectual and religious elite on April 24, 1915. Armenian men who had already been conscripted into the Ottoman Army were put into work battalions and then murdered.

Other Armenians—mostly helpless, elderly, women, and children—were driven on forced marches into the desert. Many of those who withstood unimaginable suffering finally succumbed to starvation or illness.

Sadly, the Armenian massacres have been labeled the "forgotten genocide" as a result of a concerted effort to rewrite history. Some who should know better assert that the horrid events were merely a regrettable sidelight of war, not genocide.

Mr. Chairman, we must not let unseemly quarrels over semantics cloud our moral vision or distract us from the fundamental point: The world must not allow human beings to be killed because of their race, religion, or ethnic group.

It matters little whether or not in every case of genocide in this century the perpetrators had a master plan for annihilation. The crucial, horrifying truth is that Armenians were killed because they were Armenians; Jews were killed because they were Jews; Gypsies were killed because they were Gypsies; Tutsis were killed because they were Tutsis; and Bosnian Moslems were killed because they were Moslems.

In the 1930's the international community should have been alerted by Hitler's cynical comment, "Who today remembers the extermination of the Armenians?" Just as Hitler saw lack of historical memory of the Armenian genocide as a signal that he could carry out with impunity his demented genocide of Jews and Gypsies, so too must the Hutus in Rwanda have been emboldened by the world's failure to stop the vile ethnic cleansing in Bosnia.

On this 80th anniversary of the Armenian genocide; the 50th anniversary of the liberation of Auschwitz, Buchenwald, and other Nazi death camps; and the first anniversary of the Tutsi genocide, I stand here to tell you that this chain must be broken once and for all.

We must not only remember and honor the martyrs, but must also solemnly swear: "This will never happen again."

THE 80TH ANNIVERSARY OF THE ARMENIAN GENOCIDE

Mrs. FEINSTEIN. Mr. President, last Monday, April 24, marked the 80th anniversary of the beginning of the Armenian genocide. I rise today to acknowledge and commemorate this terrible chapter in our history, to help ensure that it will never be forgotten.

On April 24, 1915, the Ottoman authorities began rounding up hundreds of Armenian political and religious leaders throughout Anatolia. Over the ensuing months and years, some 1.5 million Armenians were killed at the hands of the Ottoman authorities, and hundreds of thousands more were exiled from their homes. For its devastation and barbarism, the Armenian genocide stands out as one of the most horrific events in human history.

As the 80th anniversary of the Armenian genocide passes, it is vital that we remember and speak out about the systematic persecution and murder of millions of Armenians by the Ottoman government. I urge my colleagues to join me, the Armenian-American community, and people across the United States in commemorating the genocide and paying tribute to the victims of this crime against humanity.

Americans, who are blessed with freedom and security, can never allow oppression and persecution to pass without condemnation. By commemorating the Armenian genocide, we renew our commitment always to fight for human dignity and freedom, and we send out a message that the world can never allow genocide to be perpetrated again.

Even as we remember the tragedy and honor the dead, we also honor the living. Out of the ashes of their history, Armenians all across the world have clung to their identity and have prospered in new communities. Their strength and perseverance is a triumph of the human spirit, which refuses to cede victory to evil. The best retort to the perpetrators of oppression and destruction is rebirth, renewal, and rebuilding. Armenians throughout the world have done just that, and today they do it in their homeland as well. A free and independent Armenia stands today as a living monument to the resilience of a people. I am proud that the United States, through our friendship and assistance, is contributing to the rebuilding and renewal of Armenia.

Let us never forget the victims of the Armenian genocide; let their deaths

not be in vain. We must remember their tragedy to ensure that such crimes can never be repeated. And as we remember Armenia's dark past, we can look with hope to its future, which is bright with possibility.

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.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON RESCISSION PROPOSALS—MESSAGE FROM THE PRESIDENT—PM 43

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Commerce, Science, and Transportation, and to the Committee on the Judiciary.

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report three rescission proposals, totaling $132.0 million.

The proposed rescissions affect the Departments of Justice and Transportation, and the National Aeronautics and Space Administration.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 2, 1995.*

MESSAGES FROM THE HOUSE

At 1:04 p.m., a message from the House of Representatives delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

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

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

H.R. 1380. An act to provide a moratorium on certain class action lawsuits relating to the Truth in Lending Act.

At 3:13 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 1158) making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. LIVINGSTON, Mr. MYERS of Indiana, Mr. REGULA, Mr. LEWIS of California, Mr. PORTER, Mr. ROGERS, Mr. SKEEN, Mr. WOLF, Mr. DELAY, Mrs. VUCANOVICH, Mr. LIGHTFOOT, Mr. CALLAHAN, Mr. OBEY, Mr. YATES, Mr. STOKES, Mr. BEVILL, Mr. FAZIO, Mr. HOYER, Mr. DURBIN, Mr. COLEMAN, and Mr. MOLLOHAN as the managers of the conference on the part of the Houses.

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-748. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the report on the metric system; to the Committee on Commerce, Science, and Transportation.

EC-749. A communication from the Administrators of the Federal Aviation Administration and the National Aeronautics and Space Administration, transmitting jointly, pursuant to law, the report on the subsonic noise reduction technology; to the Committee on Commerce, Science, and Transportation.

EC-750. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on Commerce, Science, and Transportation.

EC-751. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of the budget requests of the Federal Aviation Administration for fiscal year 1996; to the Committee on Commerce, Science, and Transportation.

EC-752. A communication from the Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report on the Grant-In-Aid for Fisheries Program for fiscal years 1993 and 1994; to the Committee on Commerce, Science, and Transportation.

EC-753. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report on bluefin tuna for calendar years 1993 and 1994; to the Committee on Commerce, Science, and Transportation.

EC-754. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report entitled "National Implementation Plan for Modernization of the National Weather Service for Fiscal Year 1996"; to the Committee on Commerce, Science, and Transportation.

EC-755. A communication from the Secretary of Transportation, transmitting, the report on the regulatory review effort on grassroots partnerships; to the Committee on Commerce, Science, and Transportation.

EC-756. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation entitled "The Department of Transportation Reorganization Act of 1995"; to the Committee on Commerce, Science, and Transportation.

EC-757. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report on the national plan of integrated airport systems; to the Committee on Commerce, Science, and Transportation.

EC-758. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report on the Maritime Administration for fiscal year 1994; to the Committee on Commerce, Science, and Transportation.

EC-759. A communication from the Secretary of Transportation, transmitting a draft of proposed legislation entitled "The Amtrak Restructuring Act of 1995"; to the Committee on Commerce, Science, and Transportation.

EC-760. A communication from the Secretary of Transportation, transmitting a draft of proposed legislation entitled "The Interstate Commerce Commission Sunset Act of 1995"; to the Committee on Commerce, Science, and Transportation.

EC-761. A communication from the Assistant Administrator (National Weather Service), National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a revision to the report entitled "National Implementation Plan for Modernization of the National Weather Service for Fiscal Year 1996"; to the Committee on Commerce, Science, and Transportation.

EC-762. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on the Youth Conservation Corps for fiscal year 1994; to the Committee on Energy and Natural Resources.

EC-763. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report entitled "Outer Continental Shelf Natural Gas and Oil Resource Management Program: Cumulative Effects, 1987-1991"; to the Committee on Energy and Natural Resources.

EC-764. A communication from the Deputy Assistant Secretary of the Interior (Water and Science), transmitting a draft of proposed legislation entitled "The Helium Disposal Act of 1995"; to the Committee on Energy and Natural Resources.

EC-765. A communication from the Assistant Secretary of the Interior (Land and Minerals Management), transmitting, pursuant to law, the report of a notice on leasing systems; to the Committee on Energy and Natural Resources.

EC-766. A communication from the President and Chief Executive Officer, U.S. Enrichment Corporation, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on Energy and Natural Resources.

EC-767. A communication from the Administrator of the Energy Information Administration, Department of Energy, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on Energy and Natural Resources.

EC-768. A communication from the Secretary of Energy, transmitting a draft of proposed legislation entitled "The Alaska Power Administration Sale Authorization Act"; to the Committee on Energy and Natural Resources.

EC-769. A communication from the Secretary of Energy, transmitting, pursuant to

law, the report on the U.S. uranium industry for calendar year 1994; to the Committee on Energy and Natural Resources.

EC-770. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the Low Emissions Boiler Systems Program; to the Committee on Energy and Natural Resources.

EC-771. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the Building Energy Efficiency Standards Activities; to the Committee on Energy and Natural Resources.

EC-772. A communication from the Secretary of Energy, transmitting, pursuant to law, the report under the Powerplant and Industrial Fuel Use Act for calendar year 1994; to the Committee on Energy and Natural Resources.

EC-773. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the evaluation of utility early replacement programs; to the Committee on Energy and Natural Resources.

EC-774. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the Integrated Resource Planning; to the Committee on Energy and Natural Resources.

EC-775. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC-776. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC-777. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC-778. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC-779. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC-780. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report relative to the refunds of offshore lease revenues where a recoupment or refund is appropriate; to the Committee on Energy and Natural Resources.

EC-781. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the report of a construction prospectus; to the Committee on Environment and Public Works.

EC-782. A communication from the Administrator of the Environmental Protection Agency, transmitting drafts of proposed legislation entitled "The U.S.-Mexico Border Water Pollution Control Act" and "The U.S. Colonias Water Pollution Control Act"; to the Committee on Environment and Public Works.

EC-783. A communication from the Acting Secretary of Agriculture, transmitting, pursuant to law, the report under the Comprehensive Environmental Response Compensation and Liability Act for calendar year 1994; to the Committee on Environment and Public Works.

EC-784. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report of the shipping study; to the Committee on Environment and Public Works.

EC-785. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report of the surface transportation research and development plan; to the Committee on Environment and Public Works.

EC-786. A communication from the Deputy Under Secretary of Defense (Environmental Security), transmitting, pursuant to law, the report on the Defense Environmental Restoration Program; to the Committee on Environment and Public Works.

EC-787. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report on storm water discharges; to the Committee on Environment and Public Works.

EC-788. A communication from the Acting Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, the report on the Salem River Deep Draft Navigation Project; to the Committee on Environment and Public Works.

EC-789. A communication from the Senior Vice President (Communications), Tennessee Valley Authority, transmitting, pursuant to law, the report on the statistical summaries for fiscal year 1994; to the Committee on Environment and Public Works.

EC-790. A communication from the Chairman of the Physician Payment Review Commission, transmitting, pursuant to law, the annual report for calendar year 1995; to the Committee on Finance.

EC-791. A communication from the Fiscal Assistant Secretary of the Treasury, transmitting, pursuant to law, the report of the Treasury Bulletin for March 1995; to the Committee on Finance.

EC-792. A communication from the Chairman of the U.S. International Trade Commission, transmitting, pursuant to law, the report on trade between the United States and China, the successor States to the Former Soviet Union and other Title IV countries during calendar year 1994; to the Committee on Finance.

EC-793. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on the Medicaid Drug Rebate Program; to the Committee on Finance.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations:

Lawrence Harrington, of Tennessee, to be United States Alternate Executive Director of the Inter-American Development Bank.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. HELMS, from the Committee on Foreign Relations:

Treaty Doc. 104-3 Extradition Treaty with Jordan (Exec. Rept. No. 104-2).

TEXT OF THE COMMITTEE-REPORTED RESOLUTION OF ADVICE AND CONSENT

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan, signed at Washington on March 28, 1995.

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. DASCHLE:

S. 742. A bill to amend the Wild and Scenic Rivers Act to limit acquisition of land on the 39-mile segment of the Missouri River, Nebraska and South Dakota, designated as a recreational river, to acquisition from willing sellers, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. HUTCHISON:

S. 743. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for investment necessary to revitalize communities within the United States, and for other purposes; to the Committee on Finance.

By Mr. CRAIG:

S. 744. A bill to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE:

S. 742. A bill to amend the Wild and Scenic Rivers Act to limit acquisition of land on the 39-mile segment of the Missouri River, Nebraska and South Dakota, designated as a recreational river, to acquisition from willing sellers, and for other purposes; to the Committee on Energy and Natural Resources.

THE WILD AND SCENIC RIVERS ACT AMENDMENT ACT OF 1995

Mr. DASCHLE. Mr. President, in 1991 Congress designated a 39-mile stretch of the Missouri River from Fort Randall to Lewis and Clark Lake as a national recreational river. The purpose

of the recreational river designation is to protect the river and its environment, protect landowner rights, and provide for visitor use.

Recreational river designations preserve an important part of our Nation's natural heritage. This section, along with other segments of the Missouri River, provides critical native wildlife habitat, buffers against floods, and scenic waterways for recreation including fishing and hunting. For these reasons, South Dakotans feel strongly about the care and management of the river.

The National Park Service is currently evaluating alternative plans for managing this segment of the Missouri River. The selected plan will set goals and mechanisms for the care and public use of the river.

Numerous South Dakotans have commented officially on management alternatives proposed by the National Park Service. Some favor plans that emphasize the protection of wildlife habitat and provision of a primitive river experience. Others advocate a recreational emphasis with attention drawn to cultural and historical aspects of the river. Most agree on a balanced approach to river management.

However, many people who own land adjacent to the river have expressed concerns about the effectiveness of river protection efforts. They worry that recreational facilities developed on either side of the river will threaten the fragile river ecosystem. They are afraid that the Federal Government will take away portions of their land but will not do an adequate job of river protection.

I have always believed that ranchers and farmers are the original environmentalists. They make their living off the land and, therefore, know how the Earth and its rivers work. For farmers and ranchers, a healthy Earth makes for a healthy living.

The National Park Service has stated that, at this juncture, it does not believe that land condemnation will be necessary to accomplish the designation. While I appreciate the sensitivity of the Park Service to this issue, concerns persist among landowners over the potential for land condemnation when the final plan is announced. These fears, which have created a climate of mistrust, threaten to impede the designation process. For this process to move forward in a constructive and productive way, I believe it is important to clarify this issue and ensure that land condemnation is no longer an option in this process.

Therefore, today I am introducing a bill to amend the Wild and Scenic Rivers Act. The bill will limit acquisition of land on the 39-mile segment of the Missouri River designated as a recreational river to acquisition from willing sellers.

The bill seeks to ensure that the people who live with the river, who best know its seasonal ebbs and flows, will retain control of the management decisions that will affect them and the river. The bill guarantees that landowners with river property will not have their land condemned by the National Park Service for the purpose of this designation.

South Dakotans living along this stretch of the Missouri River are entitled to be the stewards of their own land. They are eager to protect this stretch of the river and to maintain its natural beauty.

In this time when States are clamoring for greater control over their natural environment and the laws that guide its use, it is my hope that Congress will provide the degree of control that Americans are asking for along this 39-mile stretch of river. Local landowners must take responsibility for the health and well-being of their natural environment. This bill, which applies only to the 39-mile stretch of the Missouri River from Fort Randall to Lewis and Clark Lake, will provide that opportunity in this case.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 742

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

SECTION. 1. LIMITATION OF ACQUISITION OF LAND ON PORTION OF THE MISSOURI RIVER DESIGNATED AS A RECREATIONAL RIVER.

Section 3(a)(22) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(22)) is amended in the ninth sentence by striking "owner:" and all that follows through the end of the sentence and inserting "owner."

By Mrs. HUTCHISON:

S. 743. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for investment necessary to revitalize communities within the United States, and for other purposes; to the Committee on Finance.

COMMERCIAL REVITALIZATION TAX CREDIT ACT

Mrs. HUTCHISON. Mr. President, the bill that I am introducing today is the Commercial Revitalization Tax Credit Act of 1995 [CRTC]. This legislation will encourage business investment in economically distressed areas. It will create jobs; expand economic activity; improve the physical appearance and increase property values in these areas. My bill would provide a targeted, limited tax credit to businesses to help defray their costs of construction, expansion, and renovation. Currently, such an incentive is lacking. This credit would fill a gap in the range of tools that States and localities need to make declining neighborhoods good places to do business, to work, and to reside. Martha Murphree, executive director of the Houston chapter of the American Institute of Architects said it very well: This legislation would "give small businesses leverage to expand and/or improve their facilities, thus adding value to their establishments and allowing them to hire more employees."

In fact, the American Institute of Architects is one of the prime reasons that this bill came to my attention and I applaud them for taking this initiative.

Mr. President, this tax credit will help businesses form a partnership with the Government to help revitalize areas of our country that have, in some cases, long suffered from neglect.

I firmly believe that we must reduce the size and scope of the Federal Government. I also firmly believe that there are compassionate ways to aid our cities without adding more Federal Government bureaucracy. Expanding tax incentives to enable the private sector to create real jobs in the economically depressed areas of our country is an excellent way to combat poverty, crime, despair, and the physical deterioration of our cities. This legislation encourages empowerment at the local level. It builds on the empowerment zone/enterprise community program that is now unfolding in 109 communities across the Nation. My own State of Texas has five of these specially designated areas in these cities: Houston, Dallas, El Paso, San Antonio, and Waco. The legislation could also benefit additional communities which have had previously approved and designated economic revitalization areas and which now receive Federal funds under the Community Development Block Grant Program.

I have always been a supporter of the pro-growth ideas that are at the foundation of the enterprise zone concept. But what was enacted in 1993 did not include the broad based incentives for capital formation that former Secretary of Housing and Urban Development Jack Kemp had envisioned. These specially designated zones primarily encourage wage-based tax credits to employers who hire an individual to work for a business within the zone. But there is no existing incentive for a business within the zone to expand so that larger numbers of people could be hired. Increasing and upgrading buildings and infrastructure is a necessary part of improving our cities and combating cycles of poverty and crime. This is the part of the equation that has been missing.

This is not intended to be a panacea. I do not anticipate that the tax credits will be the primary reason for going forward with such an expansion. However, I do think it can be an important, positive factor that would give the business man or woman the push needed to go forward with construction, renovation, or expansion. The credit

will mitigate the inherent risk in business decisions to locate in areas experiencing a variety of social and economic troubles. The credit will provide an incentive to invest in these areas, and the result will be new sources of tax revenues and new jobs.

We have seen how other targeted tax incentives can achieve such goals. Two excellent examples are the historic rehabilitation tax credit and the low-income housing tax credit. The historic rehabilitation tax credit provides a 20-percent credit to the owners of properties listed on the National Register of Historic Places to restore their properties for commercial purposes. According to the National Park Service, the credit has definitely created jobs. In fiscal year 1994, the credit produced almost 21,000 jobs, among 524 projects, and leveraged $483 million in private investment at a Federal cost of $97 million. Over the previous 4 fiscal years, $509 million in tax credits leveraged $2.5 billion in private investment. In the 17 years since Congress enacted the credit, it has generated almost $17 billion in private investment, in more than 25,000 projects. Moreover, this credit has preserved thousands of this Nation's most precious architectural treasures. It has also sparked tourism which in turn has generated millions of tax dollars.

The low-income housing tax credit is the residential housing construction and rehabilitation partner to the CRTC. It provides a tax credit of up to 9 percent per year for up to 10 years against the cost of developing or renovating housing affordable to low- and moderate-income people. Since its creation in 1986, it has financed 700,000 new and rehabilitated housing units. At an annual credit amounting to about $320 million, the low-income housing tax credit attracts about $975 million in private investment a year. According to the U.S. Department of Housing and Urban Development, for every 100,000 new housing starts, 170,000 jobs are created. Of these jobs, 40 percent are on-site and another 20 percent are in trade, transportation, and services that come primarily from local markets. The National Association of Homebuilders reported that, for fiscal year 1992, the 92,000 units built or rehabilitated spun off more that $1.6 billion in wages and taxes.

Clearly, Congress has found that targeted tax credits can serve a valuable public purpose. My proposal will do the same for economically depressed communities struggling to attract new business investment, just as the historic rehabilitation tax credit has done for historic properties and the low-income housing tax credit has done for affordable housing. According to the National Association for Counties' report on business development incentives, it is important to ensure that tax incentives are crafted to encourage new activity which might not otherwise occur. Also, the credit must be carefully targeted and used judiciously. There must be safeguards to ensure accountability. The tax credit must fit within a State or locality's overall economic development policy. It must also be designed to stimulate the local economy, and to promote job growth in economically depressed areas. My proposal meets all of those standards.

This tax credit will be a cost-efficient instrument of Federal policy. It will require a minimum of Federal bureaucracy. Most of the work will be done by the State, which will allocate the tax credits, and monitor projects to make sure that the proposed benefits are realized. It will engage the private sector in addressing the economic development needs of low-income communities. The Government cannot and should not do the job alone. Private sector involvement helps ensure success. Because their own funds will be at risk, private investors will rigorously assess the feasibility of ventures before undertaking them. This is not a charity or a Government give away program. The credit will attract additional private lending. Lenders want to see the kind of private equity investment generated by the CRTC before they will consider a loan, particularly in an economically distressed community. The CRTC is flexible. It will work for a wide range of retail, industrial, health care, and other facilities which are crucial to making their communities good places to live and to do business. The CRTC is based on the principal of paying for performance. Tax credits can be claimed only after the investment is made; the project completed; the assets remain in use; and income is generated. That ensures that the taxpayers will get what they are paying for.

The tax credit I propose has the following major features:

The credit may be applied to construction, amounting to at least 25-percent of the basis of the property, which takes place in specially designated revitalization areas, including enterprise communities, empowerment zones, and other areas specially designated according to Federal, State, or local law.

Qualified taxpayers could choose a one time 20-percent tax credit against the cost of new construction or rehabilitation. For instance, if the expansion of a supermarket in the El Paso enterprise community cost $150,000, the tax credit against income would be $30,000. Alternatively, the business owner could take a 5-percent credit each year over a 10-year period.

Annually, the credit would be allocated to each of the States, according to a formula that takes into account the number of localities where over half the people earn less than 60 percent of the area's median income.

Localities would determine their priority projects and forward them to the State for allocation of credits according to an evaluation system which the States establish.

The CRTC would provide $1.5 billion in tax credits over 5 years, in amounts as follows: $100 million in fiscal year 1996, $200 million for fiscal year 1997, and $400 million each year from fiscal years 1998 to 2000.

Mr. President, the legislation I offer today is designed to attract over $7 billion of private sector investment to the most troubled neighborhoods and communities of this Nation. It will create jobs, generate tax revenue, and improve the physical appearance of these specially designated revitalization areas. With a minimum of bureaucracy and through a proven tax mechanism, my initiative will make a difference to the people and the economies of hundreds of communities and thousands of neighborhoods across this country.

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

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

S. 743

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial Revitalization Tax Act of 1995".

SEC. 2. COMMERCIAL REVITALIZATION TAX CREDIT.

(a) ALLOWANCE OF CREDIT.—Section 46 of the Internal Revenue Code of 1986 (relating to investment credit) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding at the end the following new paragraph:

"(4) the commercial revitalization credit."

(b) COMMERCIAL REVITALIZATION CREDIT.—Subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

"SEC. 48A. COMMERCIAL REVITALIZATION CREDIT.

"(a) GENERAL RULE.—For purposes of section 46, except as provided in subsection (e), the commercial revitalization credit for any taxable year is an amount equal to the applicable percentage of the qualified revitalization expenditures with respect to any qualified revitalization building.

"(b) APPLICABLE PERCENTAGE.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable percentage' means—

"(A) 20 percent, or

"(B) at the election of the taxpayer, 5 percent for each taxable year in the credit period.

The election under subparagraph (B), once made, shall be irrevocable.

"(2) CREDIT PERIOD.—

"(A) IN GENERAL.—The term 'credit period' means, with respect to any building, the period of 10 taxable years beginning with the taxable year in which the building is placed in service.

"(B) APPLICABLE RULES.—Rules similar to the rules under paragraphs (2) and (4) of section 42(f) shall apply.

"(c) QUALIFIED REVITALIZATION BUILDINGS AND EXPENDITURES.—For purposes of this section—

"(1) QUALIFIED REVITALIZATION BUILDING.—The term 'qualified revitalization building' means any building (and its structural components) if—

"(A) such building is located in an eligible commercial revitalization area,

"(B) a commercial revitalization credit amount is allocated to the building under subsection (e), and

"(C) depreciation (or amortization in lieu of depreciation) is allowable with respect to the building.

"(2) QUALIFIED REHABILITATION EXPENDITURE.—

"(A) IN GENERAL.—The term 'qualified rehabilitation expenditure' means any amount properly chargeable to capital account—

"(i) for property for which depreciation is allowable under section 168 and which is—

"(I) nonresidential real property, or

"(II) an addition or improvement to property described in subclause (I),

"(ii) in connection with the construction or substantial rehabilitation or reconstruction of a qualified revitalization building, and

"(iii) for the acquisition of land in connection with the qualified revitalization building.

"(B) DOLLAR LIMITATION.—The aggregate amount which may be treated as qualified revitalization expenditures with respect to any qualified revitalization building for any taxable year shall not exceed $10,000,000, reduced by any such expenditures with respect to the building taken into account by the taxpayer or any predecessor in determining the amount of the credit under this section for all preceding taxable years.

"(C) CERTAIN EXPENDITURES NOT INCLUDED.—The term 'qualified revitalization expenditure' does not include—

"(i) STRAIGHT LINE DEPRECIATION MUST BE USED.—Any expenditure (other than with respect to land acquisitions) with respect to which the taxpayer does not use the straight line method over a recovery period determined under subsection (c) or (g) of section 168. The preceding sentence shall not apply to any expenditure to the extent the alternative depreciation system of section 168(g) applies to such expenditure by reason of subparagraph (B) or (C) of section 168(g)(1).

"(ii) ACQUISITION COSTS.—The costs of acquiring any building or interest therein and any land in connection with such building to the extent that such costs exceed 30 percent of the qualified revitalization expenditures determined without regard to this clause.

"(iii) OTHER CREDITS.—Any expenditure which the taxpayer may take into account in computing any other credit allowable under this part unless the taxpayer elects to take the expenditure into account only for purposes of this section.

"(3) ELIGIBLE COMMERCIAL REVITALIZATION AREA.—The term 'eligible commercial revitalization area' means—

"(A) an empowerment zone or enterprise community designated under subchapter U,

"(B) any area established pursuant to any consolidated planning process for the use of Federal housing and community development funds, and

"(C) any other specially designated commercial revitalization district established by any State or local government, which is a low-income census tract or low-income nonmetropolitan area (as defined in subsection (e)(2)(C)) and is not primarily a nonresidential central business district.

"(4) SUBSTANTIAL REHABILITATION OR RECONSTRUCTION.—For purposes of this subsection, a rehabilitation or reconstruction shall be treated as a substantial rehabilitation or reconstruction only if the qualified revitalization expenditures in connection with the rehabilitation or reconstruction exceed 25 percent of the fair market value of the building (and its structural components) immediately before the rehabilitation or reconstruction.

"(d) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—

"(1) IN GENERAL.—Qualified revitalization expenditures with respect to any qualified revitalization building shall be taken into account for the taxable year in which the qualified rehabilitated building is placed in service. For purposes of the preceding sentence, a substantial rehabilitation or reconstruction of a building shall be treated as a separate building.

"(2) PROGRESS EXPENDITURE PAYMENTS.—Rules similar to the rules of subsections (b)(2) and (d) of section 47 shall apply for purposes of this section.

"(e) LIMITATION ON AGGREGATE CREDITS ALLOWABLE WITH RESPECT TO BUILDINGS LOCATED IN A STATE.—

"(1) IN GENERAL.—The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the commercial revitalization credit amount (in the case of an amount determined under subsection (b)(1)(B), the present value of such amount as determined under the rules of section 42(b)(2)(C)) allocated to such building under this subsection by the commercial revitalization credit agency. Such allocation shall be made at the same time and in the same manner as under paragraphs (1) and (7) of section 42(h).

"(2) COMMERCIAL REVITALIZATION CREDIT AMOUNT FOR AGENCIES.—

"(A) IN GENERAL.—The aggregate commercial revitalization credit amount which a commercial revitalization credit agency may allocate for any calendar year is the portion of the State commercial revitalization credit ceiling allocated under this paragraph for such calendar year for such agency.

"(B) STATE COMMERCIAL REVITALIZATION CREDIT CEILING.—

"(i) IN GENERAL.—The State commercial revitalization credit ceiling applicable to any State for any calendar year is an amount which bears the same ratio to the national ceiling for the calendar year as the population of low-income census tracts and low-income nonmetropolitan areas within the State bears to the population of such tracts and areas within all States.

"(ii) NATIONAL CEILING.—For purposes of clause (i), the national ceiling is $100,000,000 for 1996, $200,000,000 for 1997, and $400,000,000 for calendar years after 1997.

"(iii) OTHER SPECIAL RULES.—Rules similar to the rules of subparagraphs (D), (E), (F), and (G) of section 42(h)(3) shall apply for purposes of this subsection.

"(C) LOW-INCOME AREAS.—For purposes of subparagraph (B), the terms 'low-income census tract' and 'low-income non-metropolitan area' mean a tract or area in which, according to the most recent census data available, at least 50 percent of residents earned no more than 60 percent of the median household income for the applicable Metropolitan Standard Area, Consolidated Metropolitan Standard Area, or all nonmetropolitan areas in the State.

"(D) COMMERCIAL REVITALIZATION CREDIT AGENCY.—For purposes of this section, the term 'commercial revitalization credit agency' means any agency authorized by a State to carry out this section.

"(E) STATE.—For purposes of this section, the term 'State' includes a possession of the United States.

"(f) RESPONSIBILITIES OF COMMERCIAL REVITALIZATION CREDIT AGENCIES.—

"(1) PLANS FOR ALLOCATION.—Notwithstanding any other provision of this section, the commercial revitalization credit dollar amount with respect to any building shall be zero unless—

"(A) such amount was allocated pursuant to a qualified allocation plan of the commercial revitalization credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part, and

"(B) such agency notifies the chief executive officer (or its equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project.

"(2) QUALIFIED ALLOCATION PLAN.—For purposes of this subsection, the term 'qualified allocation plan' means any plan—

"(A) which sets forth selection criteria to be used to determine priorities of the commercial revitalization credit agency which are appropriate to local conditions,

"(B) which considers—

"(i) the degree to which a project contributes to the implementation of a strategic plan that is devised for an eligible commercial revitalization area through a citizen participation process,

"(ii) the amount of any increase in permanent, full-time employment by reason of any project, and

"(iii) the active involvement of residents and nonprofit groups within the eligible commercial revitalization area, and

"(C) which provides a procedure that the agency (or its agent) will follow in monitoring for compliance with this section.

"(g) TERMINATION.—This section shall not apply to any building placed in service after December 31, 2000."

(b) CONFORMING AMENDMENTS.—

(1) Section 39(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(7) NO CARRYBACK OF SECTION 48A CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to any commercial revitalization credit determined under section 48A may be carried back to a taxable year ending before the date of the enactment of section 48A."

(2) Subparagraph (B) of section 48(a)(2) of such Code is amended by inserting "or commercial revitalization" after "rehabilitation" each place it appears in the text and heading thereof.

(3) Subparagraph (C) of section 49(a)(1) of such Code is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) the basis of any qualified revitalization building attributable to qualified revitalization expenditures."

(4) Paragraph (2) of section 50(a) of such Code is amended by inserting "or 48A(d)(2)" after "section 47(d)" each place it appears.

(5) Subparagraph (B) of section 50(a)(2) of such Code is amended by adding at the end

the following new sentence: "A similar rule shall apply for purposes of section 48A."

(6) Paragraph (2) of section 50(b) of such Code is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) a qualified revitalization building to the extent of the portion of the basis which is attributable to qualified revitalization expenditures."

(7) Subparagraph (C) of section 50(b)(4) of such Code is amended by inserting "or commercial revitalization" after "rehabilitated" each place it appears in the text or heading thereof.

(8) Subparagraph (C) of section 469(i)(3) is amended—

(A) by inserting "or section 48A" after "section 42", and

(B) by striking "CREDIT" in the heading and inserting "AND COMMERCIAL REVITALIZATION CREDITS".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 1995.

By Mr. CRAIG.

S. 744. A bill to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compactors that meet appropriate American National Standards Institute design safety standards; to the Committee on Labor and Human Resources.

THE BALERS AND COMPACTORS SAFETY STANDARDS MODERNIZATION ACT

Mr. CRAIG. Mr. President, I introduce the Balers and Compactors Safety Standards Modernization Act.

This bill would make long-overdue revisions to safety standards set by the Department of Labor's Hazardous Occupation Order Number 12 [HO 12].

HO 12 is a regulation issued by DOL in 1954 to protect employees who are under 18 years of age. In brief, it specifically prohibits minors from operating more than a dozen different types of equipment in the workplace. I certainly agree with the underlying purpose of HO 12, which is that younger workers should not be allowed to operate certain types of machinery when doing so would place them in harm's way.

Specifically, this Safety Standards Modernization Act would address problems caused by DOL's interpretation and enforcement of HO 12, with respect to cardboard balers and compactors that commonly are used in supermarkets, grocery stores, and other retail establishments, for preparing and bundling cardboard and paper materials for recycling purposes.

DOL's current interpretation of HO 12 goes so far as to prohibit minors from placing, tossing, or loading cardboard or paper materials into a baler or compactor. Such activities take place during a loading phase that is prior to, and separate from, the actual operation of the machine. While such a loading-phase prohibition may have made sense back in 1954, when HO 12 was originally issued, such is not the case today.

Technology has brought about significant safety advancements to balers and compactors. Much like a household microwave oven or trash compactor, the newest generation of balers now in use in grocery stores and other locations cannot be engaged and operated during the loading phase.

This important design feature is a result of safety standards issued by the American National Standards Institute [ANSI]. An employee is not at risk when placing cardboard materials into a baler that is in compliance with ANSI standards Z.245.5 1990, or putting paper materials into a compactor that is in compliance with ANSI standards Z245.2 1992.

Nonetheless, DOL treats all balers and compactors the same, and considers the placement of materials into these machines, if performed by a minor, to be a clear-cut violation of HO 12. Each violation can result in a fine of $10,000 against an employer.

If DOL could produce injury data showing that workers are at risk when loading materials into a machine that meets current ANSI standards, I might agree that the current interpretation and enforcement of HO 12 is warranted. However, DOL has acknowledged that it has no injury data for balers that meet the ANSI standard.

Despite the complete lack of evidence that workers are at risk in these situations, DOL has cited numerous supermarkets throughout the United States and has assessed several million dollars in fines against grocery owners in recent years.

It is difficult to understand the logic behind this kind of enforcement when, in fact, a review of 8,000 compensation cases involving injuries over the past 7 years by the Waste Equipment Technology Association failed to find a single injury attributable to a baler that meets current ANSI safety standards.

The present, rigid interpretation of HO 12 is bad regulatory policy and should not continue. It benefits no one, especially workers. Worker protection is not enhanced by issuing large fines against employers that use balers meeting current safety standards.

Such a policy also is clearly inconsistent with the goal of creating employment opportunities for young people. Because so many grocers have been fined by DOL for loading violations, the industry has become less inclined to hire younger workers.

Originally, DOL applied this interpretation of HO 12 to cardboard balers. As burdensome and objectionable as this policy has been, concerning cardboard balers, DOL more recently went a step farther and now is applying the same interpretation to compactors, a similar piece of equipment that retail establishments use to recycle paper materials.

Without the benefit of formal rulemaking and the opportunity for interested parties to file comments, DOL extended the jurisdiction of HO 12 to compactors at the beginning of 1994, and employers found themselves subjected to fines when it was documented that a minor had placed materials into a compactor.

This is one more example of the "speed trap" mentality of Federal agencies, and the Department of Labor, in particular. Balers and compactors are both governed by ANSI safety standards and cannot be engaged or operated during the loading phase. This means, to re-emphasize, that employees loading machines meeting ANSI standards are not at risk.

Clearly, DOL's position on HO 12, as it relates to cardboard balers and compactors, is not in step with the technology being used in the workplace. In view of the fact that this equipment can not be operated during the loading phase, there is no compelling reason to continue treating the placement of materials by minors a violation of HO 12.

The old joke goes that, when something is difficult to accomplish, you compare it to passing an Act of Congress. If there is one process more intractable, it must be modernizing Federal agency regulations.

HO 12 needs to be revised so that the placement of paper or cardboard materials into a baler or compactor that meets its respective ANSI safety standards by an employee under age 18 is no longer a violation of the regulation. The loading phase should be completely distinguished from the operating phase of the machine.

While DOL has solicited comments on its child labor regulations, in general, Congress does not need to, and should not, wait any longer for this one, simple revision to HO 12. Throughout at least two administrations, DOL has promised to reconsider the rule. Their latest offering is the goal of issuing a new, final regulation by February 1996, even through we have yet to see a proposed revision to the rule.

We don't need months of agency hearings and reams of paper. I've seen these grocery store balers operate. What's needed is a simple, commonsense change, and the bill I'm introducing today would make that change in a simple, straightforward way.

The many young people who will not have summer jobs this year under DOL's status quo interpretation of HO 12 should not have to wait another year or more for the glacier-like process of regulatory change to catch up with technology.

By promptly acting on the bill I'm introducing today, we can open up thousands of youth summer job opportunities without relying on government programs and grants.

The jobs are there. The young people are there. All we need to do is remove

one, unnecessary, regulatory wall between them.

This bill would provide a narrow amendment to the Fair Labor Standards Act that would overrule DOL's interpretation of HO 12 in the limited and appropriate way I've described. My bill would not change the critically important safety focus of the regulation. In fact, I agree that DOL should remain vigilant and enforce the regulation in case when the safety of young workers is compromised by use of equipment that does not meet current ANSI safety standards.

The bill would provide only that young workers would be allowed to operate balers and compactors that meet the current industry standards that ensure complete safety in their operation.

Mr. President, I ask unanimous consent to print the text of my bill in the RECORD.

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

S. 744

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Compactors and Balers Safety Standard Modernization".

SEC. 2. AUTHORITY FOR MINORS TO LOAD MATERIALS INTO BALERS AND COMPACTORS.

In the administration of the child labor provisions of the Fair Labor Standards Act of 1938, minors under 18 years of age shall be permitted to—

(1) load materials into baling equipment that is in compliance with the American National Standards Institute safety standard ANSI Z245.5 1990, and

(2) load materials into a compacter that is in compliance with the American National Standards Institute safety standard ANSI Z245.2 1992.

ADDITIONAL COSPONSORS

S. 191

At the request of Mrs. HUTCHISON, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 191, a bill to amend the Endangered Species Act of 1973 to ensure that constitutionally protected private property rights are not infringed until adequate protection is afforded by reauthorization of the act, to protect against economic losses from critical habitat designation, and for other purposes.

S. 227

At the request of Mrs. FEINSTEIN, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 227, a bill to amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions and for other purposes.

S. 383

At the request of Mr. WARNER, the names of the Senator from Pennsylvania [Mr. SPECTER] and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 383, a bill to provide for the establishment of policy on the deployment by the United States of an antiballistic missile system and of advanced theater missile defense systems.

S. 388

At the request of Ms. SNOWE, the names of the Senator from Montana [Mr. BURNS] the Senator from Wisconsin [Mr. FEINGOLD], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 511

At the request of Mr. DOMENICI, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 511, a bill to require the periodic review and automatic termination of Federal regulations.

S. 578

At the request of Mr. D'AMATO, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 578, a bill to limit assistance for Turkey under the Foreign Assistance Act of 1961 and the Arms Export Control Act until that country complies with certain human rights standards.

S. 637

At the request of Mr. MCCAIN, the names of the Senator from Michigan [Mr. ABRAHAM] and the Senator from North Carolina [Mr. FAIRCLOTH] were added as cosponsors of S. 637, a bill to remove barriers to interracial and interethnic adoptions, and for other purposes.

SENATE JOINT RESOLUTION 31

At the request of Mr. HATCH, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of Senate Joint Resolution 31, a joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States.

SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the names of the Senator from South Dakota [Mr. PRESSLER] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Resolution 85, a resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care.

AMENDMENTS SUBMITTED

THE COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995 COMMON SENSE PRODUCT LIABILITY REFORM ACT OF 1995

DOLE (AND OTHERS) AMENDMENT NO. 617

Mr. DOLE (for himself, Mr. EXON, Mr. HATCH, Ms. SNOWE, Mr. MCCONNELL, Mr. ABRAHAM, Mr. KYL, Mr. THOMAS, Mrs. HUTCHISON, Mr. GRAMM) proposed an amendment to amendment No. 596 proposed by Mr. GORTON to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

On page 19, strike line 12 through line 5 on page 21, and insert the following:

SEC. 107. PUNITIVE DAMAGES IN CIVIL ACTIONS.

(a) FINDINGS.—The Congress finds that—

(1) punitive damages are imposed pursuant to vague, subjective, and often retrospective standards of liability, and these standards vary from State to State;

(2) the magnitude and unpredictability of punitive damage awards in civil actions have increased dramatically over the last 40 years, unreasonably inflating the cost of settling litigation, and discouraging socially useful and productive activity;

(3) excessive, arbitrary, and unpredictable punitive damage awards impair and burden commerce, imposing unreasonable and unjustified costs on consumers, taxpayers, governmental entities, large and small businesses, volunteer organizations, and nonprofit entities;

(4) products and services originating in a State with reasonable punitive damage provisions are still subject to excessive punitive damage awards because claimants have an economic incentive to bring suit in States in which punitive damage awards are arbitrary and inadequately controlled;

(5) because of the national scope of the problems created by excessive, arbitrary, and unpredictable punitive damage awards, it is not possible for the several States to enact laws that fully and effectively respond to the national economic and constitutional problems created by punitive damages; and

(6) the Supreme Court of the United States has recognized that punitive damages can produce grossly excessive, wholly unreasonable, and often arbitrary punishment, and therefore raise serious constitutional due process concerns.

(b) GENERAL RULE.—Notwithstanding any other provision of this Act, in any civil action whose subject matter affects commerce brought in any Federal or State court on any theory, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant only if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct by the defendant that was either—

(1) specifically intended to cause harm; or

(2) carried out with conscious, flagrant disregard to the rights or safety of others.

(c) PROPORTIONAL AWARDS.—The amount of punitive damages that may be awarded to a claimant in any civil action subject to this section shall not exceed 2 times the sum of—

(1) the amount awarded to the claimant for economic loss; and

(2) the amount awarded to the claimant for noneconomic loss.

This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(d) BIFURCATION.—At the request of any party, the trier of fact shall consider in a separate proceeding whether punitive damages are to be awarded and the amount of such an award. If a separate proceeding is requested—

(1) evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded; and

(2) evidence admissible in the punitive damages proceeding may include evidence of the defendant's profits, if any, from its alleged wrongdoing.

(e) APPLICABILITY.—Nothing in this section shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by the United States, or by any State, under any law;

(2) create any cause of action or any right to punitive damages;

(3) supersede or alter any Federal law;

(4) preempt, supersede, or alter any State law to the extent that such law would further limit the availability or amount of punitive damages;

(5) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(6) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(7) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

(f) FEDERAL CAUSE OF ACTION PRECLUDED.—Nothing in this section shall confer jurisdiction on the Federal district courts of the United States under section 1331 or 1337 of title 28, United States Code, over any civil action covered under this section.

(g) DEFINITIONS.—For purposes of this section:

(1) The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) The term "clear and convincing evidence" means that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard shall be more than that required under preponderance of the evidence, and less than that required for proof beyond a reasonable doubt.

(3) The term "commerce" means commerce between or among the several States, or with foreign nations.

(4)(A) The term "economic loss" means any objectively verifiable monetary losses resulting from the harm suffered, including past and future medical expenses, loss of past and future earnings, burial costs, costs of repair or replacement, costs of replacement services in the home, including child care, transportation, food preparation, and household care, costs of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(B) The term "economic loss" shall not include noneconomic loss.

(5) The term "harm" means any legally cognizable wrong or injury for which damages may be imposed.

(6)(A) The term "noneconomic loss" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(B) The term "noneconomic loss" shall not include economic loss or punitive damages.

(7) The term "punitive damages" means damages awarded against any person or entity to punish such person or entity or to deter such person or entity, or others, from engaging in similar behavior in the future.

(8) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

(h) EFFECTIVE DATE.—This section shall apply to any civil action in which trial has not commenced before the date of enactment of this Act.

THOMPSON (AND OTHERS) AMENDMENT NO. 618

(Ordered to lie on the table.)

Mr. THOMPSON (for himself, Mr. COCHRAN, and Mr. SIMON) submitted an amendment intended to be proposed by them to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

In section 102(a)(1), after "commenced" insert the following: "in a Federal court pursuant to section 1332 of title 28, United States Code, or removed to a Federal court pursuant to chapter 89 of such title".

In section 102(c)(6), strike "or" at the end.

In section 102(c)(7), strike the period at the end and insert "; or".

In section 102(c), add the following new paragraph:

(8) create a cause of action or provide for jurisdiction by a Federal Court under section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

• Mr. THOMPSON. Mr. President, I submit on behalf of myself and Senators COCHRAN and SIMON an amendment that would limit applicability of the product liability to cases in federal court.

As currently before the Senate, H.R. 956 would seriously jeopardize the balance between state and federal governments that the Founding Fathers established in the Constitution. States have had responsibility for developing their own rules of tort law—free of federal interference—for more than 200 years. In an unprecedented fashion, the product liability bill would displace state law governing an area always reserved to the states, even when the case is brought in state court. I am troubled by a Washington knows best approach to product liability.

Even worse, the displacement of state law is selective. H.R. 956 prevents states from providing less protection to defendants, but not from providing more. This one-size-fits-all bill overlooks both that individual Americans are unique and that states have their own right to determine the law that should apply to their special situations.

The bill raises federalism problems in a very practical sense. Because state law would still govern many aspects of product liability law under H.R. 956, there would be numerous questions to litigate concerning the relationship between the federal law and existing state laws. New, different, and inconsistent interpretations of the federal law and the state laws would result. Under the bill, resolution of these issues would be provided from a federal court of appeals. Those courts, not state courts, would ultimately determine the scope and meaning of state law as it interacts with this bill. Moreover, those appeals courts would be deluged with litigation at a time when years elapse before trial of a civil case in federal court, and when Americans rightly demand that federal courts apply swift and certain justice in criminal cases.

By contrast, my amendment recognizes that interstate commerce is the justification for a federal product liability bill. It is interstate commerce that justifies federal court jurisdiction in cases brought by citizens of one state against citizens of another. I believe that the rationale of the bill corresponds precisely with the reasons underlying federal diversity jurisdiction.

Despite the claims made, no one truly knows the effect of this bill on the ability of injured Americans to recover adequate compensation for injuries caused by defective products. Nor will anyone know whether competitiveness of American business will be enhanced or whether insurance premiums will fall if H.R. 956 is enacted. At the same time, the bill would displace 200 years of law based on actual experience. If the bill failed to achieve its objectives, there would be almost no means of unscrambling the federalized egg. By contrast, applying the bill only to federal court cases would provide an opportunity to experiment. If H.R. 956's ideas work, states can adopt these rules as their own. Potentially, a preemptive approach might then make sense. But if the bill created numerous practical problems, well-tested state law would remain undisturbed while Congress acted to fix the problems in the federal law.

The practical effect of my amendment would be that defendants sued out of state in many instances would be able to remove their cases to federal court and obtain the federal rule. Defendants sued in their home state would not be able to remove the case to

federal court. Thus, those defendants would be governed by their own state law as applied by their own state court. I believe this is to be a much more sensible approach than the one now before the Senate, and one consistent with the federal system the Constitution created.●

DORGAN AMENDMENT NO. 619

Mr. DORGAN proposed an amendment to amendment No. 617 proposed by Mr. DOLE to amendment No. 596 proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

On page 1, beginning with line 3, strike through line 2 on page 8 and insert the following:

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

"(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

"(b) BIFURCATION AT REQUEST OF EITHER PARTY.—At the request of either party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award."

SNOWE AMENDMENT NO. 620

Mr. GORTON (for Ms. SNOWE) proposed an amendment to amendment No. 596 proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

On page 19 strike line 22 through page 20 line 4 and insert the following new subsection:

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—The amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed 2 times the sum of—

(A) the amount awarded to the claimant for economic loss; and

(B) the amount awarded to the claimant for noneconomic loss.

(2) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

SHELBY (AND HEFLIN) AMENDMENT NO. 621

Mr. SHELBY (for himself and Mr. HEFLIN) proposed an amendment to amendment No. 617 proposed by Mr. DOLE to amendment No. 596 proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

At the appropriate place insert the following:

SEC. . LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

DEWINE (AND ABRAHAM) AMENDMENT NO. 622

Mr. DEWINE (for himself and Mr. ABRAHAM) proposed an amendment to amendment No. 617 proposed by Mr. DOLE to amendment No. 596 proposed by Mr. GORTON to the bill H.R. 956, supra; as follows:

On page 3 line 23, strike "loss: and insert in lieu thereof: "loss;

except that if the award is against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government or organization which has fewer than twenty-five full-time employees, that amount shall not exceed $250,000."

DEWINE AMENDMENT NO. 623

Mr. DEWINE proposed an amendment to amendment no. 617 proposed by Mr. DOLE to amendment no. 596 proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

On page 4 line 11 strike the semicolon after the word "awarded" through line 15 and insert a period.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, May 2, 1995, at 3 p.m. in open session, to consider the nominations of Gen. Dennis J. Reimer, USA to be Chief of Staff of the Army, and for reappointment to the grade of General; and Lt. Gen. Charles C. Krulak, USMC to be Commandant of the Marine Corps, and for appointment to the grade of General.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, May 2, 1995, immediately following the first Roll Call vote to hold a business meeting to vote on pending items.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GORTON. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet at 10 a.m., during the session of the Senate on Tuesday, May 2, 1995 to hold hearings on the Navy T-AO-187 Kaiser Class Oiler Contract.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, May 2, 1995, beginning at 9:30 a.m., in room 485 of the Russell Senate Office Building on the implementation of the Tribal Self-Governance Demonstration Project authorities by the Indian Health Service.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on the Nomination of Dr. Henry Foster, during the session of the Senate on Tuesday, May 2, 1995 at 9:30 a.m.

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

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Administrative Oversight and the courts, U.S. Senate Committee on the Judiciary, be authorized to meet during a session of the Senate on Tuesday, May 2, 1995, at 9:00 a.m., in Senate Dirksen Room 226, on the costs of the legal system.

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

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND REGULATORY RELIEF

Mr. GORTON. Mr. President, I ask unanimous consent that Subcommittee on Financial Institutions and Regulatory Relief, of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, May 2, 1995, to conduct a hearing on S. 650, The Economic Growth and Regulatory Paperwork Reduction Act.

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

SUBCOMMITTEE ON STRATEGIC FORCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces of the Committee on Armed Services be authorized to meet on Tuesday, May 2, 1995 at 9:30 a.m. in open session to receive testimony on the space programs in review of the Defense authorization request for fiscal year 1996 and the future years defense program, and to review the Department of Defense's space management initiative.

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

ADDITIONAL STATEMENTS

JAMES D. HENRY, MISSOURI SMALL BUSINESS PERSON OF 1995

● Mr. BOND. Mr. President, it is with great pleasure that I recognize Jim Henry as Missouri's Small Business

Person of the Year for 1995. Jim Henry is the president and chief operating officer of the R.C. Wilson Co., located in St. Charles.

In years to come, we may refer back to 1995 as the year of small business owners. More attention is being given to the accomplishments of small business persons than at any time since I entered government service. Small businesses will create 66 percent of all new jobs this year. By contrast, large companies with over 5,000 employees will add only 6 percent of the new jobs. Small businesses are the engine that is fueling our economy, generating 52 percent of all sales and one-half of the gross domestic product. It is, therefore, very appropriate that the Small Business Administration has set aside this week to honor our Nation's men and women, like Jim Henry, who own and operate small businesses.

Jim Henry's business, the R.C. Wilson Co., is a collection agency. Most of us think of a collection business as one that is insensitive at best. However, since Mr. Henry purchased the company in 1985, he has worked hard to establish a level of excellence that is essential for success in today's competitive business environment. His business philosophy puts a special emphasis on the dignity of the consumer, and provides professional service and outstanding results while maintaining the fine image of the client.

Jim Henry has been an innovator. Over the past 10 years, he has expanded and enhanced the delinquent-account collection services by fully computerizing his agency. He added optical-disk storage and on-line capability with clients. He has recognized the tremendous changes in the work place by adding on-line connections for employees working from home. His business was the first of its kind in Missouri to add a computerized dialing system.

In 1985, the R.C. Wilson Co. employed 25 people with annual billings of $1.25 million. Today, Jim Henry has 114 employees and bills $4 million a year. His success rate is nearly 50 percent better than the industry average.

Jim Henry has succeeded by recognizing the needs of his customers and clients, by working hard and by being innovative. Equally significant, Jim Henry has never forgotten his employees, many have been with the company for over 20 years. He has shown us how to be an excellent businessman and employer, and I am proud to recognize Jim Henry as Missouri's 1995 Small Business Person of the Year.•

TRIBUTE TO STEVE WITTMAN

• Mr. FEINGOLD. Mr. President, true pioneers are rare and special individuals. They inspire us with their vision, their energy, their skill and their ability to lead.

Today I am sad to report the passing of one such pioneer, the legendary aviator Sylvester Joseph Wittman. Mr. Wittman and his wife, Paula, died in an airplane crash on Sand Mountain, in northeastern Alabama last Thursday night. They were flying in an airplane that Mr. Wittman had designed and built from their winter home in Ocala, Florida to their home in Oshkosh, Wisconsin when the accident occurred.

Many successful people like to go by the book. Steve Wittman, as he preferred to be called, helped write the book. His life practically traced the history of aviation. He took wing in the spit-and-bailing-wire era and never stopped contributing to his beloved calling even as we began flying farther, higher, and faster in more complex machines.

He was born in the year after the first powered flight at Kitty Hawk. His flying career began in 1924, when he and a partner bought an airplane, and he taught himself to fly. His first pilot's license was signed by Orville Wright.

For 70 years, he designed, built, and flew airplanes as a barnstormer, a test pilot, and a racer, and he was one of the founders of the Experimental Aircraft Association, the Oshkosh-based organization that does so much to promote the love and the joy of flying.

The Winnebago County airport in Oshkosh, which Mr. Wittman managed from 1931 until 1969, is named Wittman Field in his honor.

Buster, a red single-engined midget racer Mr. Wittman built and flew is currently on display in the Golden Age of Flight Gallery in the west wing of the National Air and Space Museum. Buster, originally named Chief Oshkosh, raced successfully for 23 years, beginning in 1931.

He was a superb pilot, and stories about his skill are legion, even though he was reluctant to tell them himself. One of the more famous incidents occurred as he and a friend were flying over Tennessee. A trigger-happy rifleman had put a .22 caliber slug into Mr. Wittman's gas tank, and the fumes almost asphyxiated him. He managed to get his ship down safely, a bit of flying his partner barely completed though fully conscious.

He kept the slug as a souvenir.

Mr. Wittman set several speed records, and it would be hard to find a significant air racing event he had not entered. It wasn't unusual for him to fly home with the winner's trophy. He entered his last closed-course pylon race in 1989. At the age of 85, he won one heat, finished second in another and then came in third in the final race.

By the way, he did all this with vision in only one eye. He had lost the other in an accident when he was young.

In addition to his brilliant and storied racing career, he also contributed greatly to the common body of knowledge of the aviation community. Although he had no formal engineering training, he was often ahead of the curve in aviation design, and he never stopped looking for clues to better performance. He designed a landing gear that has been installed on over 100,000 airplanes.

One of his airplanes, the Wittman Tailwind, is a design that is still being flown by private pilots all over the world.

His self-developed talents were so impressive, he was made an honorary member of the elite Society of Experimental Test Pilots, a rare achievement.

He had his share of bumps and bruises in crashes along the way, but at 91, he was still flying.

He did all this with modesty and gentlemanly character, and he was a man who enjoyed life at a level most of us never approach.

As Tom Crouch, chairman of the aviation department at the Air and Space Museum put it, "If anybody in the history of aviation could be called a legend, it would sure be him."

Our condolences go out to Mr. Wittman's relatives, friends, fellow aviators, and to all those who were inspired by this true pioneer.•

AID/U.N. POPULATION FUND

• Mr. REID. Mr. President, as my colleagues and I prepare to go to conference on the H.R. 1158/S. 617 Defense supplemental appropriations and rescissions bills, I wish to submit a statement of support for funding for the Agency for International Development [AID] and United Nations Population Fund [UNFPA] population assistance programs. I strongly commend the distinguished chairman of the Senate Appropriations Committee and the ranking member for their focus on retaining the option of continued funding for AID and UNFPA population assistance programs in S. 617. By allowing the administration to decide where to rescind AID dollars, rather than agreeing to proposals to specifically rescind UNFPA and other AID population assistance funds, the Senate Appropriations Committee has kept open an opportunity to support these programs at fiscal year 1995 levels. While AID administers many valuable and significant human assistance programs worldwide, its population assistance programs contribute greatly to improving opportunities for economic growth and political stability in many developing countries, and are crucial to the protection of our global environment. I strongly support the full funding of these programs and urge my colleagues in conference to commit to leaving the administration with the option to meet the United States 1995 population assistance commitments.•

TRIBUTE TO RICHARD CLARKE

• Mr. FEINSTEIN. Mr. President, leadership grounded in common sense and compassion and elevated by imagination and vision is the hallmark of Richard Clarke's 30-year career at Pacific Gas & Electric Co. [PG&E], the last 8 as chairman of the board and chief executive officer.

As his retirement nears, I should like to salute him. Over the years, first as mayor of San Francisco and now as U.S. Senator, I have worked closely with Richard. Not only on questions involving utility service, but on a broad range of community issues, I have known Dick as a person who quickly gets to the heart of issues and directly speaks his mind.

Even further, he has been involved in a wide range of charitable and civic activities, and gives meaning and substance to the accolade "civic leader."

During his tenure as PG&E's CEO, Richard Clarke made environmental improvement a company priority and created programs that implemented policies to conserve energy. So effective were these innovations that PG&E received the President's Environment and Conservation Challenge Award in 1991, the Nation's highest recognition for corporate environmental excellence. In that same year, then President Bush named him to the President's Council of Sustainable Development.

At the same time, Richard, as chair of the Bay Area Council and the Committee on Jobs, worked to bring together other business leaders of San Francisco business and focus their collective knowledge and talents on ways to make government more efficient and the economy stronger.

Under Richard Clarke's guidance, PG&E has won national recognition for improving the workplace by establishing child day-care centers for employees and advancing opportunities for women and minorities.

His sense of community concern and compassion is reflected in his effort of such worthwhile efforts as Francisco Food Bank and Project Open Hand, which provides nourishing meals to people living with AIDS, to United Way and the San Francisco Symphony, where he serves as a board member. He personally developed and championed programs that encourage PG&E employees to become mentors to disadvantaged young people and to provide guidance to small, developing businesses in the inner city.

As he retires, Richard Clarke leaves behind a remarkable record of accomplishment—success in business and community affairs. He takes with him the admiration and respect of all those who have worked with him, and who wish him all the best in retirement.•

THE 1995 WHITE HOUSE CONFERENCE ON AGING

• Mr. SARBANES. Mr. President, today begins what I anticipate will be a productive and useful week for the more than 2,200 delegates here in Washington for the fourth White House Conference on Aging. I commend President Clinton for convening the first White House Conference on Aging since 1981, and want to take this opportunity to welcome all of the participants in this important policy conference, especially those from my own State of Maryland.

In the spirit of the first White House Conference on Aging established by President Kennedy in 1961, this week's Conference will address common problems facing all generations of Americans and seek to increase public awareness of the interdependence of generations and the essential contributions of older people. It will also facilitate the development of public policy recommendations to maintain and improve the well-being of the aging. Mr. President, this is an important and full agenda and I applaud all who are participating in this timely Conference.

Senior citizens today comprise more than 12 percent of the country's population and by the year 2000, that number is expected to surpass 16 percent. Maryland seniors comprise 15.6 percent of the State's population, a figure expected to increase to just over 16.2 percent by the year 2000. This demographic transformation poses significant challenges and opportunities and the White House Conference on Aging provides an excellent framework through which the participants may address these issues.

The considerable participation and interest in the White House Conference on Aging clearly illustrates what I have always believed and experienced—older Americans want to contribute. They want to work, to volunteer, and to participate in improving their communities and their Nation. It is critical, in my view, that we recognize and utilize the valuable insight, experience and wisdom that senior citizens bring to all aspects of life.

Mr. President, I have always believed strongly in the potential of this significant and growing population to contribute to the development and implementation of policies that affect all Americans and I expect that the coming days will confirm my belief. I want to again commend all of the delegates from across the country and wish them well as they participate in the fourth White House Conference on Aging.•

ORDERS FOR WEDNESDAY, MAY 3, 1995

Mr. GORTON. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9 a.m., Wednesday, May 3, 1995; that following the prayer, the Journal of the proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and that there then be a period for the transaction of morning business not to extend beyond the hour of 10:15 a.m., with Senators permitted to speak for up to 5 minutes each, except for the following: Senator THOMAS, 12 minutes; Senator BURNS, 10 minutes; Senator DORGAN, 12 minutes; Senator MOSELEY-BRAUN, 10 minutes; and Senator PRESSLER, 30 minutes; I further ask unanimous consent that at the hour of 10:15, the Senate resume consideration of H.R. 956, the product liability bill.

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

Mr. GORTON. Mr. President, for the information of all Senators, there will be a series of stacked votes beginning at 11:15 tomorrow morning on or in relation to any second-degree amendments to the Dole amendment No. 617.

Members should be on notice that two cloture motions were just filed tonight on the underlying Gorton substitute. Therefore, two cloture votes will occur during Thursday's session of the Senate at a time to be determined by the two leaders.

RECESS UNTIL 9 A.M. TOMORROW

Mr. GORTON. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:08 p.m., recessed until Wednesday, May 3, 1995, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate May 2, 1995:

POSTAL RATE COMMISSION

WILLIAM H. LEBLANC III, OF LOUISIANA, TO BE A COMMISSIONER OF THE POSTAL RATE COMMISSION FOR A TERM EXPIRING NOVEMBER 22, 2000. (REAPPOINTMENT.)

EXECUTIVE OFFICE OF THE PRESIDENT

JACOB JOSEPH LEW, OF NEW YORK, TO BE DEPUTY DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET, VICE ALICE RIVLIN.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

RICHARD J. STERN, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 3, 2000, VICE CATHERINE YI-YU CHO WOO, TERM EXPIRED.

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS TO TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. MALCOLM B. ARMSTRONG [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:

To be lieutenant general

LT. GEN. CHARLES T. ROBERTSON, JR. [redacted]

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE

ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. EDWIN E. TENOSO xxx-xx-x...

THE FOLLOWING-NAMED AIR NATIONAL GUARD OFFICERS FOR APPOINTMENT AS RESERVE OF THE AIR FORCE IN THE GRADE INDICATED UNDER THE PROVISIONS OF SECTIONS 12203 AND 12212, TITLE 10, UNITED STATES CODE, TO PERFORM DUTIES AS INDICATED.

MEDICAL CORPS

To be lieutenant colonel

DAVID R. ANDREWS xxx-xx-x...

JUDGE ADVOCATE GENERALS DEPARTMENT

To be lieutenant colonel

BENJAMIN F. LUCUS I xxx-xx-x...

IN THE MARINE CORPS

THE FOLLOWING-NAMED NAVAL ACADEMY GRADUATES TO BE APPOINTED PERMANENT SECOND LIEUTENANTS IN THE U.S. MARINE CORPS, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

NAVAL ACADEMY GRADUATES

To be second lieutenants

ACOSTA, STEPHEN J xxx-xx-x...
ADAMS, AARON W. xxx-xx-x...
ANDERSEN, DAVID E xxx-xx-x...
APPLETON, ROBERT W., II xxx-xx-x...
ASTLE, JAY C xxx-xx-x...
BAILEY, MARCIA L xxx-xx-x...
BAILEY, ROBERT O. xxx-xx-x...
BASHAM, CHARLES J xxx-xx-x...
BATES, JAMES A., JR xxx-xx-x...
BEAUMAN, AMY G. xxx-xx-x...
BOBO, JOHN P. xxx-xx-x...
BRIDGEFORTH, LINWOOD J xxx-xx-x...
BRILEY, CARL S xxx-xx-x...
BROWN, ERIC C xxx-xx-x...
BROWN, LEE E xxx-xx-x...
BURGESS, BRIAN P xxx-xx-x...
BURKE, JAMES B xxx-xx-x...
CARY, ANGELIQUE L xxx-xx-x...
CHAPMAN, ANDREW G xxx-xx-x...
CHOI, KYUJIN J xxx-xx-x...
CLEMANS, CRAIG C xxx-xx-x...
COCKERHAM, SCOTT J xxx-xx-x...
CONNELLEY, CARROLL J xxx-xx-x...
CONNER, WILLIAM J xxx-xx-x...
COTTRELL, MIMI xxx-xx-x...
DAY, WILLIAM D xxx-xx-x...
DEAN, CHAD E xxx-xx-x...
DELGADO, FRANKIE P xxx-xx-x...
DONLEY, JAMES P xxx-xx-x...
DUNNE, JUSTIN S. xxx-xx-x...
EHLER, BRETT A xxx-xx-x...
EICH, GEOFFREY S xxx-xx-x...
ELFERS, MARK W xxx-xx-x...
FITE, JAY R., JR xxx-xx-x...
FORBES, ANGUS P xxx-xx-x...
FRAME, BRUCE C xxx-xx-x...
GADZIK, JOSEPH S xxx-xx-x...
GAINES, RONALD E xxx-xx-x...
GARDNER, HARRY L xxx-xx-x...
GONZALEZ, MICHAEL D. xxx-xx-x...
GRANT, ANDREW F xxx-xx-x...
HAINES, JASON W. xxx-xx-x...
HAMSTRA, ERIC J xxx-xx-x...
HANRAHAN, KELLY M xxx-xx-x...
HARPER, MARK T., JR xxx-xx-x...
HARRIS, EMILY E xxx-xx-x...
HART, CHRISTOPHER A xxx-xx-x...
HAYNES, JONATHAN A xxx-xx-x...
HERNANDEZ, RAY C xxx-xx-x...
HERRERA, ROBERTO xxx-xx-x...
HICKS, JOSEPH D xxx-xx-x...
HOWARD, MICHAEL J xxx-xx-x...
JAKUBOWSKI, ERIC S xxx-xx-x...
JILSON, ERIK W xxx-xx-x...
JONES, CHRISTOPHER H xxx-xx-x...
KAPITULIK, ERIC L xxx-xx-x...
KEMP, JESSE A xxx-xx-x...
KIEFER, ARNOLD M. xxx-xx-x...
KNIGHT, SONJA S xxx-xx-x...
KOLOSKI, THOMAS H xxx-xx-x...
LAMBERT, MICHAEL T., IV xxx-xx-x...
LAW, DAVID A xxx-xx-x...
LAWSON, RICHARD B xxx-xx-x...
LEBLANC, ELRIDGE C xxx-xx-x...
LEDFORD, ANDREW K xxx-xx-x...
LEMOTT, DOUGLAS, JR xxx-xx-x...
LEONARD, JOHN J xxx-xx-x...
LIMBERT, MATTHEW E xxx-xx-x...
LIPPERT, FREDERICK S xxx-xx-x...
LIPSKY, RAYMOND B., JR xxx-xx-x...
MANSFIELD, LESLIE B xxx-xx-x...
MARTIN, GREGORY W xxx-xx-x...
MARTINEZ, ROBERTO J xxx-xx-x...
MARTINO, VINCENT xxx-xx-x...
MCCLUNG, MEGAN M. xxx-xx-x...
MCINNIS, BRADLEY J xxx-xx-x...
MILLER, JASON F xxx-xx-x...
MILLER, TORRENS C xxx-xx-x...
MITCHELL, WIL E. xxx-xx-x...
MOCKENHAUPT, DONALD A xxx-xx-x...
MOORE, DAVID A xxx-xx-x...
MOORMAN, JAY E xxx-xx-x...
MOXEY, TYREL W xxx-xx-x...
MULLIN, EDWARD P xxx-xx-x...
MURRAY, KEVIN F xxx-xx-x...
MURRAY, KYLE D xxx-xx-x...
OGDEN, TIMOTHY D xxx-xx-x...
OLSON, NANCY L xxx-xx-x...
ORLANDONI, DONALD M xxx-xx-x...
PAGE, THOMAS S., JR xxx-xx-x...
PARK, SIDNEY R. xxx-xx-x...
PAULSON, PARKE A xxx-xx-x...
PICKETT, ROY L xxx-xx-x...
PRESECAN, THOMAS H xxx-xx-x...
PRICE, JONATHAN D xxx-xx-x...
PRIDDY, ANDREW T xxx-xx-x...
REMBOLD, JONATHAN P xxx-xx-x...
RIGHTER, JAMES A xxx-xx-x...
ROBBINS, MATTHEW B xxx-xx-x...
ROTHENBACH, WILLIAM C xxx-xx-x...
RUSSELL, MATTHEW E xxx-xx-x...
SAMPLE, CHRISTOPHER J xxx-xx-x...
SANTANA, FRANK xxx-xx-x...
SCHUTZ, WILLIAM A., I xxx-xx-x...
SENN, MATTHEW A xxx-xx-x...
SHERWOOD, ROBERT W xxx-xx-x...
SHONE, FRANK R., JR xxx-xx-x...
SHORT, ERIK S xxx-xx-x...
SMITH, JOHN E xxx-xx-x...
SPAMAN, JAMES G xxx-xx-x...
STOUT, PAUL K xxx-xx-x...
SULLIVAN, ERIN J xxx-xx-x...
SUND, CHAD M. xxx-xx-x...
TIRONE, MICHAEL G xxx-xx-x...
TURNER, WILLIAM T xxx-xx-x...
VEGGEBERG, VERNON T xxx-xx-x...
WAGNER, ERICH H. xxx-xx-x...
WAHLGREN, KIPP A xxx-xx-x...
WEINSTEIN, DAVID A xxx-xx-x...
WYSSBROD, ROBERT L xxx-xx-x...
YOUNG, HAROLD C xxx-xx-x...
YOUNG, TODD C. xxx-xx-x...
ZAMARRIPA, LUIS R xxx-xx-x...
ZEMBIEC, DOUGLAS A xxx-xx-x...
ZIMA, GREGORY N. xxx-xx-x...

IN THE MARINE CORPS

THE FOLLOWING-NAMED TEMPORARY LIMITED DUTY OFFICERS OF THE U.S. MARINE CORPS TO RECEIVE ORIGINAL REGULAR APPOINTMENTS AS PERMANENT LIMITED DUTY OFFICERS UNDER PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 5589:

To be captain

JAMES C. ADDINGTON xxx-xx-x...
DENNIS J. ALLSTON xxx-xx-x...
WILLARD D. ANDREWS, JR xxx-xx-x...
WILLIAM D. ARNDT xxx-xx-x...
STANLEY A. BALDWIN, JR xxx-xx-x...
ERNEST D. BANKS xxx-xx-x...
THOMAS O. BARCUS, JR xxx-xx-x...
THOMAS P. BARZDITIS xxx-xx-x...
JAMIE R. BATES, JR xxx-xx-x...
THOMAS E. BECKER, JR xxx-xx-x...
BRAD W. BERGMAN xxx-xx-x...
RUBEN BERNAL xxx-xx-x...
WILLIAM BEROTTE, JR xxx-xx-x...
ROY L. BIBBINS xxx-xx-x...
MICHAEL J. BISSONNETTE xxx-xx-x...
JOSEPH S. BLOCHOWICZ, JR xxx-xx-x...
MICHAEL A. BOGACZYK xxx-xx-x...
CARMINE J. BORRELLI xxx-xx-x...
JAMES E. BRITT, JR xxx-xx-x...
CLARENCE J. BROOKER xxx-xx-x...
GEORGE L. BROUNTY xxx-xx-x...
JOHN T. BROWER xxx-xx-x...
EVERETTE G. BROWN xxx-xx-x...
GARY L. BROWN xxx-xx-x...
JOYCE A. BROWN xxx-xx-x...
ROGER G. BROWN xxx-xx-x...
DAVID R. BURCH xxx-xx-x...
GUILLERMO E. BURGESS xxx-xx-x...
JACK V. BUTLER, JR xxx-xx-x...
MARK E. BUTLER xxx-xx-x...
GREGORY D. BUTLER xxx-xx-x...
RICHARD W. BYNO, JR xxx-xx-x...
JOSE CABRERA xxx-xx-x...
CATHERINE A. CABRERA xxx-xx-x...
RICHARD B. CALDWELL, JR xxx-xx-x...
FRED M. CALLIES xxx-xx-x...
JOHN J. CAMPBELL xxx-xx-x...
WILLIAM T. CHAPMAN xxx-xx-x...
DONALD C. CHAPMAN xxx-xx-x...
PAUL W. CHAPMAN xxx-xx-x...
DON M. CHASTEEN xxx-xx-x...
DAVID N. CHERRIX, JR xxx-xx-x...
DANNY A. CHRISTMANN xxx-xx-x...
DALE R. CLARK xxx-xx-x...
MARK A. CLESTER xxx-xx-x...
ARTHUR P. COCHRAN xxx-xx-x...
SAMUEL L. COLEMAN xxx-xx-x...
PHILIP J. COLE xxx-xx-x...
GORDON L. COLSTON, JR xxx-xx-x...
RONALD W. CONARDY xxx-xx-x...
ROBERT N. CONQUEST xxx-xx-x...
RONALD C. CONSTANCE xxx-xx-x...
MARTHA E. CONWAY xxx-xx-x...
III WILLIAM J. COOK xxx-xx-x...
JOSEPH A. COPPOLA xxx-xx-x...
STEPHEN J. CORBITT xxx-xx-x...
JEROME CORE xxx-xx-x...
DAVID L. CORKERN xxx-xx-x...
JEFFERY A. CRAFTON xxx-xx-x...
RICHARD H. CRANE xxx-xx-x...
BRAXTER E. CRISLER, JR xxx-xx-x...
JAMES A. CROFFIE xxx-xx-x...
DAVID K. CROSSLEY xxx-xx-x...
ROGER N. CROSS xxx-xx-x...
NELLO E. DACHMAN xxx-xx-x...
MICHAEL W. DAHLKAMPER xxx-xx-x...
WILLIAM J. DAVIS, JR xxx-xx-x...
GEORGE A. DAVIS xxx-xx-x...
KENNETH M. DAVIS xxx-xx-x...
SCOTT E. DAVIS xxx-xx-x...
DONALD R. DINKEL xxx-xx-x...
BRADLEY I. DODD xxx-xx-x...
MICHAEL W. DONHAM xxx-xx-x...
MARLIN L. DOODY xxx-xx-x...
GERARD F. DORRE xxx-xx-x...
RONALD R. DUGAS, II xxx-xx-x...
PHILLIP D. DURBIN xxx-xx-x...
BRIAN R. DUVAL xxx-xx-x...
ADAM D. DZIEKONSKI xxx-xx-x...
LESTER C. EALEY, JR xxx-xx-x...
ROURK A. ELLQUIST xxx-xx-x...
DONALD L. ERICKSON xxx-xx-x...
LESTER H. EVANS, JR xxx-xx-x...
DAVID C. FADDEN xxx-xx-x...
JOHN J. FAHEY xxx-xx-x...
GARY R. FALTINOWSKI xxx-xx-x...
DOUGLAS M. FARLEY xxx-xx-x...
JOHN J. FARLEY xxx-xx-x...
RICHARD H. FESCOE xxx-xx-x...
RUSSELL D. FICKES xxx-xx-x...
DAVID W. FISHER xxx-xx-x...
VERNON R. FREDERICK, JR xxx-xx-x...
DAVID W. FREY xxx-xx-x...
LARRY W. FRYE xxx-xx-x...
STANLEY S. FRYE xxx-xx-x...
DARYLL E. FULFORD xxx-xx-x...
LOUIS M. GACS xxx-xx-x...
THOMAS M. GALITELLO xxx-xx-x...
MICHAEL J. GALLAGHER xxx-xx-x...
MICHAEL H. GAMBLE xxx-xx-x...
GERARDO D. GARCIA xxx-xx-x...
JOSEPH R. GAUTREAU xxx-xx-x...
JAMES R. GEHRIS, JR xxx-xx-x...
TIBURTIUS GERHART, JR xxx-xx-x...
JOHN T. GERMAIN xxx-xx-x...
RANDY L. GIEDT xxx-xx-x...
CHARLES E. GIRARD xxx-xx-x...
ROBERT G. GOODWIN xxx-xx-x...
LOWELL B. GOUTREMOUT, JR xxx-xx-x...
JEFFREY W. GRAVES xxx-xx-x...
RUSSELL L. GRIMSLEY xxx-xx-x...
LONNY R. HADDOX xxx-xx-x...
LEONARD HALIK III xxx-xx-x...
GLENN J. HALL xxx-xx-x...
KATHY E. HAMMAN xxx-xx-x...
PAUL P. HARRIS xxx-xx-x...
GARY L. HARTLESS xxx-xx-x...
STEPHEN W. HASTINGS xxx-xx-x...
TIMOTHY M. HATHAWAY xxx-xx-x...
MARSHA K. HAYDEN xxx-xx-x...
HAROLD G. HAYES xxx-xx-x...
KENNETH J. HEALEY xxx-xx-x...
CHARLES A. HENRY xxx-xx-x...
JAMES G. HERRING xxx-xx-x...
DOUGLAS J. HIBBARD xxx-xx-x...
ERNEST R. HINES xxx-xx-x...
LEONARD L. HOFFMAN xxx-xx-x...
JERALD D. HOLM xxx-xx-x...
ROBERT C. JAROUSSE xxx-xx-x...
ISAIAH JOHNSON xxx-xx-x...
JOEL F. JONES xxx-xx-x...
MARTIN L. KALINA xxx-xx-x...
RAYMOND L. KESSLER xxx-xx-x...
DANNY W. KETTLE xxx-xx-x...
A. D. KING, JR xxx-xx-x...
STEVEN F. KLUGE xxx-xx-x...
MARK A. KNOWLES xxx-xx-x...
RICHARD D. KOSS xxx-xx-x...
BRAD D. LANDON xxx-xx-x...
MICHAEL P. LANDRY xxx-xx-x...
DEBORAH E. LANDRY xxx-xx-x...
MICHAEL E. LARSON xxx-xx-x...
SCOTT B. LATIOLAIS xxx-xx-x...
PETER M. LAWSON xxx-xx-x...
JOHNATHAN D. LAWSON xxx-xx-x...
THADDEUS T. LEWIS III xxx-xx-x...
MICHAEL F. LEWIS xxx-xx-x...
MICHAEL J. LEWIS xxx-xx-x...
JOHN C. LEX xxx-xx-x...
FREDERICK R. LIGHTY, JR xxx-xx-x...
MICHAEL T. LIEFER xxx-xx-x...
JAY H. LIETZOW xxx-xx-x...
CLIFTON R. LLOYD xxx-xx-x...
ROY E. LOGAN xxx-xx-x...
JAMES R. LOGAN xxx-xx-x...
DARIS W. LONG xxx-xx-x...
MICHAEL S. LONG xxx-xx-x...
TIMOTHY S. LOVE xxx-xx-x...
ROBERT J. MAGERS xxx-xx-x...
ARTHUR D. MARTIN xxx-xx-x...
KEVIN F. MASON xxx-xx-x...
THOMAS P. MCCABE xxx-xx-x...
JAMES C. MCCONNELL xxx-xx-x...
MICHAEL K. MCDANIEL xxx-xx-x...
MICHAEL T. MCGLYNN xxx-xx-x...
GEORGE C. MCLAIN xxx-xx-x...
DANIEL J. MCLEAN xxx-xx-x...
GREGORY A. MCNEAL xxx-xx-x...
WAYNE D. MEDEIROS xxx-xx-x...
JEFFREY F. MENDENHALL xxx-xx-x...

EUGENE C. MENDIOLA xxx-xx-x...
WILLIAM A. MEZNARICH, JR xxx-xx-x...
RICKY R. MILLARD xxx-xx-x...
RUSSELL E. MILLER, JR xxx-xx-xx...
PAUL J. MINER xxx-xx-x...
WILLIE J. MOORE xxx-xx-x...
JOSEPH F. MORAVEC xxx-xx-x...
TIMOTHY C. MOREHEAD xxx-xx-x...
LARRY D. MORGAN xxx-xx-x...
TERRANCE W. MORROW xxx-xx-x...
JOHN C. MOTT xxx-xx-x...
THEODORE W. MUELLER xxx-xx-x...
MICHAEL T. MULQUEENY xxx-xx-x...
CLENNON W. MURRAY xxx-xx-x...
PATRICK A. NEWSOME xxx-xx-x...
MICHAEL S. NISLEY xxx-xx-x...
JOHN R. NOLAN xxx-xx-x...
STEVEN W. OCHS xxx-xx-x...
KEVIN C. OHERAN xxx-xx-x...
RICKE S. OLGUIN xxx-xx-x...
ROBERT J. OSBORN II xxx-xx-x...
JOSE G. PANIAGUA xxx-xx-x...
KERRY D. PATTERSON xxx-xx-x...
CHARLES G. PELOQUIN xxx-xx-x...
ROBERT G. PENNOCK xxx-xx-x...
GREGORY A. PERSINGER xxx-xx-x...
DANIEL J. PETERLICK xxx-xx-x...
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RICHARD A. RATLIFF xxx-xx-x...
MICHAEL D. REAVES xxx-xx-x...
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ROCKEY J. REEL xxx-xx-x...
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ROBERT M. REILLY xxx-xx-x...
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THOMAS R. RICE xxx-xx-x...
TIMOTHY S. RICKER xxx-xx-x...
MICHAEL R. RIDDELL xxx-xx-x...
STEVEN P. RISIGARIGA xxx-xx-x...
JOHN A. RITTER xxx-xx-x...
GUILLERMO R. RIVERO xxx-xx-x...
ROY R. ROSAL xxx-xx-x...
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JAY A. ROTHMEYER xxx-xx-x...
CARLOS L. SANDERS xxx-xx-x...
CARL J. SCHEIDT xxx-xx-x...
EDWIN G. SCHROEDER xxx-xx-x...
JONATHAN F. SCHWARZ xxx-xx-x...
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SHANE D. SELLERS xxx-xx-x...
ROBERT E. SEVERSON xxx-xx-x...
BRITTON C. SHAFFER xxx-xx-x...
JOHN F. SISSON, JR xxx-xx-x...
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DANIEL L. SPEEDY xxx-xx-x...
LARRY E. SPICER xxx-xx-x...
DAVID L. STOKES xxx-xx-x...
WILLIAM R. STRICKLAND xxx-xx-x...
WILLIAM D. SVOBODA xxx-xx-x...
GARRETT F. SYLVAIN xxx-xx-x...
ROBERT G. SYPOLT xxx-xx-x...
RANDELL TACKETT xxx-xx-x...
WILLIAM G. TERHUNE xxx-xx-x...
DANNY R. TERVOL xxx-xx-x...
STANLEY E. THOMAS xxx-xx-x...
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DENNIS G. ADAMS xxx-xx-x...
JOSE L. AGUIRRE xxx-xx-x...
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DEMETRICE M. BABB xxx-xx-x...
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JEFF F. BROOKS xxx-xx-x...
GEORGE B. BROWN xxx-xx-x...
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GARY D. FRALEY xxx-xx-x...
PATRICK F. FROSSARD xxx-xx-x...
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GEORGE L. HART xxx-xx-x...
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CALVIN H. IONA xxx-xx-x...
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ALLEN M. JACOBS xxx-xx-x...
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MARIE G. JULIANO xxx-xx-x...
KENNETH E. KARLSON xxx-xx-x...
KENYON T. KELLEY xxx-xx-x...
GEORGE D. KENDLEY xxx-xx-x...
MARSHALL L. KINDRED xxx-xx-x...
GEORGE W. KIRBY xxx-xx-x...
HENRY L. KLEPAC xxx-xx-x...
BRUCE W. KNIPPEL xxx-xx-x...
LAWRENCE KOCIAN xxx-xx-x...
PETER J. KOUTROUBA xxx-xx-x...
JAMES J. KRAUS xxx-xx-x...
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DALTON J. LANGLINAIS xxx-xx-x...
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CARL W. LOWE xxx-xx-x...
PHILLIP W. LUCAS xxx-xx-x...
ELMER L. LUCAS xxx-xx-x...
ALBERT A. LUCKEY xxx-xx-x...
DANIEL P. LYBERT xxx-xx-x...
AUGUST F. MALSON II xxx-xx-x...
HECTOR L. MELENDEZ xxx-xx-x...
LARRY T. MESSNER xxx-xx-x...
JOSEPH A. MILLER xxx-xx-x...
PATRICK E. MILLER xxx-xx-x...
LAWRENCE A. MILLER xxx-xx-x...
LESLIE N. MINIHAN xxx-xx-x...
SCOTTY W. MONTAGUE xxx-xx-x...
MICHAEL C. MONTCRIEFF xxx-xx-x...
BRUCE G. MONTGOMERY xxx-xx-x...
NATHANIEL MOON xxx-xx-x...
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DAVID M. MOSER xxx-xx-x...
STEPHEN H. NEGAHNQUET xxx-xx-x...
ALAN J. NELSON xxx-xx-x...
CHARLIE P. NEUMANN xxx-xx-x...
MICHAEL E. NICKNADARVICH xxx-xx-x...
MATTHEW J. O'DONNELL xxx-xx-x...
LEE P. O'DONOVAN xxx-xx-x...
MARVIN D. PARKER xxx-xx-x...
HUGHES V. PATTERSON xxx-xx-x...
MILTON L. PETERSON xxx-xx-x...
CARL E. PHILLIPS xxx-xx-x...
DAVID L. POWERS xxx-xx-x...
EARL T. RADABAUGH xxx-xx-x...
RONALD W. REDFERN xxx-xx-x...
JOHN H. REGAN xxx-xx-x...
WILLIAM J. RESAVY, JR xxx-xx-x...
CHARLES S. REYNOLDS, JR xxx-xx-x...
PABLO F. RIBADENEIRA xxx-xx-x...
CHARLES E. RIPLEY xxx-xx-x...
RANDY R. RISHELL xxx-xx-x...
GARY S. ROBERTS xxx-xx-x...
TIMOTHY R. ROLLINS xxx-xx-x...
RAYMOND T. ROWLAND xxx-xx-x...
VINCENT T. SABLAN xxx-xx-x...
STEVEN R. SCHRIER xxx-xx-x...
FRANK L. SCOTT, JR xxx-xx-x...
WILLIE F. SCOTT xxx-xx-x...
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THOMAS P. SEVERIT xxx-xx-x...
DANIEL P. SHEA xxx-xx-x...
DAVID S. SIMKO xxx-xx-x...
BILLY T. SKAGGS xxx-xx-x...
JOHN W. SPENCER xxx-xx-x...
FLOYD B. STARKS xxx-xx-x...
EDWARD H. STEINHAUSER xxx-xx-x...
ROGER STEPHENS xxx-xx-x...
DAVID T. STEWART xxx-xx-x...
RONALD F. SWANSON xxx-xx-x...
STANLEY D. TEMPLE xxx-xx-x...
RAYMOND O. THOMAS xxx-xx-x...
JOHN M. THORNTON xxx-xx-x...
BERNDT H. TIETJEN xxx-xx-x...
MICHAEL K. TOELLNER xxx-xx-x...
MARK L. TORNAI xxx-xx-x...
VERL J. TRICKETT xxx-xx-x...
CHARLES M. TUCKER xxx-xx-x...
CHARLES L. TURBYFILL xxx-xx-x...
CARL A. VANDIEST xxx-xx-x...
WILLIAM S. WATKINS xxx-xx-x...
RALPH WAY xxx-xx-x...
DENNIS A. WHEELER xxx-xx-x...
RONALD W. WILHITE xxx-xx-x...
ROBERT C. WITTENBERG xxx-xx-x...
JOHN C. WRIGHT xxx-xx-x...
LAWRENCE N. YEE xxx-xx-x...
PAUL A. ZAPPALA xxx-xx-x...
WILLIAM E. ZIMMERLY xxx-xx-x...
WAYNE J. ZIMMERMAN xxx-xx-x...
ROBERT A. ZINK xxx-xx-x...

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ROBERT C. BENBOW, JR xxx-xx-x...
VERNON E. BROWNING xxx-xx-x...
RAYMOND C. BROWN xxx-xx-x...
DANDRIDGE S. CARTER xxx-xx-x...
WILLIAM J. CAVANAUGH xxx-xx-x...
TOMMY L. CHANDLER xxx-xx-xxxx
MERRITT L. COGSWELL xxx-xx-x...
CHARLES E. CONE xxx-xx-x...
DONALD P. CONE xxx-xx-x...
MICHAEL J. COOPER xxx-xx-x...
LARRY A. COWART xxx-xx-x...
DENNY L. COX xxx-xx-x...
PAUL D. CYR xxx-xx-x...
JOSEPH W. DEANES xxx-xx-x...
STEVEN S. DEMERS xxx-xx-x...
LYLE A. FERRARA xxx-xx-x...
SAMUEL L. FLORES, JR xxx-xx-x...
ARTHUR G. FRIEND xxx-xx-x...
MICHAEL E. GEORGE xxx-xx-x...
LAWRENCE R. GREEN xxx-xx-x...
JOHN C. HANNAFORD xxx-xx-x...
JOE V. JOHNSON xxx-xx-x...
JOHN J. KASSAY, JR xxx-xx-x...
FREDERICK J. KEEGAN xxx-xx-x...
JOHN J. KIEREPKA xxx-xx-x...
GARRY N. KLAUS xxx-xx-x...
HERMAN C. LARKIN xxx-xx-x...
DANIEL C. LEUTNER xxx-xx-x...
JAMES A. MARTIN, JR xxx-xx-x...
ROBERT W. MCMANUS xxx-xx-x...
CHRISTOBOL H. MENDEZ xxx-xx-x...
ROBERT H. MOORE xxx-xx-x...
DANIEL S. MULLINS xxx-xx-x...
JAMES D. NICHOLSON xxx-xx-x...
THOMAS J. PFAFFENBERGER xxx-xx-xx...
WARREN S. ROBINETTE, JR xxx-xx-x...
LAWRENCE A. ROMAINE, JR xxx-xx-x...
JOSEPH H. SCHEPIS xxx-xx-x...
NICHOLAS A. SHRUM xxx-xx-x...
JOHN R. SMITH xxx-xx-x...
LONNIE D. SMITH xxx-xx-x...
DALE W. STONE xxx-xx-x...
JERREL R. TOWNSEND xxx-xx-x...
JERRY M. VICKERS xxx-xx-x...
JAMES W. WASHINGTON xxx-xx-x...